

An Open Letter To Microsoft Users

Since filing my complaint against Microsoft with the Commerce Commission in New Zealand, I have had emails from all over the world.

There have been the expected extreme views. However, in general, the subject of the complaint, the unilateral removal of the right of users to upgrade their existing licences for an upgrade fee, as against having to re-buy product or buy into Microsoft's new Software Assurance programme, has struck a deep vein of customer unhappiness.

I commented in my article "Being Sold, Not Told" (at <http://www.findlaw.co.nz/articles/default.asp?task=read&id=1502&site=LE>) that in my view, apart from being illegal, I believed Microsoft's move was a mistake.

With the benefit of input from others I find myself questioning whether the introduction of Software Assurance is less a mistake and more a bold gamble of Microsoft.

Microsoft is proud of its record of changing the whole direction of the company when it perceives a threat. Whatever you think of the elimination of Netscape as the market leader in the Internet space by the late run with MS IE, one has to recognize that Microsoft is a company that is almost uniquely competitive.

I have kept asking myself "why does a smart company like Microsoft want to risk such wholesale alienation of its customers by removing the right to upgrade?"

After all, it had many other less confrontational options, in particular options which would have not involve the risk of being prosecuted again for illegal behaviour. For example, Microsoft could have introduced Software Assurance and left the right to upgrade, but just made it less attractive financially to upgrade.

Many people who have responded to the news of the complaint (which has included IDG publications, CNet, Reuters and other major news organizations) have drawn my attention to comments of Microsoft executives, in particular comments of MS CEO, Steve Ballmer.

Those contributions have helped me to understand that there is in fact a logical answer to my question as to why Microsoft wants to take such a huge risk and is prepared to risk alienating customers and prosecution.

But, first to answer a common question asked of me in response to my article "Being Sold, Not Told", "what do I expect to achieve with the complaint?"

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Frankly, I had hoped that Microsoft might yet again delay the 31 July deadline for removal of upgrade rights, as Microsoft had previously done in September 2001 and February 2002.

I had hoped that Microsoft might make its proposition simple and compelling for small business.

For example an “all you can eat” annual CAL or license per user for a reasonable rate, say sub \$NZ 500 per annum with time to pay by quarterly instalments would be workable. ISP’s have done this with flat rate pricing so why not Microsoft, particularly after it has announced its strategy based on delivering software as a service and rumours persist that it has offered “all you can eat” deals to its Select customers in that range.

Microsoft NZ has also claimed it cannot deal with credit requirements for all customers but again is this really the case. After all, Microsoft US has offered finance to customers in the US so why not here?.

Finally, I had hoped that the response would be to engage.

Those hopes are clearly just that, hopes, not reality.

These changes are occurring despite repeated industry surveys by ITIC, as reported by John Fontana in Network World, indicating that this programme is unpopular and not understood. The ITIC surveys indicate that of companies responding, only 12% of respondents are financially ready to pay for Upgrade Advantage and Software Assurance. Furthermore 50% of respondents remain confused about Open Licence 6.0.

Neither result is surprising.

As one correspondent pointed out to me, Steve Ballmer’s in his remarks in October last year as report by Carol Sliwa of Computerworld, accepted that customer were unhappy.

However Ballmer is reported to have continued to comment that “...I think we’re kind of done, because we have heard what people had to say” and that “....I think the Software Assurance price is a fair price.”

This was in October 2001. Mr Ballmer clearly meant what he said because nothing has changed.

And so the 31 July, 2002 deadline, when we lose our rights to upgrade, will soon be on us.

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On the issue of costs for my law firm, our estimate is, using Microsoft's strap line for Open Licence 6.0 to "get current and stay current", involves us spending 400% of our average annual expenditure on Microsoft products **by** 31 July, 2002.

Despite direct discussions with Microsoft NZ, Microsoft NZ executives could neither confirm what was properly payable by us, nor justify the massive increase by pointing us to any positive benefits.

On the issue of what Open Licence 6.0 means, we asked Microsoft in September last year for a copy of the actual contract wording for Open Licence 6.0. We could not find the contract wording on the MS web site. In the end the mystery was resolved. The wording was (and still is) NOT AVAILABLE on the web site. We pushed and finally the wording was FAXED to us.

Reading the Open License contract was a revelation. Software Assurance (29% p.a. payable 2 years in advance) was in fact not ASSURING us of software, but merely our buying our previously free 'right', the right to upgrade. For 58% of the product price you are not sold software, but only the right to upgrade to any version Microsoft releases in the period of cover.

Incredibly, the wording also makes it clear that despite paying all that money, first Microsoft may levy further charges for media etc on a release and secondly, if Microsoft delivers NOTHING in the next 2 years that is okay.

