

# Thank You For Joining Today's Gartner Webinar



## Software Licensing and Pricing:

### Negotiating the Right Terms and Conditions is Key to Containing Costs

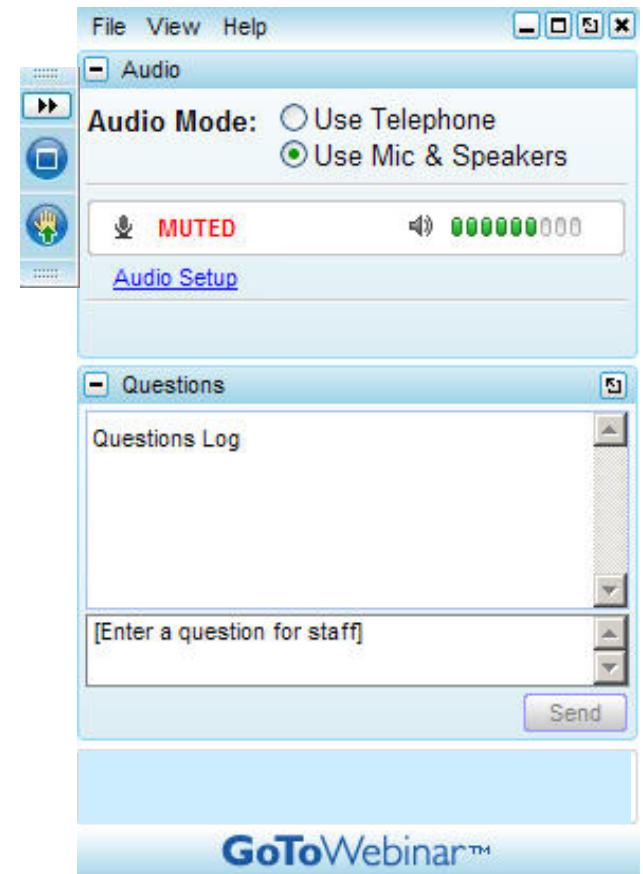
**Alexa Bona, Research Vice President**  
**2 February 2009**

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# How to Participate Today

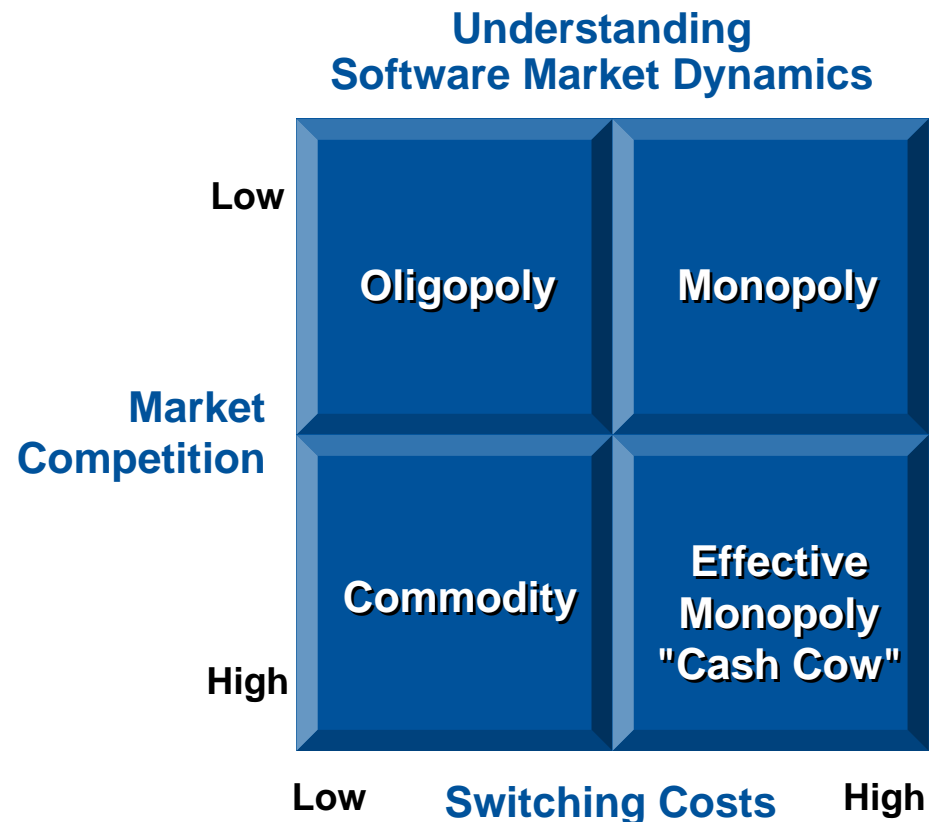
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# Software Market Dynamics: High Switching Costs mean flexible Ts and Cs are Vital!

