

Oracle Lawsuit May Impact Rimini Street's Delivery of Services

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This report provides background on the legal complaint filed by Oracle against Rimini Street, a provider of application maintenance and support services for regulatory and legal changes. We develop potential scenarios that may unfold as a result of the legal action and provide implications for customers and perspective customers, including specific guidance and recommendations.

Key Findings

- Oracle's complaint against Rimini Street alleges inappropriate access of Oracle intellectual property (IP). The complaint also alleges that Rimini Street's business model is "illegal," that alleged downloading intrusions by Rimini Street have damaged Oracle's support service capabilities and that Rimini made "illegal copies" of Oracle-licensed enterprise applications software. Rimini Street denies the allegations.
- Oracle is seeking an injunction to halt what it alleges as Rimini Street's "illegal" conduct and to prevent further practices it alleges are "unfair."
- Rimini Street plans to file a response to the complaint in court on 29 March 2010. Although Rimini quickly communicated its denial of the allegations, made sure its clients were aware of the litigation, and discussed the case in general with press and analysts, Rimini has declined to share its detailed response to the allegations prior to the official court response (so as not to pre-empt the court response).

Key Recommendations

- Monitor Rimini Street and Gartner communications for advice regarding any legal actions by the courts that may interfere with Rimini delivering certain services or requiring Rimini to change the way it delivers certain services.
- Develop a contingency plan to be prepared for the scenarios that are possible.
- Review Rimini Street and Oracle contracts with counsel. If you have any questions, contact the vendor for clarification.

- New customers that are in the RFP/request for information (RFI) process with Rimini Street should evaluate whether they can manage the increased level of risk associated with a supplier that has a legal action pending, which has the potential to impact the way Rimini delivers certain services.

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Analysis

1.0 What You Need to Know

On 25 January 2010, Oracle filed a lawsuit against Rimini Street, alleging misuse of its intellectual property by Rimini Street. Rimini Street denies the allegations, and says it will respond to the complaint in court on 29 March 2010. If the misuse is confirmed, it could result in Rimini Street potentially having to cease delivering certain services or change the way Rimini has to deliver certain services related to Oracle products.

Depending on the course and outcome of the legal action, a number of scenarios could play out as a result of this lawsuit, some of which could occur relatively soon and others much longer if there is a protracted court case. Rimini Street customers and prospective customers need to plan for the possible scenarios that could result from this legal action. Possible actions that customers may take include:

- Take no action at all and monitor the situation for developments.
- Migrate to another third-party provider for application maintenance and support of regulatory and legal updates.
- Execute their long-term technology plan sooner than expected.
- Return to a mainstream Oracle product and Oracle maintenance and support.
- Develop internal capability to perform their own support and maintenance of regulatory and legal updates.

The legal action is likely to take considerable time to work through the courts. A similar lawsuit filed by Oracle in March 2007 against TomorrowNow (a subsidiary of SAP) is expected to go to court later this year.

Gartner does not provide legal counsel about contracts and other matters. Legal questions should be referred to corporate counsel for your respective company/organization.

2.0 Press Release From Rimini Street

On 26 January 2010, Rimini Street published a press release that indicated a complaint had been filed against them by Oracle. Included in the release was a single statement that Rimini would respond to the complaint. There were no details in the release as to the nature and specifics of the complaint.

3.0 The Oracle Complaint

The complaint Rimini referred to is a legal complaint filed by Oracle against Rimini Street and Rimini's CEO, Seth Ravin. The complaint was dated 25 January 2010. The crux of the 42-page complaint alleges that Rimini Street downloaded thousands of 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 alleges 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. Oracle is seeking an injunction to halt Rimini Street's conduct with respect to the alleged "illegal practices" and to prevent further practices it alleges are "illegal." Rimini Street has denied the allegations and will respond in court on 29 March 2010. It is important to note that no customers were named as defendants in the lawsuit at this time.

