

# Communications System Resale – Buyer Beware

Swapping, selling or expanding communications systems is not as cut and dried as it may sound. When it comes to copyright legislation and licensing, the fine print can get a bit confusing. Stephen Coates looks at which companies offer what when it comes to the resale of systems.

‘**F**our hundred thousand dollars, going once, going twice, three times . . . Sold to the couple at the back.’ Take a house auction, something many readers have attended (although those not in Sydney probably watched lower bids). Now, suppose, having exchanged contracts, you are tapped on the shoulder by the architect who designed the house for the original owner. He proceeds to tell you that he didn’t sell the copyright for the design of the house to that owner, he simply granted them a ‘right to use’ it, and that it was non-transferable. He therefore demands a re-licensing fee.

## Absurd? Or Just Unconventional?

The design of that house, the music on a CD, the design of a motor car, this article and the software on the PC on which it was written are all intellectual property and are all protected by copyright legislation. The acquisition of goods covered by copyright requires a capital outlay by the purchaser, therefore comprising an investment. However, if and when the acquirer of the good seeks to resell it, the matter can be as trying and confusing as any of the technologies with which this industry must deal.

Consider a typical company. It will have one or more phone systems, LANs, PCs, servers and so on. If it operates a call centre, it may also have an IVR, CTI applications and other components. Depending on the date of purchase, such systems are likely to have, collectively, an asset value of hundreds of thousands, perhaps millions, of dollars.

But things change. Every so often, companies replace these components with new systems offering new features and greater capacity. Readers of magazines such as *CommsWorld* are well versed in all of the advantages of the latest and greatest products in this industry. But many systems of various types that make their way onto the second-hand market still have many years of serviceable life in them, especially if the software has been updated.

For example, take two clients of the author. The first, a government department, has just consolidated its call centres to a site which uses its corporate standard PABX. The result is that one site with a different brand of PABX no longer needs its ACD MIS. Another client would like to develop a call centre at a site that has that very brand of PABX and requires some expansion as well as an ACD MIS. However, that vendor is one of those in the right-hand column of Table 1 on page 90 and wants to charge





the second company the same re-licensing fee to acquire the ACD MIS as if it were to purchase a new system.

The Commonwealth Bank, as it integrates the operations of recently acquired Colonial, may face a similar issue in the near future. CBA uses NEC PABXs in its offices, Spectrum in its call centre and will shortly be migrating from IBM to

Aspect IVRs. Colonial uses Nortel PABXs and Premier IVRs. At least both use the TCS workforce management system.

### Transferable Licence?

The issue is that hardware is sold, and can be resold. Software may be sold, or the 'purchaser' may instead be granted a right to use, which is non-transferable. Whether the organisation that has paid, perhaps very handsomely, for that software has the right to sell it, and whether a second party has the right to buy and use it, is another matter.

Telephone system vendors are almost evenly split on this matter. As listed in Table 1 an organisation with such a system from almost half of the suppliers present in this part of the world can resell the system to another who can reuse it without paying a re-license fee. This is also the case, according to resellers, with Lucent

systems, although Lucent refused to confirm this, saying that they "do not accept grey market product and we do not publish re-license information".

PABXs and ACDs are inherently a combination of hardware and embedded software which have traditionally been sold as an indivisible package. Such hardware is of little use without the software, and vice versa, although such components as ACD MIS servers and clients typically run on de facto standard platforms and are required only to perform functions peripheral to the operation of the switch itself.

IVR and audio call recording systems are also combinations of hardware and embedded software, although some of the latter come with off-box evaluation software packages. Although, in theory, customers could buy their own circuit cards and servers, and with a vendor's software, construct such a system, in reality, the hardware and software of such systems comprise an indivisible package.

The majority of vendors of such systems appear to recognise this, as listed in Table 2 on page 91 and Table 5 on page 93, allowing unrestricted resale. And although not surveyed, one could expect this to also be the case for most multiplexers, routers, hubs and voice mail systems.