If you want the wording of the contract you can search all you like on Microsoft's site you still won't find it. (but see the link below)

I even recently listened through Mr Gordon Gazaway's, Microsoft's Program Manager, Open License, streamed audio presentation on Open License for 20 minutes, hoping to find the holy grail of contract wordings.

I did learn from Mr Gazaway that Open License was a "good experience", that it "saved money .. and recognized your up front commitment", that options such as "disks, documentation and support" were available at EXTRA COST and incredibly that SA was "more than upgrade rights ...being an assurance of the latest software". On this last point, Mr Gazaway's must have written his script without reading the Open Licence contract or talking to his boss, Rebecca Le Brunerie (more on this later).

Despite Mr Gazaway's ramblings, the Open Licence contract wordings provide no such assurance.

I did, in the end, find out after listening through Mr Gazaway's long, complex and to me unintelligible description of how to calculate your Open Licence pool points, that to get the real oil, apparently what you do is go to eOpen on Microsoft's web site.

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On eOpen you give Microsoft your Open Licence authorization number, your Agreement number, your MS Passport login and after completing a process that I could not complete, you somehow get told what you owe.

I could not complete eOpen because while I have an agreement number, I did not have the rest. In particular, I will not participate in MS Passport because of the known privacy concerns, lack of warranties from Microsoft over protecting my privacy and systems failures with that technology.

Anyway if you endure this mystery process it evidently results in a contract, which you are notified of, Mr Gazaway says, "within 24 hours of completing the process". It appears after committing yourself to pay, you might just then be lucky enough to read the terms you have contracted on. Call me old fashioned, but I like to see the contract first, before I decide to buy.

If all this sounds unbelievable, you can of course check it out yourself but this is what Rebecca Le Brunerie, program manger for worldwide licensing and pricing for Microsoft, had to say earlier this month (as reported by Gavin Clarke in Computerwire):

"There's a fair amount of confusion out there. There will be tons and tons of direct mail this month, briefings with subsidiaries, adverts in local papers, seminars."

(more spam!) and most revealing that:

"Software assurance is not a requirement. It is upgrade protection. That's confusing users."

Confusing users yes, but not a 'requirement'? This is not what even large and powerful users have experienced.

The Commerce Commission effectively inquired of me why, if my complaint was true, had not others (bigger, more important others possibly) complained and why not overseas. Of course that is not relevant to the Commissions duty but a fair enough question as an issue of curiosity.

My answer? Microsoft's reputation with those that criticise or oppose.

If Microsoft is prepared to, when things don't go its way, threaten to sue the Texas Department of Criminal Justice over a licensing dispute (see Joe Barr's report in LinuxWorld), if Bill Gates can threaten the US Federal Court in remedy hearings last week to pull Window if the US District Court orders unbundling (see the ZDNet reports), if Computerworld (Patricia Keefe 15 April, 2002) has to list protection steps for users in negotiating with Microsoft, then who blames any

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company, or for that matter sovereign state, for being cautious about saying anything about Microsoft.

So I come back to my original question “why does a smart company like Microsoft want to risk such wholesale alienation of its customers by removing the right to upgrade?”

The easy hypothesis would be the Enron/Andersen hypothesis, that when a company loses touch with reality, anything can be justified in the company's mind.

Mr Gates and Mr Ballmer have proven to be much smarter than that, so I don't think that this is some mutual hallucinogenic experience on their part.

Microsoft's present reality is:

1. Microsoft is prepared to alienate its customers to implement Software Assurance.
2. Microsoft has tied Software Assurance to Passport and Activation Keys
3. Microsoft complains about its customers, offers rewards to employees to do in bosses and is devoting vast resources to its so-called piracy campaign with the very unfriendly Activation Key regime which effectively mandates Internet connectivity.

Microsoft is, at the same time, investing heavily in telecoms partnerships (witness the Microsoft MSN/Telcom investment here). These steps are logical provided the ASP model proliferates, but the world is slow getting on the program.

4. Microsoft is prepared, with its hundreds of lawyers and billions of dollars, to sue its customers apparently without consideration to its image as a supplier and corporate citizen. (Reports even include suing schools.)
5. Microsoft takes offense and sues at the most trivial things e.g the “Lindows” web site action.
6. Microsoft is prepared to mislead the public with statements such as Mr Gazaway's that Open Licence assures you of the latest software. It doesn't. As Ms Rebecca Le Brunerie admits is a sale of a mere right, previously implied by practise and free, that of the right to upgrade. She also makes it clear that Software Assurance is not any promise of any specific software.

