

VMware Audits: What You Need to Know About Licensing Rules, Part I

By Keli Johnson Swan



Figure 1 VMware Licensing Rules

It is not unusual for companies to use virtualization technologies to reduce costs, ensure redundancy, and reduce physical size of the network. Some of these companies are turning to VMware to manage their virtualized environments. Virtualization can involve complex technical and licensing issues. Failure to properly license the environment risks subjecting the company to unbudgeted licensing and compliance fees. The following is a number of common questions and concerns related to licensing VMware.

I. **Is a customer allowed to use software for evaluation purposes?**

Yes, as long as the evaluation copy is not used in the production environment and is for testing only.

II. **Can an affiliate use the software?**

Typically a corporate affiliate is allowed to use the software if the affiliate is under common control or ownership of more than 50%. This means that any joint ventures or affiliates with less than 50% common ownership, control, or voting rights must be separately licensed. See VMware End User License Agreement (“EULA”), Section 1.1.

III. **Can the software be transferred?**

Subject to all of the terms and conditions of the VMware End User License Agreement, the software cannot be transferred unless the customer obtains written consent from VMware, which will not be unreasonable withheld. See Section 12.1 of the EULA.

IV. **Does the license expire?**

The EULA indicates that all VMware licenses are perpetual unless the order for the software specifically limits the term of the license. This means that license will not expire unless it is terminated.

V. **Can VMware be installed at any location?**

No. VMware can only be installed in the territory specified in the order (for example, North America). Global corporations may consider alternative licensing options, or negotiating and specifying the territories in the original order to ensure all locations are properly licensed.

VI. **Can VMware be used with Oracle software?**

Yes, but it may require additional licensing fees for use of the Oracle products in a virtualized environment. .

It is important to carefully review the contemplated use cases for VMware against the licensing restrictions to ensure that the company is in compliance with its license agreement.



About the author Keli Johnson Swan:

As an associate attorney at Scott & Scott, LLP, Keli is primarily focused on software licensing and copyright infringement matters. She advises clients in a variety of industries to ensure compliance with software licenses and develop strategies for maximizing the value of software licenses.

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