Answers to Your 20

TOP QUESTIONS ABOUT MICROSOFT® AUDITS

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The word "audit" scares many people, but if your company licenses software, you will be audited at some point. Even when you know you have nothing to hide, the idea of someone in authority checking to ensure you are compliant can create a very stressful situation.

What should you know about the Microsoft® Audit process? Find out the answers to our 20 most Frequently Asked Questions.

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What is a Licensing Audit?

Whenever you install a Microsoft® product, whether as an individual or a corporation, you agree to comply with the terms of the End User License Agreement (EULA) which specifically grants Microsoft® the right to dictate how you use the software and also grants them permission to audit the use of their product(s). A Microsoft® Licensing Audit can take the form of a self-audit, an on-site audit or possibly as an automated script query in which the results are sent back to the auditor (in many cases, a Microsoft® partner). If you perform a self-audit and agree to pay for the necessary licenses to become compliant, the process usually ends there.

If you ignore the request for a self-audit or refuse to comply, the issue may be turned over to the Business Software Association (BSA) and you may be subjected to a formal audit.
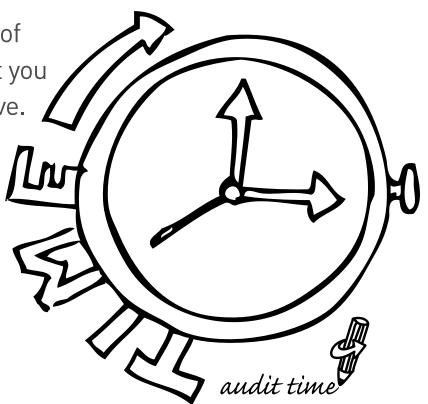
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How much advance notice does Microsoft® give for an audit?

The terms of your volume licensing (VL) agreement grants Microsoft® the right to perform an audit once each year with 30 days' notice.

This is the amount of advance notice that you can expect to receive. If you have been keeping good records of your software, 30 days should be ample time to respond to the audit request.

audit time

If you need more time, you may be able to request an extension.

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How often should we expect to be audited?

The terms of your volume licensing (VL) agreement grants Microsoft® the right to perform an audit once each year with 30 days' notice. Microsoft's policy dictates that Select, SPLA, ISV, Open, and Enterprise Agreement (EA) customers should expect an audit at least once every three years. Volume licensing generates a significant $40 billion annually for Microsoft®, and there is literally no cost to Microsoft® to request and enforce an audit (especially if you are found to be more than 5% out of compliance); so don't expect to pass under the Microsoft® audit radar.

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Who pays the cost of an audit?

Typically you, the customer, incur most or all of the cost of the audit. If the audit reveals that your organization is using greater than 5% more than you have licensed, you, the Microsoft® customer, will be required to pay the retail price for all unlicensed products plus the cost of the audit. You may also be required to pay a fine if you are under-licensed. A recent study found that more than half of respondents reported audit fees of $100,000 or more, and more than 20 percent of organizations reported true-up costs of $1 million or more.
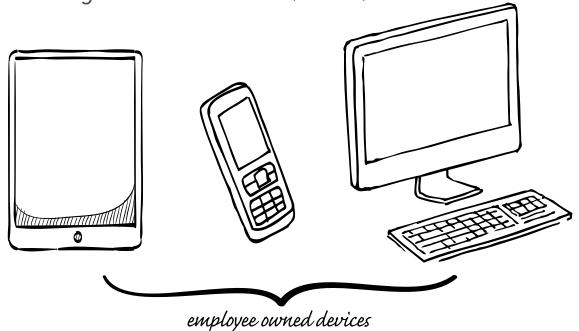
There are a number of other costs; some of which are more tangible than others: the time and distraction as internal resources are forced to focus on an audit, and the damage to your credibility in the eyes of Microsoft®, which can make future negotiations particularly difficult.

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How does our BYOD policy affect the audit process?

During an audit, your organization is required to inventory all installed and accessed software, including employees working remotely, and non-company-owned devices that access company resources. The software may be licensed on a server, but the organization must also ensure that every user (or device accessing the product) is licensed appropriately. This can be particularly challenging since so many users access corporate assets from personally owned devices such as home PCs, tablets, and smartphones, also known as Bring Your Own Device (BYOD).

employee owned devices

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What are some common violations that typically get uncovered in audits?

One common pitfall is that an organization may purchase device Client Access Licenses (CALs) but fail to license personally owned devices. If these devices are accessing company resources, they may require a CAL. The organization could be fined two to four times the price of the CAL for each violation (and there may be multiple violations on each device). Multiply that by the number of potential users and devices and it's easy to see why it's so important to focus on compliance in this area.

