



Know Your Rights: Legal Approaches to Minimizing Oracle Audit & Compliance Risk

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Agenda

- Licensing Overview
 - Processor Licenses
 - User Licenses
 - Revenue-Based Licenses
 - Unlimited License Agreement (ULA)
- Oracle Acquisitions
- Oracle Audits
 - Surprises
 - Termination Provisions

Licensing Overview

- Types of Products
 - Application
 - Technology
- Types of Licenses
 - Processor
 - User
 - Revenue
- Unlimited License Agreement (ULA)

Processor Licenses

- Virtualization is tricky
 - Must use Oracle-approved “hard partitioning” technologies
 - Live migration must be disabled to limit licensing requirements
- Production licenses generally required for development and/or testing environments

Human License Metrics

- Named User Plus
 - Defined as “an individual *authorized*...to use the programs” – actual usage generally is not relevant to licensing obligations
 - Minimum NUP license quantities are required for some products (e.g., 25 NUPs per processor required for Database Enterprise)
- Number of Employees
 - Defined as “an active employee” – not only is actual usage irrelevant, so too is authorization to use the software

Revenue-Based Licenses

- Licensing based on amount of revenue attributable to a particular subsidiary or line of business
- Difficult to determine appropriate license value for each unit of measurement
 - For example – license fee increases for every \$1 million in revenue
 - What is appropriate discount level for revenue-based licenses
 - What if other subsidiaries contribute to revenue?

Unlimited License Agreement (ULA)

- Customer estimates usage for identified Oracle products during ULA term (generally 3 years)
- Oracle prices based on Customer's current use and estimated growth
- At end of term, Customer certifies usage and receives perpetual licenses for identified products, if ULA is not renewed
- Support for certified license quantity cannot be reduced following certification

Challenges with ULAs

- Customer has no way to track unlimited license usage, so it cannot certify at the end of the term
- Customer estimates usage that did not occur during the term
- Customer did not otherwise get value during the term and cannot get value after expiration

Oracle Acquisitions

- Oracle changes licensing metrics for popular products it acquires
- When customers upgrade to Oracle versions, new licensing rules apply
- Pricing models often change along with license changes

Oracle Audits

- Based on my experience Oracle is focused on its audit activity at this time
- Conducted generally internally
- Oracle License Management Services (LMS) participates in the audit
- Customers contractually required to respond, even if they are in the middle of transitions or migrations

Oracle Audit Surprises

- Functionality enabled but never used is considered non-compliant
- Prior agreements, including license transfers and custom agreements not always honored
- If it is not in the OLSA or SLSA or an ordering document, LMS will not give credit

Termination Provision

- Oracle believes it has the right to terminate all licenses acquired under one agreement in the event of a breach
- Oracle considers failure to respond to an audit request a breach
- Oracle considers failure to pay for deficient licenses identified in audit a breach, regardless of whether the customer needs those licenses

Minimizing Risks

- Understand the implications of virtualization
- Regularly evaluate Oracle license position, especially before terminating maintenance or ULA
- Consult with qualified experts to answer complex licensing questions
- Do not rely on resellers or informal communications to establish license position

Questions?

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