

SOFTWARE ASSET MANAGEMENT (SAM) SOFTWARE AND SERVICES BUYER'S GUIDE

WHAT THE VENDORS DON'T WANT YOU TO KNOW

DR. MICHAEL J. COREY

Software Asset Management (SAM) Software and Services Buyers Guide

What the Vendors Don't Want You to Know

Author

Dr. Michael J. Corey

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LicenseFortress

515 S. Flower Street

18th Floor

Los Angeles, CA 90071

www.licensefortress.com

Table of Contents

ABOUT THE AUTHOR	6
ABOUT THE TECH REVIEWER	7
INTRODUCTION	8
THE BUSINESS PROBLEM	9
IT'S A MATTER OF WHEN YOU WILL BE AUDITED	10
THE BURDEN OF PROOF IS ON YOU - THE CUSTOMER	10
EVEN SMALL ORGANIZATIONS HAVE LARGE AUDIT BILLS	11
IN A DECADE, WE HAVE YET TO FIND A COMPANY 100% COMPLIANT	11
THE DECK IS STACKED AGAINST YOU	12
SOLUTIONS FOR ELIMINATING THE BUSINESS RISK	13
SOFTWARE ASSET MANAGEMENT (SAM) SOFTWARE	13
DISCOVERY CAPABILITY	13
DISCOVERY WITHIN CLOUD ENVIRONMENTS	14
VENDOR LICENSING METRICS	15
THE SHELFWARE DANGER	15
COULD SAM SLOW US DOWN?	16
TIME COMMITMENT AND THE SAM TOOL	16
THE DANGER OF VENDOR ALIGNMENT	17
CLOUD HOSTED SAM TOOLS	18
SAM TOOL IS ONLY A PARTIAL SOLUTION	19
LICENSE CONSULTANTS	20
BEWARE OF THE EX-SOFTWARE VENDOR AUDITOR	21
VENDOR INDEPENDENCE	21
LICENSE CONSULTANTS ARE NOT LAWYERS	21
IMPORTANCE OF LEGAL INVOLVEMENT	23
DO NOT REPRESENT YOURSELF DURING AN AUDIT	23
LICENSE OPTIMIZATION	24
SAM MANAGED SERVICES	25

Table of Contents

SAM TOOL NOTIFICATIONS	26
SAM TOOL MAINTENANCE	26
LICENSE EXPERTISE AS NEEDED	27
TECHNICAL EXPERTISE	28
LEGAL EXPERTISE	29
CLICK-WRAP CONTRACTS	29
AUDIT DEFENSE	29
VENDOR INDEPENDENCE	30
CONCLUSION	31
SOURCES	33
ABOUT LICENSEFORTRESS	34



Dr. Michael J. Corey

About the Author

Dr. Michael Corey is the co-founder of LicenseFortress. Michael has worked with Oracle technology for over 38 Years. In 2015 & 2017, he was identified as #42 of the top 100 most influential people in the “cloud industry”. Since 2012 he has been a recognized Oracle Ace Pro and VMware vExpert. From 2014 to 2019, Michael was a Microsoft MVP. Michael is the Original Oracle Press Author and has over 10 books published on Oracle, Microsoft, and VMWare. Michael is a past president of the International Oracle Users Group and a founder of the Professional Association of SQL Server. For over 30 years Michael is a frequent speaker at Business and Technology Events all over the globe.

Michael received a gubernatorial appointment to the Massachusetts Robert H. Goddard Council for Science, Technology, Engineering, and Mathematics. In 2021 Michael earned his doctorate from Temple University.

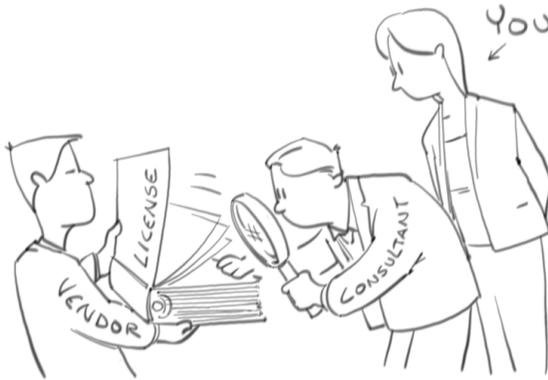


Dean Bolton

About the Tech Reviewer

Dean Bolton launched his IT career in 2000 after completing his bachelor's degree in computer science and engineering at the Massachusetts Institute of Technology. He started working with Oracle databases early in his career at an internet systems and applications design firm. Since then, he has continued working as an Oracle developer, database administrator, architect, consultant, and evangelist. Today, Dean is the managing partner of VLSS LLC, a premier Oracle and VMware consulting firm. He serves as the lead enterprise architect with a focus on Oracle applications and database solutions. Dean is an Oracle 12c DBA Certified Master, Exadata Specialist, SQL Certified Expert, and VMware vExpert. Dean is a recognized Oracle licensing expert with presentations at VMworld, IOUG Collaborate, UKOUG, and OpenWorld.

Introduction



For as long as the software vendors have been exercising their right to perform license compliance audits, software asset management (SAM) software has existed. A traditional SAM tool provides you with an inventory of the vendor software installed in your IT environment, where the software is deployed, and what features are deployed.

Just as quickly as SAM software rolled out, software license compliance consultants started up their businesses. Company leaders (wanting to ensure compliance to the terms of their software licensing and control costs related to their software use) engaged the services of these license compliance consultants.

Notably, the most expensive part of an organization's technology deployment is the software, not the hardware. Software license compliance mistakes can quickly cost millions of dollars. Therefore, SAM software is a crucial component of proactively managing your software deployment.

License compliance consultants are vital to understanding the proper way to license the vendor's software and successfully navigate a software license audit process initiated by the software vendor.

This guide will provide insight and practical tips for purchasing a software asset management solution and the criteria to consider when hiring a software license consultant. We will also discuss a new, more efficient, hybrid approach to dealing with the challenges of software license compliance called the SAM Managed Service.

A SAM Managed Service is a hybrid approach to providing ongoing software license compliance. It combines a SAM tool with access to the license expert packaged as a continuous service, but we'll talk about that in a later section of this buyer's guide.

