# Microsoft Intellectual Property Indemnification

Published: November 10, 2004 | Updated: October 18, 2007

## Helping Protect End Users by Providing Strong Intellectual Property Protection

Companies understand the importance of protecting themselves from legal risk. Many have asked Microsoft to help them reduce their risk of an intellectual property legal dispute.

Software today is built not just on a complex array of technical code, but also on a complicated set of intellectual property rights. Sometimes those rights need to be acquired from third parties. Because of this, software is occasionally subject to allegations of intellectual property infringement. By licensing software that includes strong end-user intellectual property protection, individuals and organizations help shield themselves from costs commonly associated with intellectual property disputes.

Intellectual property protection of software is a valuable benefit that Microsoft offers end users. If someone alleges that your end use of Microsoft software infringes their intellectual property rights, Microsoft will help protect you from legal costs and liability associated with the dispute. Not all software companies offer intellectual property protection. Few offer the same high levels of protection provided by Microsoft.

Microsoft intellectual property protection:

* **Is provided to end users of Microsoft server and client software.**Microsoft offers the same high level of intellectual property protection to all end users, regardless of whether they have acquired their license through a Microsoft volume licensing program or through other means, such as a retail outlet or computer manufacturer.
* **Covers patent disputes, as well as copyright, trademark, and trade secret claims.**Intellectual property disputes can take many forms. The end-user protection offered by Microsoft includes coverage for most patent, copyright, trade secret, and trademark disputes.
* **Helps protect users from legal costs, without preset caps.**In the event of a covered infringement claim against a Microsoft software offering, Microsoft will help protect the end user from the costs of defending the claim and from court-awarded damages.

To understand the legal commitment of Microsoft, review the specific language of your volume licensing agreement; or, if you have acquired Microsoft software through another channel, review the following legal commitment. If you have a contractual indemnity from Microsoft, you are free to rely on either those terms or the following policy. You don't have to do anything to indicate your choice. If you ever want to assert the terms outlined here, you can—the choice is yours.

## The Microsoft Intellectual Property Commitment to End Users

1. **The Microsoft commitment to defend infringement and misappropriation claims.** This commitment covers any Microsoft software licensed for a fee for your end use, except for embedded (industry or task-specific) software. When we refer to "covered software" within this commitment, we are referring to those Microsoft software offerings only. For any covered software, we will:
* defend you against any claims made by an unaffiliated third party that the covered software infringes its patent, copyright, or trademark or misappropriates its trade secret, and
* pay the amount of any resulting adverse final judgment against you (after any appeals) or settlement to which we consent.

For purposes of this commitment, the terms "misappropriation" and "trade secret" will have the meanings defined in the Uniform Trade Secret Act. You must notify us promptly in writing of the claim. You also must give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim. We will reimburse you for reasonable out-of-pocket expenses you incur in providing that assistance. The claim might fall outside the scope of our commitment, but send it to us anyway. We may choose to treat it as if it were covered by this commitment.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on:

1. you running the covered software after we notify you to discontinue running due to such a claim;
2. the combination of the covered software with a non-Microsoft product, data, or business process;
3. damages attributable to the value of the use of a non-Microsoft product, data, or business process;
4. you altering the covered software;
5. your distribution of the covered software to, or its use for the benefit of, any third party;
6. your use of our trademark(s) without express written consent to do so; or
7. for any trade secret claim, your acquiring a trade secret:

(a) through improper means;

(b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse us for any costs or damages that result from these actions.  If we receive information about an infringement claim related to covered software, we may do any of the following, at our expense and without obligation to do so:

* procure the right to continue its use; or
* replace it with a functional equivalent, or modify it to make it non-infringing (including disabling the challenged functionality). If we do that, you will stop running the allegedly infringing software immediately.

If, as a result of an infringement claim, a court of competent jurisdiction enjoins your use of covered software, we will do one of the following, at our option:

* procure the right to continue its use,
* replace it with a functional equivalent,
* modify it to make it non-infringing (including disabling the challenged functionality), or refund the amount paid for the infringing software and terminate the license for it.

This commitment provides your exclusive remedy for third-party infringement and trade secret misappropriation claims.

1. **Limitation of liability**. The limitation of liability in your license agreement for the covered software will not apply to our defense and payment obligations under this commitment.