This complaint is similar to one that Oracle filed 27 March 2007 against TomorrowNow, a subsidiary of SAP, in which proceedings are ongoing, but a trial has not yet commenced.

The complaint against Rimini may be found here (<http://www.rfcexpress.com/lawsuit.asp?id=53628>).

Rimini Street immediately notified its customers of the Oracle complaint on 27 January 2010 and said it was continuing to deliver support services without change or interruption, and that it would respond to the Oracle complaint on 29 March 2010. Rimini Street reported to Gartner that since Oracle filed the complaint, Rimini has continued to sign new clients, and no client has terminated support. Rimini also reported to Gartner strong support from customers to defend against the allegations.

Rimini Street stated to Gartner that it will respond to the Oracle complaint on 29 March 2010. Until then, it will refrain from responding in detail to the specific allegations. Rimini is continuing business as usual, selling services and delivering support to customers. Rimini stated to Gartner that it had anticipated the possibility of a legal fight with Oracle, given Rimini's strong global growth in 2009 to nearly 300 clients, including Fortune 500 and large multinational entities.

Gartner inquired of Oracle about the case and asked for a review of this document. An Oracle representative indicated it had not issued any press or other public releases about the complaint and stated that the company does not comment on legal situations.

4.0 Immediate Implications for Customers

The result of all this is that current customers are in a waiting mode while this complaint progresses through the legal system, which could take years. Customers should not expect a lot of details in response to the allegations until Rimini files its response to the complaint.

The allegations in this lawsuit are similar to those in Oracle's suit against SAP/TomorrowNow. In that action, Oracle sought an injunction against TomorrowNow, but did not prevail on that request. TomorrowNow was never prevented by court action from delivering services to its customers. However, SAP decided to close the business and assisted its customers in migrating to other providers, including Rimini Street. As a result, the implication for customers was they needed to switch to another third-party provider.

While Oracle is seeking an injunction against Rimini Street to cease what it alleges are "illegal" or "unfair" practices, to date, Rimini Street has not been blocked by the courts from any current practices or otherwise delivering services. Nevertheless, an injunction that forces Rimini Street to

cease providing certain services or change the way it provides certain services is a possible outcome, and customers should have a contingency plan should this play out.

5.0 Related Gartner Research

Gartner has previously published a number of articles related to TomorrowNow, and these should be reviewed for applicability to this lawsuit (see Recommended Reading section). In addition, we published general articles about software application maintenance and support. The most applicable was a Q&A note about switching to third-parties for application maintenance (see "Q&A on Switching to a Third Party for ERP, SCM and CRM Maintenance and Support Services"), which provided a list of vendors that deliver application maintenance and support for Oracle and SAP products.

6.0 Contract Terms and Conditions Related to Vendor IP

6.1 Can Third-Party Service Providers Access Licensed Software and Vendor Support Information?

Vendor contracts for software licenses, maintenance and support contain many terms and conditions that outline the obligations of both the customer and vendor. Related to the handling of vendor IP, Gartner's assessment of Oracle contracts is that the contracts generally give rights to the use of IP by contractors and consultants employed by the Oracle customer organization who have signed confidentiality agreements with the organization to protect the organization's confidential information, including Oracle's. It is common practice in the industry, and with Oracle, for third-party organizations to provide consulting and system integration work, but again, not using tools or information to which you don't have a license. In fact, the agreement with Oracle states that ordering the software from Oracle doesn't require the customer to purchase consulting or system integration services from Oracle. So, while there is a right to access the software and support materials, Oracle alleges that Rimini Street went beyond its allowed rights.

6.2 Can Customers Customize or Alter Their Software Environment?

Programming interfaces and tools such as Oracle/PeopleSoft PeopleTools allow customers (or their designees) to customize or maintain parts of the software environment. Related to Rimini Street and other third-party application maintenance providers, the tools or programming interfaces allow the application of regulatory or legal changes to the software configuration, applied business logic or reference metadata layers of the application stack. These tools do not provide a capability to change code that is delivered to customers "compiled" without any changeable source code.

