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### Software Usage

#### **Can I install work software at home if instructed to do so by my supervisor?**

A good rule of thumb is to install one software package for each computer, unless the terms of the license agreement allow for multiple use of the program. Some software publishers' licenses do allow for "remote" or "home" use of their software. If you travel or telecommute, you may be permitted to copy your software onto a second machine for use when you are not at your office computer. Check the license carefully to see if you are allowed to do this.

#### **Is it legal to install an original equipment manufacturer (OEM) version of software on a computer other than the one on which the software came?**

OEM software is only distributed when sold with specified accompanying hardware. When these programs are copied and/or sold separately from the hardware, it is a violation of the license with the software publisher, and therefore illegal.

#### **Can I rent a piece of software from a store?**

No. U.S. Copyright Law prohibits the rental, leasing, or lending of software without the express permission of the software publisher.

#### **Can I purchase a single licensed copy of a piece of software and load it onto several machines?**

No. This is known as "softlifting," and is contrary to the terms of a license agreement. This

prohibition includes sharing with friends and co-workers and installing software on home/laptop computers if not allowed by the license.

### **Can I give or sell a "backup copy" of a licensed program to other people?**

No. A "backup copy" can be used for "archival purposes only." This copy cannot be sold or distributed to another party without the consent of the copyright owner.

### **Can I legally copy my friend's software?**

No. Software is protected by federal copyright law, which says that you can't make additional copies of software without the permission of the software publisher.

### **What is counterfeit software? How can I tell if it's fake?**

Counterfeit software is hard-copy' software that has been reproduced by someone other than an authorized distributor. It may look just like the 'real' thing, but often is pretty obviously not. If you are offered extremely cheap software at a 'computer show and sale', in another country or at a flea market, look for some of the warning signals below.

Here are some warning signs that you might be buying or receiving pirated products:

- The software lacks proper documentation.
- The manual is photocopied or missing.
- The software does not look authentic. For example, the software, product packaging or accompanying materials are of inferior quality or include hand written labels.
- The Serial #/CD Key is printed on the CD, sleeve, or jewel case.
- One CD contains multiple applications (especially if they are from different companies)
- The price of the software is far below retail price.

### **Who benefits from copyright law?**

By protecting the investment of computer software companies in software development, the copyright law promotes broad public availability of new, creative and innovative products. These companies devote large portions of their earnings to the creation of new software products and they deserve a fair return on their investment. The creative teams who develop the software -- programmers, writers, graphic artists and others -- also deserve fair compensation for their efforts. Without the protection given by our copyright laws, they would be unable to produce the valuable programs that have become so important to our daily lives: educational software that

teaches us much needed skills; business software that allows us to save time, effort and money; and entertainment and personal productivity software that enhances leisure time.

### **What do I get out of purchasing my own software?**

When you purchase authorized copies of software programs, you receive user guides and tutorials, quick reference cards, the opportunity to purchase upgrades, and technical support from the software publishers. For most software programs, you can read about user benefits in the registration brochure or upgrade flyer in the product box.

### **What are the risks of buying or using pirated software?**

Buying and using pirated software is risky for corporate and individual users. Aside from the legal consequences of using pirated software, your organization forfeits some practical benefits as well. Those who use pirate software:

- Increase the chances that the software will not function correctly or will fail completely;
- Forfeit access to customer support, upgrades, technical documentation, training, and bug fixes;
- Have no warranty to protect themselves;
- Increase their risk of exposure to a debilitating virus that can destroy valuable data;
- May find that the software is actually an outdated version, a beta (test) version, or a nonfunctioning copy;
- Are subject to significant fines for copyright infringement; and
- Risk potential public and private embarrassment, and in the case of a organization, negative publicity that could cause irreparable harm to the business.

The use of pirated software also drives up the costs for legitimate users - which gives legitimate users all the more reason to help SIIA fight piracy by reporting to us those companies that are not "playing by the rules."

