



Mitigating your organization's exposure to Software Piracy with SofTrack

1.0 Executive Summary

Complacent management of computer software licenses could cost your organization[⊕] thousands or even millions of dollars[§]. Overuse of computer software licenses, also known as software piracy, occurs when your organization installs and/or uses more copies of computer software than you have purchased a right to. Will your organization be the next to pay fines for software piracy? How can you defend your organization from unnecessary fines, litigation and possible jail time? This executive brief by Integrity Software, Inc. will provide you with the answers you need to mitigate your organization's exposure to software piracy.

1.1 Background

- Did you know your organization could have its application license use audited at any time?
- Did you know your organization could be found liable under copyright law for actions of its employees, even if your organization's management is unaware of the violations?
- Did you know your organization could be heavily fined under civil and criminal law for software piracy? If found guilty under criminal code, punishment may include jail time of up to 5 years?
- Did you know that *anyone* can report suspected software piracy within your organization? Anyone includes disgruntled current or previous employees, contractors, etc.

[⊕] Corporation, Educational Institution, Non-Profit, Government Agency or other entity

[§] <http://global.bsa.org/usa/press/newsreleases/2003-08-05.1745.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1746.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1747.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1748.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1750.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1751.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1752.phtml>
<http://global.bsa.org/usa/press/newsreleases/2003-08-05.1753.phtml>
<http://sanjose.bizjournals.com/sanjose/stories/2003/03/17/daily48.html>

This means you and your organization must be prepared for an audit at any time! After the request of an audit is *too late* to prepare.

An audit of your organization's application use can be demanded by two different, powerful entities. The first is the application vendor – several of which aggressively prosecute license violations. The second is the Business Software Alliance or BSA – an organization active in more than 60 countries around the world.

1.2 Application Vendor's right to audit

Every Application your organization purchases includes an End-User License Agreement (EULA). And nearly every EULA includes one of the following Audit clauses or similar:

Comprehensive Audit clause example:

X.Y Audit Right. Licensee shall maintain true, complete, and correct copies of books and records reflecting the location and use of each copy of the Software in Licensee's possession or control, and the license and maintenance fees paid and/or payable hereunder for a period of a minimum of three (3) years. On at least twenty (20) days prior written notice to Licensee, but no more frequently than once in any twelve (12) month period, Licensor shall be entitled to audit Licensee's use of the Software pursuant to this Agreement. Such audit shall be conducted at Licensor's expense by a third party of Licensor's choosing, which third party shall be entitled to enter onto Licensee's premises and, for the sole purpose of confirming compliance with the terms of this Agreement, may: (i) inspect Licensee's books and/or records pertaining to the use of the Software and the payment of license fees payable hereunder; (ii) inspect and review the computer(s) which Licensee has installed and/or uses the Software; and (iii) inspect and review Licensee's network and/or computer system on which the Software could be installed or stored.

Simple Audit clause example:

X. AUDIT. Licensor may, at any time, either request a signed certification by you verifying that the SOFTWARE is being used in accordance with the terms of this Agreement and/or audit your use of the SOFTWARE to ensure compliance with the terms and conditions of this Agreement.

Example clause that does not use the word "Audit":

X. Compliance with Licenses. If you are a business or organization, you agree that upon request from Licensor or Licensor's authorized representative, you will within thirty (30) days fully document and certify that use of any and all Licensed Software at the time of the request is in conformity with your valid licenses from Licensor.

These audit privileges have serious implications for your organization.

You must respond when contacted by one of the Application Vendors providing your organization with licensed software that includes an Audit clause in its EULA. In our review, the average vendor provides the licensee (that is, your organization) an average of 30 days to respond. And, in cases where the vendor does not specifically include an audit provision in its EULA you can *still be compelled to perform an audit* to prove your organization is complying with the vendor's rights provided by U.S. copyright law.

More important than a timely response is proof that your organization *was in compliance at the time of the audit request*. **This means you and your organization must be prepared for an audit at any time! After the request of an audit is *too late* to prepare.**

Most organizations have between 5 and 150 *different* Application Vendors providing licensed software, each with its own EULA. Many of which will include the right to audit your use of their software at any time.

While it is true that some Application Vendors provide an internal licensing or metering mechanism ("self meter"), for example, Autodesk[®], most do not. And even those that do can have their internal licensing mechanisms compromised so that illegitimate software use results.

If your organization negotiated the EULA's Audit clause for an application it purchased, the negotiated Audit clause will likely not result in the removal of the vendor's audit privilege but simply set the boundaries for its occurrence and response times. The negotiation may include a resolution period that can be used by your organization to resolve license compliance violations without incurring financial penalties. Such "application audit proofing" only protects your organization from financial penalties for non-compliance but does not address the issue of overbuying software nor does it address the issue of unauthorized application installation.