Although often sold with the required hardware, CTI systems that perform such functions as screen pops in call centres and carrier exchange configuration are inherently software systems. So are the majority of predictive diallers although many vendors prefer to sell their systems in hybrid configurations that include product-specific hardware. Despite the dominant software component of these products, as is listed in Tables 3 and 4 on page 92, there is an even split between those that can be resold without restriction and those for

Table 1: Telephone System Vendors

Vendors who do not charge a re-licensing fee	Vendors who do
Alcatel: 4400 PABX	Aspect: CallCentre ACD
Fujitsu: 9600L, E600 and EIC Coral PABXs	Cisco: CCN LAN-based telephone system
Philips: Sopho PABX	Ericsson: MD110 PABX
Samsung: DCS PABX	Intecom: Intecom E PABX
3Com: NBX-100 LAN-based telephone system	NEC: 7400 PABX
	Nortel: Meridian 1 PABX
	Rockwell: Spectrum and Transcend ACDs
	Siemens: Hicom PABX

Notes: Lucent would not comment  
Permission is required for the EIC, distributed by CallTime, to be resold

where the vendors require the payment of some re-licensing fee.

Widely used in medium to large call centres, workforce management systems comprise only software and here, the prevailing software market tenet that restricts, if not prohibits, resale dominates, with only one of the five workforce management systems (see Table 6 on page 93) able to be resold without restriction.

Whether software can be resold depends upon whether it is considered to be a tangible asset which has been sold and therefore can be resold or whether the customer has purchased only a right to use it.

Aspect Communications' business development manager, Gary Reed, argued strongly for the case against resale without re-licensing.

"The title for any Aspect-supplied hardware passes from Aspect to the purchaser. This property is then owned by the purchaser and can be resold. However Aspect Communications always retains the title for its software. Aspect Communications grants the purchasing customer a non-transferable right-to-use licence for the Aspect Communications software according to the licence terms and conditions. As the customer does not own the software, he cannot sell it."

### Dinosaurs

On the question of why Aspect retains the right to seek a re-licensing fee for software required to operate one of its products, Reed added: "This policy aligns completely with software licence agreements of major PABX/ACD vendors and software companies [who have] adopted a non-transferable, right-to-use licence." He went on to add that "some of the PABX vendors have been lax in realising the software component of their products", referring to such vendors as "dinosaurs".

Most of the other vendors who do not grant the right to resell the soft-

ware component of their products also defend the practice on the grounds that they perceive it to be the standard, industry-wide practice. However, as vendors who allow resale without fee outnumber those that do four to three, to quote George Gershwin, "it ain't necessarily so".

One vendor that did take a slightly different tack was Trade Centre

Products. Chris Walton, marketing director of TCP's Trade Wind Group made the distinction between 'pure' software products which run on industry-standard hardware and products which depend upon proprietary hardware that contain integral software, such as PABXs. "They [pure software products] are all, in our experience, non-transferable licences,

Table 2: IVR Vendors

Vendors who do not charge a re-licensing fee	Vendors who do
Advanced Voice Systems: pcVoice	Aspect: Customer Self-Service
Alcatel: CCX	Callscan: Pathfinder
CPS: Pascom	CPS: CallXpress
Imedia: Protocall	InterVoice-Brite: One Voice
Miva: Miva	VECommerce (formerly Scitec): First Contact
Premier: Interact 2000	
Pronexus: VBVoice	
Steadycom: Steadycom Mercury	
Talking Computers: DiaLeCs	
Telemanagement: TeleQ	
Televox: VOXnet	
Visible Voice: Visible Voice	
Vocom: /Voice	
Voice Control Systems: Uni5	
Voice Integrators: Edify	

Note: Possible resale of the Periphonics would be assessed by Com Tech on a case-by-case basis.

**Table 3: CTI System Vendors**

Vendors who do not charge a re-licensing fee	Vendors who do
Alcatel: CCA	Aspect: Aspect CTI Server
CTI Communications: Apropos	Computer Telephone Integration: CTI Server
Duplex: Network Programs CallFlow	Cisco: Geotel
ETSI: AVIDCTI	Ericsson: NCC
Imedia: CT-Connect	Genesys: T-Server
Premier: CT-Connect	InterVoice-Brite: Agent Connect
Talking Computers: SuperQ	Lake: Davox Concerto
Vocom: iQueue	Rockwell: Call Center Studio

which are only assignable with the express consent of the licensor.” He noted, however, that this “does not apply to hardware-dominant products, for example turrets (V Band and IPC) and Dictaphone voice loggers, which can, in principle, be sold on.”

Yet none of the vendors that would not permit resale without re-licensing could give a satisfactory reason why a customer that had purchased a system, right-to-use legalese notwithstanding, was not granted the right to on-sell it.

Mike Johnson, managing director of NZ-based Televox put it: “Why

should there be any software re-license fee payable? In our own case, we would regard the VOXnet system as already purchased, including its software licences, and these would carry over to the new owner, excluding the old owner from operating either the software or hardware.”

