



## The Network

Delivers

*Dispersing the*  
**Software Piracy  
Smoke & Mirrors:**

***“The crippling fines and penalties  
associated with copyright audits”***

Software piracy! Copyright violation! License non compliance! Punitive audit action! Alan Plastow explains how your business can stop being hammered by tech suppliers and their ever-expanding revenue streams. Let's put the consumer brakes on the apparent mantra of many of the businesses that create products protected by copyright law. It's almost as if they're constantly ordering consumers to...

***“Pay me now; pay me later; pay me again; pay me more; pay  
my friends—pay, pay, pay!”***

### **Let Confusion Reign...**

To ensure that business technology consumers remain completely mystified, the entire copyright enforcement industry has cultivated one gigantic accumulation of smoke and mirrors. At the core of all the mess is the incredibly complex web of contracts, licenses, and agreements that govern our use of their products. Opposing this mess, and further complicating our lives, are the even more confusing copyright laws, acts, and legislation at the regional, national, and international levels—a majority of which have been designed either by the copyrighted products industry players or by their nicely reimbursed lobbyists.

### **Shaky Foundations...**

Many of the existing copyright laws are also most frequently based on—shall we suggest slightly skewed?—statistical evidence accumulated by the same copyright holders who stand to profit the most from consumer licensing errors. And, finally, just to keep our lives interesting—the definitions of piracy and copyright violation have quietly slipped into an obscuring fog of incomprehensible legalese.

***“As a consumer of business technologies, if you think you are  
going to come out on top of this ship-wreck, you might want to  
rethink your position and base it more on solid reality than clouded  
assumptions.”***

### **When You Play—You WILL Have to Pay!**

When you violate copyright, you will discover another entire world of constantly shifting fines, penalties, costs, and terminology. While, in America, the core copyright law is governed by Titles 17 and 18 of the United States Code, your copyright violations could easily be framed in such a manner that they will qualify you under any one of more than a dozen laws—in addition to U.S. Code. This is the world in which you will find yourself, wandering aimlessly with your white litigation cane in hand—tapping, gently tapping...

***Are you ready to get really confused?***

#### **FIRST: The Fines** – Federal Copyright Law – U.S.

Under the Federal Copyright Law, you may be fined up to \$150,000 per copyright violated—provided you did not intentionally violate the law. However, if you violated the law with the intent to defraud, you could find yourself qualifying under the criminal side of the game and facing a fine of up to \$250,000 per copyright violated.

***“Don’t confuse the copyright you violate with the number of times you have violated that copyright—those are two entirely different rogue waves you’ll have to confront. Here is an example.”***

**Real World** – You incorrectly loaded twelve copies of a word processing application for which you legally owned only one license. The application represents a single copyright violation (up to \$150,000 fine) PLUS eleven unlicensed instances of that violation. So... Your actual fine could be based on the \$150,000 amount, right? (***Fine = up to \$150,000***)

Well... Yes, maybe... You might be right, but you’ll probably be wrong. Here’s why: Under the U.S. Code there is also a clause that reduces the fine to \$750 to \$30,000 per copyright **if** you recognize your error and voluntarily correct the problem. So, now what? Let’s refer to the example again.

**Real World** - You loaded twelve copies of a word processing application for which you legally owned one license. (Okay so far.) The application represents a single copyright violation PLUS eleven unlicensed instances of that violation. (Still the same.) However, now—since you freely admitted your mistake when it was pointed out and you voluntarily corrected the problem—your actual fine ***could*** be based on the \$750 to \$30,000 amount—depending on your actions prior to, during, and after the enforcement audit. (***Now your fine could be calculated using the \$750 to \$30,000 baseline.***)

**SPECIAL NOTE** – For those of you who are not operating in the United States—you will, in all likelihood, still find yourself being influenced by U.S. legal precedents. Unfortunately (or fortunately depending on your perspective), a majority of the developed countries have mirrored U.S. copyright laws with their own. This entire unbalanced barge of litigation foundation is also pretty much supported by the World Trade Organization—so the odds are good that your country is already part of the game.

***Play nice together or you could easily be sued into submission.***

**SECOND: The Penalties** – So far we have discussed the simplified fines so you are aware that you could be exposed to per copyright fines of \$750 to \$250,000. Are you still with me? Good. Next we have to consider the additional penalties you will be facing—and these are even more frustrating than the fines.

According to Titles 17 & 18 of the U.S. Code, you may also be liable for any value derived from your illegal use of the copyrighted product. In general—very, very general—companies that have been audited for copyright violations have found themselves paying penalties of 1.5 to 4 times the list price value of each instance of incorrectly loaded product. We'll use the same sample audit results we used previously.

**Real World** - You loaded twelve copies of a word processing application for which you legally owned one license. The application represents a single copyright violation PLUS eleven unlicensed instances of that violation. Since you freely admitted your mistake when it was pointed out and you voluntarily corrected the problem—we'll guess your actual fine was \$12,000—based within the \$750 to \$30,000 possible fine amount. However, your penalties will now be added in the amount of 1.5 to 4 times the list price per instance of incorrectly licensed product. In this case, we'll use 3 times list price and assume that the product was “technically” worth \$125, so that's how we'll compute your penalty. Consider the following formula:

**LP Times 1.5 to 4 Times the Number of Violations = Initial penalty**

List Price = \$125 *times* 3 = \$375 *times* 11 illegal loads = \$4,125.

