Policies, Standards and Licensing
Knowledge to Protect Against Software “That Goes Bump in the Night”

Adelia Wardle
Software Team Lead
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To Provide the Systems and Software Technology Conference (SSTC) attendees information on policies, standards, DoD Enterprise Software Initiative (ESI), SmartBUY and software licensing models that could affect their software implementations.
Agenda

- Introduction
- DoD software policies and authorities
- Software licensing pitfalls
- What do you do to protect your software project from going “bump in the night”
- DoD Enterprise Software Initiative (ESI)
- Questions
Introduction

- Ground Rules – What we will discuss

  - Commercial Off The Shelf (COTS) Software
  - DoD Perspective
  - Licensing Expertise
  - Lessons learned – hopefully not too costly
  - Share, Share, Share
DoD Software Policies and Authorities

- FAR – Rule pending for SmartBUY mandate (72 Fed.Reg. 61603)
- DFARS - 208.7403
- DoDI 5000.2
- AFARS – Army Audit Agency recommended revision pending
- AR 25-1 (6-2)
- DA PAM 25-1-1
- Army Chief Information Officer renewed ESI policy-02 Dec 2002
- Army DISC-4 ESI Policy-01 Jan 2001
- DoD CIO Guidance and Policy Memorandum No. 12-8430-26 July 2000
- OMB Memo M-08-22, Guidance on the Federal Desktop Core Configuration (FDCC)
Software Licensing Pitfalls

- Selecting software by name not licensing model
- Terms and Conditions (T&Cs)
- End User License Agreements (EULA) – License Grants
- Sarbanes-Oxley – Revenue Recognition
- Maintenance escalation
- The "*"
- Re-Use Clause
- Non-Human Devices
- Multi-core processing license
- Software function tied to maintenance
- Virtualization – risk of license non-compliance if not managed
Software Licensing Pitfalls

- **License Type**
  - Named User
  - Device
  - Processor
  - Concurrent
  - Subscription
  - Perpetual
  - Unlimited Use
  - Restrictive, i.e., Program Specific
  - Developer vs. Full use

- **True Up/True Down**

- **Audit Clauses**

- **Cost may not be the Cost**

- **Compliance**
What to do to protect your software project from going “bump in the night”?

- Use the following before selecting your software:
  - Consulting Groups
  - License Experts
  - Network with other service and agencies
  - Software Attorney

- Requiring Technical Team may understand technology but not licensing
  - May not always have Enterprise perspective
What to do to protect your software project from going “bump in the night”?

- Use the following to describe your requirement to contracting:
  - What do you need to do with your system
    - Share in-ward and out-ward
    - Describe your requirement – give examples
    - Definitions
  - Describe your customer base clearly
    - Government, Civilian, military, contractors supporting Gov’t, non-human devices, etc
    - Manipulating data vs. static data (viewing data)
  - How many years will you need to contract
  - Flat lined maintenance
  - Audit Clauses
  - Transferability
  - True up/True down
  - Developer vs. Full use license
Established June 1998 by DoD CIO

Mission
- Lower total cost of ownership across DoD, Coast Guard and Intelligence communities
- Establish and manage enterprise COTS IT agreements, assets and policies

Methodology
- Chaired by an OASD(NII)/CIO staffer
- Co-chaired by Navy, Army or Air Force Working Group rep (currently Navy)
- DoD Components appoint Software Product Manager (SPM) to:
  - Consolidate requirements and develop business case
  - Negotiate best-value deals
  - Administer resulting agreements

Goals
- Reduce acquisition and support costs by leveraging DoD buying power
- Provide best, most flexible JTA-conforming software
- Obtain buy-in for DoD enterprise-wide software agreements
- Create a funding mechanism that incentivizes the use of DoD-wide software initiatives
DoD ESI Authority

Authority: DoD Enterprise Software Initiative (DFARS 208.7402)

- Procure COTS Software IAW DoD Enterprise Software Initiative (ESI)
- ESI Order of Precedence
  - DoD Inventory
  - DoD Enterprise Software Agreement (ESA)
  - Other means

- Designate Agency Software Product Manager (SPM)
  - CHESS designated Army SPM 02 Dec 02
  - CIO/G-6 and Army Acquisition Executive designated PEO EIS Army oversight of ESI and AWCF (2003)

- Ensure utilization of DoD inventory
- Establish ESAs as requirements identified/validated
- Adjust terms and conditions within scope of ESA
- Issue waivers from ESI requirements IAW AR 25-1 and DA IT Purchasing Guide (Sep 06)
GSA SmartBUY

- Government-wide software licensing initiative managed by OMB
  - To leverage the government’s buying power to achieve lower software licensing costs and equal or better terms and conditions
  - Interagency team led by GSA
  - FAR rule pending would make GSA SmartBUY vehicles mandatory unless alternative contract vehicle approved by AAE
  - DoD SmartBUY Policy – 22 Dec 05
    - Acquire COTS software through existing ESI or SmartBUY when requirements evaluation has led to the designated software product on a SmartBUY agreement
    - “Always” consult with ESI Team prior to negotiating large requirements
    - Permit conversion of new agreements to SmartBUY within 12 months