

Is Hosting Microsoft Products via Third Parties a Good Option?

By Christopher Barnett

Most providers of hosted software solutions traditionally have delivered those solutions over the Internet from their own servers. However, an increasing number of businesses are interested in outsourcing not only their internal-use IT infrastructure but also the systems used to host their client-facing solutions. Doing so may allow a business to focus more on product development than datacenter maintenance, with new servers added at the push of a button.

Microsoft products form the backbone of many hosted solutions, and Microsoft's principal license model for those use cases is the Services Provider License Agreement (SPLA). Fortunately for companies interested in outsourcing, it is possible under SPLA for a service provider to use a third party's servers to host Microsoft products used to support hosted solutions that the service provider makes available to its customers. The SPLA refers to such third parties either as:

- "Data Center Providers," if the third parties have their own SPLAs and use those agreements to license the Microsoft Products, or
- "Outsourcing Companies," if the Products are to be licensed under the service provider's SPLA.

However, per-processor- and per-core-licensed infrastructure products like Windows Server and SQL Server generally may not be licensed under the service provider's SPLA for use on the DCP's servers. Products eligible for licensing under the service provider's SPLA for use on a DCP's servers are tagged as follows in the Services Provider Use Rights document:

Eligible for Software Services on Data Center Providers' Servers: **Yes**

In addition, however, if a service provider is going to deploy SPLA-licensed products on an Outsourcing Company's servers, it must enter into an "Outsourcing Company Agreement" containing required terms pertaining to intellectual property and verification rights. Also, under either scenario, the service provider remains responsible for ensuring that all products licensed under its SPLA are properly reported each month and accessible in the event of an audit.

Compared to some of the alternative licensing models that Microsoft offers for hosted solutions, the requirements for using Data Center Providers and Outsourcing Companies are relatively mild. Service providers interested in reducing their expenditures on IT infrastructure should consider those options.



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.

Get in touch: cbarnett@scottandscottllp.com | 800.596.6176