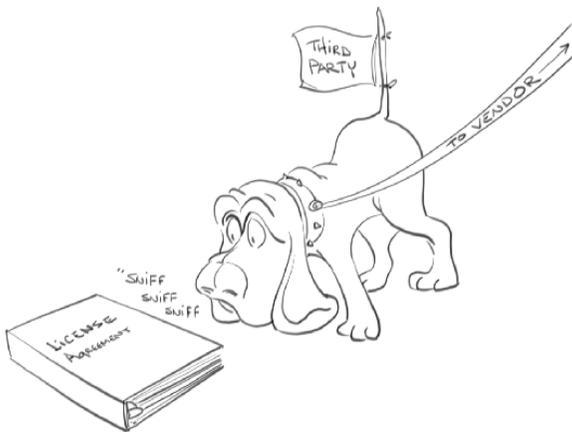
The Business Problem

Enterprise software vendors, like Microsoft, Oracle, and IBM, are increasing the velocity of their audits. These vendors realize that the more audits they perform, the more revenue they can generate. To quote Gartner: “Vendor-imposed and revenue-motivated audits are increasing for organizations of all sizes and industries.”¹

The report surmised the spike in vendor audits is a direct result of the negative impact that the COVID-19 pandemic had on software sales and that vendors are looking for ways to stabilize and increase their revenue.

“‘Truing up’ licenses amounts to billions of dollars in revenue for the major software makers. Here’s where the money goes -- and how it’s extracted,”³ stated Dan Tynan in Information World.

It is not uncommon for vendors like Oracle, Microsoft, and IBM to authorize third parties to perform software compliance audits on their behalf, increasing the frequency of audits completed every year.



Further, the July/August 2020 edition of The Patent Lawyer magazine states, “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.”⁴

What is evident is that for some vendors, software audits are an easy way to generate additional revenue. For other vendors, these audits are a way for them to make sure they are being fairly compensated for the use of their software.

Software audits are now central to the way software vendors do business and increase their revenue streams. For you to do nothing in preparation for the inevitable software compliance audit is like the ostrich sticking its head in the sand. Without preparation and a proven strategy going into an audit, the only thing that’s certain is that you’ll be the software vendor’s next victim. Why? Because in many “audits,” the software vendors don’t play fair and use the audit scheme simply to leverage more money from your company.

A recent survey sponsored by LicenseFortress and produced by Unisphere Research a Division of Information Today demonstrates that vendor audits spiked even higher in 2021 and 2022²

It's Just a Matter of When You Will be Audited

It's not a matter of if you will be audited. It's a matter of when and how often. "Forty-nine percent of small organizations (1-249 Employees), eighty-three percent of medium size organizations (250-999 employees), and seventy-seven percent of large organizations (1000+ Employees) reported being audited by one or more companies in the last three years," according to the 2022 Survey on Enterprise Software Licensing and Audit Trends.²

No matter what the size of your organization, there is a good chance that you will be audited. Of the organizations mentioned in the MANAGING THE SOFTWARE AUDIT: 2022 Survey on Enterprise Software Licensing and Audit Trends, 64% were audited by Microsoft, 41% by Oracle, and 27% by IBM.²

Software compliance audits are an easy way for major vendors to generate revenue. You will be audited. It's just a matter of time.

The Burden of Proof is on the Customer

Disputes over rightful software use generally fall under copyright law. Arthur Beeman, an attorney at Beeman & Muchmore LLP, stated, "Oracle owns copyrights on the software it licenses to customers. Consequently, any rights a customer may have to use the software are a grant from Oracle and are subject to the terms of a licensing agreement. Without exception, Oracle's licensing agreements include an audit provision, which Oracle has used to great effect to assure compliance by the customer. Once the audit provision is invoked by Oracle, the burden shifts to the customer to demonstrate it is complying with the licensing agreement, a task often fraught with risk and difficulties."

No one will dispute that Oracle or Microsoft owns the copyright for their software, which instantly shifts the burden of proof to the customer. As a customer, you must provide evidence that you have bought the appropriate licenses to use the software at play within your IT environment and, more importantly, that you are using the software in accordance with the terms of the purchased licenses.

You must provide evidence that you have licenses to use the software and are using it in accordance with the licensing terms.

Even Small Organizations have large Audit Bills

Small organizations are often surprised by how large a bill they can receive based on the findings of a software license compliance audit.

Software vendors know that if they audit you, it will result in additional revenue and could easily be in the millions of dollars - regardless of the size of your current annual spending with them.

For example, a LicenseFortress customer was in the middle of a hardware upgrade.

Their annual support bill from Oracle corporation was under \$15,000 a year. They did not realize the hardware upgrade would invalidate their standard edition licensing and would have resulted in the need to buy new Enterprise Edition licenses at the cost of over 1 million dollars.

Software vendors know that if they audit you, it will result in additional revenue and could easily be in the millions of dollars - regardless of the size of your current annual spending with them.⁵

In a Decade, we have yet to find a Company 100% Compliant

Over the past decade in business, LicenseFortress has yet to find a company that is 100% compliant with its software licensing. Based on our experience in helping companies all over the globe, we know (and so do the major software vendors) that your organization has an underlying software compliance issue. What we don't know is if you have a \$50K, a \$5 million, - or worse yet - an \$80 million license compliance issue.

When a license compliance issue is detected proactively, it's easy to make the needed changes to bring your organization back into compliance — making the compliance violation a non-event at your next vendor audit. During your next audit, you are under no obligation to disclose to the vendor that you were once out of compliance or the changes you made to correct the problem. However, if you wait until a vendor like Oracle corporation is officially auditing you, you are under a contractual obligation to inform them of any changes made during the audit period.

Proactive software compliance action makes it easy to correct issues without a contractual obligation to inform the vendor what has happened.

The Deck is Stacked Against You

Even the most diligent internal technology team will find it very difficult to stay compliant with the vendor's software terms. Why? Vendors like Oracle and many others do not require software license keys, making it easy for your technology teams to mistakenly deploy unlicensed software. In addition, third-party software installs have been found to turn on unlicensed software and features. Even official software patches from the major vendors have been found to turn on unlicensed features or install unlicensed software.



Case in point: LicenseFortress was made aware of a situation where a software vendor support representative instructed a customer to turn on performance reports. When the customer pushed back, saying they did not have a license for that feature, they were told by the vendor support team that it was okay to use. Then, during a software compliance audit a year later, the use was

detected, and the vendor audit team presented the customer with a bill for the usage. At that point, the customer engaged with LicenseFortress to help mitigate the financial exposure that the software vendor's representatives had created for the customer.