### **What exactly does the law say about copying software?**

The law says that anyone who purchases a copy of software has the right to load that copy onto a single computer and to make another copy "for archival purposes only" or, in limited circumstances, for "purposes only of maintenance or repair." It is illegal to use that software on more than one computer or to make or distribute copies of that software for any other purpose unless specific permission has been obtained from the software publisher. If you pirate software, you may face not only a civil suit for damages and other relief, but criminal liability as well, including fines and jail terms.

**At my company, we pass disks around all the time. We all assume that this must be okay since it was the company that purchased the software in the first place.**

Many employees don't realize that corporations are bound by the copyright laws, just like everyone else. Such conduct exposes the company (and possibly the persons involved) to liability for copyright infringement. As a result, more and more corporations concerned about their liability have written software usage policies. Employees may face disciplinary action if they make extra copies of the company's software for use at home or on additional computers within the office. A good rule to remember is that there must be one authorized copy of a software product for every computer upon which it is run.

**What should I do if become aware of a company that does not comply with the copyright law or its software licenses?**

Cases of software piracy, or noncompliance with software licenses, can be reported on the Internet at <http://www.siia.net/piracy/report.asp> or by calling the Anti-Piracy Hotline: (800) 388-7478.

**Is there a 24-hour rule under the copyright law that allows a user to download a program and use it for 24 hours to determine if they want to continue using it - and then after the 24-hour period they have to delete it or buy it?**

No. The 24-hour rule is an urban legend created and circulated to justify violations of copyright law on the Internet. Under copyright law, "[a]nyone who violates any of the exclusive rights of the copyright owner [reproduction, adaptation, distribution to the public, public performance, public display, rental for commercial advantage or importation] is an infringer of the copyright or the right of the author..." Section 501(a) of the Copyright Act. Infringement may occur by downloading software, uploading software, making software available for download, and transmitting software files. Whenever the distribution of a computer program occurs without the consent of the software publisher, it is a direct infringement of the copyright law. The unauthorized reproduction or distribution of a program, even for only 24 hours, is illegal. The amount of time is not an exempting factor.

**Does copy law allow the free use of Abandonware -- software that a copyright holder has ceased distributing or supporting for more then five years?**

No. Abandonware is an urban legends created and circulated to justify violations of copyright law on the Internet. Section 302 of the copyright law specifies the duration of copyrights. For works created after 1978, the copyright lasts for the life of the author plus seventy years, or, in the case of anonymous works, pseudonymous works, and works made for hire, the copyright endures for a term of ninety-five years from the year of its first publication, or a term of one hundred twenty years from the year of its creation, whichever expires first. 17 USC Section

302(c). The copyright law does not impose an obligation on the part of the copyright owner to market the work or otherwise make it available to the public for any period of time. Thus, the notion of the abandonment of a copyright due to a lack of distribution, technical support, or even the copyright holder's going out of business, is false.

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## Penalties for Software Piracy

### What are the penalties for pirating software?

The Copyright Act allows a copyright owner to recover monetary damages measured either by: (1) actual damages plus any additional profits of the infringer attributable to the infringement, or (2) statutory damages, of up to \$150,000 for each copyrighted work infringed.

The copyright owner also has the right to permanently enjoin an infringer from engaging in further infringing activities and may be awarded costs and attorneys' fees. The law also permits destruction or other reasonable disposition of all infringing copies and devices by which infringing copies have been made or used in violation of the copyright owner's exclusive rights. In cases of willful infringement, criminal penalties may also be assessed against the infringer.

### What are the penalties for having more software programs loaded onto company computers than the company has licenses?

The penalties for under-licensing are the same as those for software piracy. Under federal copyright law the company may be liable for up to \$150,000 for each software program infringed. The law also permits the software publisher to recover court costs and attorneys' fees it spends to sue the company and to destroy the all illegal software found at the companies. In cases of willful piracy, criminal penalties may also be assessed against the company.