6.3 What Procedures or Practices Should Customers Have in Place?

Because of contract terms and conditions, customers with Oracle products (JD Edwards, PeopleSoft or Siebel) should examine their practices regarding how they work with all third-party providers and the access to Oracle (or other vendors') IP. Typically, this would include downloading patches, software updates and support materials that they may be currently entitled to if they have

an Oracle support and maintenance agreement in place. The safe practice would be for the customers to perform their own downloading, while entitled by their support contract and then make materials available to third-party providers as needed to execute specific statements of work or contracts. Or, they must ensure that the third-party vendor works within the contract and support site terms and conditions. Once a customer has moved off Oracle, whether migrating to third-party support or not, there should not be any downloads. Customers are not allowed to download patches, updates or upgrades once their Oracle support terminates.

7.0 Long-Term Technology Plan

A minority of Gartner clients using Oracle and SAP ERP products tell us that they want to extend the life of their software environments and operate with minimal changes for a long period of time to maximize the return on investment from current software assets. Some clients do this while they are waiting to see what direction a vendor will take with specific acquisitions, such as Oracle's acquisition of PeopleSoft. In doing so, the majority of clients that chose to extend the life of their software canceled their support-and-maintenance contracts with the software vendor. One aspect that customers must address is the need for regulatory and legal updates when they no longer subscribe to maintenance and support from the software vendor. To resolve this need, customers turn to third-party application maintenance providers, such as Rimini Street and others, to obtain the needed regulatory updates.

For customers that elect to forgo or delay upgrades to their environments and use third-party providers for application support, this is done most frequently as an alternative to the traditional choice of support and maintenance from the software vendor. The duration of this strategy can vary from as little as three to four years or as long as 10 years (note that Rimini Street's average contract length has moved to seven years). During this time, the customers are essentially leaving the mainstream product and support cycle for a particular vendor product set and getting fixes and updates from a third-party provider. There are benefits and risks to this strategy (see "Q&A on Switching to a Third Party for ERP, SCM and CRM Maintenance and Support Services") and a number of customers find this to be an acceptable strategy for some period of time. Eventually all customers exit the strategy and acquire new mainstream technology (possibly from a different vendor) and return to a fully supported product and maintenance releases.

Previous Gartner reports and advice to Gartner clients stressed the need to develop a long-term strategy when considering the use of a third-party support provider as an alternative to vendor-delivered support and maintenance. The long-term strategy would include a plan and budget for the evolution of the business application environment within the foreseeable lifetime of the current version of software.

8.0 Re-evaluating the Use of Third-Party Providers

A minority of customers with legacy software environments may have elected to leave the support and maintenance delivered by the software vendor, such as Oracle, and chose a third-party provider as an alternative. Many customers chose Rimini Street. Oracle's lawsuit seeks to prevent Rimini Street from alleged "illegal and unfair practices" related to Oracle IP that may be used to deliver certain services. If Oracle is successful in its suit, Rimini Street may be prevented from providing certain services or may have to change the way in which certain services are provided to

customers. Considering that as a possible outcome, some customers may elect to move to a different third-party provider or re-evaluate their situation altogether. Although the evaluation varies slightly by vendor, the principal consequences are that:

- The user organization is treated like a "new customer" when needing additional license rights. Any historical privileges are typically void.
- Keeping the software updated and compliant with regulatory requirements must be sourced based on the rights of use acquired with the software license contract, not with rights associated with the maintenance and support contract. The difference between the two is sometimes not easy to detect.

