



Stuart van Rij

# Virtually exposed

**IF YOU'RE A CIO**, chances are you have either just finished implementing a virtual server environment, or are thinking about it. By all accounts more and more businesses are taking the leap to virtualisation. With the benefits of server consolidation, along with the enhanced flexibility and business continuity that virtualisation offers, it's no surprise.

However, what might surprise is that despite the advances in virtualisation technology, many

use to certain CPUs or machines.

The fine print in these licence agreements may not cater for the idea of the application being hosted on one or more virtual machines. The prospect of an application running on a single resource pool, consisting of a number of servers clustered together, would not have been anticipated in many, if not most, licence agreements.

If the licence agreement doesn't work in the new environment, there's a risk that the business

in the manner required by the business; and

■ Software asset management processes and practices need to be in place to manage compliance with the licence terms.

"I'm sorry, we don't support..."

Software vendors try to limit their responsibility for fixing problems that didn't originate in their software. More often than not the warranty in the licence agreement, and the exclusions in the support

in a physical environment before they'll begin to look at it. As a result, it's important to make sure the processes and documentation is in place to help deal with problems and grey-area diagnostics when they arise.

As part of any virtualisation project it's prudent to spend some time checking the suitability of existing licence and support agreements. Assumptions in this area can readily leave a business exposed to unexpected costs, support failures and the risk of infringement. ■

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For the customer, this means some of the expected benefits in the business case could be torpedoed through unsupported applications, unexpected licence and support costs or claims for infringement of IP rights.

Set out below are some of the key issues to consider for applications that will be migrated to the new environment.

### Old-school EULAs

Virtualisation can play havoc with some of the underlying assumptions in a licence agreement. Many software licences are inextricably tied to the underlying machine that they operate on. Unlike licences that limit rights to use on the basis of users, sites or organisation, these licences limit

could be asked to shell out additional licence fees or face an action for infringement of IP rights. So, it's essential to check the licence terms for each application that will be migrated to the virtual environment.

### Server sprawl

The ease by which new virtual machines can be created is both a benefit and a risk. A virtual machine is only a few mouse clicks away. The prospect of "virtual server sprawl" not only creates IT management headaches for the CIO, but can also ramp up the licence costs as unexpected instances of the application crop up. The last thing you want is the outcome of a software audit eating into the savings from server consolidation. As a result:

■ Licence agreements need to be checked to make sure they cater for use on multiple virtual machines and operating systems,

and maintenance terms, means the software vendor is not responsible for fixing problems caused by "hardware or software that it has not expressly approved in writing". Some agreements exclude support merely because the application is used in combination with unapproved hardware or software.

There's an obvious risk of being caught over a barrel for additional support and maintenance fees. So, it is well worth checking to make sure that the software vendor is obliged to support the application in the virtual environment.

Even if the application is supported, the mere fact that the application and operating system software needs to work with the software that creates the virtual environment, means there's ample opportunity for finger pointing when faults do arise. Software providers may even require a fault be replicated

**References:** Reed C. 'Virtually Unlicensed: The Problem with Virtualisation' *Computers & Law Magazine*, December 2007/ January 2008 (retrieved from [www.scl.org](http://www.scl.org)); Toth J.M. 'Virtualization: Technology Solution, Legal Challenge' Counsel to *Counsel Magazine*, October 2007 (retrieved from [www.martindale.com](http://www.martindale.com)); Cook A. 'Virtualisation and software warranties' *Computers & Law Magazine*, April/May 2006 (retrieved from [www.scl.org](http://www.scl.org)); Kusnetzky D. 'Virtualization Challenges Licensing Schemes' *Virtual Strategy Magazine*, 26/11/07 (retrieved from [www.virtual-strategy.com](http://www.virtual-strategy.com)).

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