Even the most diligent IT teams will find it difficult to maintain 100% software license compliance.

In another engagement, LicenseFortress was brought into a situation where a major software vendor consulting team offered to provide software patches at a client site where the software was no longer under a support agreement. LicenseFortress made it very clear to the customer that without an active support agreement, the customer has no right to install software patches from the vendor, and this would just trigger a large payment for unlicensed usage during the next license audit.

Software patches installed on unlicensed software or software that is not under a support agreement can cost your business big money!

The bottom line is that if unlicensed software is deployed (or patched), you're in violation. If this lack of compliance is detected during the next vendor audit, you, the customer, are responsible for paying the bill regardless of how it happened or who used the software.

Yes, you read that correctly.

Even if the advice were from a vendor consulting team themselves, you still would be held

liable for using unlicensed software and be expected to purchase the software to be brought back into compliance. You own the license; you own the liability.

The bottom line: If unlicensed software is deployed on your systems (or patched), you're in violation. If this lack of compliance is detected during the next vendor audit, you're responsible for paying the bill regardless of how it happened.

Solutions for Eliminating the Business Risk

Software license compliance has been an industry problem for over 30 years. Historically, there have been two approaches to dealing with the risk that a vendor-imposed software license audit poses for an organization.

- Approach #1 – Deploy a Software Asset Management tool. - Companies that wanted to solve the problem with technology obtained and implemented a software asset management (SAM) software solution, commonly referred to as a SAM tool. A traditional SAM tool provides you with an inventory of the vendor software, where the software is deployed, and what features are being deployed.
- Approach #2 - Hire a software license consultant. - Typically, license consultants are ex-vendor auditors or lawyers who are versed in software licensing.

Further sections in this software asset management (SAM) buyers guide will explore your options to deal with the risk of software license compliance and the pros and cons of any particular approach.

Software Asset Management (SAM) Software

Wikipedia defines Software Asset Management (SAM) as “a business practice that involves managing and optimizing the purchase, deployment, maintenance, utilization, and disposal of software applications within an organization.”⁶

There are several companies that have built Software Asset Management (SAM) software to help businesses like yours manage deployments of vendor software. Here are a few: Flexera, Snow Software, Licenseware, Certero, License Dashboard, Matrix42.

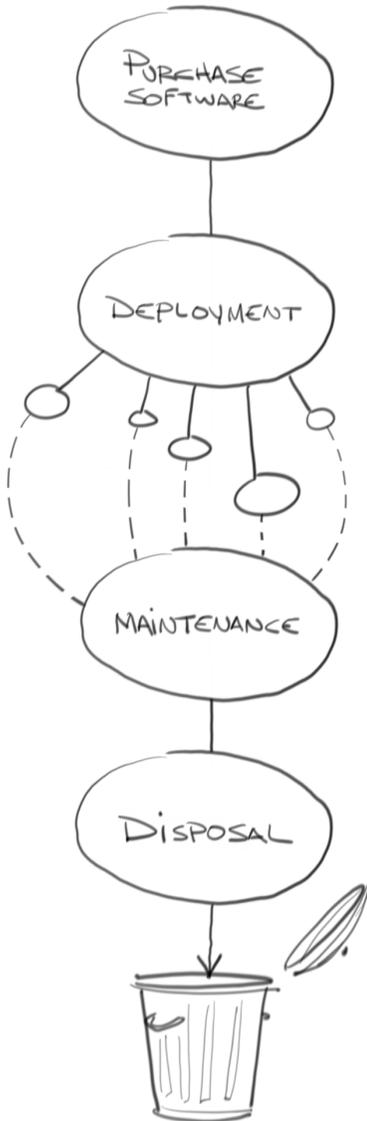
Historically these SAM tools were built to help customers manage perpetual software licenses for vendors like Oracle, Microsoft, and Adobe to IBM.

Discovery Capability

A critical component of any SAM tool is its discovery capability. Discovery is the ability of the SAM tool to:

- Search a customer's IT infrastructure
- Build an inventory of where a particular vendor's software is installed
- Determine what version of the software is in use
- Detect any deployed features.

An Effective License Position details your organization's license compliance position with a software vendor.



The above information gathered by the SAM tool forms the basis for determining a customer's Effective License Position (ELP). An ELP details an organization's license compliance position with a software vendor. The ELP is formulated by comparing software licenses that have been purchased (your entitlements) against the software currently being deployed.

Discovery within Cloud Environments

Today it's common for organizations to leverage multiple cloud environments.

Here are a few important questions to ask.

- Does your SAM tool support the clouds in which you are currently deployed or plan to use in the near future?
- Do you run older generations of hardware or software?
- Can the SAM tool support your business the way your cloud-based workflow and processes are currently deployed?

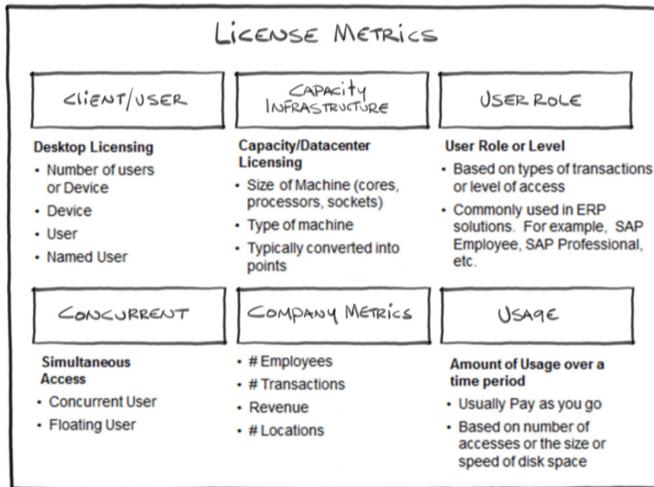
These are all qualifying questions that should be asked when evaluating which SAM tool is right for your organization.

Vendor Licensing Metrics

Over time, the metrics used by the vendors

to charge for software licenses and how customers deploy the software have evolved. A high-level overview of common license metrics that LicenseFortress has encountered can be seen in Table 1: License Metrics.

