

Database Licensing , Pitfalls, and the New Oracle Audit Playbook

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Company Logo

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Dean Bolton
Co-Founder & Chief Architect LicenseFortress, Inc



Dean Bolton launched his IT career in 2000 after completing his bachelor's degree in computer science and engineering at MIT. He started working with Oracle Databases from the beginning at an internet systems and applications design firm. Since then, he has continued working as an Oracle developer, database administrator, architect, consultant, and evangelist. Dean is the managing partner of LicenseFortress, the first and only Oracle software license management service with a guarantee, and VLSS, a premier Oracle and VMware consulting firm. Dean is recognized as one of the top three experts on licensing Oracle on VMware.

"Identified by VMware as one of the top 3 Experts on the proper way to License Oracle Software on VMware Infrastructure"

vmware vEXPERT **ORACLE Certified Master**

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Dr. Michael Corey
Co-founder & Chief Operating Officer, LicenseFortress, Inc

Cloud: **Top 100 Influencers for 2015/2017**, BLOG: <http://michaelcorey.com/>

Started Working with Oracle Version 3.0 Beta Tested Oracle 5.6.6.2.7.8.X.9.X... Presented on Technology & Business Topics from Brazil to Australia Worked with Oracle on UNIX, Linux, Windows, MVS, VM, VMS,...



Books Include:
Virtualizing SQL Server with VMware Doing IT Right
Oracle Database 12c: Install, Configure & Maintain like a Professional
Oracle 11g A Beginner's Guide
Oracle 10g A Beginner's Guide
Oracle 9i A Beginner's Guide
SQL Server 7 Data Warehousing
Oracle8i - Data Warehousing
Oracle8i - Data Warehousing
Oracle8i - Data Warehousing
Oracle8i - Tuning
Oracle8i - A Beginner's Guide
Oracle - Data Warehousing
Oracle - A Beginner's Guide
Tuning Oracle

Key Past/Current Affiliations
Past President of the Independent Oracle Users Group President IOUG VMware SIG
www.ioug.org
Founding Board IOUG Virtualization SIG & IOUG VMware SIG
Board Member International Association of Cloud and Managed Service Providers
Founding Board Professional Association of SQL Server
Past Member IOUG Board of Directors
TalwinCloud Top 200 Channel Partner Experts Cloud
Past Member Microsoft Data Warehouse Council
Past Member Oracle Educational Advisory Council
Past Director of Conferences IOUG Alive
Past Executive Board Massachusetts Robert H. Goddard Council on Science, Technology, Engineering & Mathematics

Regular Columnist Big Data Quarterly

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Database Licensing Best Practices & Pitfalls From Perspective of.....



**“Lessons Learned Here
Work for all Major Software
Vendors”**

**LESSONS
LEARNED**



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Software License Audits

“Software License Audits” has been a fertile ground for vendors like Oracle, Microsoft, Adobe, and IBM to generate revenue for many years.




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Trend: Software License Audits Are on the rise

Audits are on the rise, and they're getting more expensive. According to Gartner, 68 percent of enterprises get at least one audit request each year, a number that has climbed steadily each year since 2009. The most frequent requests come from the usual suspects: Microsoft, Oracle, Adobe, IBM, and SAP.

Gartner.

“software vendors are increasing license audits as necessary compliance checks to ensure fair Compensation.... 75 percent of software vendors believe their software is being overused in violation of the licensing agreements”

The Patent Lawyer

Software audits continue to rise

Understand the software vendor's audit playbook




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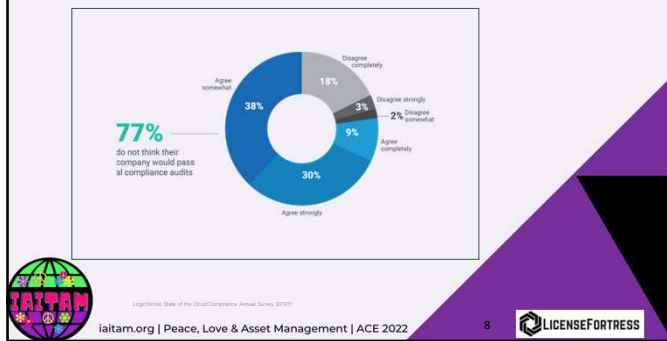
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There is a High Chance You will be Audited



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77% of Companies **do not** think they could pass a Compliance Audit



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"In the decade I have been performing software License Audits, I have yet to find a company 100% Compliant"

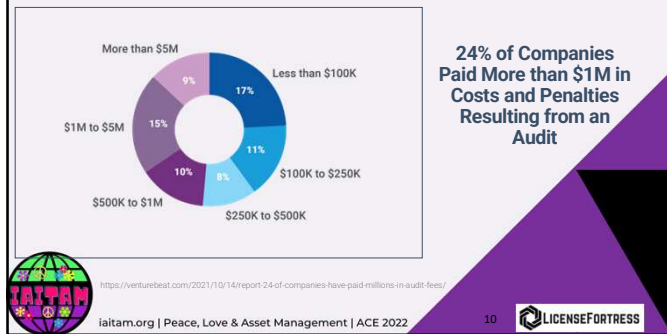


Chief Architect at LicenseFortress



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When The Audit Happens, It will be expensive



