Hosting Providers Have Two Options For Customer-Supplied Licenses

By Christopher Barnett

Like any good business, many providers of hosted IT solutions prefer to demonstrate flexibility in offering services to their customers. For example, a company that offers hosted Exchange services may want to allow their customers to use perpetual licenses the customers purchased to support deployments on the service provider's servers. While Microsoft's licensing rules permit this under some circumstances, there are important restrictions on how the Microsoft software may be deployed that can result in severe penalties for the unwary:

- **Dedicated, Physical Servers Are (Mostly) OK.** Microsoft's Product Use Rights (PUR) document states: "You [the hosting services customer] may install and use permitted copies of the software on Servers and other devices that are under the day-to-day management and control of third parties, provided all such Servers and other devices are and remain fully dedicated to your use." In addition, "Server" is defined in the PUR as "a physical hardware system capable of running server software." Thus, if the hosting provider has a physical server set aside for the exclusive use of a customer wanting to use its own licenses, that will work...usually. Usually, because another practical limitation is that the software needs to be licensed either via the customer's licenses or via the vendor's Services Provider License Agreement, without mixing the two. (Otherwise, it would be impractical for the vendor to validate how many licenses it needs to supply under SPLA.)

- **Shared Infrastructure Is…Less OK.** The dedicated-physical option is increasingly unworkable for most hosting providers due to the more efficient architectures that may be implemented using today's virtualization technologies. Recognizing this, while working diligently to uphold its reputation as a purveyor of complex, yet clumsy licensing obligations, Microsoft implemented what it calls "License Mobility Through Software Assurance" several years ago. License Mobility allows owners of perpetual licenses to deploy the licensed software on a third party's shared infrastructure. As long as those licenses are covered by Software Assurance. And as long as that third party is either Microsoft or a "qualified" License Mobility partner. And as long as the licensee completes a License Mobility Validation form. Which the vendor then transmits to Microsoft for validation. Such fun!

Thus, when it comes to using customer-provided licenses, service providers get to choose between one option that entails simple licensing, yet archaic architecture, and another option that entails industry-standard architecture, yet Rube Goldbergian licensing rules. Given Microsoft's growing presence in the hosted services market, this likely is exactly what the team in Redmond had in mind.

Service providers licensing their solutions through SPLA (and their lawyers) need to pay borderline-obsessive, exacting attention not only to the SPLA licensing rules but also to the rules affecting any other licenses they ever consider to support potential deployments in their environments. Mistakes in this area can lead to crippling penalties in the event of an audit.

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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