It's common for large organizations to have a variety of different software metrics in place to determine the cost of licensing the vendor's software application software.



The metrics tell the story. SAM tools rely on metrics. Those metrics show where the vendor's software is deployed on your systems and what features are turned on. When looking at the different SAM tools, it's critical to understand what metrics you will need to measure to establish your Effective License Position.

It's important to understand what metrics will require measurement to determine your Effective License Position.

Vendors are commonly tweaking metrics to optimize revenue. It's important to know how often the SAM tool you are deploying releases new versions. As vendor software metrics evolve, it's vital that the SAM tool you have in place keeps pace.

The Shelfware Danger

It's quite common for LicenseFortress to work with customers that have already purchased a Software Asset Management (SAM) tool. Yet, for many of these companies, it might as well be shelfware. For those unfamiliar with the industry slang term "shelfware," think of it as software a company has bought because of a perceived need but never really uses — so it just sits on a shelf.



Often the companies we encounter have purchased and installed a SAM tool — yet the deployed SAM tool is not able to meet the needs of the customer during a vendor software compliance audit. Many times, the SAM tool the customer has in place provides an Effective License Position, but the ELP provided is widely inaccurate. The range of issues that cause the SAM tool not to meet the needs of the customer doing the vendor audit can include improperly configured software, an inaccurate ELP, and a SAM not fully deployed.

Could SAM Slow Us Down?

Sometimes, customers are concerned about the potential impact the SAM tool could pose on production database performance. A SAM tool is enabled on your most critical business infrastructure. It's important that the SAM tool you choose can do the job without impacting the day-to-day business operations.

The Commitment and the SAM Tool

It takes a substantial amount of effort to install, configure, and maintain a SAM tool. The SAM tool needs to span your organization's entire infrastructure. Many organizations do not realize the actual time investment required, so it's common to find the SAM software not fully deployed across an organization's infrastructure. It's also quite common for the SAM software to not be properly configured — limiting its capabilities.

For example, LicenseFortress frequently encounters customers using a SAM tool to help them with Oracle software, only to discover it was never configured to connect to each database —limiting their ability to determine which features are enabled. The problem? Their IT staff just didn't have the time or know-how to take on the task of configuring the tools for each database instance.

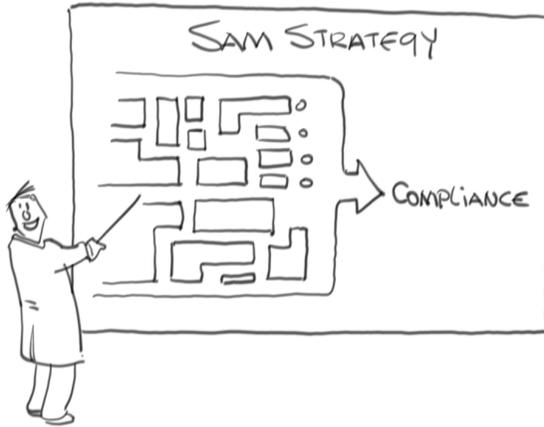
Organizations need to properly invest in the resources required to install and maintain the SAM tool if they expect to reap the benefits

For Oracle databases, the product set features in use can be more expensive than the initial database purchase itself. Additionally, it's not unheard of for Oracle DBAs to accidentally enable features that need to be licensed without realizing it. License Fortress has even seen 3rd party installations and Oracle patches turn on unlicensed features.

Without the SAM tool being properly configured for each database instance, it will not detect

the use of an unlicensed feature. It's important to recognize that installing, configuring, and maintaining a SAM tool takes a substantial amount of organizational effort.

It's essential to recognize that installing, configuring, and maintaining a SAM tool takes a substantial amount of organizational effort.



Organizations are fluid, so SAM tools need periodic care. It's not a set-and-forget piece of software. Given the existing workload of your technology team, you need to determine if your organization be able to dedicate the resources necessary to installing, configuring, and maintaining a SAM tool.

If the answer is no, later in this guide, we'll discuss SAM Managed services, a hybrid approach to Software Asset Management — where the burden of installing, configuring, and maintaining the software is handled by the SAM Managed Service provider.

In our experience, it's not unusual for a larger organization to have deployed multiple SAM tools. We often hear the staff say things like, "We use 'X' SAM tool over here, and we found 'Y' SAM tool did not work very well on that platform." If your IT infrastructure is very complex, do you have the staff and resources needed to maintain multiple SAM tools?

We've also seen a number of customers who invested in a SAM tool and dedicated the needed resources to properly install, configure and maintain it. Yet, they fell into what we call the "vendor alignment trap," which we will discuss in the next section of this book.

The Danger of Vendor Alignment

A significant selling point some SAM tools spout out is that they are officially endorsed or blessed by the software vendor. In our experience, being tightly aligned with the vendor is not a good thing. With these partnerships or endorsements comes implied obligations. For

example, there is the expectation that you lead with their product solution over other vendors. There is an expectation that the SAM tools follow the vendor's policies when reporting back what is considered license compliant versus what is not license compliant.

Next, we will illustrate an example of why it's not always in a customer's best interest to work with a SAM tool vendor blessed by the software company. In this example, this SAM tool uses [Oracle's Partitioning Policy](#) to determine when a customer is license compliant. If the customer had a five node VMware cluster with Oracle running on two of the nodes to which Oracle had never run on the other three nodes, according to the Partitioning Policy, the customer would still be expected to license all five nodes. Adhering to this policy only artificially drives up the cost to deploy the software the customer needs, as the customer is under no contractual obligation to follow this policy. While Oracle officially accepts the SAM tool output during an audit, it is also miss-reporting the customer's contractual obligation on what is needed to be license compliant —resulting in the customer paying substantially more than necessary for their Oracle licensing.

