



## **Distribution channels – Value Added Resellers (VARs) and other options**

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As a software developer/owner seeking to maximise distribution of your software product, you may be considering a few different options:

- direct sales;
- engaging an agent; or
- appointing a distributor (reseller).

But terminology in this area can be confusing, so making sure you understand the nature of (and accompanying legal rights and obligations that come with) your new relationships is vital, particularly as distribution chains often mean that there is more than one other business between you and your end customer.

### **Direct sales vs third party distribution**

As a software developer, provided you have the legal rights, you can choose to sell (licence) your software directly to your end customers, or you could appoint a third party to do it for you. This may allow you to:

- reach end-customers quickly and easily using the existing network and experience of your chosen partner;
- enter new markets where your partner is already active but you currently aren't;
- save you the time and expense of setting up your own sales team; and
- free you up to concentrate on developing.

However, the trade-off with having any third party involved in selling your product is that you:

- lose a degree of control over your product;
- have to disclose confidential details of your product/trade secrets to outsiders;
- distance yourself from your end customers; and
- have to sacrifice some of your profits as your reseller will want commission on the sales or a discount on the products.

### **Distributors vs Agents**

An agent (sometimes known as a sales rep) is your representative and acts for you vis-à-vis your customers.

Agency means:

- you retain control over the sale of the software: price; conditions of sale; marketing etc;
- you remain closer to your customers; and
- you retain the risk (financially and legally) in the product and on sales, so will be responsible for fixing faults, refunds etc.

Key considerations:

- warranty and support responsibility remains with the developer but the agent could be required to perform a triage service so that only serious matters are referred up to the software developer;
- will your agent be exclusive?

A distributor (reseller) of your products will buy the software from you then sell it on. This means:

- they have more control over the sale of the software, critically, on pricing;
- they have a direct relationship with the end customers; and
- they take the risk on sales, defects etc.

Key considerations:

- do you want your distributor only to take payment on your behalf and handle orders (will there be a minimum?), or go further with responsibility for maintenance, help desk and installation for example?;
- specify your requirements for marketing and promoting your product (you don't want it sitting on a shelf somewhere);
- precisely define the fee structure (volume sales discounts for example) and agree detailed payment provisions;
- will you restrict your distributor from altering the software or combining it with another product?;
- make sure you have (and use) a right to access information (audit) on the distributor's compliance with its obligations to you;
- will you look to carve out territories to create a network of exclusive distributors?; and
- be aware that competition law may impact upon your freedom to place restrictions on your distributor.

### **VARs, OEMs and publishers**

**A Value Added Retailer** distributes your software but with one or more modifications or additions ("value add") such as:

- a new configuration;
- customisation;
- possible combination with other software; or
- an integration and/or support service.

For example, if your software program is designed to process medical claims, a VAR might package it with

other healthcare related applications, which may help differentiate your product and thereby increase sales.

**An OEM**, (Original Equipment Manufacturer), doesn't actually manufacture the equipment, but rather:

- acquires equipment such as desktops, servers and network gear from manufacturers; and
- combines it with software which is then sold as a "total package" to end users.

If for example your product works in the financial services industry, you may look to partner with an OEM in this field who can sell your product pre-loaded onto hardware destined for clients in this sector.

**A publisher**, which may itself be a developer, will typically package a product for distribution (either directly or through a further distributor/reseller) and may take on other routine tasks such as preparing user instruction manuals, product packaging, and providing training to end users. They are usually paid a royalty based on a percentage of the price of the units sold.

Key considerations:

- protecting your IP when it is combined with other products can be more difficult; and
- carving out responsibility for faults and fixes can get complicated, the developer will need to make sure it won't be paying to fix issues with code written by the VAR, OEM or other third parties.