



Policies, Standards and Licensing Knowledge to Protect Against Software "That Goes Bump in the Night"



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Purpose

- To Provide the Systems and Software Technology Conference (SSTC) attendees information on policies, standards, DoD Enterprise Software Initiative (ESI), SmartBUY and software licensing models that could affect their software implementations.

Agenda

- Introduction
- DoD software policies and authorities
- Software licensing pitfalls
- What do you do to protect your software project from going “bump in the night”
- DoD Enterprise Software Initiative (ESI)
- Questions

Introduction

- Ground Rules – What we will discuss
 - Commercial Off The Shelf (COTS) Software
 - DoD Perspective
 - Licensing Expertise
 - Lessons learned – hopefully not too costly
 - Share, Share, Share

DoD Software Policies and Authorities

- FAR – Rule pending for SmartBUY mandate (72 Fed.Reg. 61603)
- DFARS - 208.7403
- DoDI 5000.2
- AFARS – Army Audit Agency recommended revision pending
- AR 25-1 (6-2)
- DA PAM 25-1-1
- Army Chief Information Officer renewed ESI policy-02 Dec 2002
- Army DISC-4 ESI Policy-01 Jan 2001
- DoD CIO Guidance and Policy Memorandum No. 12-8430-26 July 2000
- OMB Memo M-08-22, Guidance on the Federal Desktop Core Configuration (FDCC)
- ASD NII/DoD CIO Policy Memo, Subj: Federal Desktop Core Configuration, dated August 15, 2008

Software Licensing Pitfalls

- Selecting software by name not licensing model
- Terms and Conditions (T&C's)
- End User License Agreements (EULA) – License Grants
- Sarbanes-Oxley – Revenue Recognition
- Maintenance escalation
- The “*”
- Re-Use Clause
- Non-Human Devices
- Multi-core processing license
- Software function tied to maintenance
- Virtualization – risk of license non-compliance if not managed

Software Licensing Pitfalls

- License Type
 - Named User
 - Device
 - Processor
 - Concurrent
 - Subscription
 - Perpetual
 - Unlimited Use
 - Restrictive, i.e., Program Specific
 - Developer vs. Full use
- True Up/True Down
- Audit Clauses
- Cost may not be the Cost
- Compliance

What to do to protect your software project from going “bump in the night” ?

- Use the following before selecting your software:
 - Consulting Groups
 - License Experts
 - Network with other service and agencies
 - Software Attorney

- Requiring Technical Team may understand technology but not licensing
 - May not always have Enterprise perspective

What to do to protect your software project from going “bump in the night” ?

- Use the following to describe your requirement to contracting:
 - What do you need to do with your system
 - Share in-ward and out-ward
 - Describe your requirement – give examples
 - Definitions
 - Describe your customer base clearly
 - Government, Civilian, military, contractors supporting Gov't, non-human devices, etc
 - Manipulating data vs. static data (viewing data)
 - How many years will you need to contract
 - Flat lined maintenance
 - Audit Clauses
 - Transferability
 - True up/True down
 - Developer vs. Full use license

- Established June 1998 by DoD CIO
- Mission
 - Lower total cost of ownership across DoD, Coast Guard and Intelligence communities
 - Establish and manage enterprise COTS IT agreements, assets and policies
- Methodology
 - Chaired by an OASD(NII)/CIO staffer
 - Co-chaired by Navy, Army or Air Force Working Group rep (currently Navy)
 - DoD Components appoint Software Product Manager (SPM) to:
 - Consolidate requirements and develop business case
 - Negotiate best-value deals
 - Administer resulting agreements
- Goals
 - Reduce acquisition and support costs by leveraging DoD buying power
 - Provide best, most flexible JTA-conforming software
 - Obtain buy-in for DoD enterprise-wide software agreements
 - Create a funding mechanism that incentivizes the use of DoD-wide software initiatives

DoD ESI Authority

- Authority: DoD Enterprise Software Initiative (DFARS 208.7402)
 - Procure COTS Software IAW DoD Enterprise Software Initiative (ESI)
 - ESI Order of Precedence
 - DoD Inventory
 - DoD Enterprise Software Agreement (ESA)
 - Other means
 - Designate Agency Software Product Manager (SPM)
 - CHESS designated Army SPM 02 Dec 02
 - CIO/G-6 and Army Acquisition Executive designated PEO EIS Army oversight of ESI and AWCF (2003)
 - Ensure utilization of DoD inventory
 - Establish ESAs as requirements identified/validated
 - Adjust terms and conditions within scope of ESA
 - Issue waivers from ESI requirements IAW AR 25-1 and DA IT Purchasing Guide (Sep 06)

GSA SmartBUY

- Government-wide software licensing initiative managed by OMB
 - To leverage the government's buying power to achieve lower software licensing costs and equal or better terms and conditions
 - Interagency team led by GSA
 - FAR rule pending would make GSA SmartBUY vehicles mandatory unless alternative contract vehicle approved by AAE
 - DoD SmartBUY Policy – 22 Dec 05
 - Acquire COTS software through existing ESI or SmartBUY when requirements evaluation has led to the designated software product on a SmartBUY agreement
 - “Always” consult with ESI Team prior to negotiating large requirements
 - Permit conversion of new agreements to SmartBUY within 12 months

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ESI Web Site