Suppose you look at the fine print of the Partitioning Policy. In that case, it states, "This document is for educational purposes only and provides

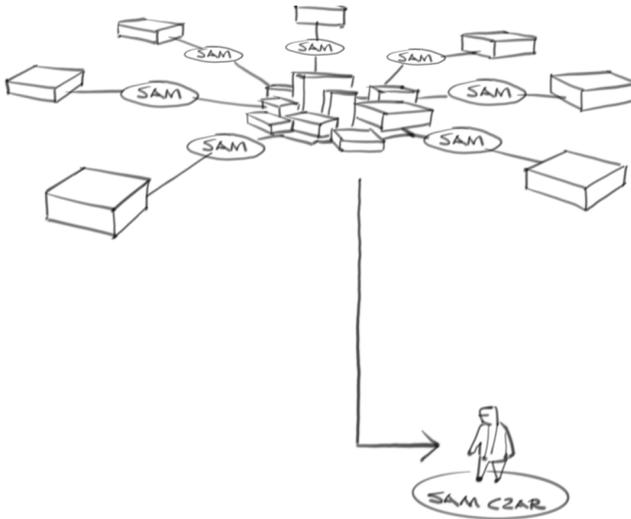


Vendor alignment or endorsement of a SAM tool may come with expectations that are not in the customer's best interest.

guidelines regarding Oracle's policies in effect on February 14, 2022. It may not be incorporated into any contract...". Further, another issue with following a vendor policy, the policy can change at a moment's notice leading to potentially costly license remediation practices to remain aligned.

Cloud Hosted SAM Tools

A common approach in the software industry today is to provide software-as-a-service (SaaS), where the vendor hosts the software in their cloud or a public cloud. While this is an excellent way to deploy software for many applications, we would caution against taking this approach with your in-house SAM tool.



For a SAM tool to be effective, it will need access to your entire infrastructure. Trusting this level of information to a tool hosted outside your organization poses a substantial security risk. Your organization is only as strong as the cyber defense systems of the cloud in which the SAM tool resides.

The PROBLEM with cloud-based SAM Tools: Your organization is only as strong as the cyber defense systems of the cloud in which the SAM tool resides.

SAM Tool is Only a Partial Solution

SAM tools are part of a vital set of tools to manage and maintain software license compliance proactively. A fully functioning, properly configured SAM tool can provide needed information during your next software compliance audit. It can produce information required to help you understand what software is being deployed, where its deployed, and the current options in use.

It will not, however, provide an interpretation of your contract, as it cannot determine your entitlements. The old data entry expression, "Garbage in, garbage out," comes to mind.

While a SAM tool can provide you with what software is in use, it cannot, on its own, perform license optimization. Further, it cannot help provide an audit strategy during an audit.

A SAM tool is an important component of being proactive in maintaining license compliance. Yet, when your next software license audit happens, expect to need the help of a software license consultant. Alternatively, be proactive now and begin

using a SAM Managed Service that includes audit defense.

MANAGING THE SOFTWARE AUDIT: 2022 survey on Enterprise Software Licensing and Audit Trends² conducted by Unisphere Research, a division of Information Today, showed you have a 69% chance of being audited within the next three years for software compliance. There is a 64% chance it will be Microsoft, a 41% chance it will be Oracle, and a 27% chance it will be IBM.



It's common for large organizations that have one or more SAM tools deployed in-house to seek the help of a SAM Managed Service company (like LicenseFortress) to help proactively manage ongoing license compliance and the course of a license compliance audit.

License Consultants

A common approach for companies desiring to handle license compliance is to hire a software license consultant. Just as a company has an annual audit of its financials, software license consultants are brought on board to do an annual license compliance check. The license consultant runs scripts or uses your existing SAM tool to determine your current deployment of software. The consultant reviews your purchases to determine your entitlements. After the engagement is complete, the license consultant often stresses the importance of an annual license compliance check. Given the high cost of software compliance mistakes, an annual check is not good enough. Companies need to take a more proactive approach to license compliance.

Given the high cost of software compliance mistakes, an annual check is not good enough. Companies need to take a more proactive approach to license compliance.

Doing an annual software license compliance check is undoubtedly better than doing nothing. But in our experience, when license compliance mistakes happen, and they are detected and corrected within hours, days, or even a few weeks, the audit outcomes are very different than when the compliance violation goes undetected for months or even years. In the previous decade, an annual software compliance check may have been sufficient, given the high cost of software from vendors like Oracle. However, doing an annual true-up is no longer good enough to mitigate substantial business risk.

Beware of the Ex-Software Vendor Auditor

Many license consultants started their careers as auditors for software vendors like Oracle, Microsoft, or IBM. Another common way they enter the business is having worked for big accounting firms that were hired to do third-party software license compliance audits by the software vendors.

A well-documented fact by Gartner research suggests that Oracle interprets policies as if they were a contractual obligation from a pricing and compliance perspective.⁸ The vendor trained the above-mentioned ex-software vendor audit license consultants on how to perform software compliance audits. In the case of Oracle, that training includes interpreting company policy during an audit as a contractual obligation, as we previously discussed.

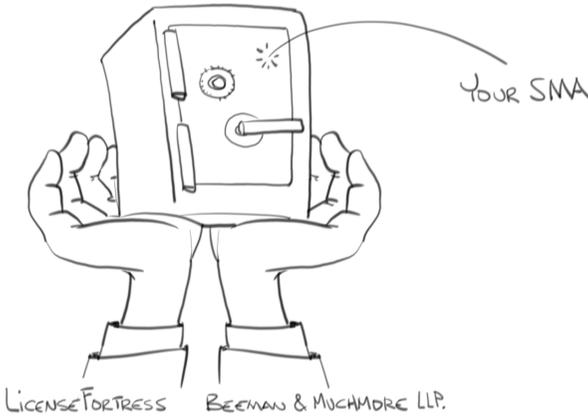
Vendor Independence



It's essential to choose a software license compliance consultant that is free of any ties (current or past) to the software vendor. Before LicenseFortress entered the SAM market, it was common for license consultants to also sell software licenses for the very vendors they were supposed to be battling for the client. It was obvious that this was an enormous conflict of interest. From inception, we made a business decision never to sell software licenses. Many of these other firms, feeling pressure from our pledge of vendor independence, got out of the practice of selling licenses. An industry trend that LicenseFortress is very proud to have influenced.

License Consultants are Not Lawyers

For over a decade, LicenseFortress has been helping companies with software compliance and audit defense. Legal issues are becoming more commonplace during compliance audits – from issues relating to poorly written contracts and ambiguous terms on where and how software can be deployed to how software can be used in a subsidiary. Some software vendors leverage this confusion during a software license audit.



