



The Network "Delivers"

Problem Scope: Global

When Software Warranties are Without Warrant

When the clause starts out with a rousing:

**"...VENDOR EXPRESSLY DISCLAIMS
ALL WARRANTIES, EXPRESS OR
IMPLIED..."**

Then they (the LICENSORS) are telling you (the LICENSEES) that they will not back their product and there isn't much you can do about it.

Consider a few examples of onerous license clause entries...

Disclaimed: LICENSOR DISCLAIMS IMPLIED FITNESS FOR PARTICULAR USE.

The product you purchased does not have to serve a specific purpose—even if the licensor or vendor informed you it would do so during the sales cycle. Their "words" and their "delivered product" do not have to even come close to one another.

Money Saving Opportunity? Establish your acceptance criteria, based on genuine business needs, and expect any operating system or software product to comply with your specifications.

And the related, but very popular...

Disclaimed: LICENSOR DOES NOT WARRANT THE PRODUCT WILL MEET CUSTOMER REQUIREMENTS.

Just like the proverbial used car, this product comes "as is" and the rest of the equation becomes your problem.

Money Saving Opportunity? Did we mention how critical it is that you establish—and enforce—your own specifications for product functionality? Maybe what we all need is a "lemon" law for operating systems and software...

Think that you're not bound by any of these license clauses?

Think again. Please read your licenses.

*** Please keep in mind that we do not teach or profess to teach law, accounting, or any of the other professions that may not share the perspectives of the business consumer. Our programs of instruction are designed to provide you, the business professional, with a "software suicide prevention heads-up" so that you can recognize when a given action could possibly lead to problems down the road. We expect this alert state to encourage you to consult with the proper legal or accounting professional prior to placing your name on the agreement bottom line.**

Disclaimed: DEFECTS IN PRODUCT DO NOT HAVE TO BE CORRECTED.

Once you receive the product, irregardless of how well or poorly it has been designed, the licensor is not required to fix any errors.

Money Saving Opportunity? Is there any other consumer or business product that can get away with this kind of attitude? I would say not a successful one... You have a right to expect products that actually work well. Include a specific defect remedy requirement in all new agreements.

Disclaimed: LICENSEE ASSUMES ENTIRE RISK OF PRODUCT PERFORMANCE OR RESULTS OF USE.

What the vendor is actually saying here is that, once you have paid for the product, it becomes your problem. You may also discover that this sentiment is rephrased multiple times within the agreement.

Money Saving Opportunity? Negotiate this out, or at least split the difference. There should be no excuse that justifies the vendor avoiding their responsibilities.

But don't panic. We can show you how to identify and modify.

Disclaimed: LICENSOR DOES NOT WARRANT DOCUMENTATION TO BE – CORRECT, ACCURATE, RELIABLE, CURRENT, OR APPROPRIATE.

Your new operating system, or product, may or may not come with a user's manual. It doesn't actually matter though: That manual doesn't have to be useful to you.

Money Saving Opportunity? Do you sense a trend here? Essentially, the licensors are saying that their products and support materials can be essentially useless—and that you still have to pay full price. Negotiate this out. Manuals should be accurate, timely and reliable—at the very least.

You gotta watch these folks—all the time.

Disclaimed: NO ORAL OR WRITTEN INFORMATION BY THE VENDOR OR ITS AUTHORIZED REPRESENTATIVES SHALL SUPERSEDE THIS WARRANTY.

Essentially, you can negotiate all you want, but this license document will minimize the business relationship in favor of a purely legal one.

Money Saving Opportunity? Okay. We can understand the relationships between sales commentary and a final license. However, if your company chooses to negotiate an addendum or modification to a license agreement, you have every right in the world to do so. Negotiate mutually agreeable standards for license modification or do not purchase the product.

After all, it's just business, right?

Please Remember: This material is a heads-up to alert the business tech consumer regarding how seriously flawed the current licensing process has become. We aren't suggesting that you attempt to play lawyer or accountant. We are, however, teaching front line business professionals how to recognize a potential problem before they are sucked in to the sharp practice whirlwind. Once you have read a license—just one single license—you will begin to understand how poorly the business technology consumers have been monitoring this vendor-centric relationship. You'll also begin to sense how thoroughly exposed you are to potentially expensive problems.

"Since this is 'just business,' the consumers of business technology have some business needs of our own..."

