



LAWYERS AND TECHNOLOGY

By Wendy R. Leibowitz

Avast, Ye Legal Software Pirates! BSA Fires Broadside at Law Firm

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WHO CARES ABOUT pirated software? You can download many programs free off the Internet. Software arrives in the mail and is folded into computer magazines in such abundance that surplus diskettes are used as coasters. There are demo programs you can use for free for a few months before they become automatically disabled and shareware you can try for a short time before you must register and pay for it under an honor system (yeah, right). There is freeware and public domain software that can be legally copied. Then there is commercial software that is licensed under a "shrinkwrap" contract whose terms, printed in tiny type and enclosed in a shrinkwrapped package, are enforced by some courts but not others.

In short, there's a lot of software out there. It is easily copied and distributed over the Internet, or over a "sneaker net," whereby people copy a program for friends or co-workers and walk it over to them. Combating illegally copied--or pirated--software seems hopeless. Many offices, without asking many questions, would reward a computer staffer or consultant who provides software cheaply to the business.

Technological fixes, such as "locks" that prevent copying, are burdensome to legitimate users who need to ask permission to make authorized back-up copies. And locks can be broken by pirates. Still, the software industry is thriving.

But according to the Business Software Alliance, of Washington, D.C., an organization funded by software developers and publishers, piracy does cause damage, particularly to new companies. In 1996, the BSA estimates, the software industry lost \$2.7 billion to pirates in North America alone. In countries without strong copyright laws, such as Vietnam, Indonesia, China, Oman and Russia, between 90 percent and 99 percent of the software in use is pirated. "We call those 'one-disk' countries," says Robert Kruger, vice president of enforcement for BSA, because only one disk is purchased to serve the entire country. Piracy, then, undercuts sales a bit in those areas.

And so, for the past four years, Mr. Kruger, a former federal prosecutor in Washington, D.C., and a small staff aided on occasion by the FBI and the Department of Justice, have answered calls on 35 hotlines around the world to try to delete unlicensed software and capture the most egregious pirates.

Walking the plank most recently was the New Orleans law firm of Adams and Reese, which agreed to pay \$120,000 to the BSA's anti-piracy education and enforcement campaign, delete unlicensed software, purchase replacement copies and strengthen its software management policy. The amount of the fine was based roughly on the number of unlicensed software programs at the firm.

Like many BSA investigations, the audit of 150-attorney Adams and Reese began with a tip

from a disgruntled former employee seeking revenge. (In addition to curtailing piracy, the BSA hotline, which fields about 10,000 calls a year, is also a great tool for getting even!)

The firm, which cooperated fully with BSA, was aware of some software problems, says managing partner Eddy M. Quijano, especially after a temporary secretary in the Houston office infected all 400 computers in the firm's six offices with a virus. Still, the scale of the software audit was daunting; it took the nine-member technology services group several months. "You have to match the licenses in every program in every machine to the purchased license," says associate Jeffrey E. Richardson, who was involved with the inventory.

In addition to the inventory and fine, Adams and Reese's educational efforts were also painful. "People thought it was unreasonable of the firm to prevent them from using software at home [such as a personal calendar] that they use at work," says Mr. Richardson. "People asked, 'Why can't I download this program from the Internet?' but only information services staffers can load software now."

BSA says it has settled with about half a dozen law firms. Thanks to the cooperation (and ensuing publicity) of reputable firms such as Adams and Reese, the piracy climate is changing, says Eric Doney, a regular outside counsel to BSA and a partner in the Mill Valley, Calif., office of Oakland's Donahue, Gallagher, Woods & Wood.

Mr. Doney has been fighting piracy on behalf of his software clients for the past decade. "It's certainly frustrating," he says, especially given the 'Net's global distribution power, "but we think continuing publicity and education is having an impact." Established businesses don't want to use stolen goods, just as they wouldn't want their own products or services to be ripped off, he says.

Kaye Caldwell, president and policy director of the Silicon Valley Software Industry Coalition, adds a practical note: "Piracy adds to the costs of software--just remember that software must be priced to cover piracy costs."

Calls to the anti-piracy hotline come from whistleblowers and computer consultants as well as terminated employees, notes Jonathan Maltby, an anti-piracy specialist who handles about 30 calls a day: "Sometimes people don't believe in the practice; they call to get peace of mind." And software developers don't like to see others' work stolen, he adds.

A special chapter in piracy history was written recently by those copying Macintosh software. Pirated copies of a new version of a program appeared on many servers, free for the taking.

But then, according to an anonymous post at (www.macintosh.com), "As though every one was possessed, the files disappeared [sic]. In place was a message about supporting Apple in its time of need." The costs of the theft to the popular company sparked an online debate among would-be pirates, some of whom did not want to pay for the new version and others who replied that the cheapskates should continue using the old version. "As I looked and looked, I found not one copy of [the operating system] available anywhere," marvels the observer. "It seems that Mac pirates and other customers seem to be egar [sic] to fork out the wedge [\$] to get the OS [operating system] legitimately.... This is alien behavior to say the least." So maybe fighting piracy isn't a hopeless cause after all.

Hyperlinks

The Business Software Alliance's home page, at (www.bsa.org), contains a model software policy. □