IBM Software Licensed under the IPLA - Backup Use Defined

The International Program License Agreement (IPLA) has no specific terms concerning use of a program in backup mode. However, it does define charges for the "authorized use" of the program that are based on the level of use a customer acquires. For example, this "use" charge could be for the number of users concurrently using the program, a number of installs, etc. Each program will have 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 program. In addition, the IPLA does not restrict the movement of a program from one machine to another within the authorized use on the PoE. For example, if a program has a PoE for "one install", and there are no other restrictions, a copy of the program may be resident on more than one machine under the customer's control, but only one program is authorized to be in use at any given time. This applies to all programs licensed under the IPLA. An exception to note is that if a program has a charge for "each copy", there is no backup copy allowed without a charge for use. There are very few programs 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 programs running or resident on backup machines, IBM defines 3 types of situations: "cold"; "warm"; and "hot". In the "cold" and "warm" situations, a copy of the program could be resident on another machine and if it is not "in use", a separate use authorization for this copy would not required and no additional charge would apply. This is within the boundaries of "authorized use" as noted above. In a "hot" backup situation, the copy of the program that is on another machine is being used and a use authorization is required and the customer needs to acquire an additional one. All programs 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 program used for backup purposes:

- cold - a copy of the program may be stored for backup purposes or within the authorized use as noted above on a machine as long as the program has not been started.
      There is no charge for this copy and no additional use authorization is required.

- warm - a copy of the program may reside for backup purposes or within the authorized 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 authorization is required.

- hot - a copy of the program may reside for backup purposes or within the authorized use as noted above on a machine, is started and is "doing work". However, this program requires a use authorization.
        If there is no use authorization, one must be acquired and there is a charge for this copy.

"Doing Work", includes, for example, production, development, program maintenance, and testing. It also could include other activities such as mirroring of transactions, updating of files, synchronization

of programs, data or other resources (e.g. active linking with another machine, program, data base or other resource, etc.) or any activity or configurability that would allow an active hot-switch or other synchronized switch-over between programs, data bases, or other resources to occur.

In the case of a program 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, program, data base or other resource, etc.), the program is considered to be doing work in both the "warm" and "hot" situations and a use authorization 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 program has a capacity-based charging metric and the secondary machine has more capacity than the primary machine.

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In the IPLA construct, the authorized use of a program is based on the level of use acquired by the customer. This is stated on a Proof of Entitlement (PoE) that accompanies each program. For example, if a program has a PoE for "one install", and there are no other restrictions, the program may be resident on more than one machine under the customer's control, but only one program is authorized to be running at any given time.

When an emergency occurs and the primary machine on which the program normally runs is inoperable, the customer may run the program on another machine as permitted in the PoE.

This alternate operation of the program may continue for a reasonable length of time while the primary machine is inoperable. If the time becomes extensive (e.g. over 3 weeks), the customer and IBM should review both the individual situation and the recovery plan to determine if any additional program charges are appropriate. For example, if the program charging is based on capacity and the backup machine is a higher capacity than the primary machine, then a review should be held. In no case may programs running in backup mode be used simultaneously on the primary machine unless there is an additional use authorization.

To prepare for an emergency backup situation, customers may run periodic tests to determine whether the backup facility will adequately back up their systems. The assumption is that normal use of the program licenses is continuing on the primary machine while the test is being done. These tests do not include any productive work, development, program maintenance or testing. They are run solely to check out the adequacy of the backup facility to support the customer's program configuration and to simulate the disaster recovery procedures.

No extra program charges apply for these tests, as long as they are reasonable in number and duration (e.g. 1-3 tests per year, each test lasting approx. 2 to 3 days). In certain cases, (e.g. online systems running 24X7 that are critical to the customer's business operation), more frequent tests may be required, but should be of a shorter duration with the total hours not exceeding the above guidelines. Also, there can be no productive output or work done from the tests and no development, program maintenance or testing as part of the tests.

If a customer requires an extended period for backup facility testing, IBM and the customer should review the reason and determine appropriate license charges, if any.

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Audit information:

During the period when a customer is using any IBM Program copies for cold or warm backup (or backup test), and any such copy is not licensed to the backup machine and charges are not in effect, IBM has the right to review the customer's rationale for not licensing the IBM Program copy for the backup environment. The review will be held on the customer's premises, during their normal business hours and in a manner that minimizes disruption to their business.

If at any time it is determined that the use of an IBM Program copy is outside of the no-charge cold or warm backup guidelines for use of program copies as described in this document, IBM has the right to require the customer to order, license, and pay the appropriate charges for the IBM Program(s).