



**Software & Information
Industry Association**

www.sii.net

SOFTWARE USE & THE LAW

SIIA has produced this guide for individuals, businesses, educational institutions, server operators and user groups in Canada and the United States. This guide is intended to provide a basic understanding of the issues involved in ethical software use. It will tell you what the laws are, how to follow them and why you should adhere to them.

This guide is only one component of SIIA's continuing effort to increase public awareness of software piracy. If you have any questions about the legal use of software, please call SIIA at (800) 388-7478 or contact us at piracy@SIIA.net.

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EVERYONE BENEFITS FROM A HEALTHY COMPUTER SOFTWARE INDUSTRY

Every year, evolving software technology brings us faster, more sophisticated, versatile and easy-to-use products. Business software allows companies to save time, effort and money. Educational computer programs teach basic skills and sophisticated subjects. Home software now includes a wide array of programs that enhance users' productivity and creativity. Computer graphics have turned PCs into a veritable artist's palette and new games are increasingly inventive. The industry is thriving and users stand to benefit along with the publishers.

WHEN A FEW PEOPLE STEAL SOFTWARE, EVERYONE LOSES

Along the way, however, the problem of software theft has developed. It threatens to impede the development of new software products. Romantically called "piracy," the unauthorized duplication of software is a Federal offense that affects everyone -- large and small software publishers and legitimate users alike. Even the users of unlawful copies suffer from their own illegal actions: they receive no documentation, no customer support and no information about product updates.

Software creates unique problems for copyright owners because it is so easy to duplicate, and the copy is usually as good as the original. This fact, however, does not make it legal to violate the rights of the copyright owner. Although software is a relatively new medium of intellectual property, its protection is grounded in the long-established copyright rules that govern other more familiar media, such as records, books, and films.

The law applies equally to a \$50 game and a \$750 project management program. Each product reflects a substantial investment of time and money by many individuals. Software development involves a team effort that blends the creative talents of writers, programmers and graphic artists. Piracy diminishes the value of a program and deprives the developers of fair compensation. Software piracy inhibits innovation. The software industry is filled with new developers trying to break into a crowded market. They can survive only if their products are purchased. Each theft makes staying in business more difficult for these small and innovative firms.

Unauthorized duplication of software is also a Federal crime if done willfully and for purposes of commercial advantage or private financial gain.

THE LAW IN THE UNITED STATES

Software is automatically protected by federal copyright law from the moment of its creation. The rights granted to the owner of a copyright are clearly stated in the Copyright Act, Title 17 of the US Code. The Act gives a copyright owner "the exclusive rights" to "reproduce the copyrighted work" and "to distribute copies ... of the copyrighted work" (Section 106). It also states that "anyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the copyright" (Section 501), and sets forth several penalties for such conduct.

Those who purchase a license for a copy of software do not have the right to make additional copies without the permission of the copyright owner, except when it is necessary to: (i) copy the software onto a single computer in order to use the software, (ii) make a backup copy "for archival purposes only", which are specifically provided in the Copyright Act and (iii) copy the software during activation of the computer in order to repair the computer (Section 117). The license accompanying the product may allow additional copies to be made -- be sure to review the license carefully.

The unauthorized duplication of software constitutes copyright infringement, 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 resulting copyright infringement whether or not they knew their conduct violated federal law. Penalties include liability for damages suffered by the copyright owner plus any profits of the infringer that are attributable to the copying, or statutory damages of up to \$150,000 for each work infringed.

The unauthorized duplication of software is also a Federal crime if done "willfully and for purposes of commercial advantage or private financial gain (Title 18 Section 2319(b))." Criminal penalties include fines of as much as \$250,000 and jail terms of up to 5 years.

- ❑ **Copyright Office**
(<http://www.copyright.gov>)
- ❑ **Entire text of the law**
(<http://law.house.gov/usc.htm>)

Just because
it is so easy
to make
'perfect' copies
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the rights of
the copyright
owner.

THE LAW IN CANADA

Software is automatically protected by federal copyright law from the date of creation. The rights granted to the owner of a copyright are clearly stated in the Copyright Act, R.S.C 1985, c. C-42. The Act gives the copyright owner the sole right to produce, reproduce or publish the work or any substantial part thereof in any material form whatever, and to rent out the computer program (Section 3). It also states that "copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything that, by this Act, only the owner of the copyright has the right to do" (Section 27(1)), and that a copyright shall be deemed to be infringed by any person who sells or lets for hire, distributes, exhibits in public or imports for sale or hire into Canada any work that infringes copyright (Section 27(4)).

