

TIPS FOR SOFTWARE LICENSING IN 2011



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Software vendors and their customers are changing the traditional distribution models for software licensing in Canada. While this change is by no means new – IT outsourcing, ASPs (Application Service Providers), SaaS (Software as a Service) and “cloud computing” have been around for many years in different forms and by different names – the change has accelerated in the industry in recent years. It is becoming more common for software to be distributed online, via subscription-based services, that are often coupled with data-hosting services, mobile apps or other non-traditional modes of distribution.

We’ve compiled some practical pointers for software vendors and their licensees to consider in 2011:

1. **A license is still a license.** Even as models of distribution evolve, some dependable legal concepts – such as licensing – still apply to the methods of commercialization. A software vendor grants a license and a licensee accepts that license, subject to certain use restrictions and other contractual obligations. This is important to remember when reviewing “purchase terms” which can become clouded with terms such as “purchase”, “lease” or other terms which don’t properly document the licensor-licensee relationship.
2. **Unauthorized access.** Technical protection measures can prevent unauthorized use of the software. When a copy of the software does not actually reside on a customer’s system, then it’s almost impossible for unscrupulous customers to make pirated copies of the underlying code. However, advances in technology and ingenious coding have also enabled new ways of hacking, multiplexing and pooling to make use of the software. With some of these tools, 100 users could take advantage of a subscription-based software tool using a single account. To combat these efforts at unauthorized access, software vendors need to review and update their license terms to guard against the latest devious

methods, and employ effective enforcement remedies.

3. **APIs, SDKs and ISVs.** No-one does alphabet soup like the IT world. Non-traditional ways of distributing software have enabled software vendors to engage and empower their customers to build their own modules to interact with the core software. Think of Apple’s phenomenally popular iPod, iPhone and iPad apps. The company enabled independent software vendors (ISVs) to use a Software Developer Kit (SDK) to build little applications that run on top of the iOS platform, and use Application Programming Interfaces (APIs) to interact with the other core applications. The result is that a simple software platform becomes a tool with seemingly infinite possibilities. What Apple did is not new – but they made it simple and popular. Other software and hardware vendors are employing the same model, to enable their ISVs and customers to build unique custom modules. This can be implemented with carefully drafted SDKs and licenses.
4. **Revenue models change.** As distribution changes, revenue models also evolve, and this should be properly reflected in the license agreement and invoicing terms: Subscription or service models may reflect time-based fees, licensing based on different categories of users, different numbers of users, subscription to different modules, features and functions, fees based on a per-transaction model, a database access model, advertising funded revenue models, or other types of licensing fees. This requires flexibility to permit software vendors the ability to charge different licensees in different ways for use of the same product.
5. **Laws change.** New court decisions and copyright laws will impact this evolving area of business. Canada may see sweeping reforms to the *Copyright Act* in 2011. ▲

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