Next, you would add the fine (\$12,000) to the penalty (\$4,125) and you'll find yourself owing the enforcement auditors \$16,125. But, don't feel comfortable yet. You're not finished!

**THIRD: Enforcement Group Costs** – You have paid your fines and penalties totaling around \$16,125 but you aren't off the hook yet. You will still most likely have to pay all the expenses of the auditing group and any experts they decided to call upon to support their accusations. These experts could include lawyers, paralegals, accountants, representatives of each copyright holder, and anyone else they chose to involve—plus, you'll pay court fees (if you pushed your case all the way to court). This number will not be small and you won't argue it in any way because you're focused on being “voluntary and open” in your response to the audit (Don't forget item TWO).

**Real World** - During a 2006 software license non compliance audit confrontation in California, the copyright holder asked the court for \$1.5 million in legal fees and \$150,000 in costs.

**FOURTH: Other Hidden Costs** – Thought you were finished, didn't you? Hardly! When these folks get their hooks into you they earnestly desire to make an example of you and your company. Consider the following additional—and nearly always hidden—audit costs:

- You will pay for the labor to conduct the audit. Unfortunately, like most businesses, you will not know precisely how to conduct that audit so the enforcement group is well within its rights to force you to repeat the audit until you get it right—And they will do precisely that.
- You will have to pay for ongoing technical support during the audit. Since your technical personnel will most likely be swamped in conducting an unfamiliar enforcement audit, you will be investing in a great deal of overtime to keep your systems operational.
- You will have to pay the labor to remove, reconfigure, or replace all incorrectly licensed products on every computer.
- You will have to re-purchase every incorrectly licensed product that you intend to continue using at full retail value—no reduced price negotiations are generally permitted. This cost is usually in addition to your 1.5 to 4 times list price penalties. Remember: They're making an example of you.
- Your technology environment can easily be frozen until the audit is concluded. This means you will not be permitted to move, add, change, or update any system. You may also not be permitted to negotiate or renegotiate any copyright-related licenses or agreements until you settle the dispute.
- As part of your settlement, you will be required to initiate and maintain an ongoing software asset management program. Something we've been teaching companies to do for years—right now—before the copyright & compliance auditors show up. Keep in mind that, when you begin this process in reaction to an enforcement audit, it will cost you significantly more because you are being pressed and cannot effectively plan it out.
- And—not finally, but we've frustrated you enough for this Briefing—You will be required to remain under an audit/compliance watch for a period of three to five years after the original audit. During this period of time, the copyright holders, or their friends, may re-audit you if and when they feel the need.
- **Oops!** We forgot to mention: Just because enforcement group "A" has audited you and settled your differences doesn't mean that audit groups "B" through "Z" won't take a shot at you in the future. They can, they have, and they will. You can bet on it. Also keep in mind: The enforcement business is highly lucrative—new enforcement groups are forming every year and they're ALL looking for you!
- There is more, but do you get the idea yet? These folks are unregulated, powerful, and they have the letter of the law behind their actions. You will not win. Instead, you will lose a great deal of time and money because you did not correctly manage your technology environment.

**Summary** – Remember our sample audit? You violated a single licensed product eleven times. Your estimated fine was \$12,000 and the estimated penalty came to \$4,125. You paid all expenses relating to the audit as well as the costs for replacement products—all of these hidden costs could easily total 3 to 6 times the published settlement—sometimes even more.

3 to 6 *times* \$16,125.00 = *As much as* \$48,000 to \$96,000

**And this happened because you violated a single copyright eleven times. Don't forget, we've only seen the tip of your enforcement audit iceberg shakedown cruise.**

**Lessons Learned** – You and your company could have prevented nearly all of these unnecessary costs simply by establishing a proactive wall of due diligence in the way you managed software and other copyright protected products. In fact, you can start now and still massively cut your software non compliance audit exposure.

**BONUS: Up to \$1,000,000 Rewards!** – Think you're going to get a free million dollar whistle-blower payday by reporting your company? Think again. Here's the interesting point: Whenever the copyright holders and their enforcement industry friends discuss your copyright violations, they will always use the \$150,000 penalty in their computations (Unless you are playing on the \$250,000 criminal side of the game board.) Conveniently enough, these are the same figures used when these groups publicize their offered rewards. BUT, those rewards are most likely going to be based on the \$750 to \$30,000 fines that nearly every audit target pays—not on the \$150,000 per copyright.

***“In other words—potential Whistle-Blowers—don't get your hopes up. You have a significantly better chance of winning the lotto.”***

I'm **Alan Plastow** and this Knowledge Briefing is part of a series that we at The Business Technology Consumer Network and The Institute for Technology Asset Management feel you should know. If you have questions, observations, or comments please let us know. We are here for you—the business technology consumer. We do not represent the software or copyright holder industries, nor do we advocate on their behalf. **The Network** and **The Institute** are vendor-neutral organizations of technology asset managers.