Qualified Desktops and Industry Devices in Microsoft Enterprise Agreements

By Andrew Martin

As we've discussed here before, Microsoft Enterprise Agreements ("EA") can offer significant opportunities for large companies to enjoy both IT asset and management cost savings. However, many enterprise-level customers that fit into the target market for an EA have complex corporate environments that make a single one-size-fits-all agreement difficult to squeeze into. One of the tightest fits that complex corporate customers experience is when attempting to apply the standard EA definitions of Qualified Devices and Industry Devices (also referred to as Line-of-Business Devices) to their organizations. Essentially, the standard EA requires a business to purchase the same licenses for every desktop computer in the organization, unless that desktop computer meets the narrow definition of an Industry Device.

Qualified Devices currently are defined as "*any personal desktop computer, portable computer, workstation, or similar device.*" Not included in this definition are servers or devices with embedded software, devices not controlled by the enrolled affiliate, or Industry Devices. Industry Devices are generally described as computers that are only used to run industry-specific software. The definition allows for the Industry Device to perform some basic "desktop functions" such as e-mail or word processing, but those functions must be tightly integrated into the industry-specific software. It is important to note that Microsoft tweaks the definitions of these critical terms from year to year in an effort to keep up with changes in technology and common deployment schemes, so to determine exactly what is considered a Qualified Desktop and what is excluded requires a careful reading of the original EA enrollment documentation.

Essentially, however, Microsoft is asking an organization to fit its desktop computer deployments into two categories: 1) highly specialized computers that are used solely to run line-of-business software; and 2) everything else. Because organizations sometimes have a number of hierarchical distinctions for desktop users—for example, there may be different desktop-software requirements based on job description or management level—these companies may find themselves over-licensing for software in order to fit within the two-tier EA structure. The company will license every desktop according to the highest required functional level, resulting in underutilized software for those computers that do not need the advanced functionality.

Microsoft offers no easy solution to this "over-licensing" issue. However, we have seen that clients who carefully review the standard EA terms against their IT-organizational needs often are able to successfully negotiate a deal with Microsoft that addresses this and other issues with the one-size-fits-all standard EA.

About the author Andrew Martin:

As an associate attorney with extensive prior experience advising information technology start-ups, Andrew's practice focuses on finding solutions for his clients' intellectual property issues. Due to his extensive experience in the software and technology industries, Andrew understands both the practical and legal issues involved in IP licensing agreements and disputes. In addition to licensing, Andrew helps his clients find new ways to use existing technologies to assist his clients in areas such as data privacy compliance. Andrew uses his diverse background which includes founding a record label and working for a world-wide concert promoter when counseling the firm's entertainment clients.

Get in touch: amartin@scottandscottllp.com | 800.596.6176