M&A and Software Licensing

Description

Don’t let software licensing fall between the M&A cracks
by Michala Wardell

IN TODAY’S ECONOMIC CLIMATE, it’s crucial to make the right business decisions. Companies should, therefore, take a thorough approach when it comes to making business decisions, no matter how big or small. In particular, a guarded approach when going through mergers and acquisitions ought to be a given, in view of the considerable costs involved in acquiring another company and the risks attached to acquiring another firm’s assets. However, it appears many businesses are not practicing full due diligence.

Last month, safety specialist **First Choice Facilities was fined £18,000 for unlicensed software following completion of an acquisition**. It was also forced to pay nearly **£100,000** after the Business Software Alliance found it was using under-licenced software – £81,000 of which was to purchase sufficient software licences to address the shortfall. The company claimed it had unknowingly inherited the software during the course of an acquisition and it had failed to audit the acquired company’s software assets before the point of sale. The cost of this lack of due diligence was an expensive and bitter pill to swallow.

Buying or merging with another firm or company is expensive in itself. As an acquiring business, finding out, when it’s too late, that you didn’t run the necessary checks and inadvertently infringed intellectual property (IP) rights is a sobering experience – leaving you liable to pay for software licences that the company you acquired should have paid for in the first place.

Important to Have an Software License Accounting System:
And yet, this is a common mistake. Many companies wrongly assume the software they inherit is properly licenced and that the licences will automatically transfer to them. In fact, licencing statements for the company being purchased are often not reviewed in time, or even readily available. The acquiring business needs to be persistent in ensuring any licencing costs associated with anacquisition are properly identified and accounted for in financial statements as part of the acquisition –or risk exposing itself to redress.
While many businesses may assume this is an IT problem and delegate the problem of software licenses to an IT manager, the financial repercussions of being found with under-licenced software are very much the FD's headache. And yet, according to the latest BSA research, only 7% of FDs are confident that the software in their organisation is correctly deployed. There is clearly a disconnect between FDs' traditional responsibilities and their culpability in the event their business is found with unlicensed software. While the nitty-gritty of software licencing may drop off the radar in the midst of more heavy-duty concerns during a merger or acquisition, FDs need to be held accountable for their business software assets.
There also needs to be a greater appreciation of the value of software. Too often, it is perceived as a basic utility, rather than the engine behind a company's success. Once business leaders recognise the implications of taking a lacklustre approach to software management, accounting for IT will rise up the agenda. IT management should be an important consideration, not an after-thought.

The original article can be seen here .

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