

Rimini Street Responds to Oracle Complaint and Files Countersuit

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This research updates our advice based on Rimini Street's response to a legal complaint filed by Oracle (see "Oracle Lawsuit May Impact Rimini Street's Delivery of Services") and provides additional advice based on Rimini Street's counterlawsuit. IT management should use this research to guide them as they consider third-party application maintenance and support decisions from Rimini Street and other providers in the market.

Key Findings

- Oracle's January 2010 complaint against Rimini Street alleges inappropriate access of Oracle intellectual property, that Rimini Street's business model is "illegal," that alleged downloading intrusions by Rimini Street damaged Oracle's support service capabilities and that Rimini made "illegal copies" of Oracle-licensed enterprise applications software.
- Rimini's 29 March 2010 answer to Oracle's complaint denies all of Oracle's claims and includes a countersuit alleging the lawsuit is just Oracle's latest tactic in a five-year anticompetitive campaign. Rimini Street is suing Oracle, alleging defamation, business disparagement and trade libel, as well as claiming that Oracle is misusing its software copyrights and engaging in unfair competition.

Recommendations

- Continue to follow our advice in "Oracle Lawsuit May Impact Rimini Street's Delivery of Services," and monitor Rimini Street and Gartner communications for advice regarding any legal actions by the courts that may interfere with Rimini delivering certain services or that require Rimini to change the way it delivers certain services.
- Review Rimini and Oracle support contracts with legal counsel for compliance (e.g., product downloads and use of third parties for support services).
- Customers have the right to use third parties for implementation, tax, legal, regulatory, and postimplementation maintenance services. Ensure that recent and future changes to Oracle's

support agreements, terms and conditions do not interfere with your right to retain and use third-party consultants for these purposes.

Analysis

On Monday 29 March 2010, Rimini Street, third-party provider of business application maintenance and support services, filed its official response in the courts to claims made by Oracle in January 2010. Rimini Street also filed a counterlawsuit against Oracle. (The complaint against Rimini Street may be found [here](#).)

Oracle's Complaint

The legal complaint filed by Oracle against Rimini Street and Rimini's CEO, Seth Ravin, was dated 25 January 2010. The crux of the 42-page complaint alleged that Rimini Street downloaded support-related documents that were beyond the scope of authorization for the customers on whose behalf Rimini Street was performing the downloading. The complaint also alleged that Rimini Street's business model is "illegal," that the downloading intrusions by Rimini Street have "damaged" Oracle's support service capabilities and that Rimini made "illegal" copies of Oracle-licensed enterprise application software.

Rimini Street's Response and Countersuit

On 29 March 2010, Rimini Street filed an answer summarily denying all of Oracle's claims, and stated that its business model and support processes are completely legal. Rimini supported its position with detailed information on the processes and procedures it uses to isolate information downloads by customer and ensure that each customer receives only the support information that it is entitled to under the terms of their license agreement and the Oracle Support Agreement in effect prior to a client's move to Rimini Street. Rimini filed a counterlawsuit against Oracle to stop what Rimini Street alleges is a five-year campaign of anticompetitive tactics by Oracle, which includes the filing of its lawsuit against Rimini Street in January 2010.

Rimini Street is claiming defamation, business disparagement and trade libel. Rimini Street also claims that Oracle is misusing its software copyrights and engaging in unfair competition. Rimini Street alleges that Oracle is attempting to influence competition in an area beyond the scope of its copyrights. Among other claims, Rimini Street asserts that, although Oracle admits that its software licensees have every right to use third-party maintenance and support vendors, Oracle is using tactics such as the design of its support website (including "browser-wrap" or "click-wrap" agreements) to inhibit competition and to interfere with a customer's ability to select a support vendor other than Oracle.