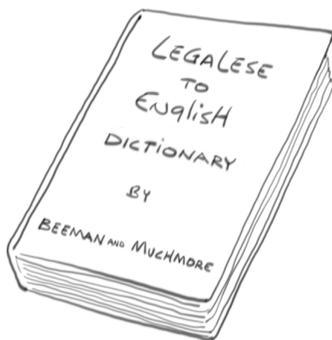
While all LicenseFortress consultants have a strong understanding of contracts, it was clear to us that in order to support customers effectively, we also needed to incorporate legal advice into every engagement.

We chose to partner with Beeman & Muchmore, LLP.

Arthur Beeman and Joel Muchmore were the lawyers on record in the iconic Mars v. Oracle case⁹ — to date, the

only public filing by a licensee challenging Oracle's deeply unpopular licensing and auditing practices.

"The strategic blueprint of Oracle's ongoing assault against its licensees can be found in its notoriously vague and confusing licensing terms," stated, Joel Muchmore. Further elaborating, "A typical Oracle licensee has often accumulated a nearly impenetrable tangle of historic Master Agreements, Ordering Documents, communications, and other ancillary contract materials that can be next to impossible for the untrained and inexperienced to unravel. It is our experience that Oracle preys upon this ambiguity to cloak legally unsustainable – if not downright incorrect – contractual arguments. Considering the galloping pace that Oracle can force upon audit resolution, it is no wonder that many anxious licensees fail to take the time necessary to debunk Oracle's indefensible legal posture."



Too often, we see software license consultants from other firms making statements without understanding the legal ramifications. . As Joel states so eloquently, "A typical Oracle licensee has often accumulated a nearly impenetrable tangle of historic Master Agreements, Ordering Documents, communications, and other ancillary contract materials that can be next to impossible for the untrained and inexperienced to unravel". At LicenseFortress We feel the combination of world-class technical expertise combined with legal expertise that has deep experience in software vendor licensing is critical for successful conclusions to software vendor audits." License consultants

are not lawyers and should not overstep their areas of expertise.

Another common mistake is the practice of companies relying exclusively on in-house counsel. While in-house counsel may be well versed in business law, dealing with the complexity of software compliance as it pertains to today's complex environments requires legal

specialists that focus on software compliance. A significant upside of working with a firm like LicenseFortress that has legal advice baked into the process is that lawyers have very stringent obligations regarding conflicts of interest and level of care. Beeman and Muchmore would not be able to work closely with LicenseFortress if we were in ethical violation of those obligations.

Importance of Legal Involvement

It's essential to ensure the software licensing consultant you hire includes a legal review (by lawyers well-versed in software contracts and copyright law) of all your contracts with the software vendor. For long-term software vendor customers, a detailed legal review may establish that you have legacy rights that you want to make sure you utilize to the fullest advantage, and during all future purchases, preserve those rights.

What you are obligated to pay the software vendor is based upon your contract, not their stated policies. During an audit, it's now commonplace for some software vendors to use ambiguity in contractual language as a way to generate more revenue. While a license consultant brings a lot to the table, they are not lawyers. Issues involving the interpretation of contracts should include a legal review. Additionally, after a software licensing audit is completed, the software vendor issues a close letter. It's important to have legal weigh in and ensure the close letter does not leave any loopholes for the software vendor to come back again and exploit the customer for more revenue.

Do Not Represent Yourself During an Audit

There is an old adage, "A lawyer who represents themselves has a fool for a client." When a vendor like Oracle, Microsoft, or IBM audits you, the team they send in does this day in and day out. The vendor auditors have evolving playbooks that have developed over the years to maximize the financial return to their organizations.



“When a software vendor serves you a license Software Compliance Audit Notice, obtain the services of a license consultant”

Here are some things you need to be on the lookout for and avoid:

- Auditors using a sense of urgency to move customers through the audit process at an uncomfortable pace (which can work to the auditor’s advantage)
- The expectation that you must run vendor-supplied scripts (even though there may be no obligation to do so)
- Auditors that treat vendor policy like it’s a contractual obligation
- Auditors using a lack of clarity in the contract to find the customer out of compliance

These are a few of the many ways vendors can adjust the audit playbook to their advantage.

Vendor software license audits are about generating revenue. A 2022 survey on Enterprise Software Licensing and Audit Trends conducted by Unisphere Research showed that software license compliance audits are on the rise. They surmise in the survey that this is a direct result of companies looking to generate additional revenue to offset the revenue lost because of the COVID-19 pandemic.

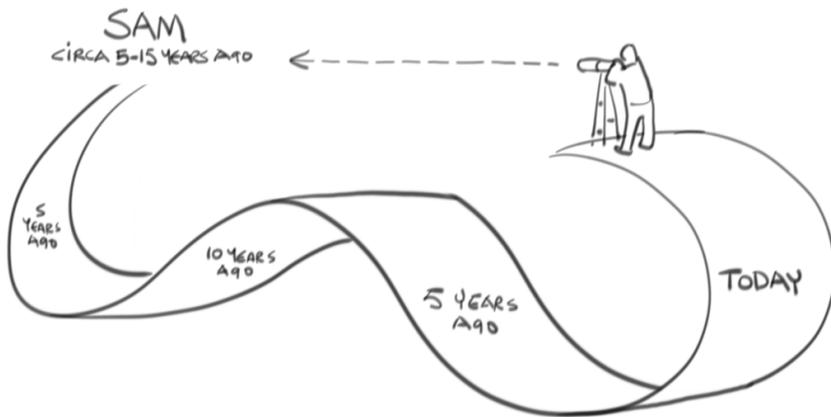
License Optimization

Many times, companies engage software license consultants to help them save money through license optimization. This is in direct conflict with the software vendors who want to preserve and increase revenue.

IBM has its ‘All or Nothing’ subscription and support agreement. Oracle has its repricing policy. SAP has its ‘All or Nothing’ support policy. Microsoft requires Software Assurance to gain Sever Mobility Rights. This list could go on and on.

While a software license consultant will know how to navigate through these barriers designed to preserve the software vendor revenue — this will only get you so far in license optimization.

To optimize licensing spending, it’s important to understand how and where technology is being deployed. Often, organizations made decisions 5, 10, or even 15 years ago that represented excellent thinking at that point in time. But much has changed in the technology landscape, and it’s important to revisit some of those decisions. It’s the combination of license expertise coupled with technologists that will harvest the greatest savings in license deployment.