9.0 Possible Scenarios

A number of possible scenarios could result from this litigation:

- The court rules in favor of Rimini Street, and the case is closed.
- A court-imposed injunction could prevent Rimini Street from delivering certain services or may cause Rimini Street to have to change the way it delivers certain services to customers.
- The court rules in favor of Oracle and imposes fines or damages against Rimini and/or puts Rimini out of business.
- Oracle and Rimini Street could reach a settlement.
- Rimini could decide to exit the business associated with Oracle products.

Certainly, other scenarios could present themselves as time goes on, such as a government regulatory intervention (for example, U.S. SEC or the EU) or a countersuit by Rimini Street against Oracle. These scenarios mainly apply to current customers of Rimini Street. The scenario that would have the least impact on Rimini Street customers is that in which the court rules in favor of Rimini Street. This would mean that Rimini customers would not need to take any action other than maintaining the course they previously plotted. In general, this would support other third-party software providers in the market, thus increasing the competition for alternatives to support other than that delivered by the software vendor. As pointed out previously, it could take years for any of these scenarios to fully come to a conclusion. Below, we provide guidance related to the negative outcome scenarios that would lead customers to potential decisions.

9.1 Injunction Against Rimini Street Practices

Oracle is seeking an injunction to halt what it alleges are Rimini Street's "illegal and unfair" practices. The immediate concern is if the court grants the injunction requested by Oracle (to date there has been no formal injunction hearing requested by Oracle or scheduled by the court), which could change how Rimini Street may be able to access and use any Oracle IP on behalf of Rimini's customers. However, since Rimini Street accesses and uses customer software in ways very similar to most system integrators, it would be hard to see how Rimini Street could be prevented from interacting with Oracle intellectual property in the same way that any other third party could interact

on behalf of a client. The court will need to review this request, and it could take considerable time before a decision is actually rendered, either for or against the injunction.

One customer response would be to migrate to another third-party provider. However, if intellectual property access rights are the issue being argued, moving to another third-party vendor may not resolve this point. Another possibility is to execute the customer's long-term plan for new technology if the timing is conducive to doing so. A third option is to elect "no support" and assure the application stack is frozen, enforce a moratorium on changes and assure the capability of internal staff to resolve incidents. The length of this option would depend on the timing of future needed regulatory changes.

The note we published on switching to third-party providers for CRM, ERP or SCP ("Q&A on Switching to a Third Party for ERP, SCM and CRM Maintenance and Support Services") provided a list of providers and the products they supported. Table 1 is a more current version of the provider list. Note that not all of these providers offer a full range of break/fix and regulatory update services.

Table 1. Third-Party Application Maintenance and Support Providers' Products Supported

Company	JD Edwards	PeopleSoft	SAP	Siebel	Web Site
CedarCrestone		X			www.cedarstone.com
Ciber	X	X	X		www.ciber.com
Citagus		X			www.citagus.com
Hexaware		X			www.hexaware.com
netCustomer	X	X		X	www.netcustomer.com
RiminiStreet	X	X	X	X	www.riministreet.com
Spinnaker	X				www.spinnakermgmt.com
Summit Technology	X	X			www.summitsti.com

Source: Gartner (February 2010)

Selecting a third-party support provider should entail standard sourcing and procurement practices. This includes the RFI and RFP process and developing a statement of work that details the specific application maintenance and support services needed for the business application. When selecting vendors, three practices are paramount:

- The vendor needs to provide a statement of the number of resources and capabilities it has for the specific version of business application product deployed and for the specific modules in use (for example, CRM and ERP).

- The vendor needs to provide customer references where it supports the same product version and modules deployed for the business application. Preferably, the customer reference should be from a similar vertical industry, with a similar scope of users and operations.
- The customer references must be interviewed to verify that the vendor is supporting the same product version and modules and that support has been delivered successfully for a minimum of six months. The vendor's track record for incidents submitted and resolved should also be examined.

One particular item that must be clearly defined is who will take responsibility for vendor product patches and future versions. Gartner recommends that the internal IT organization own this responsibility and download materials while they are entitled to them. The internal IT organization can then provide these, when needed, to the third-party provider. IT organizations should avoid letting the third-party support provider download materials from a vendor on their behalf.