Another common violation is the use of Terminal Server technology. Many organizations using products such as Citrix or Jetro are not aware of the requirement to purchase Microsoft® Remote Desktop Server (RDS) CALs, known previously as Terminal Server. Microsoft® automatically queries for the use of Citrix and Jetro in the organization and checks for the required RDS CAL.

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What happens if we are found to be out of compliance?

If your company is found to be non-compliant, you will be required to purchase the missing licenses at list price and, if the BSA is involved, potentially pay a fine two to four times the cost of the software for each instance. In addition to the fine, you will be required to purchase valid licenses or remove the software from your systems. If you handle the matter transparently and pay for the missing licenses, typically that will be the end of it, until the next audit.

If Microsoft® suspects you were knowingly out of compliance, or if you do not take the audit process seriously and are found significantly out of compliance, it could impact your future negotiations with Microsoft® negatively.

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We had no idea we were out of compliance. Won't Microsoft® be more lenient with us?

No. Microsoft® holds you to the same standards it holds all of its customers around the globe. It is important to settle properly with Microsoft®, as the same scenario as yours has probably been played out a million times between the software vendor and its other customers.

They don't want to lose a customer, but they obviously don't want their customers using their software illegally either. Either pay up, keep better track next time or, if you feel Microsoft® grossly miscalculated your license violation, consult with a law firm or consultant with expertise in this area.
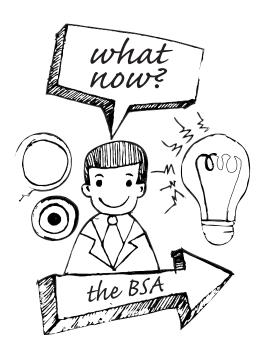
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Microsoft® is out to get me – why should I cooperate with their audit request?

Microsoft® is definitely not out to get you. The company attempts to audit all of its Volume Licensing customers once every three years, and a recent survey found that nearly 60 percent of respondents reported getting audits from Microsoft® within the last year. In most cases, this is in the form of a Software Asset Management (SAM) Review in which you would be asked to perform a self-inventory of installed software to ensure that it is all appropriately licensed.

Whether you perform a self-assessment or endure an onsite review, with few exceptions, Microsoft® does not typically suspect that you are intentionally out of compliance unless they have some evidence to the contrary.

If we can't reach an agreement with Microsoft®, wouldn't it be easier to work with the BSA?

If you can't reach an agreement with Microsoft®, it's unlikely the BSA will be any easier. Negotiating with Microsoft® has the advantage in that Microsoft® could potentially benefit from your future software purchases, so it has the motivation to retain you as a customer; however the BSA has no similar incentive. By contrast, the role of the BSA is to prevent piracy and non-compliance so it's highly unlikely the BSA will be more lenient than Microsoft®.

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Microsoft® provided me with a list of all of our licenses. It looks OK to me. Are we done?

You might be tempted to end your audit process at this point due to time constraints, but you could end up overpaying for licenses you do not need. You also may be non-compliant, and not even realize it. In most cases where we have done a point-by-point gap analysis between the Microsoft®-generated list and a company's actual usage, we have found significant discrepancies; and these differences need to be documented and dealt with in the audit process.

It is important to gather and organize receipts and authorization documentation for all your systems, to verify that they are compliant. Verification may take various forms: EA, Open or Select Agreements including User and/or Device CALs, Product Key(s), paid invoices, OEM licenses, Partner Pack documentation, and so on.
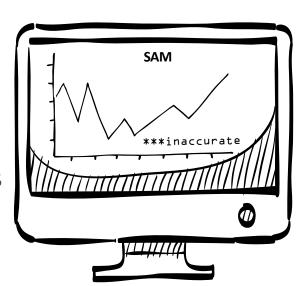
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What are some common errors that occur in automated software inventories?

A Software Asset Management (SAM) tool may be a good place to start, but there will almost certainly be additional work required to obtain an accurate and comprehensive usage assessment. Most inventory tools don't account for CAL types, nor do they perform adequate analysis of virtual scenarios or remote or employee-owned devices, including home PCs, tablets and smartphones. Differentiating between OEM licenses and retail purchases is also nearly impossible to do with an SAM.

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We have reached a settlement; should I be concerned about anything else?

One thing you should always try to include in a settlement, whether with Microsoft® or the BSA, is that the violation and settlement not be publicly disclosed. This becomes increasingly difficult if the negotiations move to the BSA as they often want penalties made public as a means to deter others from doing the same.

If the case makes it to court, it will likely become public record, and the negative publicity could be more damaging than the offense and fines.

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How does the ISO affect software auditing?

