

## Microsoft Updates Volume Licensing Use Rights Documents By Christopher Barnett

In the past, business consumers of Microsoft's products and services have needed to reference at least two documents – the Product List and the Product Use Rights – to help determine the purchasing requirements and licensing rules applicable to those products and services. Both documents were incorporated by reference into Microsoft's volume licensing agreements and were updated periodically by Microsoft on its website.

While that basic incorporation-by-reference model remains in place, beginning in July 2015 Microsoft combined the Product List and the Product Use Rights into a unified document – the [Product Terms](#). Users of Microsoft's subscription-based Online Services like Office 365 still will need to reference the Online Services Terms, which define service-specific use rights, but the Product Terms document now contains all of the information previously included in the two predecessor documents regarding product and service availability and software usage restrictions.

As before, the Product Terms in effect when a volume license agreement is signed typically will remain in effect during the term of that agreement (usually, three years). However, upgrades to new product releases during the term will result in the incorporation of the then-current Product Terms for those products, so Microsoft customers must remain vigilant regarding changes made to the incorporated terms and must be prepared to abide by them.

Some changes in the new document already have been the cause of some confusion and concern. For example, in the April 2015 Product Use Rights (the last version of the PUR published before Microsoft released the Product Terms), the General License Terms pertaining to Developer Tools like Visual Studio said:

*Each Licensed User may run an unlimited number of copies of the Developer Tools software and any prior version **on any device**.*

By contrast, the corresponding language in the August 2015 Product Terms says:

*One Licensed User may use any number of copies of the software and any prior version **on any device dedicated to Customer's use** for each User License it acquires.*

Some IT services vendors that purchase Visual Studio with MSDN subscriptions for their developers reasonably may be concerned by the above change. "Customer" is a term defined in a company's volume license agreement to mean the company that signed the agreement with Microsoft. Therefore, a client of an IT services vendor may not allow employees of that vendor to deploy software on the client's computers under the vendor's MSDN subscriptions unless those computers are "dedicated" the vendor's use. Depending on how you define the ambiguous word "dedicated," the new language could be interpreted in different ways. If "dedicated to Customer's use" means "assigned solely and exclusively to the vendor," then the language

effectively may prohibit the vendor's usage of software on the client's devices under MSDN, since IT services clients may not want to purchase additional hardware just to support on-site contractors. However, if "dedicated" simply means "set aside for the vendor," then the new language would seem to be functionally the same as what appeared in the last PUR.

Fortunately, in July 2015, Microsoft also published a new [Visual Studio and MSDN Licensing White Paper](#). That document includes the following statement:

*The licensed user can install and use the software on any number of devices. The software can be installed and used on your devices at work, at home, at school, and even on devices at a customer's office or on dedicated hardware hosted by a 3rd party.*

That language seems to support the more permissive interpretation of the new language in the Product Terms. Given the ambiguous nature of the word "dedicated," any guidance from Microsoft regarding how it intends for the software to be used may help to clarify the meaning of the contract. However, unlike the Product Terms, the White Paper is not incorporated by reference in a licensee's volume license agreement. Therefore, while Microsoft arguably has implemented no substantive change to the licensing rules with the new language, there nevertheless is a risk that Microsoft's compliance teams could adopt a more aggressive interpretation during an audit. Companies subject to the new Product Terms therefore should take steps to ensure that any computers used by on-site contractors reasonably may be characterized as being "dedicated" to those contractors (such as, for example, by showing that the devices pertain to those companies' development and testing environments).

As ever, vigilance with regard to licensing obligations is critical when deploying Microsoft's products. While the move to the unified Product Terms probably is a good thing, it certainly does not reduce the need to stay on top of updates and changes to those rules.



**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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