1.3 Business Software Alliance's right to audit

The directive of the Business Software Alliance (BSA) is to "promote a safe and legal digital world". One of its primary activities is enforcing the copyrights of its membership. The BSA enforces copyrights of its membership for organizations found to be in violation of its software license agreements. Such violations are labeled as software piracy.

The term "software piracy" as defined by the BSA⁺ is unauthorized copying, distributing or downloading of copyrighted software, or simply the possession of unlicensed software. This includes software that is merely installed on a computer whether or not it is actually used. It also includes *overuse* of software that is centrally installed on a network server.

According to the BSA the three most common forms of software piracy are:

1. End-user copying: Organizations installing or using software on more computers than they are licensed to support.
2. Distribution: Selling or distributing illegally copied software, including counterfeit products.
3. Downloading: Marking unauthorized copies from the Internet.

BSA membership includes several prominent Application Vendors. Membership includes Adobe, Autodesk, Macromedia, Microsoft, Network Associates and Symantec.

The BSA's anti-piracy operations include prosecution of criminal software theft such as those who profit from the illegal reproduction and sale of pirated software. Typically, this type of software theft is not the same as the software piracy that occurs within organizations.

The BSA prosecutes many organizations each year for software piracy. It offers telephone hotlines around the world for **anyone** to report suspected incidents of software piracy. This means disgruntled employees or former employees, contractors and any scrupulous or unscrupulous person so inclined to phone a "tip" to the hotline. Recent investigations and prosecutions by the BSA[§] have resulted in an average settlement of more than \$80,000 per company. In addition to the monetary loss these fines impose the process of being audited can literally shutdown your company as federal agents seize your computers for inspection!

If your organization is in possession of unlicensed software, even if your organization's management is unaware of the violations, your organization can be prosecuted under civil and criminal law.

⁺ http://global.bsa.org/usa/policyres/admin/Software_Piracy_Fact_Sheet.pdf

The BSA also engages in public exposure of organizations guilty of software piracy. This exposure is designed to embarrass the convicted organization[#].

1.4 Software Piracy: Civil and Criminal penalties

Software piracy can result in your organization being prosecuted under both civil and criminal law. The BSA, on behalf of the Application Vendor, or the Application Vendor itself can prosecute software piracy under copyright law[△]. As the copyright holder, the Application Vendor can request the court to stop your organization from using its software and can also request monetary damages. Damages can include both actual damages due to unlicensed use of its software, profits attributable to use of said unlicensed software and statutory damages of up to \$150,000 for each software application copied. The BSA continually seeks to protect the interests of its membership. Your organization can also be criminally prosecuted by the United States Government for copyright infringement, which can result in fines of over \$250,000 and/or a jail sentence of up to 5 years. If your organization is prosecuted in the United Kingdom, recent changes in the law[♦] can result in jail sentences of up to 10 years! When an organization is criminally prosecuted, it is the company directors who face personal legal action.

2.1 Protect your organization from software piracy with SofTrack

SofTrack can help you manage and reduce the daunting risks of unlicensed software installation and use throughout your organization. The following section details specific forms of software piracy you may experience in your organization and how SofTrack can help protect against each.

2.2 Software Piracy Threats and how SofTrack protects your organization

Threat:

Unauthorized installation of licensed or unlicensed software upon Windows-based workstations/computers

SofTrack Response:

Deny Creation and Renaming of *.EXE and *.COM files via SofTrack's Local Workstation Agent

Threat:

Previously unauthorized installation of licensed or unlicensed software upon Windows-based workstations/computers

SofTrack Response:

[#] http://www.rhoads-sinon.com/newsandevents/archives/legalupdates/softwarepiracy_feb_2003.htm

[△] <http://global.bsa.org/usa/polyres/admin/BSA.mpeg>

[♦] <http://www.vnunet.com/Features/1142460>

SofTrack's Quick Inventory Report, *runtime is usually less than 5 seconds per workstation*, reveals all applications installed via Add/Remove Programs and the MSI installer agent – manual intervention is required to remove violating applications at each workstation

Threat:

Renaming of licensed software to subvert installation or usage detection upon Windows-based workstations/computers

SofTrack Response:

Deny Creation and Renaming of *.EXE/*.COM files via SofTrack's Local Workstation Agent

Threat:

Overuse of concurrently licensed software, whether centrally installed upon a network server, including Windows, Linux, NetWare or other storage repository such as a SAN or NAS, or at specific Windows-based workstations

SofTrack Response:

Active metering and control of concurrent software licenses with SofTrack's Local Workstation Agent

2.3 SofTrack processes that provide software piracy protection for your organization

SofTrack provides powerful software piracy protection via two complementary but independent processes. These processes are Quick Inventory and Local Workstation Metering. The sections that follow describe how each can be used by your organization to protect against software piracy.

