

Enterprise Software Licensing vs. Self-Hosting – Top Three Things to Remember

By Christopher Barnett

Most business managers looking to license software in a large organization are interested in two key goals: cost reduction and flexibility. Cost reduction is an obvious goal. Flexibility is another matter, however. Retail licensing for large enterprises usually is a non-starter – retail licenses generally are more expensive per seat, are more difficult to track against software installations, and require a company to accurately forecast its software needs into the future, with a large up-front capital expenditure. Therefore, at a certain size, many companies start looking for alternatives, and those alternatives (for Microsoft products, at least) often take the form of either an Enterprise Agreement (EA) or a “self-hosting” solution under a Services Provider License Agreement (SPLA). Here are some of the most important things to keep in mind when trying to decide between them:

- 1. License Accounting.** One of the greatest advantages of software licensing under an EA is its retrospective licensing model – customers make an initial assessment of license needs at the beginning of an EA term and then adjust the number of licenses included in an EA order during annual “true ups,” which are based on the number of deployments as of the true-up date. Self-hosting under SPLA one-ups even the EA on flexibility, in that businesses adjust their licensing order (both for new deployments and decommissions) on a month-to-month basis. However, with that flexibility comes the requirement to accurately track deployments on the same month-to-month basis. For some companies, this may be relatively easy to accomplish. For others, though, it might be too burdensome, depending on the network architecture and products in question.
- 2. License Duration.** Licenses acquired under EA last forever, assuming the EA customer meets all of its obligations under the agreement. Licenses acquired under SPLA, on the other hand, last only for as long as the SPLA remains effective. This means that companies who try self-hosting and then determine that it is not for them will end up with no perpetual software licenses – and a large prospective license purchase – if they ever decide to jump ship to EA or a different licensing model.
- 3. Corporate Formation.** EAs are made to satisfy the internal licensing needs of large organizations. SPLAs, by contrast, are made first and foremost to satisfy the licensing needs of business that provide hosted software solutions to their customers over the Internet. Most SPLAs therefore include limits on how many SPLA-obtained licenses may be used for internal purposes by the SPLA customer (and the SPLA “customer” usually is defined to include the signing company in addition to all of its subsidiaries, parents, and affiliates under common control). Therefore, a self-hosting entity under SPLA needs to be organized carefully, being mindful of the triggers that could set off the internal-use caps contained in the company’s SPLA.

Questions regarding enterprise software licensing often implicate complex, interconnected legal issues. When in doubt, enlist the assistance of knowledgeable licensing counsel.



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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