



Major IBM Licensing Obstacles and How to Mitigate Them

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Five IBM Licensing Risks

- Old Agreements with Many Amendments
- License Scope and Restrictions
- Geographic Limitations
- Sub-Capacity Licenses and ILMT
- Compliance and Audits

IBM Agreements

- Agreements are not easy to understand and manage
- Often contain complex, expensive, and onerous provisions
- Most leverage at the beginning of relationship or renewal of the agreement
- Many customers have power to negotiate custom clauses
- Little or no leverage when user is already in breach

Negotiating Favorable Licensing Terms

- Evaluate how the software will be used
- Understand the license requirements, especially if virtual environments or clusters are present
- Try to identify and resolve ambiguities before agreement is signed
- Ensure that the license expressly grants usage rights required for architecture being used
- Confirm what rights exist upon termination or expiration of the license
- Get legal involved at the outset of the relationship, or anytime there is a license revision

Negotiating Audit Provisions

- Rights Under the License Agreement are Usually Onerous
- Typically Provisions Contain:
 - Right to Enter and Inspect business to Confirm Compliance
 - Use of a Third-Party Auditor
 - Penalties, Including Back Maintenance and Interest for 2 or 3 Years
- IBM Will Occasionally Negotiate Audit Provisions
- Easier to Negotiate Before License Purchase

Revisions and New Agreements

- Difficult to determine what agreements are effective
- Relationship sometimes spans decades
 - Sometimes an amendment or addendum is signed rather than a new agreement
 - Often no one affirmatively accepts new licensing terms
- IBM can usually revise agreement without a signature if customer fails to object to e-mail
- If there are many competing agreements, important to insist on an agreement that covers current relationship

License Scope and Restrictions

- How is the licensee defined
- Are there geographic limitations on the license uses?
- Restrictions on commercial use
- Virtualization
- Affiliates and third-party usage

Geographic Limitations

- Definition of geographic region, e.g., North America
- Can products be used outside the territory where license was purchased
- Are foreign affiliates allowed to access servers in the licensed territory
- Is a world-wide license available

Types of IBM Licenses – Full Capacity

- Processor Value Unit (PVU)
 - Most common license
 - Based on cores, not chips or sockets
- Authorized User License
 - Named users cannot be reassigned unless original user replaced on a long-term basis
- Concurrent Users
- User Value Units
 - Usually for Tivoli products
 - Number of licenses needed decrease as users increase (i.e., 5000 users need 5000 UVUs but 10,000 users need 7,500 UVUs)

Types of IBM Licenses – Sub-Capacity

- For large servers and virtual environments, IBM offers sub-capacity licensing
- Requires customers to install IBM's License Metric Tool (ILMT)
- Requires monthly or quarterly reporting
- Can lead to extensive exposure if ILMT not properly deployed and managed
- Lack of ILMT is primary source of liability in an IBM audit

Responding to IBM Audits

- o Establish Framework for Audit
 - o Scope
 - o Auditors
 - o Whether On-Site Meeting Will Be Allowed
- o Confidentiality and 408 Agreements
- o Timeframe
- o Consequences of Non-Compliance – Buy or Uninstall
- o Will be governed by audit provision in the relevant agreement(s)

Investigating License Compliance - Deployments

- Automated process designed to identify all software products installed on corporate computers
- Discovery of all assets is challenging
- Reporting is unreliable
- Validation is difficult
- IBM recommends or requires ILMT
- Make sure all data is protected by Attorney Work-Product Privilege

Investigating License Compliance - Entitlements

- o IBM contracts often contain entitlements
- o Review all contracts with publishers who were acquired by IBM
- o Collect recent software services & support invoices
- o Determine whether IBM has issued to your organization a Proof of Entitlement (POE) for any of its software

Resolving IBM Audits

- Evaluate settlement demand to ensure the math and the analysis are accurate
- IBM usually sends an audit resolution quote instead of a formal demand
- The amount due is often negotiable
- IBM may allow customer to substitute a needed product
- It is important to ask for a release

Questions?

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