

Copyright Issues Overview

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Date: January 24, 2002

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Introduction

This document is merely a brief introduction into U.S. copyright laws as they pertain to software, copyright infringement and related issues. It is not intended to be a guide into this area of law, nor should it be used to make decisions related to your intellectual property legal issues, nor used to draw legal conclusions. You should contact competent legal counsel for any assistance that you require in the complex area of intellectual property law.

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What are Copyrights ?

Copyrights are the rights granted by laws and treaties to owners of intellectual property to make and distribute copies of their intellectual property. This intellectual property can take many forms. Some of these forms include music, software, art, literature, audiovisual works, photographs, drawings, maps and so on.

Most countries around the world recognize the concept of intellectual property and have signed treaties promising to honor the intellectual property rights of individuals and companies in foreign countries. Many countries also have their own laws that pertain to this type of property. While certain countries have become rather infamous for their lax enforcement of obvious cases of infringement by their citizens, the general mood around the world is a tougher stance on enforcing existing laws and treaties, and stricter penalties for infringement.

In the United States, the government entity that handles the registration of intellectual property is the Copyright Office at the Library of Congress in Washington, D.C.

Typically, but not always, copyrighted material contains a copyright notice that tells you the material is copyrighted. The copyright notice used for visually perceptible copies of the property and/or on the media containing the property typically takes the following form:

© 2002 John Doe

Observe the three elements that typically appear in a copyright notice:

1. The word Copyright and/or the symbol ©
2. The year of first publication (in this example, 2002)
3. The name of the copyright owner (in this example, John Doe)

Software Copyrights

As previously mentioned, software is a form of intellectual property. Normally, when an end-user pays money to obtain software, they did not actually purchase the software itself. They merely purchased the right to use the software under specific conditions. The software company (or publisher) is still the owner of the software. Software companies typically distribute their software with a contract known as a software license that governs the end-user's use of the software, identifying their rights, the conditions of use, warranties that may exist, and so on. In many cases, you can read this license before you install the software itself on a computer. Sometimes the license appears when you start the process of installing the software. You are asked if you agree to the terms of the license. If you do not agree, the software setup program will terminate without installing the software. Alternatively, the license may be included with the software packaging. A copy of the license may also appear in a 'Read me' file that was installed on the computer with the software.

End-users are well advised to read and understand the contracts that they enter into when they install and use software. Remember, only a fool enters into a contract they didn't read. The part of the license agreement that software companies are especially keen on is the part that tells you how you may use the software, how many computers you can install it on, etc. This part of the license agreement is usually found near the beginning of the document and the rights it grants varies depending upon the nature of the software as well as the marketing strategy of the software company. Sometimes you must buy a separate license for each computer, and sometimes you buy a separate license for each user. Sometimes each user can install a second copy at home, but most times they can't. Sometimes software is licensed by the number of processors in a server. Licenses can even be granted for a 'site' or an entire company. Knowing your rights and responsibilities is important in order to avoid infringing on the copyrights of others.

Copyright Infringement

Copyright infringement occurs when an individual engages in activities that violate the rights of the copyright owner. In regard to software, this typically happens when software is installed and/or used on computers or by users in a manner that goes beyond the rights granted in the software license agreement. Copyright infringement also happens when copies of the software media are created in violation of the software license agreement. Copyrights can also be infringed when data, files, content or information are copied or used in a manner that violates the software license agreement. The preceding are some typical examples of how end-users may infringe upon the copyrights of others.

Software developers may also infringe by rewriting software that has already been written. A parallel can be drawn here with another form of intellectual property: literature. Assume that an author has written a murder mystery novel that included multiple suspects, a twisting and turning plot and a surprise ending. Other authors are free to create new murder mystery novels and include similar elements, as they are typical of this type of novel. However, if a second author takes the first novel and makes some changes to the setting, renames the characters, and adds another suspect, clearly the second author has not written a new novel but rather stolen the work of the first, infringing on his copyrights. You can say the second author's work doesn't pass the 'smell test'. Similarly, two software companies can write accounting programs that includes general ledger and payroll features, but one cannot simply rewrite the payroll module of their competitor.

