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Windows Server Licensing Under SPLA

By Andrew Martin

Licensing under Microsoft's Service Provider License Agreement (SPLA) often is not a simple process. There are monthly true-ups to process, user management policies to follow, and the specter of increasingly frequent audits looming large. To complicate things further, licensing rules for Microsoft server products vary significantly. Some products, such as Exchange, can only be licensed on a per user basis, while other products give the partner the choice of whether to license using a per-user or per-processor model. As an illustration, and to keep this blog post from being as long as the Service Provider Use Rights (SPUR) document, we will look at licensing options for the Windows Server Operating System product.

There are two licensing models for Windows Server under SPLA: 1) Per Processor model; and 2) Subscriber Access License (SAL) model. Under the SAL model, the SPLA partner must acquire and assign a SAL to every user that *is authorized* to access the server software, *regardless of actual access.* However, once SALs have been properly purchased, the partner is permitted to run as many instances of the server software on as many devices as it needs. In addition, the partner can allow up to two users to access the server directly for testing and administration without acquiring additional SALs.

Under the Per Processor model, there are three options for the partner: Datacenter, Enterprise, or Standard. The model is similar to the model for virtualization rights under an Enterprise Agreement that I discussed before. Licensing for datacenter allows the partner to run an unlimited number of Windows Server instances on a single server, so long as the partner pays for one per-processor license for each physical processor on the machine. Under the Enterprise edition, the partner can run up to four virtual instances and one physical instance, again, so long as it pays for one Per Processor license for each physical processor. If the partner deploys more virtual servers than the four permitted servers, it has to purchase additional licensing. The Standard edition licensing is identical to the Enterprise addition, except the partner gets only one additional server to run in a virtual environment on that machine.

Factors the partner should consider when deciding on a licensing model include the strength of the partner's user-management processes, the partner's infrastructure resources, current needs and future growth. In many cases, a new partner may just "take a guess" as to what it needs, working up a single financial model as a test case, and then move forward with that choice. However, avoiding a careful use and growth-projection analysis can lead to significant discomfort when Microsoft comes calling with an audit notice.

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.

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