

## Large Enterprises Need to Think Outside the Box When Licensing Software

By Christopher Barnett



Software publishers utilize myriad different license metrics to determine what kind and quantity of particular licenses their customers are required to purchase. Some are relatively straightforward, such as “one license per server” or “one license per user.” Others can be more complex, such as “one license per each virtual processor core...Subject to a four-core minimum...With licenses sold only in ‘packs’ of two...And you better make sure you’re purchasing the right software edition.” Most of these metrics – especially the more complex ones – make lots of sense if you are the publisher, usually less so if you are the licensee.

However, once a company reaches a certain size, even the “simple” metrics can become exceedingly difficult to use in the real world. Hardware inventories can be difficult or impossible to gather for companies with dynamic, distributed computing domains. Users accessing particular programs on servers (or licensable options within those programs) can be challenging to identify with any degree of accuracy or precision. What may have appeared once upon a time to be an appropriate licensing methodology can, with time and growth, become administratively burdensome to manage. And where burdens arise, mistakes – often costly – are almost sure to follow.

Companies with substantial software expenditures owe it to themselves to demand more sensible licensing arrangements with their software vendors. If an enterprise cannot reliably generate an inventory of users or devices, then it should propose alternatives during licensing negotiations that may be non-standard for the publisher but more logical for the licensee. Revenue shares and HR headcounts are two good examples, but all reasonable options should be explored.

To be sure, most publishers will be hesitant to consider non-standard metrics, and there almost certainly will be a pricing penalty for deviating from standard licensing procedures. In the end, to the extent that a publisher is willing to make concessions, the licensee will need to decide whether those additional costs would outweigh the estimated savings associated with administration of standard licensing models and the estimated exposure associated with failing to accurately calculate license requirements. In some cases, it may make more sense to adjust to the standard requirements. However, the more companies request that publishers offer more flexible proposals, the more likely it may be that such alternatives become commonplace. It rarely hurts to ask.

Image: Dollar Photo Club/Dukes



**About the author Christopher Barnett:**

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher's practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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