In 2003, the International Standards Organization developed best practices for software asset management programs. Over the years, the standards evolved, and today there are scalable standards and best practices for companies of all sizes. ISO standardization also brought about Software ID Tags (SWID) which enable a degree of automation when performing software inventory.

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I'm using the Microsoft® Assessment and Planning tool (MAP). Does this cover me in case of audit?

It is unlikely your company will ever be able to rely solely upon automation tools to conduct an accurate licensing or software inventory. Microsoft® offers a free Assessment and Planning Toolkit (MAP) which leverages SWID technology. The MAP Toolkit is quite effective in determining software installed on-premises and can be a good starting point for a software inventory, but it will not provide a comprehensive list of devices or users who may access on-premises systems. Even Microsoft® acknowledges the limitations of the MAP Toolkit:

" The Software Usage reports should be used as a baseline for CAL usage analysis rather than as an authoritative summary of software usage. Due to the wide variety of ways that software can be deployed and inventoried in your environment, the Software Usage Tracker cannot always produce accurate counts of server software and access to that software. These reports are for informational purposes only and should not be used as the sole source of information for determining software license usage compliance. "

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What kinds of things do I need to inventory for a Microsoft® Audit?

Your organization has to account for OEM licenses, servers, employee owned devices (including home PCs, tablets, and smartphones), retail purchases, legacy systems, vendor-owned machines running organizational software, vendors that have access to internal applications and customer-facing application, and more.

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Our employees are spread throughout the world and some work from home. How can I prevent them from installing unlicensed software?

Most users rely on IT to ensure compliance, but the users may not know (or adhere to) their rights with devices not controlled by the IT department.
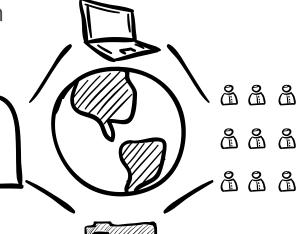
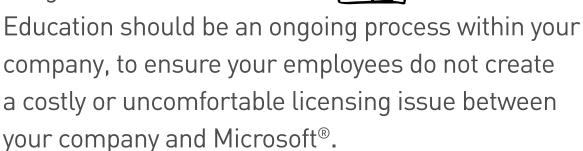This is particularly true with BYOD and the MS Home Use Program. An important and often overlooked aspect of SAM is to educate your employees and software users so the guidelines are clear. Education should be an ongoing process within your company, to ensure your employees do not create a costly or uncomfortable licensing issue between your company and Microsoft®.

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How did Microsoft® know we were out of compliance?

Your audit may simply be due the fact that your number came up. However, many audits are a result of disgruntled employees (or former employees) who report potentially unlicensed software usage to the Business Software Alliance (BSA). There may also be channel partners who suspect non-compliant usage, even if for the self-serving reason of anonymously attempting to generate future sales as the offending customer is forced to become compliant. Microsoft® also does periodic benchmarking and may have found that your organization seemed to be under-licensed compared to other similar organizations.

What is the BSA?

The BSA (aka The Software Alliance) is a consortium of many of the world's largest software companies whose objective is to reduce software copyright infringement. It is well-funded by member companies and through the settlements it wins against offending companies.

One of the main ways in which the BSA learns of piracy is via disgruntled employees. They have run campaigns such as the above "Nail Your Boss!"

The BSA offers rewards of up to $1 million for tips that lead to a settlement. The potential reward payment can be up to $5000 for settlements as small as $15,000.

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We understand all the risks, and have decided to do our own self audit. What kinds of errors should we be wary of while we investigate our own software licensing usage?

From our experience working with scores of clients around the world, we have discovered approximately forty areas that companies frequently reported inaccurately during an audit. These include:

- Device CALs vs. User CALs (audit counted all devices and did not recognize that many were licensed under User CALs)

- Multiple versions of Visio® and Project (Standard and Pro on the same machine, a new and old version that wasn't removed when the product was upgraded)

- Inactive users within Active Directory® that haven't been removed

- BYOD devices that were counted as organizational devices

- Use of wrong licensing metrics for SQL Server® Windows Servers

- Failure to recognize historical entitlements (products purchased 3-9 years ago) that can be used to mitigate current licensing gaps

- Licenses from mergers and acquisitions

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About Emerset

Emerset Consulting Group provides enterprise licensing advisory services that contain costs, avoid overspending, and align your software asset planning with your long term business strategy. With over 500 contracts negotiated and a new licensing deal or audit agreement closed each week by one of our clients, Emerset is uniquely positioned to guide your company through the licensing, audit and renewal process.

Our proven, hands-on approach saves our clients millions of dollars each year on Microsoft and Oracle licenses, and helps you avoid future costs as your business evolves.

Contact us today to find out how we can help you level the playing field in your software negotiations.

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