

## Is Microsoft Trying to Kill Self-Hosting?

By Christopher Barnett

Earlier this year, with no fanfare (which is perhaps unsurprising), Microsoft implemented a significant change to its Product Terms pertaining to Software Assurance (SA) benefits that likely will have a significant licensing impact for companies that have taken advantage of the Self-Hosted Applications benefit accompanying SA.

For several years now, Microsoft has allowed customers with SA covering certain server product licenses to use those licenses in order to support “Unified Solutions” hosted for third-party end users. In order to take advantage of that “Self-Hosted Applications” (SHA) benefit, the licensees generally had to ensure (1) that the Microsoft products in question were fully licensed for user access (which usually means processor/core licenses and External Connectors for products otherwise requiring CALs), and (2) that the Unified Solution satisfy certain eligibility criteria, notably including a requirement that the Microsoft products must be used only in support of primary, hosted functionality owned by the licensee (and not licensed from another third party). However, for many companies, those have been relatively easy requirements to satisfy. Furthermore, the SHA benefit represented an attractive alternative to Microsoft’s Services Provider License Agreement (SPLA), which entails a monthly reporting burden and, for many companies, heightened risk of licensing exposure.

Unfortunately for those companies, with the February 2016 Product Terms release, Microsoft added the following paragraph to the section pertaining to the SHA benefit:

*If Customer delivers the Unified Solution from shared servers, Customer may not use Windows Server (nor Remote Desktop Services External Connector License or any other Windows Server access license) as a Self-Hosted Application. Instead, Customer must use Windows Server software licensed through a License Mobility through Software Assurance Partner or Customer’s Services Provider Licensing Agreement, or under another Microsoft Volume Licensing offering permitting use on shared servers. Other Products used in a Unified Solution delivered from shared servers must have License Mobility through Software Assurance.*

Keep in mind the fact that when Microsoft says “servers,” it is referring to physical hardware:

*Server means a physical hardware system capable of running server software.*

In addition, Microsoft released a new Self-Hosted Applications Licensing Brief that included the following:

*With the Self-Hosted Application Software Assurance benefit, you have the option to deploy your Unified Solution on multi-tenant servers. If you choose this deployment option, the Windows Server product that is used to support your Unified Solution must be licensed through an Authorized License Mobility Partner; your own Service Provider Agreement; or another Volume License program that permits Windows Server to be deployed on shared hardware.*

The effect of the change is that SPLA now is the only way to license Windows Server in connection with any “commercial hosting” service utilizing shared physical infrastructure. Given the expense associated with dedicating physical hardware to a hosting customer, most hosted solutions utilize shared infrastructure. Therefore, most SHA licensees will be affected by this change. Furthermore, since the new language does not include any terms offering grandfathered status to services that previously may have been properly licensed through SHA, all SHA licensees now must formulate new frameworks for licensing their solutions for Microsoft going forward.

Since most Microsoft volume license agreements specify that the Product Terms in place at the beginning of the agreement term control product usage during the term, companies that had agreements in place as of the date of the change have a reasonable argument that the change will not apply to them until it is time to renew. At that stage, all companies seeking to take advantage of SHA and to avoid SPLA should consider asking Microsoft to agree to a custom amendment allowing SHA licensing for Windows Server on shared infrastructure.



**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](mailto:cbarnett@scottandscottllp.com) | 800.596.6176