

**IT PROCUREMENT CASE STUDY:
VERBAL AGREEMENT FAILS TO PROTECT MAJOR GROCERY RETAILER AGAINST
BACKDATED LICENSING FEES**

SUMMARY

A verbal agreement covered several machines using a single copy, resident on shared disk storage. When use of the software proliferated to new machines, the client contested the large backdated fees that were imposed by the software company. The business relationship is permanently damaged and the software is being withdrawn.

Do

- Always get everything documented and agreed by the supplier.
- Assign someone to keep a constant eye on how software is being used, in relation to the contract in place.
- Chase software company hard to obtain the required written documentation.

DON'T

- Assume that verbal agreements are legally acceptable
- Allow things to hang in the balance

SCOPE:

The client was licensed for “product” software for 2 separate S/390 processors at two separate data centres. Licences had been in place for several years. Passwords were not required in order to run “product” on any system, and over a period of time the use of this software became prevalent on two new machines using shared disk storage with the machines that were licensed.

This was not a deliberate decision, but happened because the user community proliferated the use of this software, and insufficient licence monitoring was in place to prevent it.

DRIVERS:

The vendor arranged a meeting to discuss the client’s use of their software. The client illustrated its use of the software with a configuration diagram showing:

- four different S/390 machines installed at the time (two each at two separate data centres) and
- how each machine accessed information (software products as well as data) on shared disk storage between each other (within each data centre).

The representative from the software company verbally agreed that this was

acceptable as the client had only one copy of their product at each data centre, perfectly valid arrangement within the existing contract terms and conditions.

The meeting ended with the client feeling pleased that no further difficulties remained attached to their specific use of the software.

PARTIES:

A middle manager and a junior manager on the client side, and a representative of the vendor who was a junior manager within their contracts admin department, but who was fairly inexperienced in product technical matters.

Negotiations during dispute between the client and the software company involved the client's purchasing department and two senior managers of the software company

EXPERIENCE:

The client heard nothing further from the software company for nine months, even though the Project Leader had twice requested confirmation in writing of the agreements reached at the earlier meeting.

When the software company made contact, the client was very surprised to hear that they did not agree with the interpretation of using shared resources between processors, and that the software company believed they had been in violation of the contract since the summer of the previous year, when the two extra processors had been installed.

The client contested this, stating that the software company's representative had clearly agreed to their interpretation of using a single copy of their product (at each data centre) in order to process on more than one processor.

The software company repeated that this was not acceptable, and that further, their attendee at the March meeting had not been authorised to agree anything like this.

After a long period during which it appeared that the software company might agree with the client's interpretation of the meeting, their stance hardened.

In November 1999 the software company threatened to take their client to court if they did not pay the fees they were claiming. These fees, backdated to July 1997, when the extra processors had been installed, amounted to over £700,000

OUTCOME

The client worked hard on the vendor to try to get them to understand the importance of a good relationship between the two companies, but they were

set on receiving a large payment. It seemed more than coincidental that they 'woke up' to the idea of some extra income, in time for their Year End, in both December 1998 and 1999.

The client eventually had to pay over £200,000 in fees for the backdated 'rental' of their product for the two unlicensed processors. Further, in order to bargain a reduction from the original £700,000, the client agreed to pay an increased amount of support and maintenance fees for the existing licensed machines. The cost to the retailer, over three years, will be more than £300,000.

The client committed to removing the use of "product" on the two unlicensed machines by end of March 2000, with a further rental of £10,000 per month for any period following this.

Further fees did not come into effect because the client managed to reduce the processing to what was permissible within the contract terms.

The relationship between the two companies has not recovered from this event, and the client is committed to removing the software entirely in due course.

LESSONS:

- Verbal agreements mean nothing. Document everything agreed by all parties.
- Involve suitably experienced personnel in meetings with vendors over contractual issues.
- Client-side contract 'supervision' and overall management of terms and conditions is key to ensuring that a customer does not step outside of the contract and subsequently run the risk of incurring extra costs.