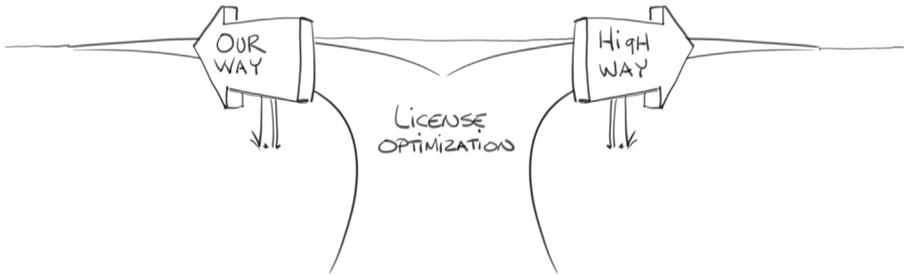


SAM Managed Services

A SAM Managed Service is a hybrid approach to providing ongoing software license compliance. It combines a SAM tool with access to the license experts packaged as a continuous service.

When LicenseFortress entered the business, we quickly created one of the industry's first SAM Managed Services. We felt that combining a SAM tool with license consultants was the only way to proactively provide our customers with a complete solution for software license compliance. However, it's important to note that not all SAM Managed Service programs are created equal. The following sections outline some things to consider when evaluating SAM Managed Services.





SAM Tool Notifications

An important aspect of any complete SAM Managed Service is the inclusion of the use of a SAM tool. The SAM tool is key to providing proactive license compliance monitoring and alerting. As license compliance violations happen, the tool should proactively notify you of the compliance issues in real-time.

It's very important to receive PROACTIVE License compliance monitoring and alerting as part of the managed service.

It's essential to ensure that you are notified, in addition to a notification sent to the technicians of the SAM Managed Service that you are using.

These days, organizations are expected to do more with less. It would be easy for a compliance issue to fall through the cracks. If your organization does not promptly rectify the license compliance issue, the SAM Managed Service should step in and ensure the problem is addressed.

Both the SAM Managed Service and YOU (the customer) must receive notifications.

AND

The SAM Managed Service Provider needs to ensure alerts do not go unresolved by the customer.

In our experience, when license compliance issues are resolved within hours, days, or weeks, they become non-events during the next software vendor audit.

SAM Tool Maintenance

It's common for companies that LicenseFortress has encountered to have purchased and installed a SAM tool. Yet, as we mentioned earlier, it might as well be shelfware.

A significant benefit to a SAM Managed Service is shifting the burden of configuring and maintaining the SAM tool from you and your team to the SAM Managed Service Provider. Because SAM maintenance and management is their daily work, the SAM Managed Service provider can be more effective and efficient in helping you stay compliant.

The burden of maintaining the SAM tool should be the responsibility of the SAM Managed Service Provider, taking the work off the shoulders of your in-house staff.

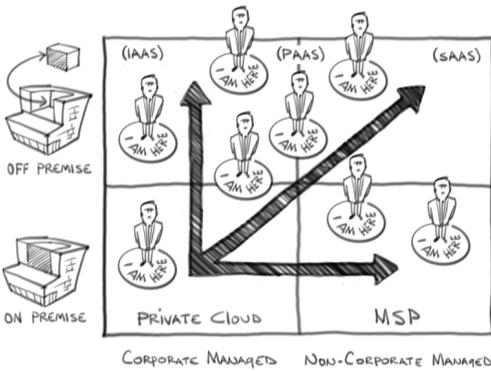
Having the SAM Managed Service maintain the SAM Tool ensures that your Effective License

Position (ELP) presented from the SAM tool always reflects your organization's current position.

The SAM Managed Service you choose should be able to take in alerts from your in-house SAM tool and process them proactively. This process makes your SAM Managed Service the fail-safe to ensure license compliance issues are addressed in a timely manner.

License Expertise as Needed

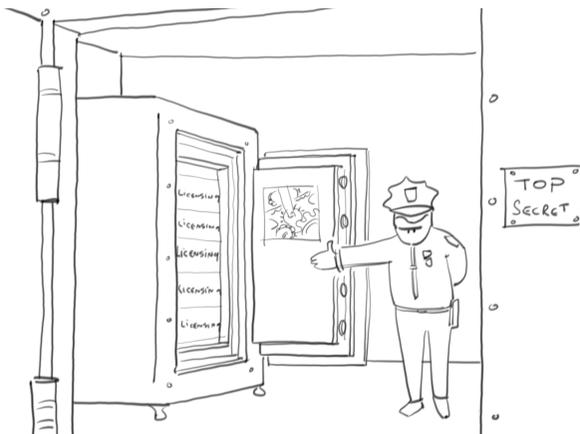
Organizations are constantly evolving in how and where technology is being deployed. Figure 2 represents a typical corporate infrastructure today. It spans from on-premise to off-premise, from corporately managed to non-corporately managed, and from the private cloud to the public cloud. To further complicate matters, technology itself is evolving at a rapid pace.



It's common for technologists not to fully understand the impact on software compliance as infrastructure is moved into these different environments. It's just as common for outsourced IT teams not to understand the implications of software licensing on technology deployment.

The SAM Managed Service provider must provide access to License Specialists as needed.

Companies are building or deploying new systems, moving data from on-premise to off-premise or even into the cloud. Given the high costs associated with non-compliance of software it's essential that your organization has access to license expertise as needed.



Technical Expertise

While a traditional license consultant will understand how to get around the policies that software vendors put in to preserve revenue, for most of them, this is where their expertise ends. The Managed Service Provider needs to understand virtualization, hyper-converged infrastructure, and the current capabilities of the database to emerging technologies.

Why?

How you choose to back up a database can have an impact on licensing.

Given the recent advances in hardware and the redundant nature of virtualization, your license consultant needs to know if it's possible to meet the organization's business requirements and reduce the current burden of the licenses. Alternatively, they should be able to advise you as to whether you can get more throughout with the current licenses, eliminating the need to purchase more software from the vendor.



Look for SAM Managed Service Providers that can bring
License experts that are also deep technologists

Optimally you will want this capability in one person. When the SAM Managed Provider works with your team, conversations will be happening, and topics will come up ad-hoc that will provide a deeper understanding of where your organization is headed. A resource that is both technical and has a deep understanding of licensing can bring both perspectives to the table at once, benefiting your organization.

