

FEATURE

Microsoft expands indemnification program for partners

The coverage extends to current and future versions of its software

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Citing growing fears of litigation in the IT industry, Microsoft Corp. has expanded a program that helps protect PC makers and other partners against intellectual property (IP) litigation related to the use of its software, the company said today.

When disputes over intellectual property (IP) arise, a defendant's channel partners are often also pursued over the alleged IP violations, said David Kaefer, director of business development in Microsoft's intellectual property and licensing group. "It is fairly common for the channel to be the place where an IP holder chooses to assert a claim," he said. "The reason behind it is the channel often is in the least-strong position to defend itself."

The software maker already offers indemnity to certain partners that use its products. Today's announcement extends that protection to a wider range of system builders and software vendors, removes a cap on the amount of legal fees it is prepared to pay and adds trade secrets to the types of IP disputes it will help cover. The list already included cases related to software patents, copyrights and trademarks.

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Microsoft has helped partners with IP cases in the past. For example, a few years ago, it provided assistance for Gateway Inc. and Dell Inc. when Lucent Technologies Inc. filed patent suits against them related to Microsoft software.

The coverage extends to current and future versions of Microsoft's software, including SQL Server, Exchange Server, and its Office suite and Windows operating systems, the company said. Microsoft has retained a cap on how much it will pay to cover damages and settlement fees.

The program covers partner companies that account for approximately \$18 billion in Microsoft software revenue annually, the company said. Those partners include PC makers, builders and distributors, as well as independent software vendors.

While some might see the extensions to Microsoft's indemnification as part of its well-publicized "Get the Facts" anti-Linux campaign, Kaefer said that this is not the case. But he criticized what he sees as a lack of protection against potential IP lawsuits on the part of Linux vendors.

"Today, the leading Linux providers don't have strong indemnifications for their partners and customers," Kaefer said.

Stephen Graham, group vice president of software business strategies at market research firm IDC, said adding indemnification for resellers and other partners is something "all the vendors ought to be thinking about," given the current environment in which IP infringement litigation is becoming more prevalent.

"There are a whole bunch of things coming together that underscore the need for companies to really think seriously about this as a business risk," he said.

Even so, Graham said the "average Microsoft partner" probably won't find itself a target of an indemnification suit.

"Litigation generally follows the money," he said. "If you're a very small partner and a very small company, people will take that into account when they decide whether to pursue litigation or not."

Softex Ex. 2018, p. 1
Microsoft v. Softex
IPR2023-01185

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