9.2 Longer-Term Scenarios

The other negative outcomes (Oracle wins or Rimini decides to close business lines) most likely provide customers a longer planning period. As an indicator of the time it may take for this case to play out, Oracle filed suit against TomorrowNow in March 2007, and the case is planned to go to court this year (that case is in a different court jurisdiction). The most appropriate actions to consider taking for a longer-term scenario would be:

- Return to Oracle mainstream products, such as PeopleSoft Release 9.1. Generally, after even a two-year absence from Oracle support, buying a new license is less expensive than paying reinstatement fees and penalties for returning to Oracle support. This may be especially true if the customer has unused licenses (shelfware) that could be a part of the negotiation. Customers need to discuss this option with their Oracle representative.
- Execute the customer's long-term plan. Depending on the timing of court proceedings, some clients may be close enough to activate their long-term technology plan they created when they decided on the strategy to use third-party application support. This is likely a multiyear effort and involves a diligent assessment of technology and technology providers, planning a budget that will accommodate the plan and embarking on the phases of a designing and building new technology life cycle.
- Develop internal capability to maintain and support the application environment. IT organizations could develop a strategy to be self-reliant (not dependent on a third party) and develop the appropriate skills to tend to regulatory and legal changes. Some modules of ERP systems, such as those dealing with financials, may have little or no regulatory or legal update implications.

Some customers who "froze" their Oracle environments are looking to understand the Oracle Fusion road map and may decide to move to Fusion (see "Q&A: What Is Oracle's Commitment to Applications Unlimited?" and "Oracle Fusion Applications: Still a Mystery"). Other customers consider this a "blank slate" opportunity to assess their business needs and make a switch to another technology provider. A variant of this option is to choose a provider that is not a Tier 1 ERP

vendor, such as Oracle, Microsoft or SAP, but instead consider a Tier 2 player or select a niche player that is particularly relevant to their industry sector.

10.0 Detailed Recommendations

Considering all the circumstances and scenarios, here are our recommendations for specific customer audiences.

10.1 Recommendations — Current Customers of Rimini Street Receiving Support for Oracle Products

- Monitor Rimini Street and Gartner communications for advice regarding any legal actions by the courts that may interfere with Rimini delivering certain services or requiring Rimini to change the way it delivers certain services. The legal case may take several turns and may proceed over the course of several years.
- Develop a contingency plan to be prepared for the possible scenarios.
- Review Rimini Street and Oracle contracts with counsel. If you have any questions, contact the vendor for clarification.
- Review all documentation for vendor IP protection and verify that procedures are being followed.

10.2 Recommendations — Prospective Customers Considering Rimini Street Support for Oracle Products

- New customers that are in the RFP/RFI process with Rimini Street should evaluate whether they can manage the increased level of risk associated with a supplier that has a legal action pending, which has the potential to impact the way Rimini delivers certain services.
- Monitor Rimini Street and Gartner communications for advice regarding any legal actions by the courts that may interfere with Rimini delivering certain services or requiring Rimini to change the way they deliver certain services. There will likely be little additional comment from Rimini Street on the allegations as it prepares to file its official response in court on 29 March 2010.
- New customers should negotiate sufficient indemnification clauses in contracts to mitigate liability risk against service recipients.
- Companies that are considering third-party support providers (other than Rimini Street) for application maintenance and support of Oracle products should inquire about the handling of the IP of software vendors and discuss any concerns and issues with their prospective vendors.

Additional research contribution and review: Rob Addy, Jim Shepherd, Bill Swanton and Jeff Woods.

Recommended Reading

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

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

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

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

"SAP Shutdown of TomorrowNow Pushes Customers to Alternatives"

"SAP's 2007 Preliminary Results Reflect Intent to Sell TomorrowNow"

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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