2.3.1 Quick Inventory

SofTrack's Quick Inventory determines what software is installed on each workstation in your environment. SofTrack's Quick Inventory module usually requires less than **5 seconds** to run on the average corporate Windows-based workstation. It can be run from a logon script, batch file, registry "run" key and it can even be run by SofTrack's Local Workstation Agent. This module can be used on any Windows-based workstation or server¹. The SofTrack Quick Inventory function gathers:

- a. Applications Installed – same list as seen in Add/Remove programs
- b. Operating system and specific patches installed
- c. Machine Details:
 - Workstation name
 - TCP/IP address
 - Size and Free space of C:
 - Total RAM installed and types of RAM installed in each slot
 - Manufacturer
 - Model
 - Serial Number

¹ Windows 95, 98, Me, NT, 2000, XP, 2003 and all thin client sessions

- Number of CPUs² installed with type and speed for each
- Internet Explorer version

2.3.2 Local Workstation Agent

SofTrack's Local Workstation Agent (LWA) controls and audits several aspects of each users' workstation experience. This module can be used on any Windows-based workstation or server². The SofTrack LWA provides your organization with the following abilities:

- Control concurrent application use via active metering³
- Passively monitor application use, i.e. Software Usage Monitoring³
- Deny creation/installation of new executable files³
- Deny renaming of existing executable files³
- Log every file, your user's open or *attempt* to open³
- Log everything Internet Explorer opens or *attempts* to open
- Detect Idle Application use and selectively terminate idle applications

2.3.3 Quick Inventory and Local Workstation Agent

Together, SofTrack's Quick Inventory tool and Local Workstation Agent supply your organization with the power to audit the past and control present and future application installation and use.

2.4 Additional record keeping required to protect your organization from software piracy

Protecting your organization against software piracy requires more than the SofTrack's Quick Inventory and Local Workstation Agent. Full protection includes proper record keeping. Essential bookkeeping includes:

- a. Maintaining accurate records of software licenses, contracts and their purchases including invoices whether received directly from the vendor or from a third party such as a reseller or consultant as well as proof of payment of these invoices.
- b. Tracking "version information" for each software license owned, for instance, a license for Microsoft Office 97 is different than a license for Microsoft Office 2000.

Larger organizations may want to appoint a Software License Compliance Manager whose duties include the creation and maintenance of a database to track corporate software license and purchase records.

3.1 Detect over-buying of application licenses and save money with SofTrack

With SofTrack's Quick Inventory you can quickly and easily determine how many instances of each licensed application your organization has installed. And with SofTrack's Local Workstation Agent you can quickly and easily determine the number of actively used licenses exist for each application.

² Windows 95, 98, Me will always report one CPU even if others are installed

³ All software and files accessed including those stored on any device from the local workstation to Windows, Linux or NetWare server or SAN/NAS device

As an example, via the Quick Inventory report you may find that PurchasedApp⁴, is installed on 150 workstations. But, via SofTrack's Local Workstation Agent you discover that, during the past 30 days, only 25 of those 150 installations have been used. With this information in hand your organization's Software License Compliance Manager may decide to contact the users' of the 125 workstations where PurchasedApp is not being used to inquire if there is a continuing need for its installation. After determining the needs, remove PurchasedApp from each workstation no longer requiring its installation. With the correct number of licenses known your organization will save money the next time it purchases a maintenance contract, renews an annual subscription or upgrade for PurchasedApp.

What if 10 users were requesting a new license for PurchasedApp? Given the situation above, SofTrack saves you money because no new purchase is required. Instead, with the same Quick Inventory and Local Workstation Agent reports you could determine which workstations no longer require PurchasedApp, uninstalling it where no longer required and installing it where needed.

SofTrack's ability to save your organization money when purchasing software extends to all software even those that "self meter" such as Autodesk's applications. Self-metering indicates that such an application can regulate its own licensed use. But, if underutilized, "self metering" does not automatically indicate that it you will be alerted that unused licenses exist and do not require maintenance or other renewal fees. SofTrack provides a Cost Savings Report that can clearly display the costs and savings involved.

3.2 SofTrack available for 30-day free evaluation

Begin your free evaluation of SofTrack today! All you need to do is fill our evaluation request page located at http://www.softwaremetering.com/_eval.htm or phone us at (512) 372-8969. During your evaluation you are entitled to free evaluation installation assistance and technical support. SofTrack scales to meet the needs of any size organization.

4.1 Conclusion

Software Piracy happens in even the best-managed companies. Growing and innovative companies frequently overlook the need to monitor their software installations and usage, and by doing so, place themselves in jeopardy. They are so busy doing what they do well and do not notice that their incremental growth may also be creating a potentially large risk that could have significant impact on their cost of doing business.

Fortunately, with SofTrack's complete capabilities of software license compliance, metering and auditing, you have a powerful tool that can help defend your organization from unnecessary fines, litigation and possible jail time.

5.1 News stories of organizations convicted of software piracy

Every month we update our website with links to stories of software piracy convictions and related news. Please visit our Metering and Licensing News page:

http://www.softwaremetering.com/_news.htm

⁴ Fictitious Example