### Are pirated software and other forms of copyright violation protected by the First Amendment?

The First Amendment is not a defense for committing copyright infringement. *Harper & Row Pub., Inc. v. Nation Enterprises*. [471 U.S. 539, 105 S.Ct. 2218 (1985)] Conversely, copyright laws are not restrictions on free speech, but instead provide protection to speech and expression. This protection seeks to promote creativity and the wide dissemination of ideas. The unlawful reproduction and distribution of copyrighted material is not protected by the First Amendment and is considered copyright infringement under Federal law. In addition, "inducing, causing or materially contributing to" the commission of a direct infringement may constitute contributory infringement {definition: selling a component of a patented invention, knowing that the component was especially made or adapted for use in the infringement of the patent and

that it is not a staple article or commodity of commerce suitable for substantial non-infringing use is contributory infringement. 35 U.S.C.} under Federal law. Information or code posted on a web site to promote a direct infringement may also constitute contributory infringement and is not protected by the First Amendment.

### **If I was instructed by my employer to install illegal software onto company computers, who could be held liable?**

Under "vicarious liability" {definition: When one person is liable for the negligent actions of another person, even though the first person was not directly responsible for the injury. For instance, a parent sometimes can be vicariously liable for the harmful acts of a child and an employer sometimes can be vicariously liable for the acts of a worker. } stipulations of the US Copyright Act, an employer is liable for acts committed by its employees when those acts are within the scope of their employment duties. Another theory of liability is the doctrine of contributory copyright infringement, whereby a party who does not do an infringing act but who aids or encourages it is liable for the infringement. If you were instructed by your employer to install software on your company's computer(s) in violation of -- or in excess of -- the software licenses, you may want to inform your employer of their obligations under the copyright law. If your employer is not responsive or you choose not to inform your employer of the violation, you should report the violation to SIIA at <http://www.siia.net/piracy/report.asp> or by calling the Anti-Piracy Hotline: (800) 388-7478.

### **What are the maximum civil penalties for copyright infringement?**

In the United States, the violator is liable for damages suffered by the copyright owner, plus any of the infringer's profits that are attributable to the copying, or statutory damages of up to \$150,000 for each work harmed.

### **What are the maximum criminal penalties for copyright infringement?**

In the US, the infringer could be fined up to \$250,000 and face a jail term of up to five years. Do people actually go to jail for this? Yes, they do.

### **Is ignorance of the fact that your acts are illegal a defense?**

Copyright law does not require the person committing the violation, or responsible for the violation, be aware that their actions are in violation of law. The absence of knowledge -- or even intent -- does not excuse the violation and is not a defense in a copyright infringement law suit.

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### Becoming Software Compliant

#### **Does SIIA provide any programs to help organizations manage their software?**

Yes, SIIA offers a program called the Certified Software Manager (CSM) seminar. The CSM Seminar addresses the specific needs of software managers, technical support specialists, purchasing agents and value-added resellers who must ensure their organizations are software compliant. Through the [CSM seminar](#), participants learn how to identify the components of an effective software management plan; understand complex software license agreements; become a savvy information technology buyer; negotiate more favorable software license agreements by matching licensed inventory to user needs; untangle the details of the self audit process and prepare to earn the widely recognized CSM designation.

#### **Does SIIA offer educational materials to help businesses and schools understand copyright?**

SIIA offers a number of educational materials designed to help organizations comply with the Federal Copyright Law. These materials include:

- "It's Just Not Worth the Risk" video. This 12-minute video, available for \$20, has helped over 20,000 organizations dramatize to their employees the implications and consequences of software piracy.
- ["Don't Copy that Floppy"](#) video. This 9 minute rap video, available for \$20, is designed to educate middle-school students on the ethical use of software.
- ["A Shared Set of Values"](#) is an upbeat video, produced jointly by SIIA and the American Association of Publishers, in which college students, college faculty and publishers of all types of media discuss the legal and ethical implications of copying other people's works. \$20.
- ["Software Use and the Law"](#) This free PDF brochure detailing the copyright law and how software can be used by educational institutions, corporations and individuals.
- [Posters](#). SIIA publishes several posters to help emphasize the message that unauthorized copying of software is illegal.

To order any of these materials, see the [SIIA Resource eStore](#), or call 202-289-7442.

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### Reporting Software Piracy to SIIA

#### How can I report piracy to SIIA?

SIIA pursues three types of software piracy: corporate end-user piracy, Internet piracy and reseller piracy. Each of these requires a different reporting process.

