



Defending Your Organization from the Software Police

If anyone in your organization copies software, you can be fined and sent to prison. Couldn't happen to you? Don't bet on it!

BY JANET S. GREENLEE

Picture this. You're at your desk preparing for a meeting. Suddenly four people burst into your office. Two are armed U.S. marshals, and two are from the Software Publishers Association (SPA). Wielding a search warrant, the marshals command your workers to move away from their computers. Guns at the ready, the marshals stand guard while the SPA representatives examine all software installed on your organization's computers. If they find any unauthorized software, you could be fined \$250,000. Worse, as executive director, you could be found guilty of a felony and sentenced to five years in a federal prison.

Couldn't happen to you? Don't bet on it! In 1994 alone, the SPA took action against 447 organizations and received more than \$2.5 million in fines. Since 1988, more than \$14 million in fines have been paid.¹ Prison sentences have been rare, so far. However, in March 1995, a federal court sentenced the operator of a computer bulletin board to probation and home confinement, not for any unauthorized copying of software, but for allowing his bulletin board to be used to make such copies.²

No firm is too small for the SPA to notice. Most of the firms under investigation (some with nonprofit status) have less than 50 computers.³

Perhaps more important, don't think you can escape prosecution if a staff member copies software without your knowledge. You and your organization can be held liable even if you are totally unaware of the illegal actions of your staff!⁴

Most nonprofit personnel who copy software don't think of themselves as criminals. They don't realize they are jeopardizing their organizations and executive directors. Sometimes they don't even know that what they're doing is a crime. Even if they do, they have no idea of its seriousness.

The truth is, it is a serious crime. Penalties are severe, and enforcement is escalating. There are, however, ways you can mitigate the problem. First, let's look at what software piracy is and what the law says about it. Then we'll look at how you can protect yourself.

What Is Software Piracy?

Software piracy is the unauthorized copying or use of any computer program in any way other than what the software licensing agreement states. Piracy typically refers to the unauthorized use or duplication of copyrighted software by someone who hasn't been licensed to use the software.⁵

What Is the Law?

Computer programs are protected by copyright law. Under this law, any unauthorized duplication is unlawful. When you purchase a computer program, you do not "own" that program, but merely the right to "use" the software.⁶ The licensing agreement explains the terms of use. This agreement usually appears either on the computer screen the first time you access the program or is printed on the package holding the system disks. It typically includes a warning that opening the package or accessing the program signifies acceptance of the terms and conditions of the license.

A typical license permits the purchaser to install the program on one computer and to make only one back-up copy to use if the original is damaged. Any other copies are unautho-

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alized and violate both the license agreement and federal copyright law.

In 1992, an amendment to the Federal Software Copyright Law raised software piracy from a misdemeanor to a felony. The new amendment imposed fines up to \$250,000 and prison terms up to five years for the “unauthorized reproduction or distribution of 10 or more copies of software with a total retail value exceeding \$2,500.”⁷ In addition, civil penalties of up to \$100,000 or twice the revenue lost by the software company can be assessed for each illegal copy of software found on the premises.⁸

Software piracy is a huge problem. People who would never steal from a computer store somehow rationalize the illegal duplication of expensive software. In 1994, the SPA estimated that 49% of all business software in use was pirated. This means that for every legally purchased package, approximately one illegal copy exists. The SPA estimates that lost revenues from software piracy in 1994 alone exceeded \$8 billion.⁹

The software industry is responding to this problem through lobbying, education, and aggressive enforcement of the law. The SPA and the Business Software Alliance (BSA) represent most software vendors. With increasing determination, they are pursuing individuals and organizations, including nonprofits, suspected of pirating software.

What Happens if SPA Targets You?

