Top 10 Ways to Defend Yourself from an Oracle Audit

Provided by

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Oracle Audits

Clients often call NET(net) telling us they have received notice of an Oracle Audit, and asking us what they should do.

This is important advice, as your response in the early stages will set the trajectory of the discussions and could ultimately have a very significant impact on the outcomes.

To say there may be some general distrust of Oracle, at least partly due to some general market dissatisfaction with their auditing process, might just be the understatement of the year. While it is certainly true that Oracle has the right to protect its intellectual property from wrongful use by examining customer deployments, and has the right to exercise clauses in their contractual agreements that govern the compliancy obligations of their customers, Oracle also has both a responsibility and an obligation to adhere to clauses in those agreements that give customers the right to deny audit requests that are not the result of contractual obligations or evidence based breaches of intellectual property.

As is the case with many suppliers, Oracle customers often complain that Oracle chooses not to implement technical controls to restrict the use of software that is not properly licensed, preferring an approach that the generous observer would say opens up a more flexible deployment, consumption and use of technology without needless restrictions. However, a cynical observer might say it is an approach that deliberately attempts to cause a customer to deploy more software than they intend to use, so there is a latent liability in a pending compliancy action just waiting for Oracle to activate it.

Oracle customers often complain that the software management controls are far behind the licensing programs, and that the control mechanisms of the software deployment process are not only poorly documented (which often leads to unintended deployments of titles, versions, editions, or quantities that are in excess of entitlements), but that they may be deliberately convoluted as an engineered strategy to increase unintended deployments. To be fair, customers are also admittedly inefficient when it comes to establishing and maintaining strong internal controls around the deployment, consumption and use of Oracle software and have lacked sophistication in software asset management business processes which may help limit some of this potential liability.

Whether it's innocent ignorance or obfuscation, or a more nefarious and deliberate strategy, one thing that is clear is the potential runaway liability of Oracle software audits have surprised many of their customers with 8 or even 9 figure liabilities, so it's a HUGE industry problem and one we intend to help improve by way of the information below, outlining the Top 10 Things You Should Do When Facing an Oracle Audit.

Top 10 Things You Should Do When Facing an Oracle Audit:

1 Seek Professional Advice

This is an area where you ***need*** an outside independent expert licensing advisor. NET(net) has helped many clients around the world manage Oracle audits. We have the experience you want, the expertise you need, and deliver the performance you deserve to help you minimize costs and risks, and maximize the realization of value and benefits. Do not think for one minute that your internal team can handle this situation alone and reach an optimal outcome. If not us, find another reputable advisor and secure the expertise you need to guide you through this process. Do not expect your Oracle account rep, your reseller, your consultant, or your buddy to handle this situation for you. Whomever you hire must be independent, must not be affiliated with Oracle in any way, must not get paid on the sale of Oracle licenses, and must work as your exclusive advocate through the entire process.

2 Confirm Validity of the Requesting Authority

In some cases, NET(net) clients have received offers of license reviews from their account rep, resellers, consultants, or even official sounding organizations like the BSA, which makes it difficult at times to tell the difference between a request for a 'friendly' license audit, and a compliancy action (whether contractual or legal) from Oracle License Management Services (LMS). What's important to note here is that in some instances, there is no obligation to comply with many of these so-called requests, so it's important to determine if the requesting party has valid authority to request such cooperation, and whether or not you have an obligation to comply.

3 Determine Contractual Obligations to Comply

Even if you are able to determine the validity of the requesting entity as Oracle LMS, it is important to review your contractual agreement to understand the language governing audits, and determine if you have contractual obligations to comply with such requests. Audit language is often the source of significant modification in the contracting process, and it is not uncommon to see more protective terms governing audit actions, including such provisions as 'no audit' clauses for a period of time, usually after large purchases. In some cases, even if the requesting authority is valid, there are contractual protections that negate your organization's otherwise standard obligations.

4 Notify Internal Stakeholders / Form a Team / Agree on Approach

Assuming you have validated the requesting authority and determined you do have a contractual obligation to comply, it's now time to work with your neutral, third party advisor to notify the internal stakeholders, form a team, and agree on an approach. Based on the nature of the audit, you will need to determine the appropriate people to engage, and there should be an overall strategy (conceived and communicated with the executive team), and a tactical plan (implemented by the cross functional operational team). It is critical that the project leader is a high level executive in the organization so there are no questions about the importance of this effort, or the seriousness of these outcomes. Interview potential team members, ask them all the right questions, and review with them their confidentiality obligations among other important provisions of their working agreements. Be 100% sure your team is on your side.

5 Respond / Confirm Receipt of Request / Exercise your Full Rights

In most cases, the notice will ask you to respond by a certain date. You should do so, but you should also be careful not to say more than what is asked, or not to provide more information than what has been reasonably requested. You will also want to professionally exercise your full rights. In many cases, Oracle will have to provide a certain amount of notice, and agree to a certain level of reasonable conditions, and you may have other pre-negotiated rights in the audit clause of your contractual agreement that you will want to fully exercise as well. Any disputes that develop here need to be settled before proceeding to any audit action.