The [Corporate End-User Piracy Report Form](#) should be used if you want to report the use of unlicensed software within a company or other organization. SIIA offers rewards up to \$1 million to individuals who report verifiable corporate end-user piracy cases to our Anti-Piracy team. For more information about the Reward Program, [click here](#).

The [Internet Piracy Report Form](#) should be used if you want to report software being illegally offered on a website, newsgroup, auction site, P2P network, FTP site, IRC, bulletin board service (BBS) or elsewhere on the Internet.

The [Reseller Piracy Report Form](#) should be used if you want to report the sale of pirate software by a reseller to your company.

You can also report any of these types of piracy by calling our Anti-Piracy Hotline at (800) 388-7478.

#### Can I use the Corporate Software Piracy Intake Form to report an organization that is not a corporation?

Yes. The form can be used to report organizations of any kind. The form should be used to report the use of pirate software within a company, a school, a trade association, or any other kind of organization.

#### What should I do if become aware of a company that is cheating on copyright law or its software licenses?

Cases of software piracy or noncompliance with software licenses can be reported on the Internet at <http://www.sii.net/piracy/report.asp> or by calling the Anti-Piracy Hotline: (800) 388-7478. The Hotline is normally staffed from 9:00 a.m. to 5:30 p.m. Eastern time, Monday



through Friday. If you call and get a voice mail message, please leave a detailed message explaining the type of piracy you are reporting and a telephone number and e-mail address where we can reach you. You may receive a follow-up call or e-mail if we need additional information. If we do so, it will be done in a discreet way, so as not to reveal the nature of your contact with SIIA.

**My supervisor has asked me to install software in violation of our company's license agreements and I simply don't feel right about it. What should I do?**

If your company is engaging in software piracy, the right thing to do is to report the piracy to SIIA. You may want to inform your supervisor of their obligations under the copyright law and send them to the SIIA website for more information. If your employer ignores you, or you choose not to inform your employer of the violation, you should report the violation to SIIA at <http://www.siiia.net/piracy/report.asp>

or by calling the Anti-Piracy Hotline: (800) 388-7478. SIIA's goal is to ensure compliance with federal copyright law and software licenses. To achieve this objective we pursue organizations who engage in software piracy or under-licensing and educate organizations about the importance of being software compliant.

**If I have installed pirated software for (or at the direction of) my employer, will SIIA sue ME for copyright infringement?**

No. SIIA does not pursue employees who install illegal software at the direction of their supervisor or company management. Nor would SIIA sue any individual who reports a case of software piracy to SIIA for copyright infringement.

**Why do you need so much information on the reporting form?**

We need this information so our investigators can determine the accuracy of the report you are filing. We urge you to complete the form to the best of your ability. You must complete all the asterisk (\*) marked fields. The form will not be accepted without this information.

**What does SIIA do with the report I provide?**

SIIA processes all piracy reports received. We receive about 120-150 reports a month, but each report is reviewed for accuracy, reliability, completeness, and timeliness. Our approach is very conservative -- we will only pursue a case where we feel very confident that we have reliable and extensive information that the target organization is pirating software. As a result, of the 120-150 reports we receive a month, we only pursue about 25-30 of them. In short, if a company is contacted by us about software piracy, that company should know we have some very reliable and credible information demonstrating piracy.

Once we decide to pursue a case, SIIA (or its outside counsel) contacts the president or other high-ranking officer at the company via letter and phone to request that the company voluntarily audit its workstations for software. More often than not, the company conducts an audit. Then, the company provides SIIA with a copy of the audit results that show the names and number of software programs loaded onto its workstations. The company will also provide SIIA with documentation to try and prove that it has sufficient licenses for the software. One of three things happen then:

