



Dear Sir/Madam,

We present to you the ninety-ninth edition of our Software Licensing Bulletin, which highlights the concepts of IBM® Software licensed under The International Programme Licence Agreement (IPLA) - Backup use defined.

The International Programme Licence Agreement (IPLA) has no specific terms concerning use of a programme in backup mode but it does define charges for the 'authorised use' of the programme that are based on the level of use a customer acquires. Each programme has its own specific charging metric that is in the announcement material. The level of use acquired is documented in a Proof of Entitlement (PoE) that accompanies each programme. In addition, the IPLA does not restrict the movement of a programme from one machine to another within the authorised use on the PoE. An exception to note is that if a programme has a charge for 'each copy', there is no backup copy allowed without a charge for use. There are very few programme's that charge for each copy.

The intent of the backup scenario is to enable the customer to continue to be operational if an emergency occurs. This is frequently referred to as backup use, disaster recovery, or abbreviated BRS when a backup and recovery service is involved.

For programme's running or resident on backup machines, IBM defines three types of situations: cold, warm and hot. In the 'cold' and 'warm' situations, a copy of the programme could be resident on another machine and if it is not 'in use', a separate use authorisation for this copy would not be required and no additional charge would apply. This is within the boundaries of 'authorised use' as noted above. In a 'hot' backup situation, the copy of the programme that is on another machine is being used and a use authorisation is required. All programme's running in backup mode must be under the customer's control, even if running at another enterprise's location.

As a practice we have the following definitions and allowable actions concerning the copy of the programme used for backup purposes:-

- Cold - a copy of the programme may be stored for backup purposes or within the authorised use as noted above on a machine as long as the programme has not been started.
There is no charge for this copy and no additional use authorisation is required.
- Warm - a copy of the programme may reside for backup purposes or within the authorised use as noted above on a machine and is started, but is 'idling', and is not doing any work of any kind.
There is no charge for this copy and no additional use authorisation is required.
- Hot - a copy of the programme may reside for backup purposes or within the authorised use as noted above on a machine, is started and is 'doing work'. However, this programme requires a use authorisation.

If there is no use authorisation, one must be acquired and there is a charge for this copy.

'Doing Work', includes, for example, production, development, programme maintenance, and testing. It also could include other activities such as mirroring of transactions, updating of files, synchronisation of programme's, data or other resources (e.g. active linking with another machine, programme, data base or other resource, etc.) or any activity or configurability that would allow an active hot-switch or other synchronised switch-over between programme's, databases, or other resources to occur.

In the case of a programme or system configuration that is designed to support a high availability environment by using various techniques (e.g. duplexing, mirroring of files or transactions, maintaining a 'heartbeat', active linking with another machine, programme, data base or other resource, etc.), the programme is considered to be doing work in both the 'warm' and 'hot' situations and a use authorisation and charge is required.

A scheduled hardware outage, such as preventive maintenance or installation of upgrades, is not considered a backup situation. However, the same guidelines apply. In addition, the outage should not be scheduled during peak (e.g. end-of-month) processing times if the programme has a capacity-based charging metric and the secondary machine has more capacity than the primary machine.

We hope the bulletin was informative. We would be happy to provide you additional information that you may require on the subject. Please write to us at in-fmkpmgcsbulletin@kpmg.com, for any queries or feedback.

Regards,
KPMG in India

About KPMG in India's software licensing team: We have an experienced team of over 100+ professionals in India with diverse and in-depth knowledge of software licence, software asset management tool, Intellectual Property (IP) and contract review.

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