- No "ownership" of anything; just rights to use under specific terms.
- Low-to-no market competition after initial buy.
- Switching costs are prohibitive for most.
- No secondary market for software.
- Single-source maintenance so vendors have monopoly on support.
- Confidentiality clauses mean users can't talk to one another about deals.



## Participant Poll Question:

**Among your software vendors, how many offer licensing flexibilities to reduce fees as a result of the economic down-turn:**

- Please select the one option that best fits your situation
- Responses are confidential

# Key Issues

- **How can organizations reduce cost and risk in software deals?**
- What are the hidden costs in SaaS agreements, and how can organizations avoid them?
- What are some of the classic ‘gotchas’ in software deals?

# Maintenance Costs... and Surprises

- In Economic Downturn maintenance is a key source of revenue for vendors
- Maintenance fees are increasing
- Maintenance is a quasi-monopoly for most of your strategic vendors

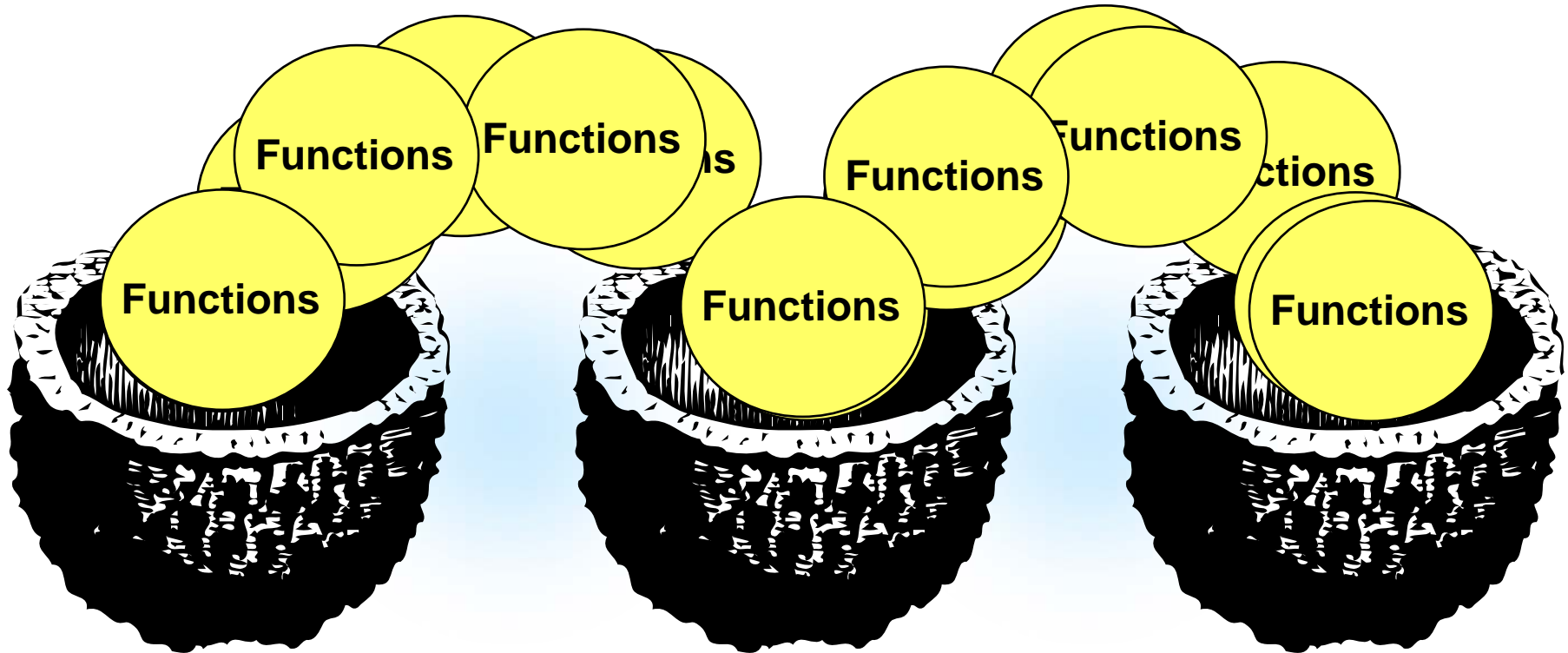
## **You need contracts with:**

- Maintenance Caps
- Document entitlements (SLAs Support periods etc) and include not to diminish clauses
- Rights to terminate or park maintenance on part of the portfolio-minimize re-instatement fees
- Rights to change to a cheaper support offering if available

What is in store may shock you.