SPA enforcement consists of four steps:

1. An Anonymous Tip. SPA investigation typically begins with an anonymous tip on SPA’s anti-piracy hotline (1-800-388-7478). Often, a disgruntled present or former employee makes the tip. (One of the first SPA raids began with a call from a temporary worker. She told SPA that the organization was using a copied template from a popular word processing package instead of the original template provided by the publisher.)¹⁰ SPA encourages such anonymous

EXHIBIT 1

SOFTWARE REGISTER EXAMPLE

Type of program (word processing, spreadsheet, etc.): Word processing
 Name and version of program: WordPerfect® for Windows 6.1
 Acquisition date: 6/15/96 Price: \$289.00
 Serial number: wpxx99999
 Location of system disks:
 K. Smith office, room 287w, bottom drawer in filing cabinet
 Location of license and back-up copy:
 K. Smith office, room 287w, bottom drawer in filing cabinet
 Location of program (directory): C:\WINDOWS\WPWIN
 Personal computer: Compaq Pentium 75
 Date purchased: 7/17/96
 Serial number: CQ1789S
 Location Rm. 176e
 Name and job title of authorized user:
 J. Jones, Human Resources Supervisor
 Signed and dated: J. Green., Software Manager, 8/10/95

EXHIBIT 2

SAMPLE SOFTWARE CODE OF ETHICS

Unauthorized duplication of copyrighted computer software violates the law and is against our organization’s standards of conduct. We disapprove of such copying and recognize the following principles as a basis for preventing its occurrence:

1. We will neither commit nor tolerate the making or using of unauthorized software copies under any circumstances.
2. We will provide legally-acquired software to meet all legitimate software needs in a timely fashion and in sufficient quantities for all our computers.
3. We will comply with all license or purchase terms regulating the use of any software we acquire or use.
4. We will enforce strong internal controls to prevent the making or using of unauthorized software copies, including effective measures to verify compliance with these standards and appropriate disciplinary actions for violation of these standards.

tips. In 1994, they received almost 30 tips a day.

2. Verification. The SPA verifies the tip by searching the registration records.¹¹ They check whether the targeted organization is using more soft-

ware copies than it has registered with the software company. If so, the investigation escalates.

3. Voluntary Audit. Next, the SPA will send you (the highest executive of the targeted organization) a letter. This



EXHIBIT 3

SUGGESTED MEMORANDUM TO STAFF

TO:
FROM:
SUBJECT:
DATE:

The purpose of this memo is to remind you of our policy concerning software duplication. Any duplication of licensed software, except for backup or archival purposes, is a violation of federal law. Each software program, such as Lotus 1-2-3 or WordPerfect®, that our organization licenses, is to be used on only one computer at a time. If your computer has a program loaded on its hard disk, then that particular program, which is serially numbered, should not be loaded on any other hard disk. ***This means that if you have 10 computers with WordPerfect® installed on each, then you should also have 10 sets of original documentation and 10 sets of system disks!***

All computers purchased by our organization are being supplied with newly licensed copies of (insert names of software programs) installed on them. (Insert name of employee) is responsible for ensuring that each program is properly registered with the software publisher.

Our organization will not tolerate any employee making unauthorized copies of software. Any employee found copying software other than for backup purposes is subject to termination. Any employee giving software to any outside third party, including clients, is also subject to termination. If you want to use software licensed by our organization at home, you must consult with (insert name of employee) before removing the system disks from the premises.

(Insert name of employee) will be visiting you over the next week to inventory hard disks and to make sure that original documentation and system disks exist for each copy of a software product loaded on a hard disk. Please begin to organize your documentation and system disks for (insert name of employee)'s review.

This policy may seem harsh, but unless we enforce a strict policy on software use, our organization will be exposed to serious legal liability that can include criminal penalties (including imprisonment).

If you have any questions, please do not hesitate to contact me.

will probably be your first indication that your organization is under investigation.

The letter will ask you to agree to a voluntary audit. If you do so, SPA employees will check all your organization's computers for pirated software. Special SPA software can reconstruct deleted programs (in case you erased pirated software after you received your letter). And, remember, since SPA officers are operating on an inside tip, they usually know where to look for the software. The burden is on you to prove that your software is legal.