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7. Microsoft persistently abuses the English language by using product/service descriptions that are likely to mislead such as "Assurance" "Passport" and "Open" when the reality is something completely different.

Software Assurance does not assure as to software, only upgrade rights. Upgrade rights in turn are meaningless options if you have no commitments as to what upgrades you will receive.

Similarly, Passport is not a passport, a document of identity, but merely a tracking system.

Finally, Open Licence is anything but Open in the sense commonly used.

Why does Microsoft do this? Why does it not call a spade, a spade.

Software Assurance could be marketed as Upgrade Insurance, Passport could be marketed as MS Identikit, and Open Licence could be marketed as VBE, Volume Buyers Extras. Whatever, at least some truth in advertising is called for here.

8. Microsoft has launched a broad attack against the GNU/GPL open source licence system, the licence system that has been part of the foundation for Linux's success.

Ironically Microsoft make claims about the risk in using such products citing risk on future support. It is making these claims at the same time Microsoft is about to cut off support to many users. Even those that pay up on Software Assurance will not get any written commitment from Microsoft to provide support as, as Mr Gazaway says, support is extra.

Given this contradiction is also not surprising to read that the Microsoft Windows Division Vice President, Brian Valentine, has described Linux as "the long-term threat" against Microsoft's core business.

At least with Linux you have hundreds of thousands of users out there fixing bugs, delivering new features and living by providing value-based services to their customers, if there is any money changing hands.

But perhaps when the US Department of Defence starts to adopt the FREE Linux OS and FREE Office suite OpenOffice, Microsoft could be excused for worrying about its competitive position.

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9. Microsoft's promised in its antitrust settlement with the Justice Department to publish technology that would allow competing products to interoperate with Windows.

However Microsoft CIFS license for its Windows file and printer sharing technology, (CIFS meaning the Common Internet File System) appears to exclude open license products and accordingly the company's only viable competitor, Linux.

The question has been asked but not answered, "has Microsoft sidestepped the penalty by crafting a technology license that excludes the company's only viable competitor?"

In turn, does this re-raise the old bogey that for Microsoft a Court Order is merely a challenge.

10. Microsoft, at the same time increased the risk for many of its customers by declaring popular installed versions of Windows such as NT 4.0 and Win 98 as 'unsupported'. 'Unsupported' for most customers means 'unsecured'. Bill Gates's sudden epiphany on security, leaves us all feeling that existing installed product is dangerous.
11. Microsoft has changed its capabilities in Win XP over previous versions with the key difference being the introduction of Win XP Home. This product unlike Win 98 has no capability to network. Translated this means that Win XP has been crippled by Microsoft so that a PC sold with Win XP Home cannot connect to a network. So much for Microsoft's much vaunted home computing initiative. But more important just check out the adverts for most PC's sold today. The manufacturers have OEM'ed the cheaper Win XP Home.

If you buy a laptop or new PC and want to connect to the company network chances are that the first thing you will have to do is get an authorization key and pay your money to upgrade your PC to Win XP Professional, which has the valuable new separate networking capability. Amazingly this feature was previously bundled and available for nothing more in old technology such as Win 3.0, Win 3.1, Win 98 etc.

Buy a new laptop or Desktop and you have bought into the new world of Activation Keys, Passport and Software Assurance.

12. Microsoft continues to play a game of selling less.

Witness just a few such moves.

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First, the already mentioned Win XP Home and networking.

But secondly, remember Win 98 ME, which removed VPN from Win 98.

Then thirdly Office XP Professional which removes Photodraw available in MS Office 2000 Professional (you now have to buy the 'new Office XP Premium).

Finally, the really big one, MS BackOffice now to be released with MS SQL Server removed from the bundle. If you are like my firm and use MS SQL Server, just cost in supporting MS SQL under MS SA separately and you will understand what a huge cost this means.

13. Finally, Microsoft has also introduced new limitations with the Activation Key.

A licence is now not a licence with the unlimited rights to reinstall. Various tests of reinstalling an Activation Key licence confirm real new limitations on the licensee's rights. Have hardware trouble and you may end up being forced to re-buy your product. The Activation Key is justified on the basis of piracy but are we really all pirates, stealing from MS. What happened to the trusted customer?

The message is clear to me. To be a Microsoft customer, is to be an untrusted partner, that does not need to be listened to, nor deserves any loyalty.

Furthermore, if we opt out, time will run out. As PC's are replaced we will not be able to buy Win 98 or Win 2000. We will be forced into the Win XP world with its new contracts, its crippled capabilities as OEM delivered, its Activation Keys, its requirements to buy into Passport and finally its uncertain upgrade future without buying Software Assurance.