Copyright infringement in the United States is a violation of federal law. Violating these laws exposes copyright infringers to both civil and criminal prosecution. The company they work for may even be liable.

Remedies for successful civil prosecution may include:

- Injunctions granted by courts to prevent further infringement
- Impounding of infringing copies and other articles used to produce these copies
- Actual damages and additional profits of infringers attributable to the infringement, or (at the copyright owners option)

Statutory damages up to \$30,000. If the court finds that the infringement was committed willfully, the award may be increased to \$150,000 per infringed work.

- Full costs and reasonable attorney's fees

Persons are also subject to criminal prosecution for willfully infringing on another's copyrights if either

1. it was done for the purpose of commercial advantage or private financial gain, or
2. during a 180 day period they reproduced or distributed copyrighted works with a total retail value of over \$1000

Penalties for successful criminal prosecution include fines up to \$250,000 and/or 5 years in jail.

Fraudulent removal of another's copyright notice or fraudulently placing copyright notices known to be false are also subject to criminal prosecution and fines.

Extent of Copyright Infringement

The Business Software Alliance (BSA) is an industry trade group that educates the public on intellectual property issues and work with software companies and governments to crack down on software piracy. According to the BSA, today, software piracy costs software companies worldwide about \$12 billion per year. That piracy rate varies by region, country, user industry and so on. The piracy rate for PC business software in 1994 was 49%. In 2000 it was 37%. By region the worst offender in 2000 was Eastern Europe at 63%; North America pirated the least at 25%. By country in 2000, Vietnam was the worst offender at 97%, followed by China at 94%. The U.S. was 24%.

The cost in the U.S. goes beyond the billions in revenue lost by software companies. Software theft also cost about 109,000 jobs, \$4.5 billion in lost wages and \$1 billion in lost tax revenue. A figure that cannot be calculated is the effect of 'missing software'. Software companies that lost revenue to theft may have otherwise written additional software, had the funds been available to do so. This software may have benefited others in terms of increased revenue, increased productivity, decreased costs, etc.

Most of this information is according to a Global Software Piracy Study published by the BSA. You can find this study and other useful information at the BSA web site: www.bsa.org.

Discouraging Copyright Infringement

There are four basic elements that can help in decreasing the incidence of copyright infringement:

1. **Legislation.** Tough laws with severe penalties go far to ‘keep the honest folks honest’. However, more work must be done to implement and enforce consistent laws and penalties, especially in the global arena. An international court system seems an appropriate solution.
2. **Education.** People must be made aware of the insidious nature of these crimes and the related risks. Besides the obvious risks of fines and even imprisonment, there are additional risks: possible loss of your job and finding employment after successful civil or criminal prosecution; loss of use of the software; possible exposure to viruses and Trojan horse programs on pirated media; no software warranties; missing documentation; no help desk assistance; ineligibility for upgrades.
3. **Implementation.** All companies should have formal rules and policies in place governing the acquisition and use of copyrighted materials. This should include an outline of the company’s posture on intellectual property, the procedures that must be followed to obtain and install software, methods to ensure compliance with software licenses, procedures to perform internal audits, the company’s penalties for individuals who infringe and put the company at risk (e.g. termination), when and where to use notices regarding the company’s own intellectual property, and so on.
4. **Litigation.** The first three elements target ‘preventable infringement’. However, there is always a group that is inherently evil and refuses to respect the property and rights of others. For them, copyright owners may have no other choice but to file suit and seek legal remedies.

The Future

As the use of broadband Internet connections becomes more widespread, you will see more software companies distributing their products directly to your computer, instead of via media such as CDs and DVDs. The driving factors will be a reduction in distribution costs as well as the desire to eliminate lost revenue due to theft. When the software is installed, you can be sure that the installation process will scan your disk for previous versions of the software, either to see if you are eligible for upgrade pricing, or determine if you were using a stolen copy of the software. Simply removing the software using an uninstall utility may not ensure that all signs indicating the prior existence of the software have been removed. Your best bet is to purchase and use only legitimate copies of software from software vendors and make sure you are in compliance with their license agreements.

Happy computing.