# Maintenance Upgrade or New Product? Is it the Licensing 'Shell Game'



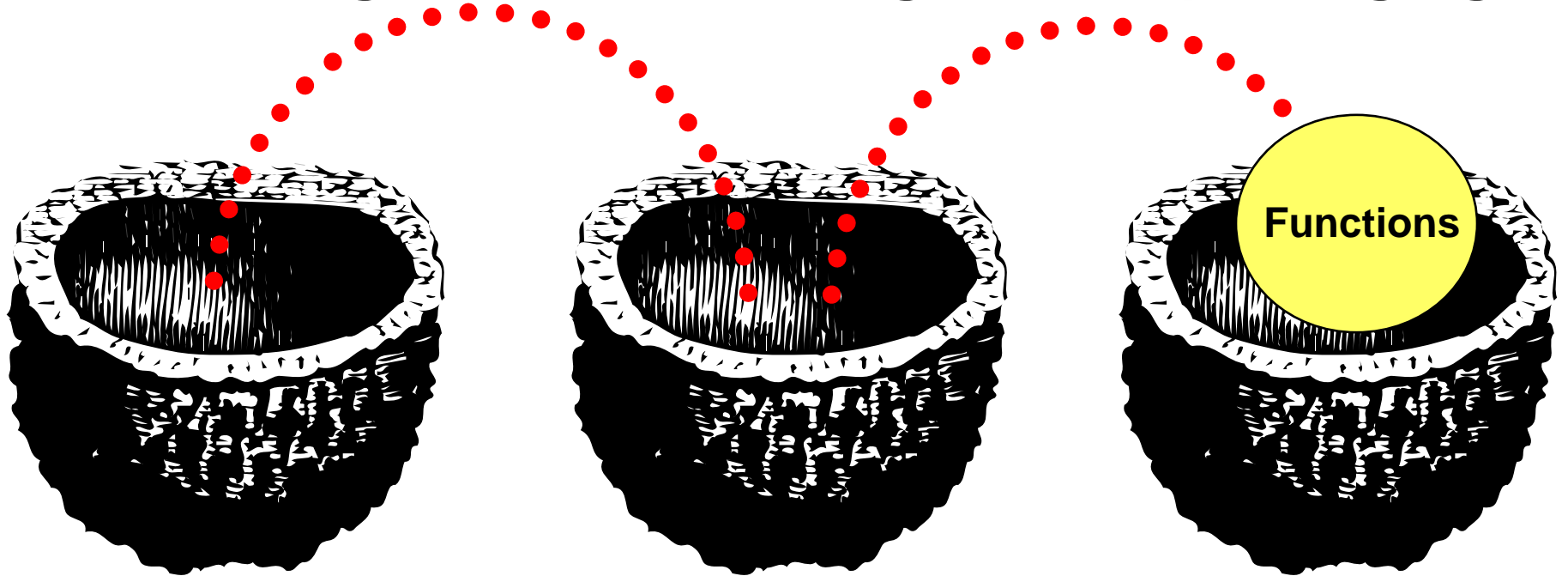
**Maintenance  
Enhancement?**

**Functional  
Upgrade?**

**New Product?**

# Maintenance Upgrade or New Product? Is it the Licensing 'Shell Game'

## Protect against Re-bundling and Re-packaging



**Maintenance  
Enhancement?**

**Functional  
Upgrade?**

**New Product?**

# Clearly Define License Model Usage Rights

There are advantages and disadvantages to all the models. But clearly defining the license model is essential to avoiding surprise costs!

