

Fact Sheet – Source Code Escrow for Lawyers

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You can help your clients who use or develop software to protect their business by implementing software escrow arrangements. An escrow arrangement will reduce your clients' risks when licensing or using software and protect access to intellectual property.

- Safeguard your client's business with source code escrow
- Reduce the risk of using software
- Protect the intellectual property rights of software developers

At Harbinger, we recognise that you want to provide valuable services and advice that helps to improve your client's business. We specialise in software escrow and verification. We provide flexible, comprehensive services and deliver them with the integrity that you expect. Our escrow professionals will work with you and your clients to define the right level of protection and to ensure that they receive tangible value.

Our services have been developed through decades of experience in software development, technology usage and IT law. They include the features and services our customers have told us they want.

When should I recommend source code escrow to my clients?

Software – or source code escrow should be considered for all software agreements. Source code escrow is a prudent practice for both software vendors and end-users. When advising your clients licensing software, you should encourage escrow protection when:

- The software is key to their business
- The software will be widely used
- The software is embedded or regarded as an input into a manufacturing process or service
- Use of the software impacts customers
- The software would be difficult or costly to replace
- Your client is managing risk
- Your client adheres to Sarbanes Oxley or other corporate compliance guidelines

Why use an escrow agent?

A founding principle of a specialist escrow agent is to remain neutral. It is important that your client's escrow agent is experienced and an independent third party that is not under the influence or control of either the end-user or the vendor.

A specialist escrow agent will have invested in state of the art software storage and management technology and will be able to provide verification services to ensure that the escrow deposits will perform when required.

Harbinger is an experienced, independent and neutral third party. We can administer escrow arrangements on your behalf. We have invested in state-of-the-art escrow management and verification systems that are the preferred solution of some of Australia's top businesses.

Standard and Tailored Agreements

Harbinger has a range of standard escrow agreements. They have been designed to include the measures and services demanded by our clients. Our recommended escrow agreements are available at www.harbinger.com.au. They are based on best practice and are available as a simple and cost effective means of establishing a robust escrow agreement.

We also tailor escrow agreements. If your client's needs today are unique, we will advise you and your client on the most appropriate services to achieve the level of protection desired – for one specific application or an entire risk management strategy.





For your clients that are Software End-users

Software end-users rely on software vendors (developers) to supply and maintain software. This exposes them to a new set of risks. In the event that their software vendor stops supporting them, an established escrow arrangement will protect their business by providing access to the source code and other information that they would need in order to continue to operate effectively.

Source code escrow is considered an essential part of modern technology services contracts. It not only delivers compliance with best procurement practices and meets Sarbanes-Oxley corporate compliance regulations, but most importantly it also reduces your client's business risk.

For your clients that are Software Vendors

When a potential customer considers purchasing your client's software, your client's ability to provide good and continuous service is a concern. Most potential customers will not consider purchasing without allaying these concerns - some choosing instead to buy software from a larger software vendor that represents a lower risk to their business.

Implementing a source code escrow arrangement reduces that risk. It acts like an insurance policy for end-users by safeguarding their investment in your client's software.

Implementing an escrow arrangement may also reduce the risk of litigation to your client if they were to go out of business.

Software vendors also accrue added benefits from escrowing their source code. The escrow arrangement provides an audit trail and independent validation of the development of intellectual property.

Key features of Harbinger's escrow services:

We offer:

- Fast service establishment
- The choice of either standard or tailored escrow agreements
- A secure online escrow management system
- Active Alerts that warn you if arrangements are not being met
- Annual reporting of compliance and lodgement activity
- Online and telephone support
- Software agreement, contract and procurement advice
- Software verification services
- Lodgement auditing services

Privacy and Security

You can take comfort from knowing that your client's data is always secure and protected. Our online data centre meets Australian Government ASIO data security requirements. All data is fully backed up to a secondary location in Harbinger's own offline data vault. We understand technology and protect your client's interests with the integrity that you and your client expects.

Harbinger provides unmatched software escrow and verification for vendors and end-users. Many of Australia's top companies trust Harbinger as their neutral third party to provide escrow services.

To find out more or to talk to one of our escrow specialists, please contact us on +61 3 9618 2000

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