Software licensing audits can cause a significant disruption to a business of any size, from startup to mid-size to enterprise, depending on the audit scope and size of disruption and expenses involved. Healthcare organizations, which have exploded in their use of technology and software applications in recent history, are extremely prone to an audit due to a variety of reasons. From misinformation and inappropriate external use, to healthcare organizations simply not understanding licensing rules, this environment can be extremely costly to everyone potentially liable.

There has been a significant increase in licensing audits to healthcare organizations, and this paper will outline why it’s happening, and important insight that can be used to avoid an audit.

Why is this happening?

The growing trend is that larger healthcare facilities with a mature infrastructure and IT department are seeing the need and opportunity to offer smaller, unaffiliated clinics in their area access to their EMR system and other third-party applications. Providing this access to smaller outfits changes the context of the software environment, even though the overall software infrastructure hasn’t changed. When access is extended, healthcare facilities are no longer using the Microsoft products for their own internal use as they are also inviting outside audiences access to the products as well. This changes the licensing options without you knowing the full ramifications, and can put you at risk of an audit.

Software audits can be expensive, resource-intensive, and stressful. Organizations can end up paying six-figure sums to vendors, even without court fees involved, and many times those expenses are unbudgeted costs that undoubtedly have not been part of a company’s strategic direction. What’s worse, audits can be a momentum-killing drag for any company of any size.

What is the landscape for audits in general? In 2013, Gartner polled attendees at two leading events, as well as the ITAM North America Summit. Event goers were involved in IT procurement for their companies, and nearly half of the more than 100 participants said they had to deal with more than one software audit during the previous twelve months.

Costs for the audit extend beyond the settlement itself. IT staff are reassigned from their normal tasks to deal with the audit, and the experience can disrupt a company’s productivity and work flow.
Healthcare Organizations & Software Licenses

Healthcare organizations run into trouble when smaller clinics leverage an ecosystem of larger hospitals who have the capital to house their own infrastructure and IT specialists. Many of these larger hospitals enable smaller ‘unaffiliated’ clinics to leverage their software infrastructure. Once a healthcare organization allows external users to access their IT environment, it changes the licensing requirements. For example, Microsoft traditional volume licensing agreements have a clause that state users cannot lend, lease, loan, or use to provide a service to external customers. More specifically, when healthcare facilities offer unaffiliated access to their EMR solution, even though no changes were made to the infrastructure, the original volume license agreement is no longer intact and valid.

Software license agreements are contracts that use language to define the legal rights of how software can be used, and defined for specific users. In most cases, the number of systems used or users accessing the systems are discounted, without organizations realizing the violation, and that leads to what is known as a “true up”, where the organization pays for the additional software usage. If organizations misrepresent what type of user is accessing the systems (i.e. internal vs external), it can lead to a larger settlement discussion. Publishers such as Microsoft are now working with these organizations to ensure they are in compliance. Lastly, there can sometimes be a disconnect between which party is extending access, which party is purchasing the license, and which party is negotiating and owning the contract.

This scenario is creating significant compliance risks for healthcare organizations and affiliated communities. The largest and most recent example involved a partner connect community and third-party applications used by large health organizations. When these larger organizations began hosting the applications to external and smaller healthcare outfits, it was found that the Microsoft products supporting the environment were no longer in proper license compliance. In many cases, the larger healthcare organizations are unaware that the licensing needs to be architected a different way in this type of hosted environment, and this often leads to an audit.

Why Audits Happen

In the cloud era, publishers are keen on noticing if licenses are being misused, particularly if monthly license usage reporting doesn’t add up to the original software license terms and conditions. Other times, public news of a certain company’s growth can trigger an investigation into whether software license scale is happening appropriately at an end-user environment. Some companies violate license agreements when they purchase a certain software application but attempt to activate a completely different application. In other cases, customers using virtualization are improperly using the license by not having the necessary license requirements as dictated by the publisher. During the audit, investigators are keen to asking the right questions in order to drill down into these finer details.

What Does a License Violation Look Like

Violation and infringement of a software license after an audit can range from minor fees to expensive court settlements, often dictated by the size of the violation and company. In cases where noncompliance is unintentional, in which the user did a poor job managing the license, many publishers will seek payment of proper use of the license. In more egregious cases, the infringement may involve copyrights violation, breach of contract and negligence, in which case a potential six- or even seven-figure settlement is awarded to the publisher in court. What’s more, potential violators also need to take into account all time, effort and costs associated with dealing with the audit, or defending their position in a lengthy court battle.
How To Avoid Audits

Proper license management to remain in compliance is the best way to avoid an audit. Trusted licensing experts such as HPE SLMS offer the best chance at helping organizations remain in compliance for their business. From initial purchase of the license and ongoing monthly reporting, to proper scale needs and renewal opportunities, reputable license expertise can greatly improve the chances of avoiding an expensive audit.

For healthcare organizations, there is a great advantage for working with a trusted expert when procuring and maintaining software licenses. While many people in an organization may feel they are capable of understanding licensing language and the agreement, trusted licensing experts understand much more, from the pricing and seat requirements to the license agreements themselves and how they’re structured.

Licensing requirements are constantly changing, particularly as publishers’ business models evolve into cloud-based offerings, combined with periodic software updates. Problems can arise simply because users are unaware there are different use rights/programs for using a publisher’s products internally versus hosted software and applications.

Are You In Compliance?

It is important to know how the different products are properly licensed. In the case of Microsoft, users need to leverage and utilize a service provider use rights (SPUR) document. Depending on organizational and client scale, this can be difficult to keep track of, which is why it’s important to work with a trusted licensing expert such as HPE SLMS. Organizations rely on these experts for guidance and information on licensing of products, as well as the timely changes to the licensing structures.

For publishers such as Microsoft, new versions of software are launched and some come with changes to the licensing structure, while others do not. This is especially critical to plan for organizational growth or change.

About Hewlett Packard Enterprise Software Licensing & Management Solutions (SLMS)

The HPE SLMS Hosting team provides a variety of services to offer software licensing expertise and guidance. First and foremost, the group works with organizations to understand the software environment, how they are using the software, and who has access to it. Understanding the environment and the goals of their partners allows their cloud solution specialists to identify the best programs and applications to meet an organization’s needs. The team also works with organizations for access to the SLMS Cloud & Licensing Solutions program, including training on using Online Services (OLS), the proprietary SLMS tool for ordering SKUs and reporting software usage. For ongoing support, the group broadcasts SPLA, CSP and CXSP program updates and other helpful information to its member communities, and works individually with organizations to determine any subscription changes and assist with compliance inquiries, as well as to provide timely answers and critical issue resolutions related to each organization’s license aggregation, usage, and reporting.
As cloud-based hosted software services continue to reshape and expand the principles of modern IT, the future of any hosting services provider depends on the quality of its partnerships. Through its range of full-service hosted software licensing capabilities and its detailed knowledge of the latest licensing programs from Microsoft and elsewhere, HPE SLMS Hosting team offers the expertise organizations need to capitalize on cloud services and solutions. HPE SLMS Hosting professionals are resourceful, trusted advocates who consult with organizations to enable the delivery of powerful hosted solutions.

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