Persons who purchase a copy of software have no right to make additional copies without the permission of the copyright owner, except for the right to make "a single reproduction for backup purposes" and "a single reproduction of the copy by adapting, modifying or converting the computer program or translating it into another computer language if the person proves that (i) the reproduction is essential for the compatibility of the computer program with a particular computer, (ii) the reproduction is solely for the person's own use, and (iii) the reproduction is destroyed forthwith when the person ceases to be the owner of the copy of the computer program (Section 27(2)(l) and (m)).

Just because it is so easy to make 'perfect' copies of software programs does not make it legal to violate the rights of the copyright owner. The unauthorized duplication of software constitutes copyright infringement whether it is done for sale, for free distribution, or for the copier's own use. Copiers are liable for the resulting copyright infringement whether or not they knew their conduct was illegal. Penalties include liability for damages suffered by the copyright owner plus any profits of the infringer that are attributable to the copying (Section 35). In addition, copiers who knowingly infringe copyright may, on conviction on indictment, be fined up to \$1,000,000 and imprisoned for a term of up to five years (Section 42).

It is illegal to load software onto more than one computer or to make copies of that software for any other purpose unless specific permission has been obtained.

USE OF SOFTWARE

Anyone who purchases a license for a copy of software in the United States has the right to load it onto a single computer, to make another copy "for archival purposes only," and to make a copy while repairing the computer. In Canada, the purchaser of a licensed piece of software has the right to load it onto a single computer and to make another copy "for backup purposes." It is illegal to load that software onto more than one computer or to make copies of that software for any other purpose unless specific permission has been obtained from the copyright owner or otherwise permitted in the license accompanying the software program.

RENTAL OF SOFTWARE

It is illegal to rent unauthorized copies of software. Concern over the fact that the rental of authorized or "original" software frequently resulted in the creation of pirated software led Congress to enact the Software Rental Amendments Act of 1990. This law prohibits the rental, leasing, or lending of original copies of any software without the express permission of the copyright owner.

The same situation prevails in Canada. In 1993, Parliament amended the Copyright Act to include the rental of software as a distinct right that cannot be exercised without the express authorization of the copyright owner. These provisions came into force on January 1, 1994.

Acquisition of software is no different than any other product or service required by a school.

USE OF SOFTWARE BY SCHOOLS

Public or private schools and universities are not exempt from copyright laws. On the contrary, because of their unique position of influence, schools must be committed to upholding copyright laws. Schools should make every effort to uphold the law, because it is by their example that students will learn to have respect for intellectual property.

Just as it would be wrong to buy one textbook and photocopy it for use by other students, it is wrong for a school to duplicate software (or to allow its faculty or students to do so) without authority from the publisher.

Some people claim that software publishers should allow schools to copy programs because it is the only way some school systems can afford to provide enough software for their students. However, the acquisition of software is no different than any other product or service required by a school. Schools purchase books, audio-visual equipment and classroom furniture -- and they pay a fair price for them. Newer and better software can be developed only if the software development team is compensated for its efforts.

Many software firms offer special sales arrangements to schools. These include discounts for additional copies of programs, reduced-priced lab packs (a quantity of programs sold together) and site license agreements (an arrangement that allows a school to make a specified number of copies for one location at a fixed price).

USER GROUPS

The personal computer industry has owed much of its success to the proliferation of user groups. These groups provide a valuable service as forums for sharing computing experience and expertise. User groups should, however, ensure that their meetings are not used to promote illegal duplication or distribution of software.

The unauthorized duplication or distribution of software by user groups -- or at user group meetings -- places many people in a vulnerable position. The individuals who duplicate or distribute software, as well as the user group itself and the owner of the meeting place may be held responsible as copyright violators. A close relationship between user groups and the software publishing community is mutually beneficial. User groups should encourage ethical software use among their members. Likewise, software publishers should respond to users' needs for proper support and updates.

If your company has a network, be sure to follow the publisher's license agreement for the use of software on the network.

BUSINESS USERS

In the workplace, "softlifting" is characterized by two common activities: extra copies of software are made for employees to take home and extra copies are made for the office. Both situations mean a greater number of computers can run copies of the software than were originally licensed.

