

## Microsoft Volume Licensing – SPLA and Internal Use

By Andrew Martin

Microsoft offers a number of volume license programs designed for use by organizations with more than 250 desktops. The Microsoft Enterprise Agreement (EA) and Enterprise Subscription (EAS) agreements are for organizations licensing products for internal use only. For companies that have the need to license software for use by their customers – say, for companies offering hosting services – Microsoft developed the Service Provider License Agreement, or SPLA. With the SPLA, organizations that are Microsoft Partners can provide access to Microsoft software by purchasing either Per-Processor or Subscriber-Access Licenses for a number of Microsoft titles. In addition, however, the SPLA also permits these Partners to deploy the software licensed under the SPLA for internal use.

Under the terms of the SPLA, Partners may use Microsoft software for internal use so long as: 1) the Partner reports its use in the required, monthly reporting; 2) the Partner’s use is less than 50% of the total use of each title, as measured on a product-by-product basis; 3) the software is not used on rental devices; and, 4) internal use is not restricted by the Services Provider Use Rights (SPUR) document. The “less than 50%” requirement is the most quoted internal use restriction, but some Partners may not be aware of additional restrictions that Microsoft might set out in the SPUR. Because Microsoft sometimes publishes new SPURs a number of times a year, determining which additional restriction on internal use applies in a given scenario isn’t always easy. Essentially, a Partner is grandfathered into the SPUR that was in effect at the date of original deployment of a particular software title. However, subsequent version upgrades or new component installations deployed by the Partner can affect these rights and restrictions.

Although Microsoft’s agreements are relatively easy to read—especially when compared with some of the more dense, technical, and legalese-heavy software licenses enterprise clients are likely to encounter—they still can be difficult to parse for even the most experienced IT professional. And because the SPUR addresses technical deployment scenarios, including virtualization, code distribution, disaster recovery rights, attorneys often find themselves equally perplexed. The current SPUR, for instance, is 95 pages filled with technical requirements and legal rights. Microsoft has even introduced an online tool that will allow Partners to [customize their SPUR](#) based on specific needs. But even with these licensing innovations, deciding whether a SPLA makes sense in a given scenario, or to what extent software titles are available for internal use, are questions that require a comprehensive understanding of Microsoft licensing and that should be carefully considered prior to moving forward with a SPLA.



**About the author Andrew Martin:**

As an associate with many years of information technology experience prior to becoming an attorney, Andrew’s practice focuses on technology transactions, licensing, and intellectual property-related disputes. Due to his experience working in the software and technology industries, Andrew understands both the technical aspects and the legal issues that are implicated in his clients’ transactions and disputes. In addition to specializing in technology law, Andrew’s diverse background, which includes founding a record label and working for a world-wide concert promoter, helps him when counseling the firm’s entertainment clients.

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