

Software Development Licensing Is Not Free

By Christopher Barnett

Many businesses develop their own software products, and they understandably want to save on the licensing costs associated with using third-party tools or products in their development environments. However, not all publishers treat development licensing in the same way, and companies that are familiar with one publisher's practices may end up in hot water if they assume those practices represent some kind of industry standard.

For example, through the [Oracle Technology Network](#) (OTN), Oracle makes many of its products available for [download](#) and use without charge, provided a prospective licensee is able to agree to the Oracle Technology Network Developer [License Terms](#). Microsoft and IBM, on the other hand, take very different approaches. IBM offers members of its [PartnerWorld](#) program the option to purchase access to [catalogs](#) of IBM software products for demonstration, evaluation and development purposes, and it separately offers development-oriented licenses for certain products under more favorable license metrics than it does for production deployments. Microsoft, for its part, offers annual subscriptions to its [Microsoft Developer Network](#), each of which gives the assigned user the ability to download and use most Microsoft products for application development and testing. Microsoft also offers certain feature-limited products, like SQL Server Express edition, at no charge. Those free licenses may not be restricted to software development, but they often are useful to those interested in evaluating the product line.

In addition to the different kinds of paid or free licensing frameworks, though, publishers may place different kinds of restrictions on what licensees can do with the software that is acquired for "development" purposes. Oracle makes software broadly available through the OTN *"for the purpose of developing, testing, prototyping and demonstrating"* an application, and then specifically prohibits other uses, such as *"internal data processing"* and *"training."* MSDN subscriptions generally are fairly permissive as well, and allow a subscription holder to use the Microsoft products *"to design, develop, test and demonstrate"* applications, including acceptance testing by end users. IBM, on the other hand, generally is more stringent, in requiring licensees to use PartnerWorld-licensed products only for developing and testing customer-facing software solutions offered generally to a licensee's clients – *"internal application development and test purposes"* are prohibited, as is *"unique application development or consultation services for a specific customer."*

Therefore, it is important that businesses carefully read and understand the scope and restrictions of any third-party licenses they intend to use for development purposes and that they implement controls on internal development practices to prevent licensing discrepancies. In the event of an audit, publishers typically will characterize all deployments not strictly adhering to development restrictions as being in production, with compliance penalties calculated accordingly.



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.

Get in touch: cbarnett@scottandscottllp.com | 800.596.6176