Unless a special arrangement has been made between the business user and the publisher, the user must follow a simple rule: one software package (or license) per computer. This means that a copy/license should be purchased for every computer on which it will be used. For example, if the business has 10 computers on which employees use spreadsheet software, it must license 10 copies of such software. If there are 25 people using word processing software on their computers, each user must have a licensed copy.

Another option that has proven successful is for firms to enter into special site license or concurrent use agreements with publishers. With a site license, the user company agrees to pay a certain amount for a specific number of copies they will distribute (and not exceed) on site. A concurrent license permits a specified number of users to access the software at any given time, but prohibits users from exceeding the number of licenses acquired by the company. The program tracks or 'meters' the number of simultaneous users. These licenses will often save the organization money and at the same time, they eliminate the possibility that copyright violations will occur. By buying the correct number of programs or the right type of license, a company removes the incentive for employees to make unauthorized copies. Following the rules will pay off in the long run, because a firm that illegally duplicates software exposes itself to tremendous liability.

Many software applications are sold in client/server versions. If your company has a network, be sure to follow the publisher's license agreement for the use of software on the network. It is a violation of the copyright laws -- and most license agreements -- to allow a single-copy version of software on a network to be simultaneously accessed by more than one user.

Finally, it has been found that when companies enact a policy statement stating their intention to ensure employee compliance with copyright regulations, the risk of software piracy is reduced. Feel free to copy and distribute SIIA's Sample Corporate Policy Statement (<http://www.siiia.net/piracy/pubs/CorporateUserPolicies.pdf>)

SIIA, in addition to the FBI and US Customs, has investigated many reports of Internet software piracy.

INTERNET POLICY

The exponential growth of the Internet, with its online auction sites, peer-to-peer networks, news groups and other on-line methods of digital content delivery, coupled with the explosion of broadband connectivity has created new concerns for copyright holders. The ability to download copyrighted software at the click of a mouse has become a significant distribution mechanism, as well as a significant problem for the software industry.

Individuals and organizations selling or giving away software on the Internet through auction sites, peer-to-peer networks, websites and other online venues can be held liable, both civilly and criminally, for infringing the copyrights of software publishers. It may bring rise to a copyright infringement lawsuit, including seizure of the equipment. SIIA, in addition to federal authorities such as the FBI and US Customs have investigated numerous reports of Internet software piracy.

Because of the rapid proliferation of content on the Internet, it has become increasingly complicated for system operators and forum moderators to closely monitor their systems for illegal content thus increasing the risk of exposure to viruses, corrupt files, and now even civil as well as criminal litigation. It has become the responsibility of the copyright holders to monitor the Internet for infractions and take the necessary measures to deal with it. SIIA monitors every avenue within the Internet on behalf of its members. If you come across something that you feel may be illegal, please report it.

If you suspect
that piracy
is taking place
in your
business
or school,
you may
contact SIIA.

REPORTING COPYRIGHT VIOLATIONS

SIIA has initiated thousands of actions against individuals and companies engaged in the unauthorized duplication of software and will continue to do so when it becomes aware of situations that warrant such action. If you suspect that piracy is taking place in your business or school, you may contact SIIA in any of these three ways:

- A special toll free number for reports of copyright violations: +1.800.388.7478.
- E-mail to piracy@siiia.net
- Online Piracy Intake Report (<http://www.siiia.net/piracy/report.asp>).

SIIA has a long standing policy of keeping the identity of our sources anonymous (unless required by law to disclose the identity). Under certain circumstances, SIIA also offers up to \$50,000 to sources for their reports of corporate piracy.

SIIA ANTI-PIRACY MATERIALS

SIIA has a variety of materials to further inform you about the legal use of software, including:

- Certified Software Manager (CSM) Seminar**
(<http://www.siiia.net/piracy/seminars.asp>)
- Compliance Network Program**
(<http://www.siiia.net/piracy/compliancencetwork>)
- Educational Videos, Publications and Posters**
(<http://www.siiia.net/estore/10browse.asp?Category=Anti-piracy>,
also <http://www.siiia.net/piracy/education.asp>)

CONCLUSION

Most people do not purposely break the law. They would never consider stealing a box of software from the shelf of a retail store. But those who copy software without authorization are also stealing intellectual property and they should understand the consequences of their actions.

If you are an individual user, don't break the law. Everyone pays for your crime. If you are part of an organization, see to it that your organization complies with the law, and that it issues an appropriate policy statement that is signed and respected by all involved.