

# Looking Under the Covers

## Establishing IT Accountability After Mergers & Acquisitions: Five Steps to Ease the Transition and Reduce Licensing Exposure

Corporate consolidations tend to have several things in common: Large collections of new desktops, software, and devices needing to be integrated into previously standardized infrastructure; storage closets stacked to the hilt with PCs – and not much clarity as to what’s on them, or when their leases are up; and, countless help desk phone calls with questions from confused employees.

You’re accountable for making this very challenging transition a success, but where do you even begin?

A shrewd move is to begin by addressing your largest vulnerabilities. Fulfilling obligations to vendors represents one major liability which faces companies that have undergone consolidation. In the IT world, this equates with licensing and lease agreements. According to Kris Barker, CEO of Express Metrix, a software company specializing in license compliance solutions that enable IT accountability, “Whereas lease obligations are typically closely tracked by financial systems and are therefore well-accounted for in corporate consolidations, software acquisitions are typically one-time expenses which involve ‘invisible’ assets whose installations are rarely systematically tracked or documented.”

Consider that the risks associated with ambivalence toward license compliance are especially high among companies that have recently undergone corporate restructuring. To begin with, software publishers – who want to sell new software – keep close tabs on M&A activities. According to Barker, “If your vendors don’t see indications that you’re proactive about adjusting your licensing position to reflect the new status quo, you may finally experience the dreaded software audit you managed to avoid for years.”

More importantly, public companies are required by law to declare their assets and liabilities the *same day* the consolidation is complete and ensure controls are established for their SEC quarterly reporting. Software – whether licensed or unlicensed – must therefore be declared on the balance sheet, alongside hardware lease obligations. Unfortunately—and mistakenly—most companies not only neglect to record their software liabilities as such, but they don’t disclose them as a known risk.

According to Marsha Murry, COO of Software Management Systems, a consulting firm devoted to software licensing and compliance management, “The conventional thinking is that unlicensed software is ‘immaterial’ to SEC filings because the cost of ‘trueing up’ represents such a small percentage of the overall balance sheet—or because employees simply haven’t bothered to ascertain what their licensing position is.” However, that liability is much more difficult to ignore when you consider copyright infringement penalties of up to \$150,000 for each infringed-upon software title, potentially staggering legal fees, and eroded goodwill. And we’ve all seen what happens to companies that don’t engage in honest reporting.

Ensuring license compliance is easier said than done. If you’re lucky, both companies have a disciplined system of documenting and tracking manufacturer’s information, purchasing details, and whereabouts of every installed license and piece of hardware prior to consolidation. But chances are, the guy responsible for IT inventory tracking at one company has since departed, and the documentation—if it exists at all—lies in disparate, incompatible sources ranging from piles of paperwork to boxes of physical media to Excel spreadsheets. How do you make sense of it all?

Murry advises companies undergoing consolidation not to wait until the ink has dried on the deal. “The best advice, of course, is to fully research the licensing position of a target company as part of due diligence, since the new business entity will be ultimately responsible for any licensing violations. In the case of an acquisition, if liabilities exist, the target company should be required to ‘true up’ all of its software and shoulder the costs of doing so. If not, its valuation should be reduced by the amount it will cost to get compliant after the consolidation,” says Murry.

For IT departments held accountable for determining licensing positions either before or after consolidation, Kris Barker of Express Metrix offers some helpful tips on making the process far less painful.

**1) Take a physical inventory of all hardware and software.**

The first question you need to answer is “What do we have, and where is it?” This information will serve as the foundation for everything else you do, and it’s therefore crucial that it’s performed thoroughly and accurately. To accomplish this, you’ll need a PC auto-discovery/inventory tool that collects data on both hardware and software, and associates it with purchasing details. If you don’t already have a tool, be sure to thoroughly research the available technology, as not all inventory tools are created equal.

For compliance purposes, it’s of utmost importance to ensure the tool provides A) a comprehensive application recognition database, so IT staff don’t spend days on end trying to identify unrecognized files; B) the ability to easily import purchasing data and reconcile it with installed software; and C) compliance reports that give you meaningful, detailed information by machine and application that can be immediately acted upon.

**2) Determine your licensing position for all installed software.**

The goal of this task, likely the most challenging and tedious job of all, is to collect documentation for every software and hardware asset discovered by the inventory tool in Step 1. You may need to contact software publishers and/or resellers to obtain appropriate purchasing and maintenance details. If you don’t have the personnel or expertise to accomplish this task in a reasonable timeframe, you might consider hiring a consultant that specializes in this area.

Be certain to centralize all collected documentation in one place in a digital format that can be accessed by or imported into the inventory tool. The tool can then perform a license reconciliation, based upon which you can determine what corrective actions need to be taken in order to become compliant. You’ve also succeeded in laying the foundation for ongoing future IT inventories and license reconciliations.

*(Note: Maintenance agreements should be closely examined, as newly-acquired software with current agreements can be used as a basis for upgrades for employees that aren’t running up-to-date software.)*

**3) Determine what hardware and software are compatible with your environment.**

Next, you’ll need to determine what hardware and software should be kept in-house, and what should be eliminated. Balanced with the benefits of a reasonably standardized environment should be an understanding what your new users’ technology needs will be. It’s dangerous to assume that employees absorbed into the new business entity (or be familiar with) the technology of existing employees



#### 4) Obtain authorization from software publishers to officially transfer or sell licenses.

Since obtaining permission to transfer licenses is an onerous task, it's helpful to familiarize yourself with the various types of licensing agreements and transfer rights you're entitled to.

While some licenses cannot be transferred at all, other software can generally be transferred or sold, but only if ownership can be verified. Contractual volume products (such as the Microsoft Enterprise License Agreement) require involvement and approval from the software publisher, and may involve certain types of fees. Non-contractual volume products are typically much easier to transfer or sell, but the publisher should still be notified.

#### 5) Act.

You should now have the information you need to get your desktop environment legal and in working order. This phase will likely consist of a broad range of activities, including "truing up" unlicensed software, re-deploying transferred licenses and machines, returning leased equipment, harvesting hardware and software for donation or resale, and/or upgrading machines or software that aren't compatible with the new environment.

While the task ahead may seem overwhelming, there *is* a silver lining: by the time you've accomplished the steps above, you'll be leaps and bounds ahead of most organizations which have only the most tenuous understanding of their licensing positions, much less what they have installed across their environments. Once you've assembled all your software documentation and integrate it with license tracking technology, the biggest battle has been won; you'll be in a position to parlay those efforts into a comprehensive, ongoing IT asset management strategy that will yield benefits far into the future.

With the groundwork you've laid, you can now implement an impressive set of new benefits, including more enforceable end-user policies, plans for disaster recovery, and full IT asset lifecycle planning. Importantly, you can also begin collecting software usage data that allows you to determine where you may be over-licensed (and therefore uncover enormous savings opportunities), negotiate licensing terms that make the most sense for your organization, and better plan and budget for employees' future software needs.

The IT accountability question when it comes to your M&A should be less "Where do we even begin?" and more "**When** do we kick off work on the steps needed to achieve these great benefits?" Your organization's decision makers, your IT balance sheet, and your own peace of mind all will thank you – for a long time to come.

*Kris Barker is CEO of Express Metrix*