Are my 13 customer-hostile steps an unlucky reality? Perhaps not.

A hypothesis that fits this reality is this: just as with Netscape, Microsoft has realized that, to paraphrase Microsoft executives on Software Assurance, software is truly a service.

If the GNU/GPL open licensing movement succeeds that will be the case.

Like many Microsoft customers, I was academically interested in the GNU/GPL developments. But my law firm runs an MS shop. It has done so since 1990 and was the first law firm in New Zealand to adopt Win 3.0 with MS Word 1.0 and MS OS 2 with Schedule Plus for collaboration.

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My reaction to Microsoft's moves in September last year, was one of a loyal, but locked-in customer, that just wanted to get on with business.

The process of engagement with Microsoft went downhill, with hidden contracts, huge potential costs, the realization that nothing would change.

That forced a review of our position and finally the filing of the complaint.

I say forced, because I was forced to realize that Steve Ballmer meant what he said when he said in October 2001 on Software Assurance "...I think we're kind of done, because we have heard what people had to say".

That is why I started asking myself my question "why does a smart company like Microsoft want to risk such wholesale alienation of its customers by removing the right to upgrade?"

So, in American idiom, here's the thing (my hypothesis).

Free software products like Linux, the Apache Web Server and the clone office suites such as OpenOffice may succeed because users will find and fix bugs, and users will also fund and develop, because foundations are being permanently funded to enable new development projects.

Question: In such a world what future is there for a high margin operator like Microsoft?

Answer: Even dominant market share cannot protect a dominant market player against a good product, which is free, unless its customers cannot switch.

So my hypothesis goes, to survive Microsoft must churn its customers out of the old upgrade model into the new so-called Software Assurance model which has even higher switching costs than the present model.

To do that Microsoft must risk its customer relationships.

As Gates and Ballmer have done before, they appear to have bet the company on a new vision, a vision that sees Microsoft being the Red Hat to its own products.

Microsoft will, as it says, sell software as a service and those SME's that cannot afford the new model, the very customers that built Microsoft's dominant position, will have to be sacrificed to the Select customers who can afford (or possibly cannot afford not to) to take up Software Assurance.

Now perhaps, the calculus of shrinking the user base and locking in that remaining user base to the Software Assurance mainline will work.

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If that is the strategy, here is my vote. Thanks Mr Gates and Mr Ballmer but count me out. I have never been a fan of addiction and that is not what I bought.

For the reader, I hope that 31 July 2002 is marked as a possibly important date in commercial history.

Whatever your decision, I hope that this article has provided you with some sense of anticipation of the events that will unfold in the years to come.

If on mass, loyal Microsoft users opt out and we enter a Linux world it will be, in my humble opinion, because Gates and Ballmer gambled their customer base and lost. In my view they don't need to make that bet, but it appears that that is their decision and the bet remains.

While full of awe at such titanic gambles, as a mere mortal user I am faced with the prospect that as my law firm cannot afford the risk of staying in, it must bear the eventual cost of opting out.

What do we intend to do?

We have formed a new group to evaluate the reality of moving to Linux with OpenOffice. Our interest in Linux, OpenOffice and GNU/GPL is now much more than academic. Our group within the firm that has adopted this project have called themselves the Tux-speedos. We expect to hit chilly waters with inadequate clothing. We expect the journey to be long. The signpost for 31 July says 'courage is required'. From the work we have done so far, to fully convert to a Linux environment may take 3 years and over \$NZ10,000 per user. We are very locked in and have very high switching costs. However, if our numbers are correct, it will still be much cheaper than staying an MS shop.

We still harbour a hope that Microsoft NZ will become customer friendly and that we can stay as we are. We concede that appears to be a naïve hope.

We will keep you posted. We hope in turn you will keep Computerworld and the Commerce Commission posted.

The role of the press is well understood. The same cannot be said of our Commerce Commission. Our Commerce Commission will have a role to play in our IT future. Its role in that future will say much about the future of our competition law in monitoring and policing the actions of transnational companies like Microsoft.

Craig Horrocks, Auckland, New Zealand, Friday, 3 May 2002.

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Contacts and links:

The author: craig.horrocks@clendons.co.nz

Computerworld NZ: Andrea_Malcolm@idg.co.nz

Commerce Commission: guylaunder@comcom.govt.nz (Investigating Officer)

The Commerce Commission Complaint: www.clendons.co.nz

“Being Sold, Not Told” and other articles www.clendons.co.nz

The Microsoft Open Licence 6.0 contract wordings: www.clendons.co.nz

Linux: www.linux.org

OpenOffice: www.openoffice.org