

Microsoft's Auditors Are Not Infallible

By Christopher Barnett

Microsoft licensing is a complex, multi-faceted undertaking, with different rules and license metrics applying to different products. In the context of software audits initiated by Microsoft, it is important to keep in mind the fact that the auditors hired to perform those investigations are fallible human beings and that they can (and do) make mistakes in their audit analyses.

Frequently, some of the nuances of those rules are overlooked by the auditors during the data-collection phase, with critical questions being left unasked. A good example is the question of which computers in an environment are used and accessed solely by developers for development or testing purposes. Many companies with large development teams purchase MSDN subscriptions that allow those team members to deploy a large variety of Microsoft products for development and testing purposes without purchasing additional licensing. If those developers are working with otherwise expensive server products, like SQL Server, then forgetting to confirm the scope of the development environment can lead to wildly inaccurate license positions for the products that are used for that development work.

For this and similar reasons, it is important for an audited company to know as much as possible about Microsoft's product use rights as possible before the audit begins. If it appears during the course of the audit that critical questions are not being asked, a company must be able to recognize the omission and to make a decision whether to bring it to the attention of the auditors before a draft audit report is produced. In some cases, if no-one thinks to raise that kind of issue during the investigation phase, then the subsequent negotiations with Microsoft to resolve the matter can be hindered by the need to gather supplemental audit data.

Companies that do not have a high level of confidence regarding their knowledge of Microsoft's product use rights should strongly consider working with knowledgeable and experienced software licensing counsel or consultants before the audit investigation gets underway.



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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