

Beware the Mandatory SAM Engagement

By Christopher Barnett

For several years now, Microsoft has offered some of its customers the “opportunity” to have third-party licensing consultants (selected by Microsoft) review those customers’ Microsoft product deployments and determine whether those customers have all of the licenses needed to support those deployments. Called [Software Asset Management, or “SAM” engagements](#), the reviews are, in theory, optional, financed by Microsoft, and presented as a collaborative benefit to customers in order to maximize the efficiency of their licensing budget. In practice, however, SAM engagements typically are nothing but informal audits conducted by consultants whose loyalties lie with Microsoft. In most cases, we advise our clients to decline SAM engagement invitations.

However, for many companies purchasing Microsoft product licenses under volume license agreements, that option may no longer exist. For example, the current form for Enterprise Enrollments under Microsoft’s Enterprise Agreement includes the following language in the section describing the licensee’s true-up obligations:

Microsoft, at its discretion, may validate the customer true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

The enrollment does not provide any additional detail regarding what the “formal product deployment assessment” entails, but it apparently would be a third-party license review conducted outside the context of the audit-rights language typically contained in Microsoft’s Business and Services Agreement. In other words, it sounds an awful lot like a SAM engagement, but one that occurs (1) potentially following any annual true up, and, more importantly, (2) at Microsoft’s discretion. Businesses that sign enrollments with this language therefore are giving Microsoft’s audit teams another way to get a bite at the compliance apple.

Microsoft has a great fondness for giving itself broad rights to invade its customers’ businesses in an effort to extract more revenue through license reviews. Many companies simply accept those contract terms, believing they have no other, viable options and no leverage to demand more favorable terms. However, in our experience, Microsoft often is willing to entertain amendments to its form agreements. Companies contemplating new or renewal volume-licensing agreements with Microsoft need to carefully review those documents with counsel before signing anything. New terms like the one above should be on every such company’s short list for deletion.



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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