6 Agree Upon a (Limited) Scope, Duration & Cost

Audit requests from Oracle LMS are generally form letters that are light on specifics. Make sure to gain clarity on the exact scope, duration, and cost for any such allowed compliancy action. From a scope perspective, you'll want to know if Oracle intends to audit the use of your Oracle Applications, or your Oracle Technology Stack (or both), and you'll want to be clear on any other limitations of scope that may include geography, legal entities, product families, environments, device types, days of the week, times of the day, etc. You will also want to gain a commitment from Oracle on the maximum duration and cost for any such audit, and that it will not unreasonably disrupt your organization and/or negatively impact any business processes. In cases of significant non-compliance, Oracle generally has a contractual right to charge its customer for the costs of the audit, so you'll want to get a not to exceed figure.

7 Seek Additional Conditional Support Parameters

Even if you do not have all the contractual rights you wish you had, now is the time to ask. Outline the parameters for your conditional support. Some things to consider:

i. Oracle explains under what grounds it claims there is wrongful use.
ii. Oracle provides its supporting evidence of these claims.
iii. Oracle outline in full what exact information you will need to provide.
iv. Oracle agree that there will be no installation of Oracle auto-detection software agents on your servers.
v. Many clients will ask for additional time to prepare as perhaps they are in a peak business season or time when critical members are not available.
vi. Some clients will ask for a special process outside the formal audit to present their internal findings and ask for a summary judgment / retraction of the official license review request.
vii. Some clients will ask for a friendly audit in advance of a formal audit so if there are any compliancy gaps, they can be handled commercially instead of via a compliancy action.
viii. Most clients will ask that any compliancy obligations are allowed to be purchased at contracted price holds or reasonable market discount rates as mutually agreed, as opposed to Oracle's extreme list prices.
ix. Consider an agreement that any surplus licensing will be exchanged against any licensing compliancy obligation on a "list to list" license value exchange basis.
x. Consider asking for a commitment to receive a waiver of any back-maintenance and/or penalties in the event it cannot be proven that you engaged in willful misconduct or gross negligence.
xi. Get Oracle to agree to a plainly worded interpretation of critical contractual provisions that govern the deployment, consumption and usage rights of the compliancy licenses in question.

xii. Agree on measurement criteria: what constitutes proof of entitlement / proof of deployment / proof of use?

xiii. Gain agreement from Oracle that if you do not use, or did not intend to deploy licenses, that they be allowed to be removed at no cost.

xiv. Get Oracle to agree that they will deliver a draft report and that you will be given the opportunity to formally respond, so that both documents will be collated together and submitted as the final report.

xv. Agree on a custom review and dispute resolution process to be followed in the event of report corrections, or irreconcilable differences.

xvi. Disclosure statement of commercial interests from any third party (auditor) used. How do they get paid? Do they get paid on the sale of licenses?

xvii. See if Oracle will agree to a forward looking "no audit" provision that grants you some period of time post audit where you can exhale (suggest 60 months).

Regardless of the specifics, now is the time to negotiate for improved audit parameters that may be available to you outside of your contractual rights!

8 Establish a Communications Protocol

It is extremely critical that the executive team notifies all key business, IT, legal, finance, procurement, and supplier management stakeholders regarding the Oracle audit, and that everyone affected is directed to route all communication with Oracle (including all communication with Oracle representatives, resellers, consultants, and partners) through a single point of contact. It is critically important to control the information flow. Oracle should also appoint a single point of contact with which to communicate.

9 NO NEW DEALs / Heavy Scrutiny on Existing Deals

Make sure that it is heavily communicated inside your organization and also to Oracle that until this audit is fully resolved, your entire global organization is prohibited from making any new Oracle purchases. Also, heavily scrutinize any Oracle maintenance payments, and actively work to lower or eliminate your ongoing operational costs. Not only is this good financial discipline in light of a likely large unplanned expense, it's also important that Oracle understands that their audits don't come without any risk to them, so their risk of delay and/or unreasonableness threatens their existing and future business.

10 Review Audit Results

Oracle should provide you with a full audit report, but you'll want to make sure it includes all known license entitlements, details of all software installed and in use, and provides ample details regarding any license shortfall, including the calculations for any compliancy licensing charges. You'll also want to ensure you receive all the appropriate consideration for all your conditional support parameters.

Whatever the final result of the audit, have Oracle (and/or the auditor) explain any discrepancies, the likely root causes of such, and what best practices you may want to reference to prevent the same issues from happening again in the future. Review your own internal policies and procedures and tighten your controls to ensure that any problems that led to and/or increased your exposure are fully remediated to the best of your ability. In some cases, clients forget this critical last step in the process and find themselves two years later right back in the same spot because they did not do root cause analysis and perform permanent corrective actions.

If you are currently in an Oracle audit, have received an Oracle audit request, or are concerned about the potential of an Oracle audit, contact NET(net). We work with our clients under strict confidentiality, and unlike an Oracle reseller, consultant, partner, or compliancy watchdog group, we have no obligation to disclose any information to any source, so we can work with you privately to help you assess and remediate your situation without exposing you to increased risk.

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