Identifying and Understanding Microsoft License Verification Audits

By Keli Johnson Swan

Microsoft, like other software publishers, routinely audits customers to help ensure that it is protecting the value of its intellectual property. Microsoft verifies its customers' compliance using several methods.

1. **Microsoft License Verification (also, Software Asset Management "SAM" request).**

In a SAM request, Microsoft assigns a third party to reach out to a customer to confirm compliance, with Microsoft paying the third party's fees. This type of audit does not seek a penalty for past infringement or copyright damages, but many customers are required to purchases licenses at the end of the process.

Companies may have their own SAM processes in place, designed to ensure the company is fully compliant. Such companies often regularly conduct internal audits. Companies that regularly review their own compliance and verify with certified Microsoft SAM providers may choose to decline to participate in Microsoft's SAM process.

2. **Microsoft-initiated Audit**

Microsoft may alternatively choose to initiate an audit of a customer pursuant to the specific audit rights outlined in the End User License Agreement, Product Use Rights, or relevant Microsoft Agreement the customer has in place. Each agreement may contain slightly different audit provisions, but the end result is the same: Microsoft has the right to audit its customers to verify license compliance.

When Microsoft chooses to initiate a direct audit, a customer is often expected to pay a monetary penalty for any deficient software, and also pay to replace the software with valid licenses purchased at MSRP instead of market price. A customer is required to provide audit data relevant to its Microsoft installations and the corresponding entitlement information to prove ownership of the software installed on its network. It is critical to ensure the accuracy of the audit data prior to sending information to Microsoft in order to avoid unnecessary monetary penalties.

3. **Microsoft True-up**

Enterprise customers have a regularly scheduled "true up" as part of their license agreements. During the true-up periods, the customer is required to report the total number of enterprise products being used. If there is a gap in the number of licenses owned and the number of licenses installed, the customer is required to purchase the licenses at the agreed=upon Enterprise price. If the customer fails to properly report, Microsoft may require the customer to pay a penalty to acquire the additional licenses. This type of license verification is ongoing for the period specified in the agreement and has specific rules and requirements.

Before responding to any type of software audit request, customers should first meet with experienced counsel to prepare a strategy for responding to the audit.

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