Common License Models for Perpetual Software Licenses

=

Named User

Concurrent User

Total Number of Employees

Total Revenue or Budget

Number of plants/warehouses or skus

Numbers of Transactions

Numbers of Servers or CPUs

Enterprise Deal

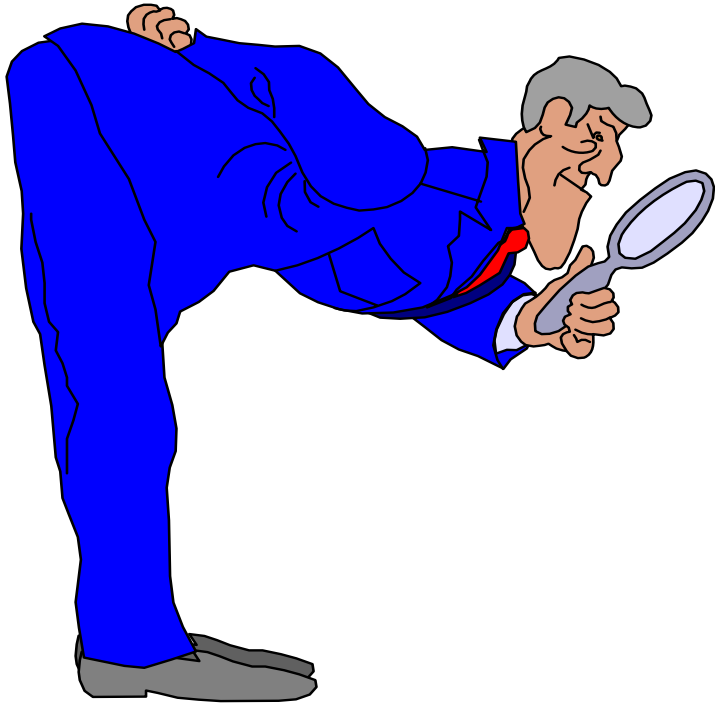
# Avoiding Paying for more than you are Using: Watch out for license minimums

- Many contracts include minimum license requirements or minimum ratios between license types
- Elimination of these ratios can ensure you are not forced to pay for licenses you do not need.

Are minimum license requirements breaking the bank?