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Trend: Vendors Will Find Ways to Do More & More Audits

Audits Generate Revenue

TREND: Authorized Third-Party Audits Becoming More Commonplace

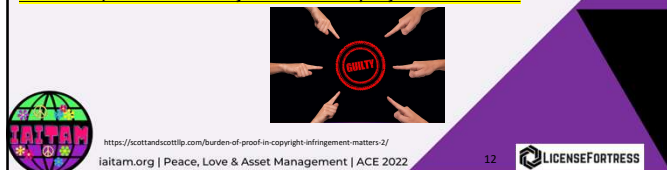
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Pitfall: Software Audit: Burden of Proof On The Customer

*"In a civil copyright infringement claim, many users of copyrighted material are surprised to learn that **once the copyright owner has demonstrated that it owns a copyright in the work, the burden shifts to the copyright user to demonstrate that it had the right to use the work in the way it was using it.***


For copyrighted software use, this means that not only must the user have a valid license, the use case must fall within the scope of the license terms.




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Pitfall/Trend: Software/Applications/Infrastructure Available at Click of a Mouse

If a user downloads software and activates it, your organization is responsible for licensing and paying the bill.




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The Cloud is Fueled By Ability to Easily Invoke Software/Application/Infrastructure Usage b

"A simple Download, By Any User, Anywhere in your infrastructure Can Result in a Very Expensive Bill"



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Potential Pitfall: Click-Wrap Contracts and Downloaded Software

- How Many People Actually Read the Click-Wrap Contracts ?
- Click-Wrap contracts are upholdable in court of law
- Click-Wrap contracts can change terms of deal

Fairview v. Quest


Controversy: Did Fairview change controlling license agreement through a "click to accept" purchase?

Quest's Allegation: New definition for "enabled user accounts" controls ("managed by the Software"), yielding an 80,000 license deficiency.

Fairview's Response: Per the terms of the original agreement, no authorized person could have accepted new terms.


Amount in Controversy: \$4,183,178.85

Outcome: Voluntarily dismissed with prejudice.




Quest Attempted to Collect 4 Million Through Change made to Contract terms through click-wrap

We have not seen this behavior from Tier 1 Vendors (Oracle, Microsoft, IBM...) and do not expect too



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Verify Audit Request is Actually an Official Audit

- Common Tactic For Sales to Imply Audit is on the way to Motivate Purchase
- Vendor Institutes Request for Information, Making it sound like an Official Audit Request




During Official Audit, You have a contractual obligation to inform vendors of all changes, Important to know the difference



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Not All Audits, Start as Audit Requests

License Reviews from Software Investment Advisory (SIA) Are not Official Audits

Is a team of experts who work with you to maximize the efficiency, value, and impact of your Oracle environment.

Looks Like a Duck, Walks Like a Duck, Eats Like a Duck, Smells Like a Duck, It's a Duck

"The nine most terrifying words in the English language are: 'I'm from **CORPUS** and I'm here to help.'"
-Ronald Reagan

<https://www.oracle.com/corporate/software-investment-advisory/>

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Pitfall: Installing Software Patches Can Turn On Features You Did Not Pay For

"Installing Oracle version upgrades sometimes turns on software features, such as the diagnostic and features packs, which trigger an associated increase in licensing cost."

A company can significantly increase its Oracle spend during version upgrades without knowing it."

Source: Campaign for Clear Licensing

"3rd Party Vendors Can Turn On Software Create Huge License Liability for Business".

"If it's turned on, You don't Detect it, in the next software audit will have to Pay for it"

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Trend Evolving License Metrics

Software vendors will continue to **introduce new licensing metrics** as the name of the game is to generate as much revenue

License Metrics

| Client / User | Capacity / Infrastructure | User Role |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Desktop Licensing <ul style="list-style-type: none"> Number of users or Device Device User Named User | Capacity/Datacenter Licensing <ul style="list-style-type: none"> Size of Machine (cores, processors, sockets) Type of machine Typically converted into points | User Role or Level <ul style="list-style-type: none"> Based on types of transactions or level of access Commonly used in ERP solutions. For example: SAP Employee, SAP Professional, etc. |
| Concurrent | Company Metrics | Usage |
| Simultaneous Access <ul style="list-style-type: none"> Concurrent User Floating User | <ul style="list-style-type: none"> # Employees # Transactions Revenue # Locations | Amount of Usage over a time period <ul style="list-style-type: none"> Usually Pay as you go Based on number of accesses or the size or speed of disk space |

"How's These Metrics Are Measured can really Matter During an Audit"

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Pitfall: Vendor Repricing Policies

Customer Goal Driving Cost Down is in Direct Conflict with Software Vendor Protecting Revenue Stream

- Microsoft Requires Software Assurance to Gain Server Mobility Rights
- IBM All or Nothing Subscription & Support Requirement
- SAP All or Nothing Support Policy
- Oracle Repricing Policy



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Pitfall: Oracle Support Repricing

- For a given CSI, Oracle's repricing policy **dictates that when some, but not all, licenses are de-supported, the support for the remaining licenses is repriced at list price** (as long as this doesn't exceed what the customer was previously paying).
- Policy makes it difficult for customers to save money when their Oracle requirements decrease
- **Safeguards Oracle's support revenue** without regard to the practical value customers are receiving.