Legal Expertise

Increasingly, legal issues come up during audits from the software vendors as a way to drive up the revenue potential of an audit. It's also common for legal issues to arise during the life cycle of companies that use the software.

For example, if a company moves its data center to Malta, can it still use its existing licenses? They are about to purchase more software from a vendor, X, and there appears to be language in the purchase order that could impact the existing MSA. The vendor is trying to make it mandatory on future software license audits that they must run the software vendor's proprietary scripts.

As situations like this occur as part of the managed service, you must have access to legal counsel specializing in software licensing.

Access to Legal Counsel is an important element of a SAM Managed Service

In our experience, companies are reluctant to engage legal counsel when legal services are only available at an extra charge.

Click-Wrap Contracts

Today it's common practice that when you download software, it includes a contract that you must acknowledge and sign off on. How many people really read those contracts? Many are surprised to learn that a downloaded contract is enforceable in a court of law. Your organization must have access to legal counsel to review these contracts to avoid potential problems up the road.

Click-wrap contracts are enforceable and should be reviewed by legal counsel that understand software licensing.



In 2020 Cox Communication sued Micro Focus over more than 11 million dollars in disputed fees.¹⁰ Micro Focus alleged that the terms of the business support agreement were effectively accepted through Cox online interfacing with Micro Focus. This highlights the importance of having legal counsel included with your SAM Managed Service.

Audit Defense

Audit defense is one of the most essential items that should be included in your SAM Managed Service. A 2022 Survey by Unisphere Research² research shows you have a 69% chance of being audited in the next three years. Companies with 250-999 employees have an 83% chance of being audited in the next three years, and companies with over 1000 have an 83% chance of being audited. The top 3 vendors most likely to audit you (in order of likelihood) are Microsoft, Oracle, and IBM. Coming on the heels of the COVID-19 pandemic, the potential of being audited is even higher. Software vendors see license compliance audits as an easy way to regain revenue they didn't earn during the pandemic. Given the significant dollars associated with License compliance issues and the increased likelihood of being audited, audit defense must be included with your SAM Managed Service.

Audit Defense should be Included with your SAM Managed Service

Vendor Independence

It's essential to choose a SAM Managed Service provider independent of the software vendors. They should not resell software licenses. Be cautious of working with firms that have partnerships with or SAM tools endorsed by the software firms. With those endorsements or relationships come obligations. The advice they dispense must be in your best interest.

It's important to choose a SAM Managed Service provider that is independent of the software vendors.



Conclusion

Software license compliance audits are at an all-time. A 2022 study² asserts this was a direct result of COVID-19 and its negative effect on software firms' revenue. Software Audits are more about generating additional revenue than about software compliance.

But it's likely that you have a vulnerability when it comes to license compliance, and, as a result, you're an easy target for software companies insisting on auditing you. Dean Bolton, Chief Architect at LicenseFortress, said, "In over a decade of helping companies with software compliance, we have yet to find a company 100% license compliant."

The fact of pervasive non-compliance is not surprising to us because LicenseFortress has seen third-party software patches turn on unlicensed software and vendor patches activate unlicensed software. We have even had support

organizations instruct a customer to use unlicensed software to troubleshoot a problem.

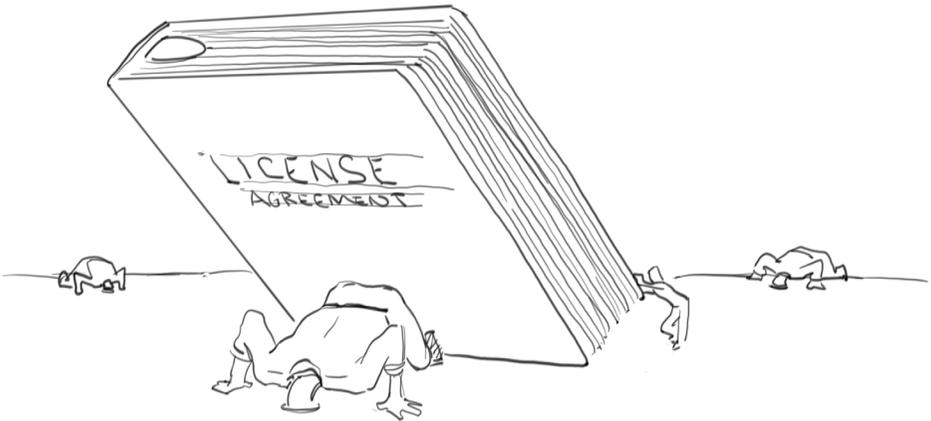
Even the most diligent organization will find it challenging to stay license compliant without outside assistance.

Even the most diligent organization will find it challenging to stay license compliant without outside assistance.

The software vendors know this, so it should come as no surprise that software license compliance audits are an easy way to generate revenue.

To stick one's head in the sand and think, "A software audit won't happen to my company" or "My organization is 100% compliant," could be a very costly mistake.

At a minimum, it's essential for companies to manage their software license compliance proactively, which requires a SAM Tool.



If you have a SAM Tool, ask yourself if you're confident that it's properly configured and maintained. Too often, it's not.

If you have not invested in SAM tools, investigate the SAM Managed Service as a potential solution. It would provide both the SAM tool and the licensing consultant. It also has the added advantage of removing your burden of installing, configuring, and maintaining the SAM Tool.

If you receive an audit notice, don't make the mistake of navigating the audit process without professional help. Only a fool has themselves as a client. Audits are about generating revenue for the software company. Too often, software vendors try to enforce vendor policy like a contractual obligation which it's not, given the business risk and potential cost associated with a company being out of compliance. We recommend looking for a SAM Managed Service to proactively deal with software license compliance.

Notes

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About LicenseFortress

LicenseFortress is a company built upon two pillars: software license compliance and optimization. We assist customers with Oracle, Microsoft, VMware, and IBM software licensing. Through a Compliance and Optimization Review (COR), we help companies mitigate the financial risk of being found out of license compliance and optimize their software licensing based on their unique business requirements. The ArxPlatform is our SAM Managed Service designed to keep customers compliant through proactive software license compliance monitoring and alerting. All our managed services include audit defense, and under ArxProtect we offer the industry's first and only financial guarantee for our Oracle customers — which will soon be made available to our Microsoft customers. For more information, visit www.licensefortress.com.



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