- If unauthorized software is found, the company must license enough copies of the software, pay a fine equal to three times the cost (MSRP) of the software and adopt and implement company-wide software compliance policies.
- If no unauthorized software is found in this audit process, the case is closed.
- If the company refuses to conduct an audit, SIIA may sue the company for copyright infringement on behalf of its members.
- Increase the chances that the software will not function correctly or will fail completely;
- Lose access to customer support, upgrades, technical documentation, training, and bug fixes;
- Have no warranty;
- Increase their risk of exposure to a virus that can destroy valuable data - or their entire system;
- May find that the software is actually an outdated version, a beta (test) version, or a nonfunctioning copy;
- Are subject to significant fines for copyright infringement; and
- Risk potential public and private embarrassment, and in the case of a organization, negative publicity that could cause irreparable harm to the business.
- If they have any type of disclaimer about the legality of their software, it isn't legal.
- The software is labeled as OEM or backup software. Not only is it illegal, but you will not be given the same level of tech support.
- Pay attention to the location from which they ship the software. If it comes from Eastern Europe, China or other locations that have high piracy rates, it may be suspect.
- You are warned not to register the software.
- The software is being sold as Academic Version or "Not for Resale."
- If they offer the software in a download format as opposed to a physical disk shipped to your door then there is a good chance that the software is pirated. While many companies are using the direct download method to reshape the methods of distribution, they very rarely allow third parties to distribute in this fashion.

### **If I report piracy to SIIA, will you tell my employer?**

No. SIIA has a long-standing policy of protecting the confidentiality of those who report to us. We will not reveal the name, or any identifying information, about the reporting source unless the identity is requested by a law enforcement authority or court subpoena. SIIA is required by

law to disclose the identity then. We have never had to reveal the identity of a source that wishes to be anonymous. Therefore, we strongly encourage you to give us your name and contact information in case a question comes up during the course of our investigation.

### **Why do you ask for so much information about me if you promise to keep my identity anonymous?**

We need this information so our investigators can contact you for additional information if necessary. This information also helps us determine the accuracy and veracity of the report you are filing. We urge you to complete the form to the best of your ability. If you are completing a report form online, you must complete all the asterisk (\*) marked fields. The form will not be accepted without this information.

### **If I make a piracy report to SIIA, can I get a reward?**

You may be eligible for a reward for reporting piracy to SIIA if you meet the eligibility requirements. The minimum settlement amount eligible for a reward is \$10,000. The eligibility requirements can be found at <http://www.sii.net/piracy/report/tos.asp>. The dollar amount of the reward will vary depending on how much the case is settled for, but will be consistent with the guidelines below.

#### **SIIA Piracy Reward Rates**

| Settlement Paid           | Potential Reward Amount |
|---------------------------|-------------------------|
| \$10,000-\$100,000        | up to \$5,000           |
| \$100,001-\$500,000       | \$10,000                |
| \$500,001-\$1 million     | \$50,000                |
| \$1,000,001-\$2 million   | \$100,000               |
| \$2,000,001-\$5 million   | \$250,000               |
| \$5,000,001-\$10 million  | \$500,000               |
| \$10,000,001-\$20 million | \$750,000               |
| Over \$20 million         | \$1,000,000             |

### **How long does it take SIIA to investigate a company that has been reported?**

It depends. The length of an investigation could vary greatly depending upon the individual circumstances of the case and the level of cooperation from the company we are investigating. Generally, cases may be pending for nine months to a year.

### **Can I get a status report on how the case is progressing?**

SIIA does not update or report the status of cases to sources because we have hundreds of active cases at any given time. If we require further information in a case, an SIIA staff member will contact you. However, if you have previously made a report to SIIA and become aware of any additional information in the case that might be helpful, please contact us immediately at (800) 388-7478.

### **Can I receive a reward for reporting Internet or Reseller piracy?**

No. SIIA's Reward Program only applies to cases of corporate end-user piracy.

### **I have reached the third level in the game Doom/Quake and cannot get to the next level. What can I do?**

SIIA has no connection to the software publisher that produces this game and cannot assist you with questions on videogames or installing software. We suggest doing an Internet search in order to locate the publisher of the software and obtain technical support, or a game aficionados group for play coaching.

### **I would like to report piracy of video games, should I report this to SIIA?**

Please report piracy of video games to the Entertainment Software Association. Their website is: <http://www.theesa.com/piracy.html>.