The easiest way to prove legality is to register all your software with the publisher. Sometimes the SPA will accept original receipts, purchase orders, registration certificates, or original disks as proof of legitimate owner-

ship. If your paperwork is not well organized, however, you may have trouble proving your software's legality even if you did acquire it properly.¹²

If SPA officers find any illegal software, they will destroy it. You must then pay a fine equal to the software's retail cost. In addition, you must replace the destroyed copies by buying legitimate copies at retail cost. Thus, if you made 10 copies of WordPerfect® 6.1 (assuming a retail price of \$329.95), you'll have to pay at least \$6,599, not including sales tax.

You can choose not to comply with the voluntary audit. However, 95% of those contacted do comply voluntarily.¹³ There are several good reasons to do so. First, the findings of a voluntary audit are confidential, while nonvoluntary audits are highly publicized. Second,

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although fines may be substantial, the penalties for a nonvoluntary audit are even greater.

4. Nonvoluntary Audit. If you refuse to participate in the voluntary audit, or don't respond to the letter, the



EXHIBIT 4 SAMPLE STAFF AGREEMENT

Organization policy regarding the use of personal computer software:

1. Our organization licenses the use of computer software from a variety of outside companies. Our organization does not own this software or its related documentation and, unless authorized by the software developer, does not have the right to reproduce it.
2. With regard to local area networks or multiple machines, staff shall use the software only in accordance with the license agreement.
3. Any staff learning of any misuse of software or related documentation within the organization shall notify (insert as appropriate his or her manager, executive director, legal counsel).
4. According to federal law, persons involved in the illegal copying of software can be subject to civil damages and criminal penalties, including fines and imprisonment. Our organization does not condone the illegal duplication of software. All staff who make, acquire, or use unauthorized copies of computer software shall be disciplined as appropriate under the circumstances. Such discipline may include termination.

I am fully aware of the software use policies of the organization and agree to uphold those policies.

(Staff signature and date)

next step will probably be a nonvoluntary audit. This audit will occur without warning (as described at the beginning of this article). Your first inkling will probably come when SPA officers arrive at your office, flanked by armed U.S. marshals. Again, you'll have to prove that you own all software on all computers.

The SPA has been remarkably successful in litigating software piracy cases. It has won settlements against all but one of the organizations it has audited.¹⁴ It usually imposes both federal and civil penalties, which, as noted earlier, can be harsh.

Can You Be Liable for Your Staff's Piracy?

Yes. You can be held liable even if your staff copies software without your knowledge.

This situation is covered under the *respondent superior* doctrine, in which "a master is liable for a servant's torts committed within the scope of employment."¹⁵

You aren't liable, however, if employees' actions are contrary to your

instruction and policy. This means that if you create *and enforce* anti-piracy policies, you may mitigate your liability.¹⁶

How Can You Protect Yourself?

Five steps will help protect you, your staff, and your organization from the software police.¹⁷

1. Assign a Coordinator. Ask one staff member to serve as software coordinator. This person will develop policies dealing with all aspects of software, including piracy. Assigning a coordinator

is a good idea for two reasons: (1) All staff will know whom to contact with any software issues. (2) You will be sending a strong message about your organization's commitment to software copyright compliance.

2. Appoint a Purchaser. Designate one person to purchase all software. This person should keep a record of all software for which the organization has legal title. (This record is one item the SPA checks during a software audit.) Exhibit 1 shows one way you can keep such a record.¹⁸

3. Enact Formal Policies. Institute a formal software policy and code of ethics.¹⁹ Have all staff sign a software agreement when they are hired (and annually after that). Exhibits 2, 3, and 4 present a suggested code of ethics, software policy memo, and agreement form.