A similar view was echoed by Fausto Marasco, managing director of Premier Technologies, who stated: “I don’t believe in charging companies for ‘transferring’ licences.” His view was similar to that of Duplex’s managing director Nick Milan who said “particularly with our own software and

that of our suppliers, I treat the licence as a purchased tangible asset that can be transferred in the same way a computer may.”

### A Tangible Asset

Marasco went on to say, “In our distribution agreements I make a point of getting these clauses taken out of the agreements for the overseas products we represent. It hasn’t been an issue to date and certainly if it came up with any of our customers we would support them vigorously on this issue.”

This certainly refutes the argument of vendors who argue that non-transferable licences are the norm.

However, as absolute as the points expressed above may be, it is not a black and white issue. Many vendors acknowledged that they had not really considered the situation and others advised that any such scenario would be assessed on a case-by-case basis. Of the vendors that retained the right to charge a re-licensing fee, many stated that the fee would be significantly less than the cost of a new licence. At least one referred to a fee to cover the administration of the change or records and maintenance contract.

Visible Voice takes much the same position, as expressed by general manager, Gary Moreland. “In cases where our standard EULA [end user licence agreement] applies, Visible Voice allows the end user to transfer ownership of the software on a permanent basis so long as they retain no copies and the transferee agrees in writing to be bound by the terms of our EULA.”

### Copyright

In addition to conferring the right to sell, he makes an important point, as did many other vendors, that the selling party must not retain any copies of the software. This is similar to copyright

**Table 4: Predictive Dialler Vendors**

Vendors who do not charge a re-licensing fee	Vendors who do
CTI Communications: Melita	InterVoice-Brite: InterDial
Premier: Mosaix	Lake: Davox Unison

**Table 5: Audio Call Recording Vendors**

Vendors who do not charge a re-licensing fee	Vendors who do
Duplex: Voice Print	Callscan: e-Talk
Eyretel: MediaStore	Trade Centre Products: Witness
Hannamax: Nice Universe	
Premier: AIIIS	
Trade Centre Products: Dictaphone	

laws that prohibit a person selling a CD second-hand from retaining a copy of the music.

However, out in the real world, these rules don't always hold. One reseller noted that it sold a lot of second-hand PABX systems from a vendor that purports to prohibit resale of its software, but without the buyers having to pay a re-licensing fee.

And it must not be forgotten that a re-licensing fee can only be charged if this was stipulated in the terms and conditions of the original contract of sale. Even those vendors that now charge such a fee may not have included such a stipulation in the terms that applied to a system sold a few years ago. And, like the price of a

new system, there is always the possibility of negotiation.

### Original Terms

A number of vendors who did not charge a re-licensing fee did encourage customers to buy a second-hand system to have that vendor perform the reinstallation and reconfiguration. One particularly pertinent point was raised by David Jastrebski a director of ETSI who advised that no re-licensing fee would apply "provided that the original terms of the licence are adhered to".

He went on to say that in addition to the selling party having to agree to relinquish any copies of the software it had made, the buying party could

only use the software for the system, number of sites and number of users for which it was originally sold.

Therefore, and this is certainly in most if not all licence agreements, a buyer who seeks to vary the usage of a system purchased second-hand, can legitimately expect to pay a fee for the variation of licence. And even if no such change is made, the purchaser would be prudent to liaise with the vendor for possible assistance with reinstallation and reconfiguration, if not redevelopment, and on-going support.

### Buyer Beware

People intending to purchase new systems are advised to clarify the issue with bidding vendors – it would be interesting to compare the terms of buying a Rockwell ACD from Ericsson, Imedia, Premier, Trade Centre Products and Rockwell themselves.

But the issue of the software licence, for some vendors at least, remains. But there may be a couple of ways around it.

An organisation that would like to sell a system and finds it having limited market value because of the vendor's onerous re-licensing requirements or resale prohibitions may be able to lease the software instead of buying it, or to sell the hardware only, and allow the buyer to use the software for free.

But the best insurance is not to buy the software in the first place. Instead, spend \$1,000 creating a wholly-owned subsidiary, 012345 Pty Ltd, and have it own the system, including the software. And when the system is no longer required, don't sell it, sell 012345 Pty Ltd! Alternatively, just lease it.

But the bottom line is, as with any other retail transaction, buyer beware.

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**Table 6: Workplace Management System Vendors**

Vendors who do not charge a re-licensing fee	Vendors who do
Premier: Blue Pumpkin	Callscan: TCS
	Ericsson: IEX
	Open Wave: ShiftTrack
	Trade Centre Products: Pipkins