Status of the Injunction

In Oracle's January 2010 filing, it sought an injunction to halt Rimini Street's conduct with respect to the alleged "illegal practices" and to prevent further practices it alleged were "illegal." According to Rimini Street, it has received no notice that a hearing on Oracle's injunction request has been scheduled by the court; thus, the issuance of an injunction does not appear to be imminent. Based

on Gartner's current understanding, we don't anticipate a change in Rimini's ability to deliver services prior to the outcome of the court case, which, barring a settlement between the parties, is not expected to occur for at least two to three years, depending on the trial schedule.

Feedback From Gartner Clients

Since January 2010, Gartner has received numerous calls from clients interested in understanding the factors to consider when migrating to third-party support in general. We have received only a few calls from Gartner clients that are existing or prospective Rimini Street clients with concerns about Rimini Street's future. Gartner believes that, regardless of how the legal action against Rimini Street is eventually resolved, the squeeze that business application vendors have put on the system integration market (from streamlining implementation costs), combined with high margins being realized by the application vendors from maintenance revenue, will result in new entrants in the market competing for application maintenance and support. We expect this to result in more maintenance and support options for business application customers.

Timeline for Legal Proceedings

Following the filing of Rimini Street's response, its countersuit and motions to immediately dismiss most of Oracle's claims, Oracle and Rimini Street negotiated an agreement that provided Oracle an opportunity to amend and refile its claims, and then respond to Rimini Street's counterlawsuit. Rimini Street and Oracle will then be likely to have procedural agreements to resolve with the court through the third quarter of 2010. Next will likely be a period of discovery that might last a year, and a potential trial might get under way in late 2012. The anticipated multiyear timeline for the legal proceedings leads us to believe that customers are likely to have two to three years before they need to react, based on the eventual legal outcome.

Changes to Oracle's Download Agreement

Rimini's countersuit put a spotlight on Oracle's legal terms for the use of its websites. Rimini Street highlighted in its response to Oracle's lawsuit that Oracle updated the terms to include language that prohibits licensed customers from accessing and downloading support materials, unless such access or download "is in furtherance of the relationship between the customer and Oracle" (no time period limits were defined).

Although Oracle has stated that it does not intend to change its support policies for Applications Unlimited products (see "Q&A: What Is Oracle's Commitment to Applications Unlimited?"), Gartner believes that restricting downloads may be a deviation from this stated position. Procurement and contract managers at enterprises that are Oracle customers should be aware that IT staff and others who may be responsible for downloading Oracle content are seeing a click-wrap agreement that has stipulations about the use of the downloaded content. Gartner is concerned that the language in the click-wrap download agreement could affect customers' right to access new software releases, updates and fixes that customers have paid for, if they decide to self-support or to use third parties for consulting, hosting, support and/or application maintenance.

Implications for Customers

Customers have always had the right to engage third parties for application implementation, customization, and postimplementation maintenance and support services. Retaining third parties to provide maintenance, customization and metadata changes to reflect tax and regulatory updates should remain the customer's right, as long as the vendor's intellectual property rights have been honored. Customers should ensure that maintenance agreement language does not reduce or conflict with their rights under established Oracle license and support agreements (as long as Oracle's intellectual property rights have been honored). Ensure that Oracle did not and does not introduce language that conflicts with existing application management and application support outsourced arrangements.

Recommended Reading

"Oracle Lawsuit May Impact Rimini Street's Delivery of Services"

"Q&A: What Is Oracle's Commitment to Applications Unlimited?"

"Negotiate Software Maintenance Terms and Conditions"

"Organizations Discontinuing Software Vendor Support Must Still Honor Original License Agreement Restrictions"

"Q&A on Switching to a Third Party for ERP, SCM and CRM Maintenance and Support Services"

"Rimini Street Enters the SAP Application Maintenance and Support Market"

"Six Risk Factors to Consider Before Terminating Business Application Maintenance"

This research is part of a set of related research pieces. See Research Round-Up: ERP/Business Application Third-Party Maintenance and Support for an overview.

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