Proper Microsoft Licensing in Hosted Environments is a Two-Part Question
By Christopher Barnett

Businesses wanting to license Microsoft products for use in connection with solutions delivered to customers over the Internet need to remember proper licensing involves answering two questions:

- Are users "accessing" the software?
- Is that access "commercial hosting"?

Many companies skip to question two, but the answer to question one may keep you from having to address it at all.

If your customers are not "accessing" your software, then you do not need to worry about acquiring either client-access licensing (e.g., CALs or External Connectors) or commercial-hosting rights (through a Services Provider License Agreement (SPLA) or through Self-Hosted Application benefits under Software Assurance) in connection with your software deployments. However, what constitutes "access" may vary from product to product. For Windows Server operating systems, Microsoft's Product Use Rights (PUR) document and related licensing guidance indicates that the trigger is "authentication" or "individual identification" of users by the server. For SQL Server, that trigger is use of SQL Server services or functionality (e.g., the Database Engine, Analysis Services or Reporting Services). However, regardless of which trigger applies, if there is no "access," then you need no client licensing or commercial hosting rights.

On the other hand, when there is access, it becomes necessary to determine whether the software is being used for commercial hosting purposes. That topic generally is somewhat more involved, and more information on it is available here.

The key here is to apply both questions consistently to each and every server in the environment and to structure your license acquisitions accordingly. If the majority of your servers are accessed and used in connection with "commercial hosting" services, then it may make sense to license the entire environment – both installations and client access – under SPLA or Software Assurance in order to minimize the risk of exposure from having inadequate license rights. On the other hand, if the population of servers being accessed and used for "commercial hosting" services is relatively small, then it might be possible to save money by segregating them for licensing purposes.

As with most enterprise-level software licensing decisions, these are questions that need to be answered collectively by IT, legal and procurement teams working together with a firm understanding of the IT environment and applicable licensing 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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