"Are You Sure You really Want to De-Support those Licenses"



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Pitfall: Making Licenses Coterminous

For a given CSI, Oracle's repricing policy **dictates that when some, but not all, licenses are de-supported, the support for the remaining licenses is repriced at list price** (as long as this doesn't exceed what the customer was previously paying).



The procurement officer thought it was a great idea



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On July 28, 2020, Oracle issued a new policy with guidance on Licensing Data Recovery Environments

- This document does extend to you a right you did not have in the past.
- "is eligible for the 10-day rule, which includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of ten separate 24-hour periods in any given calendar year (for example, if a failover node is down for two hours on Tuesday and three hours on Friday, it counts as two 24-hour periods).




WARNING

- Cannot Pick & Chose the elements of the Policy you like
 - Its all or Nothing
- Use of a Policy, could impact your contract & How it is interpreted up the road
- Very Important: Must Weigh the Pros & Cons to Any Policy
 - Involve Legal Counsel
- Oracle Can Change Policy Anytime it wants



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Pitfall/Trend Terms of Contract Point to URL

- Page that contains URL can change over time
- Make Sure You have a copy


Oracle Stipulates the number of license for different Servers in oracle Processor Core Factor Table, Which is updated frequently

2017 – Updated Three Times


1 Year Oracle Hosted Term: A program license specifying a 1 Year Oracle Hosted Term shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Oracle Hosted Term must be issued by Oracle.com via Computer and Administration services.

1 Year Subscription: A program license specifying a 1 Year Subscription shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate.

Licensing Rules for Oracle Technology Programs and Oracle Business Intelligence Applications: Subject to the conditions that follow below, your license for the programs listed on the US Oracle Technology Price List, which may be accessed at <http://www.oracle.com/technetwork/pricing/pricing.html>, includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of ten separate days in any given calendar year. For example, if a failover node is down for two hours on Tuesday and three hours on Friday, it counts as two days. The above right only applies when a number of machines are exempt to a cluster and does not apply to disk arrays. When the primary node fails, the failover node must be in a standby state.





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Pitfall/Trend being Required to Run Vendor Scripts to facilitate audit

- Many vendors require the customer to run proprietary scripts or specialized software to facilitate the software license audit.
 - Even if it's not a contractual requirement, still expected too
 - Agreeing to run script when not required to can set legal precedent for the future if not careful
 - Be careful of updated MSA terms, that may make this a requirement in the future
 - Be Aware of what information Script is Gathering
- Failure to Comply May Have the power to terminate your License

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Vendor Playbooks Constantly Evolve...

Recent Trends in the Oracle Playbook

- Increasingly **reluctant** (if not entirely opposed) to making **modest concessions** that it has historically granted.

In the past, a licensee that received an audit notice **could reasonably expect to postpone audit proceedings** for a month or two. **Oracle bristles at such requests** and insist that the audit rigidly go forward pursuant to Oracle's unilaterally proposed schedule.

Treating Oracle Partitioning Policy like it's a contractual obligation (Still in Effect)
Quasi Audits (Oracle Java)

Audit, Bargain, Close (Still in Effect)

Oracle's Strong Arm Cloud Tactics - The 2018 Model

Forbes

Oracle has used its license auditing model to run the "Audit, Bargain, Close" playbook to encourage customers who are out of compliance to sign new deals to get into compliance.

<https://www.forbes.com/sites/danwoods/2018/05/23/oracles-strong-arm-cloud-tactics-the-2018-model/#49436abc24af>

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Vendor Playbooks Constantly Evolve...

Recent Trends in the Oracle Playbook

- Past Agreements on how Audit Metrics are calculated being thrown into question
- Legal Issues becoming more commonplace to drive up findings during the audit
 - Subsidiary Usage
 - License Types called into question
 - Unclear definitions

A proper Close Letter is critical to
Having a successful Audit

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Best Practice During Vendor License Compliance Audit

Prevent Scope Creep

- Document Audit Scope
- Only Provide Information Needed to Fulfill Requirements of audit



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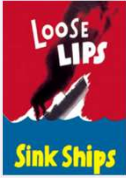
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During Vendor Audit – Single Point of Contact

- **Insert Vendor Name** will not hesitate to use information gathered from any means to expand the scope of the audit
- Disclosure by an employee may waive your future rights inadvertently



I only had one drink with the Oracle Rep



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During Vendor Audit, Don't Represent yourself Don't Go into a Gun Fight with A Knife



Team Oracle

**Remember Vendors
Have a Constantly
Changing Audit
Playbook**

**A MAN WHO IS HIS
OWN LAWYER HAS A
FOOL FOR A CLIENT**





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