What can you do about this?

Existing Agreements - What can you do with the licenses you already have? Not a whole lot. Essentially you are stuck with the current terms and conditions until the license comes up for renewal or you choose to cancel. The key in this scenario is to summarize all existing license agreements and ensure that your company is following them to the letter. Of equal importance, document and track any license renewal dates and requirements (*More on this interesting little practice in another Briefing*). Once the product license expires, either renegotiate a more favorable license or displace the product.

Frequently, even the hint of a possible displacement can cause the vendor to permit modification of an agreement so it becomes more mutually beneficial. If they won't revise the license—go with one of their competitors who will.

Displacement: There comes a time when you have to remove a given product from your technology environment and replace it with another. There are many reasons to displace an existing product. The key to remember is that YOU are the customer and YOUR requirements are the ones that matter. When you displace, ensure that you have a viable replacement product before beginning negotiations. This concept is very important—Read the Displacement Hazards Knowledge Briefing!

New Agreements – We suggest that you begin an entirely new and almost unheard-of process: The process of getting what you pay for—and not paying for something that simply doesn't work. To do so, start a formal negotiations program that eliminates or minimizes unfavorable license terms.

The important thing to remember is that the products you are acquiring are being purchased to serve a specific business need. If those products do not effectively serve that need, why would you invest the money? Essentially, the license agreement is a vital part of the potential life cycle value of the product. If the terms and conditions are so onerous that they represent a barrier to acquisition and/or operations—or, more to the point, a significant risk—you shouldn't accept those terms.

Prepare for Battle – Here-in lies a substantial problem. The software publishers have had everything their way for a very, very long time. Business technology consumers have been pretty much forced to accept any agreement that the major software players offer as the "industry standard"—whether we like it or not. Well—like it or not—those standard licenses have become an unreasonable drain on our budgets, our operations, our security, and our collective patience.

Here is what is happening: The so-called "industry standard" license is on its way to the trash pit where it belongs. The software industry as a whole is certainly not pleased with this trend but *there isn't much they can do about it*. Since around 2001, business technology consumers have been pushing back against the so-called standard licensing schema. (***Or maybe we should call it a licensing scam-ah?***)

Their Lawyers Can Beat Up Your Lawyers - Always keep in mind that the software industry has legions of intelligent and highly motivated lawyers and watchdog associations spending their time, and a massive amount of our money, creating the most one-sided license agreement terms and conditions they can possibly dream up. These folks have had plenty of experience building court cases that test and confirm the validity of their license clauses. In fact, even when they are caught out and a specific license clause is ruled un-enforceable, they simply rewrite it in another format and continue on their merry way. They spend tens of millions of dollars lobbying for favorable laws that support their draconian licensing methodologies. But there is one little problem they simply cannot prevent...

Consumers do not have to agree to the license!

And this is when the conflict comes into play. How many times have you heard THIS little refrain? "You're too small to negotiate a unique license." Or, the ever-popular, "We do not negotiate our license agreements." The global popularity of these self-serving tunes translates into this reality: Whenever you push back against licensing sharp practices, you will encounter resistance.

It's Your Choice...It's Your Money...

Submit or Commit - You can complacently permit the vendor to stonewall your reasonable requests for license agreement modification and remain a victim of biased tactics like those we discussed earlier.

Or...

You can push to negotiate and change the relationship to one of mutual benefit. I can predict with 100% certainty that your major software publisher or vendor reps will snap their noses into the air and challenge you to take their terms or leave them.

My advice is that you smile just as condescendingly as they do and displace their products for those of a competitor.

Here's Why It Will Work...

Many competitors are coming to understand that as all comparative software products move toward essentially the same degree of functionality, the key to effective sales will soon return to the availability of more favorable licenses. Once the top vendors begin discovering that American small- to medium-sized enterprises (SMEs) (*or those in any other country*) represent a majority of software sales, life for the business technology consumer will change for the better.

It is up to us, the business tech consumers, to push for, demand, and expect more reasonable changes in license agreement format.

Thoughts? Commentary? Whining? Agreement? Think we're nuts?

I'm Alan Plastow & we would sincerely like to know what you think. We will follow up on your comments and questions so you can always locate a vendor-neutral perspective. Also let us know if there are specific clauses you want discussed and we'll do our best to review them for you.