# Numbers of Audits are Increasing: Improve Audit Clauses



Many standard contracts say the vendor will have the right to audit with 30-60 days notice and that customer will pay for licenses at list prices if not in compliance. Other clauses to negotiate:

- Notification period and right to delay for reasonable business reasons.
- Who can audit and how will the audit be conducted
- Prices to be paid if out of compliance
- Define who pays the cost of the audit
- Strong confidentiality clauses for customer data

## Participant Poll Question:

**Has your organization been approached by a software vendor to do a software audit in the last 12 months?**

- Please select the one option that best fits your situation
- Responses are confidential

# Virtual IT, Real Pricing Headaches

## Virtualization and Multi-Core issues need to be addressed in contracts:

- Ensure you are not paying for maximum potential capacity, irrespective of what you are using
- Try to obtain recognition of retrospective measurement of usage
- Ensure you have built in additional discounts that would apply as you move to processors with more cores

## Existing Agreements Barely Address Virtualization



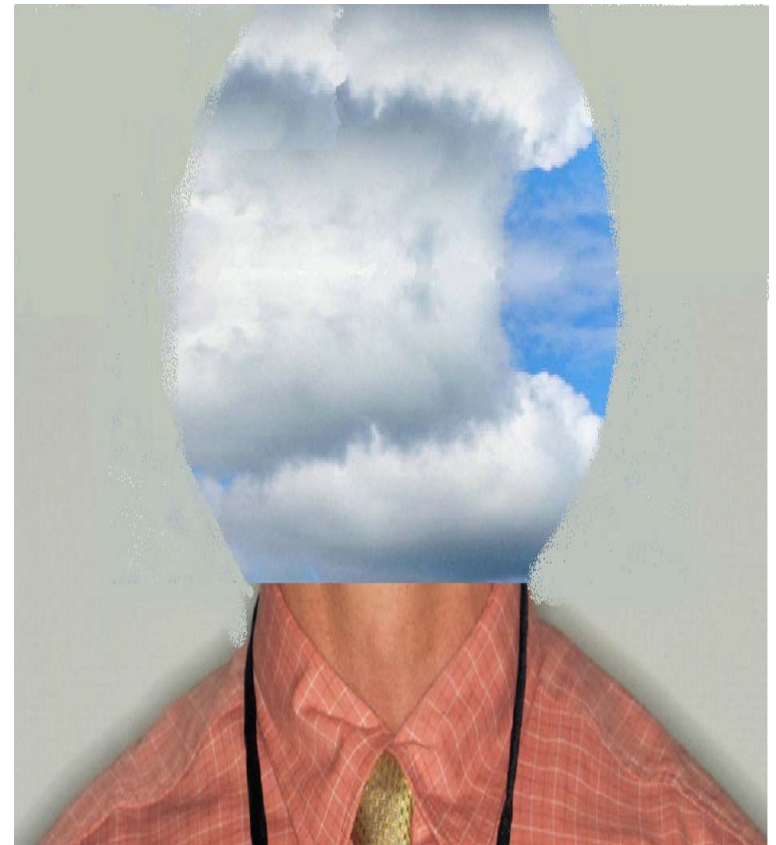
# Key Issues

- How can organizations reduce cost and risk in software deals?
- **What are the hidden costs in SaaS agreements, and how can organizations avoid them?**
- What are some of the classic ‘gotchas’ in software deals?

# Cloud Computing...or a Fog

- 'Utility' pricing much talked about but not really available
- Many SaaS contracts do not allow for reductions in volumes leading to 'shelf-ware' as a service
- Currently seeing aggressive discounting on larger competitive deals in some markets
- But no Locked-in/escalating discounts for incremental spending
- Price caps on renewal are essential
- Terms and conditions are important to negotiate  
*as well as price!*

## What Are They Thinking?



# Typically Un-Recognized Costs and Fees in SaaS contracts

- Storage fees
- Sandboxing fees
- Premium Maintenance fees
- Fees for non-corporate use (e.g. customers/ partners)
- Integration fees
- Termination Fees



# Unplanned Service Downtime Leads to Lost Productivity

- On-premise best-in-class is 99.5%; SaaS providers only guarantee back-end application, not IP connectivity; they must support 99.9% to be equivalent
- Impact of downtime is dependent on business function (call center vs. salesperson); consider your productivity loss due to downtime (mission critical vs. casual)
- Contractual assurances:
  - Penalties (one day of fees for each full or partial percentage point below the SLA during any one month)
  - Audits of SLA compliance
  - Escalation clauses



