

Written SPLA Licensing Procedures Can Be Helpful Assets During an Audit

By Christopher Barnett

The Microsoft Services Provider License Agreement (SPLA), together with the Business Agreement (MBA) or Businesses and Services Agreement (MBSA) to which it almost always is attached, is a complex set of legal documents that demand careful consideration in order to avoid unnecessary licensing exposure. However, many businesses that license Microsoft products under a SPLA (typically in order to provide hosted software services to their customers over the Internet) often do not pay adequate attention to all of the restrictions and obligations contained in those agreements. All too often, in the event of an audit, such past inattention to these issues can result in substantial penalties for non-compliance.

A written set of internal procedures related to SPLA licensing – prepared in connection with a line-by-line review of the SPLA and MBSA – often can help to avoid compliance errors. A rough outline of such a document might include the following items:

1. Order Receiving

- a. How customer orders for SPLA licenses are received
- b. Contracting process (*e.g.*, consultation with SPLA customers regarding license needs, generation of sales quotes or service agreements, steps required before licenses are included in monthly orders to SPLA reseller)
- c. Any steps taken to verify the accuracy of license counts specified by customers

2. Order Processing

- a. How SPLA-licensed software is installed on devices
- b. Where devices with SPLA-licensed software are located
- c. Any steps taken or tools deployed during the system-setup process to limit customers' ability to access or modify software configurations
- d. Any steps taken or tools deployed during the system-setup process to allow service provider to monitor software access and usage levels

3. Change Orders

- a. How and from whom requests are received to change SPLA-license levels for existing SPLA customers
- b. Change-order process (*e.g.*, consultation with SPLA customers regarding license needs, generation of any revised sales quotes or service agreements, steps required before additional licenses are included in monthly orders to SPLA reseller)

4. Usage Monitoring

- a. Frequency of any "internal" auditing processes used to reconcile licenses ordered from SPLA reseller against licenses ordered by SPLA customers, along with a description of those processes
- b. Frequency of any "external" auditing processes used to verify that customer access to and usage of SPLA-licensed software is within the scope of the licenses ordered from SPLA reseller, along with a description of those processes

Preparing such a document usually carries a number of benefits, chief among them probably being the fact that the drafting process itself forces company management to familiarize itself with SPLA requirements. However, given the fact that preparation of the policy document requires an accurate understanding of all applicable SPLA terms, the assistance of corporate counsel in the process is critical.



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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