

# IBM Software Licensed under the ICA - Backup Use Defined

According to the IBM Customer Agreement (ICA/IAP), the customer may use the program temporarily on another machine, if the Designated Machine is inoperable. The intent of this clause is to enable the Customer to continue to be operational if an emergency occurs. This applies to all programs licensed under these agreements. This is frequently referred to as backup use, disaster recovery, or abbreviated BRS when a backup and recovery service is involved. If the machine used for backup is located at another customer's site, that customer should be advised by the licensee about the ICA terms, and that the programs may be used only to backup the licensee's programs.

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 separate license for the backup copy is normally not required, no additional charge applies, and IBM does not need to be notified. In a "hot" backup situation, the customer needs to acquire another license. 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 on a machine as long as the program has not been started.  
There is no charge for this copy.
- warm - a copy of the program may reside for backup purposes 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.
- hot - a copy of the program may reside for backup purposes on a machine, is started and is doing work. However, this program must be ordered.  
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 there is a charge for each copy.

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 backup machine has more capacity than the Designated Machine.

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When an emergency occurs and the normally Designated Machine is inoperable, the ICA/IAP allows the customer to run his program temporarily on another machine.

This alternate operation of the program may continue for a reasonable length of time while the Designated 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. In no case may programs running in backup mode be used simultaneously on the Designated Machine.

To prepare for an emergency backup situation, customers may run periodic tests to determine whether the backup facility will adequately backup their systems. The assumption is that normal use of the program licenses is continuing on the Designated 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 approximately 2 to 3 days). In certain cases, (e.g., on-line 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 testing, IBM and the customer should review the reason and determine appropriate license charges, if any, with a minimum of one month of recurring charges.

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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).

Failure for a customer to allow IBM access to systems and data required to audit backup use, or to acquire required licenses will result in automatic billing by IBM of the backup licenses, per the terms of the IBM Customer Agreement (ICA).