### **What is the difference between SIIA and SPA?**

SPA and SIIA are the same organization. The Software & Information Industry Association (SIIA) was formed by the merger of the Software Publishers Association (SPA) and the Information Industry Association (IIA) in 1999. Many people still know us as SPA, so we have kept the name for SIIA's anti-piracy activities. As a result, you will see both names used on the Anti-piracy section of our website.

SIIA and its predecessor organization, the Software Publishers Association (SPA), have the longest-running software anti-piracy program in existence. Started in the mid-1980s, SIIA's Corporate Anti-Piracy program identifies, investigates, and resolves software piracy cases on behalf of our members. As Internet-based piracy has emerged, SIIA again broke new ground and now has an extensive program for tackling software pirates operating over the Internet, ensuring that SIIA members receive the maximum protection possible.

### **Purchasing Software Over the Internet**

#### **Do copyright laws apply on the Internet?**

Yes. The copyright laws apply on the Internet just as they apply to more traditional media. A person who downloads, uploads, distributes, transmits or otherwise copies or distributes software through the Internet without the express authority of the copyright owner is liable for copyright infringement. Penalties can be as high as \$150,000 for each software title infringed. In cases of willful violation, criminal penalties may also be assessed.

#### **Is pirating illegal even if the software is being given away for free?**

The unauthorized copying of software is illegal, regardless of whether it is done for sale, for free distribution or for the copier's own use. Moreover, those who copy are liable for the copyright infringement whether or not they knew they had violated federal law. Penalties include liability for damages suffered by the copyright owner, plus any profits from the copying or statutory damages of up to \$150,000 for each work infringed.

#### **Do the same rules apply to bulletin boards and user groups? I always thought that the reason they got together was to share software.**

Bulletin boards and user groups are bound by the copyright law, just as individuals and corporations are. When they offer shareware or public domain software, sharing is a perfectly acceptable practice. Similarly, some software companies offer bulletin boards and user groups special demonstration versions of their products, which in some instances may be copied. In any event, it is the responsibility of the bulletin board operator or user group to respect copyright law and to ensure that it is not used as a vehicle for unauthorized copying or distribution.

#### **What are the risks of buying pirated software?**

Buying and using pirated software is risky for users. Aside from the legal consequences of using pirated software, you forfeit some practical benefits as well. Those who use pirate software:

The use of pirated software also drives up the costs for legitimate users - which gives legitimate users all the more reason to help SIIA fight piracy by reporting to us those companies that are not "playing by the rules."

### **What do I get out of purchasing legal software?**

When you purchase authorized copies of software programs, you receive user guides and tutorials, quick reference cards, the opportunity to purchase upgrades, and technical support from the software publishers. For most software programs, you can read about user benefits in the registration brochure or upgrade flyer in the product box.

### **I have found a website where I can buy software at a cost much lower than at the store, is this legit?**

If it looks too good to be true, then it probably is. There are many sites that sell OEM software or backup copies. You should avoid these sites. Not only are they probably dealing in counterfeit software, but they may even rip-off the credit card that you use. When shopping for software, it is possible to find good deals while still getting legal software. Here are a few pointers to tell if the site is not selling legal copies:

- If they have any type of disclaimer about the legality of their software, it isn't legal.
- The software is labeled as OEM or backup software. Not only is it illegal, but you will not be given the same level of tech support.
- Pay attention to the location from which they ship the software. If it comes from Eastern Europe, China or other locations that have high piracy rates, it may be suspect.
- You are warned not to register the software.
- The software is being sold as Academic Version or "Not for Resale."
- If they offer the software in a download format as opposed to a physical disk shipped to your door then there is a good chance that the software is pirated. While many companies are using the direct download method to reshape the methods of distribution, they very rarely allow third parties to distribute in this fashion.

### **Is it okay for me to download a copy of a program for evaluation purposes if I promise to not use it for commercial purposes and to destroy it in a set time period?**

No. While some applications have evaluation copies, it is always a good idea to get them at the individual companies' websites. Many times, companies give purchase discounts to people who register to use their evaluation copies.