## Helping Protect Partners by Providing Strong Intellectual Property Protection

Channel partners that distribute Microsoft software also have asked Microsoft to help protect them from intellectual property disputes. By distributing software that includes strong intellectual property protection, referred to as "indemnification," companies can help shield themselves from costs commonly associated with intellectual property disputes. Not all software companies offer intellectual property protection for their channel partners. Few offer the same high levels of protection provided by Microsoft.

The following table summarizes the intellectual property indemnification that Microsoft provides to its channel partners. Channel partners should review the indemnification language in their partner contracts with Microsoft to learn about the specific indemnification coverage that Microsoft provides.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Patent claims**  | **Copyright claims** | **Trade secret claims** | **Trademark claims** | **Legal defense fees** | **Damages and settlement fees** |
| **Original equipment manufacturer (OEM)** | Covered | Covered | Covered | Covered | No cap | Cap |
| **OEM distributor** | Covered | Covered | Covered | Covered | No cap | Cap |
| **System builder** | Covered | Covered | Covered | Covered | No cap | Cap |
| **Independent software vendor (ISV) royalty partner** | Covered | Covered | Covered | Covered | No cap | Cap |
| **Reseller/classic distributor** | Covered | Covered | Covered | Covered | No cap | Cap |
| **Mobility and embedded OEM/embedded distributor** | Covered | Covered | Covered | Covered | No cap | Cap |
| **Retail** | Covered | Covered | Covered | Covered | No cap | Cap |

## The Microsoft Intellectual Property Commitment to OEM System Builders, OEM Distributors, Mobility and Embedded OEMs, and Embedded Distributors

Because of the unique distribution relationship that Microsoft has with these channel partners, Microsoft provides its indemnification commitment to you in the following legal commitment.

1. **The Microsoft commitment to defend infringement and misappropriation claims.**

This commitment covers any Microsoft software licensed for your installation and distribution pursuant to your Agreement with Microsoft. When we refer to "covered software," we are referring only to this software.

For any covered software, we will:

* defend you against any claims made by an unaffiliated third party that the covered software infringes its patent, copyright, or trademark or misappropriates its trade secret, and
* pay the amount of any resulting adverse final judgment against you (after any appeals) or settlement to which we consent as follows:
	+ For system builders, up to the amount paid by you to authorized Microsoft OEM distributors for covered software during the prior one-year period
	+ For OEM distributors, up to the amount paid by you to us during the then-current term of your OEM distributor agreement
	+ For mobile and embedded OEM and distributors, up to the amount paid by you for the covered software during the then-current term of you mobile or embedded OEM or embedded distributor agreement during the prior two-year period

For purposes of this commitment, the terms "misappropriation" and "trade secret" have the meanings defined in the Uniform Trade Secret Act.

You must notify us promptly in writing of the claim. You also must give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim. We will reimburse you for reasonable out-of-pocket expenses you incur in providing that assistance.

The claim might fall outside the scope of our commitment, but send it to us anyway. We may choose to treat it as if it were covered by this commitment.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on:

1. your distribution or running of the covered software after we notify you to discontinue distributing or running due to such a claim;
2. the combination of the covered software with a non-Microsoft product, data, or business process;
3. damages attributable to the value of the use of a non-Microsoft product, data, or business process;
4. you altering the covered software;
5. for mobile and embedded software products, patents that are alleged to be infringed by or essential to an implementation of the codec (e.g., VC-1) or telecom standards;
6. your use of our trademark(s) without express written consent to do so; or
7. for any trade secret claim, your acquiring a trade secret:

(a) through improper means;

(b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse us for any costs or damages that result from these actions.

If we receive information about an infringement claim related to covered software, we may do any of the following, at our expense and without obligation to do so:

* procure the right to continue its distribution and use; or
* replace it with a functional equivalent, or modify it to make it non-infringing (including disabling the challenged functionality). If we do that, you will stop distributing and running the allegedly infringing software immediately.

If, as a result of an infringement or misappropriation claim, a court of competent jurisdiction enjoins your installation, distribution, or use of covered software, we will do one of the following, at our option:

* procure the right to continue its use,
* replace it with a functional equivalent,
* modify it to make it non-infringing (including disabling the challenged functionality), or
* refund the amount paid for the infringing software and terminate the license for it.

This commitment provides your exclusive remedy for third-party infringement and trade secret misappropriation claims.

1. **Limitation of liability.**

The limitation of liability in your license or distribution agreement for the covered software will not apply to our defense and payment obligations under this commitment.