*Employee productivity during unplanned SaaS downtime*

# Additional SaaS Commercial Considerations



- Data Protection (Safe-Harbour/ Model Contract)
- SAS 70 Type 2 audits and security assessments
- Disaster recovery/ Data Back-up
- Escrow Clauses- but be careful what can be delivered
- Data ownership – data extraction rights

# Key Issues

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# Charges for Changes in Technology

## **Onerous Contract Condition: :**

"If the licensee decided to change from one supported database to another supported database, the cost for doing this will be horrendous."

## **Likely Way Presented in the Contract:**

Database: Oracle (or another database listed)

## **Example of Solution (Not Legal Advice):**

"Licensee may transfer this software, at no additional cost, to any hardware platform, software operating system or database that the vendor supports for this software."

# Maintenance Reinstatement Fees

## **Onerous Contract Condition:**

"If you drop maintenance, but want to restart it after a year, you are subject to whatever we want to charge at the time and you will have absolutely no leverage."

## **Likely Way Presented in Agreement:**

*"In the event that maintenance is declined for some period of time and is subsequently requested or reinstated, vendor will invoice licensee the accrued maintenance fees associated with such time period, plus a reinstatement fee."*

## **Example of Solution (Not Legal Advice):**

"Licensee can resume software maintenance for lapsed periods by paying licensor an amount no greater than the support fee that would have been due if maintenance had been continued over the lapsed period."

# Software Compliance and Auditors:

## **Onerous Contract Condition:**

"We are going to send you software that you are not licensed to use. If you use this software in error, you will be out of compliance with this contract, and woe to you if we audit."

## **Likely Way Presented in a Contract:**

"Licensee shall not access or use any portion of the software not expressly licensed and paid for by the licensee."

## **Example of Solution (Not Legal Advice):**

"Licensor shall not ship any software to licensee that licensee is not authorized to use."

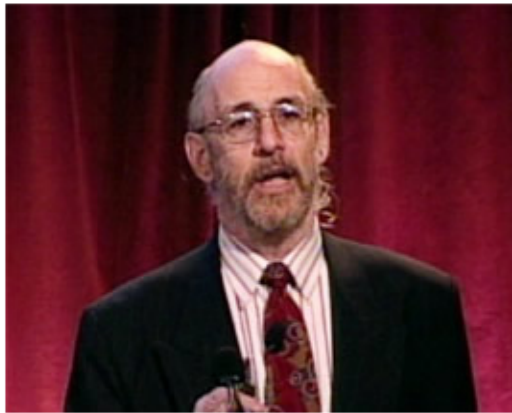
# Recommendations

- ✓ Include functional definitions of licensed software and robust re-packaging protections to avoid paying excessively for updates to existing functionality
- ✓ Focus on maintenance contract protections particularly the ability to terminate or park maintenance in a down-turn
- ✓ In current economic conditions vendors are doing more audits, ensure you have contractual protections as well as robust Software Asset Management processes to avoid exposure
- ✓ In SaaS Contracts ensure uptime and response time SLAs are well documented and sufficiently robust. Look for audit ability of the SLAs and effective penalty clauses
- ✓ One of the bigger commercial benefits of SaaS is the lower switching costs; ensure you can exit contracts get your data out effectively and efficiently
- ✓ Check your invoices!

# Gartner Reduces IT Cost in Four Distinct Ways

## IT and The Economy

### Cost Optimization



FEATURED PODCAST

### Leading IT through the Economic Storm

21 November 2008

**Dale Kutnick, SVP, Executive Programs**

CIOs key focus should be helping the enterprise to demonstrate its trustworthiness to key stakeholders, maintain business-critical operations and care for the needs of employees.



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