

Licensing **INTERVIEW** by Martin Veitch

Negotiating the licensing maze

Miro Consulting partner Eliot Arlo Colon on why firms need help negotiating licences

The current complexity of enterprise software licensing and negotiating is demonstrated by the existence of a growing industry dedicated to helping IT managers get a handle on it. For some time, corporate law firms have helped companies decipher licensing arrangements but as the stakes are raised by a concentration of larger software vendors, there could be room for more specialist companies such as Miro Consulting.

Miro is a New Jersey firm that provides advice to companies on software licensing, especially on Oracle. Negotiating, renegotiating identifying risk "and sanity checking" are all important services, explained partner Eliot Arlo Colon.

Miro earns about 95 per cent of its retainer-based fees from Oracle customers who want to improve their seat at the table with Oracle, particularly in the wake of the spending spree that has strengthened the database giant's hand in enterprise applications and other

fields in recent years.

"Before, Oracle was a top five or six IT expenditure but now, with all the acquisitions, it's number one or number two and it's something the chief executive gets involved with," said Colon.

But why does understanding software licences have to be so densely complex?

"It's probably a perfect storm of a number of things [including] the stress of [Oracle] being a public organisation and the sophistication of software. [Oracle's] sales team is trained



Colon: The audits that I am aware of are more consistently going in the vendor's favour

to be very aggressive and on top of that they have the best product in the world so it combines to be a not-so-pleasant [experience]," he explained. "I was told by an Oracle rep who is now an executive that the three biggest lies customers told him were: one, 'I could always go to one of your competitors'; two, 'We could snap this [Oracle software] out in a minute'; and, three, 'Oracle needs us more than we need them.'"

That combative situation is not helped by fear of Oracle conducting a software audit.

"Some customers say, 'Maybe we're taking a cautious approach by double-licensing but we'd rather that than expose ourselves to an audit.' That's a daunting challenge in some cases," Colon said. "I don't know if the number of audits is going up but the ones I'm aware of are more consistently going in the vendor's favour. You've got very large organisations fearful that they're going to be [audited]."

A major concern expressed by

IT buyers regarding the licensing maze is that no two vendors' licences appear to chime. Colon agreed that this is truth rather than perception.

"There are really no standards software vendors follow when it comes to licence compliance," he said. "There's no way to measure it in the software agreement [and]

"Licensing has become more complicated and I'm not sure we have seen the worst of it"

the interpretation of the software agreement can be near valueless."

Adding to the complexity are new technologies such as virtualisation, and multicore and multi-threaded processors. "Especially in the past two and a half years [licensing has become more complicated] and I'm not sure we've seen the worst of it," Colon said. "The technology is dynamic but the contracts are static. To Oracle's credit it has made some changes to its licence rules to maybe make them more customer-friendly. A case in point was fractional multicore pricing."

However, Colon disputes the notion that licensing negotiations would be rendered extinct were software vendors willing and able to simplify and standardise terms.

"For the most part, purchasing and IT people are getting pressure to negotiate. Even if the licensing rules were straightforward there would still be a tremendous amount of negotiating," he explained. "It's just costly to manage a software agreement. It costs more than the 22 per cent you pay in support. People need help. Even the most savvy buyers and legal counsel still come to us. Maybe not at the beginning but finally because they say, 'Hey, we're overmatched here. They have precedence, best practice and we just have no response.'"

According to Colon, Miro's role does not necessarily make the firm a target of hate for Oracle. "[Oracle's relationship to Miro is] like/dislike. We do have many advocates there who see us as a necessary evil. There are clients that would have left Oracle without us," he said.

Things may get worse before they get better

If licensing makes you pull your hair out, it may be time to start shopping around for a wig, says Martin Veitch

“Outside of the vendors themselves, few would disagree with the proposition that enterprise software licensing is a mess. The worse news is that changes in IT infrastructure are likely to make these tariffs even messier. Specifically, grids, virtual machines, and processors with multiple cores and multiple threads are making the value equation between software and bill even harder to calculate.

Pricing per processor or even per server is no longer sufficient. Even the definitions of "processor" and "server" are tricky, with multiple processing cores and threads located in multiple servers that sit across clusters or grids, often swapping workloads between

systems and even datacentres.

There are, however, many alternatives for companies tiring of attempts to make the server-based paradigm work. In particular, open-source vendors often present an alternative way to acquire and pay for software. Also, software-as-a-service provides a subscription-based model where buyers only pay for what they consume and maintenance charges are included in the tariff. Looking forward, service-oriented architectures with their promise of web-borne micro-services could also create more scope for utility-based changes.

However, in a world where satisfaction with software licensing is already very low, an additional issue becomes how to bring in a new metric without causing further disruption due to the novelty of schemes.

For firms, complex terms and con-

ditions, long negotiating cycles, differential pricing – for example, discounts for healthcare sites – and other factors just add unnecessary hassle.

One possible change might be to somehow flatten upfront pricing. Sun offers a tariff that includes per-employee licensing for some customers, although this is not universally applicable. Wal-Mart and the NHS both employ over a million staff, for example. Also, as with all site licences, the question of whether the tariff delivers value remains unanswered.

Despite confusion over haggling, many software veterans remain unconvinced that there is a need to move away from the usual tit-for-tat bargaining exchanges. "Customers are my life blood and they want deals," said Chris Baker, Oracle technology senior vice president in a recent interview with *IT Week*. ”