Keep your software policy in the forefront of people's minds. Post a notice on each employee's personal computer, reminding them daily of your organization's software policy, the law against piracy, and the consequences of noncompliance. (See Exhibit 5.)





EXHIBIT 5

SUGGESTED NOTICE TO BE POSTED ON EACH PERSONAL COMPUTER

If you need software, contact your supervisor. We use only original software. Unauthorized software copying is illegal. It also violates our organization policy. Making or using unauthorized software copies is asking for trouble. Don't jeopardize your career.

4. Enforce All Software Policies.

The courts have ruled that the mere existence of an anti-piracy policy does not protect the organization or its employees from prosecution.²⁰ You need to actively enforce your policy. Be sure you do the following:

- Have systems in place to uncover instances of software piracy.
- Have specified punishments for violations of your software policy.
- Conduct surprise inspections to check that all computer software is legitimate and accounted for in the software register.

5. Educate Staff. Educate staff about the importance of organization policy and software piracy laws. Any software policy that is enacted without educating staff will be ineffective.

Do Alternatives to Costly Software Exist?

Most nonprofits that copy software don't want to break the law. They simply feel they can't afford to pay for each software copy. It's true that business software can be expensive. However, less costly alternatives exist:

1. Site License. A site license authorizes you to load software onto multiple computers. The maximum allowable number is shown on the license. While site licenses can be expensive, they cost less than either purchasing individual programs or paying fines for violating the law.

2. Shareware. Shareware is software that you can legally copy. Permission to do so is explicitly shown in the documentation or on the computer screen. Usually the developer requests a small donation if you like the software. (Most requested donations are less than \$100; many are less than \$50.) If you pay the fee, you'll receive complete documentation and some upgrades.

You can find shareware on the Internet and World Wide Web. (See, for example, [www//cserve.com/](http://www.cserve.com/). This free on-line World Wide Web network has thousands of shareware programs available for downloading.) You can also find shareware on any of the commercial on-line services (such as CompuServe, America On Line, Prodigy).²¹

3. Public Domain. Public domain software has no copyright restrictions. You can copy and share it freely.²² The license will state that no copyright is sought.

If you can't afford to duplicate expensive software, try these alternatives. Or develop some innovative fundraising and networking ideas to raise the money you need. For example, get to know corporate leaders, and ask them to help you purchase software.²³ Watch for software grants and donations which are regularly made to nonprofits.²⁴

Whatever you do, remember the law. Otherwise, you may find the software police at your door—and end up paying a much higher price. ■

Footnotes

- ¹Software Publishers Association, "SPA To Target Internet, International Piracy in 1995," Press Release, January 11, 1995.
- ²Software Publishers Association, "Bulletin Board Operator is Sentenced," Press Release, March 9, 1995.
- ³See Didio in "References."
- ⁴See Cooper & Somerville in "References."
- ⁵Business Software Alliance, *Guide to Software Management*, 1994 (<http://www.bsa.org/bsa/found.html>), September 1995.
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- ⁸See Didio in "References."
- ⁹Software Publishers Association, "PC Software Industry Lost \$8.08 Billion to Pirates in 1994," Press Release, February 24, 1995.
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- ¹³See Didio in "References."
- ¹⁴"Preventing Software Piracy," *MacWorld*, September 1993, pp. 235–237.
- ¹⁵See Cooper & Somerville in "References."
- ¹⁶See Robinson & Reithel in "References."
- ¹⁷Much of the material in this section is adapted from *Guide to Software Management*, Business Software Alliance, 1994.
- ¹⁸Exhibits are adapted from *Guide to Software Management*, Business Software Alliance, 1994 (<http://www.bsa/docs/guide/sm.html>), September 1995.
- ¹⁹For more on creating a code of ethics and software policy, see Styles in "References."
- ²⁰See Robinson & Reithel and Wasch in "References."
- ²¹See Landskroner in "References."
- ²²See Lant in "References."
- ²³See Weisman in "References."
- ²⁴See Bierman in "References."

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