

\$50,000 Reward

MODERN PIRATES



**Protect Your Company
From The Software Police**

Alan L. Plastow



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Cover design and book layout by Bonnie Bushman
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Morgan James Publishing, LLC
1225 Franklin Ave. Ste 325
Garden City, NY 11530-1693
800-485-4943

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Plastow, Alan L. 1953-

Modern Pirates/ Alan L. Plastow

ISBN 1-933596-39-2

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***Software & Technology License Agreements* 345**

Second in the Real World Solutions Series, *Agreements* will give you a front line review of a wide range of license and agreement terms and conditions. Next, *Agreements* will discuss the meaning of each clause along with its impact on your company. Finally, *Agreements* will provide suggestions for modifying or eliminating strategic clauses to lower the negative impact or enhance the benefits of each.

Chapter 1

WHAT IS PIRACY AND WHAT ARE MY CHANCES OF BEING ACCUSED?

Chapter Goals: First, we all absolutely have to know...

What is piracy?

How do we find ourselves labeled as pirates?

How do our computers, PDAs, and cell phones expose us to litigation?

What are the invisible piracy threats in every company?

How do our companies commit software suicide?

Pirates!

“People who have been stealing our movies believe they are anonymous on the Internet...They are wrong. We know who they are, and we will go after them...”

Quote from Motion Picture Association of America
President and CEO, Dan Glickman

Do you think you're safe from copyright piracy? Maybe *you* aren't a pirate, but would you know if someone in your company was using copyrighted products illegally? Your business is an easy target for the copyright enforcement industry. The sooner you come to grips with the risks and realities, the sooner you can plug the potential piracy holes. The hidden savings are impressive. The costs of failure are massive.

Pirates! To some the name breathes adventure and excitement. To others a pirate represents the ultimate violation of freedom and personal space. Like thieves in the night, pirates glide silently into our most fearsome dreams, taking what they want and leaving us with shattered lives—if we're lucky. On the high seas of the 16th century it was difficult to tell which crews were the pirates and which were the honest sailors. Rules changed as quickly as the rulers. The lines of ethical behavior often blurred, and one day's honest sailor could easily become the next day's pirate. Our world hasn't evolved much since the days of the buccaneers. The people who make the rules continue to change. The rules continue to change and the people who have ethics and who have worked hard for their money continue to pay the penalties for the actions of those who don't.

You may not be a pirate but you will *still* continuously pay the price for piracy.

Is this piracy?



Real World – A 2005 television commercial for an Internet music delivery service depicted a corporate employee who reacted to any question or confrontation by playing a burst of music on his desktop computer.



Is this piracy? Most likely. In fact, this *is* probably a form of piracy that's occurring in your company right this minute. Did the employee in the commercial clip above use the Internet to download the music in question or did he copy it from the original media of his own CDs? There are two basic problems here: While, technically, the music belongs to the employee, the computer where it is loaded belongs to the company.

According to the rules, only products that are legally acquired and licensed to the company may be placed on the system. Technically, the copyrights were violated the instant the employee placed the music on the corporate computer. What's more, copyrights, even for the most insignificant product, are strictly governed by federal and global laws. Let's take a look at the potential impact of this single employee's copyright violations.

A simple count of the number of tunes played by the employee during the commercial (5 of them), multiplied by a potential civil penalty of up to \$150,000 per copyright will suggest a fraction of the probable financial risk of this single piracy incident. Do you suppose this company has an extra \$750,000 to pay the copyright violation fines? But, wait: there's more! The average song consists of *two* copyrights—one for the music and one for the lyrics. Guess we'll have to multiply the number above by an additional factor of two. For those of us who are math-challenged (like me), the potential fine for five illegal music titles on a corporate computing device could easily total around \$1,500,000.

Are you certain that there are no unlicensed music files, graphics, or software on any of your corporate computing devices? Using the figures above, could you estimate your possible financial exposure to incorrectly licensed copyrighted products on corporate computers? Try this potential measuring rule: the copyright enforcement industry informs us that a potential one in four computers will contain at least one violation. How many systems do you own? Divide by four. Multiply by \$150,000.

*Real World – The key to the scenario we just reviewed is that copyright violations do not hinge upon whether the company **permitted** the employee to place the music on the systems. In*

reality, that music is usually present **despite** those permissions. The majority of companies, even if they have any policies covering piracy usually do not enforce those policies.



Are you a pirate?

Simple Answer - You became a potential pirate the day you purchased your first computing device.

Complex Answer - Operating systems, software, music, graphics, games, fonts, and the complex copyright licensing agendas that control the way these products are used have drawn you into a vortex of potential piracy litigation. A vortex that continues to gain speed—propelling your company toward piracy violations, fines, and penalties.

There is an incredible disconnect occurring in the technology marketplace between the software consumers and the software publishers to the extent that many of those same publishers now regularly sue their own customers. The *forces of global justice* have gathered together a massive and powerful copyright police force tasked with protecting the world from the evils of intellectual property theft—piracy. Sounds like something out of Marvel Comics™, doesn't it? Lucky for us they don't wander around wearing purple tights. Unfortunately, their impact on our companies is all too real.

You may have heard of counterfeit designer consumer goods: jeans, perfumes, toys; the list is endless. Huge tonnages of pirated counterfeit goods are produced around the globe and distributed every day as genuine products. Real world pirates still board ships at sea, bent on stealing cargos and making substantial profits at our expense.

Who pays for piracy? We all do—consumers as well as suppliers—but, realistically, suppliers mostly transfer the burden to consumers through higher prices. Modern-day pirates are literally everywhere we look, stealing valid products as well as

producing and distributing counterfeit goods of every description—products that we could easily purchase without realizing their origins. The concept with which we need to be concerned is that the anti piracy industry seems to have adopted an attitude assuming that *every* consumer is a pirate wanna-be.

Here's a stunning thought: you or some of your friends are probably already modern-day copyright pirates. Let me ask a question, would you know if you purchased a counterfeit product? Probably not. "Aye, matey! Bring yerself aboard the Bonne Homme Richard. Here be demons!"

Captain John Paul Jones welcomes you to *Pirates Anonymous*. Would you like a designer eye patch? Step right up to the mast and tell us your name, your company, and your chosen criminal activity. What's that you say? *I'm no pirate. I would never consider performing an illegal act.* Wrong. Here's why.

Let's forget about the guys with guns. Let's put aside the philosophical discussion of the incredibly wide range of world piracy activities or the links between piracy, organized crime, and global terrorism. What we need to consider is our real world day-to-day exposure to the potential illegal possession and use of copyrighted intellectual property products. In our case, let's limit the discussion to the primary violations of intellectual property rights—copyright piracy—that we encounter literally anywhere we find technology.

Every single day that you own computers, PDAs, cell phones, printers—even photo copiers—you are exposing yourself and your company to potential piracy litigation. Do your computers use operating systems or software? *You're exposed.* Do you or your employees listen to digital music on corporate computers? *You're exposed.* Does anyone in your company use licensed fonts or graphics? *You're exposed.* Is anyone downloading ring tones or other sound bites onto their computer, cell phone, or PDA? *You're exposed.* Is anyone copying licensed documents or images on the copy machine? *You're exposed.*

Is anyone taking advantage of the powerful corporate Internet connection to download digital movies? *You're exposed.*



*Real World – Corbis, a photo agency with over 3 million images, places a digital watermark in images marketed via the Internet. The watermark proved too easily defeated so the company began tracking the pixel patterns of its images. This pixel **fingerprint** enables the company to identify pirated copies of its copyrighted products.*



Does anyone in your company use graphics from the Internet (or anywhere else, for that matter) in presentations and printed materials? I'm not suggesting that you are currently guilty of violating copyrights, but it is time to understand that you are definitely exposed to significant risk. You do not have to actually *do* anything dishonest to be exposed to copyright violations. Somewhere, sometime, somebody is going to load a copyrighted product on one of your computing devices without ensuring proper licensing. Merely the presence of uncontrolled technologies in your company can be the same as living with a silently ticking litigation time bomb.

Enter the software police

“We have evidence that your company is engaged in the unlawful copying and use of our software in violation of the Copyright Act, Title 17 United States Code.”

(First sentence of a software police audit letter.)

Congratulations! The fabled software police have just targeted your company, along with thousands of other businesses

of every size, for software piracy litigation. In fact, if you are the CEO or CFO, they may actually target you, personally, as the party responsible for corporate piracy. Yes, Virginia, they do exist, they rarely lose a confrontation, and you are about to receive a painful lesson in applied copyright law—a very expensive lesson that will shake your company and its public credibility to the core.

Real World

- *\$564,350 – Settlement paid to the software police by an Ohio polymer products corporation for possession of incorrectly licensed software.*
- *\$1,000,000 – Settlement paid to the Recording Industry Association of America by an Arizona technology company for the incorrectly licensed use of MP3 music titles.*
- *\$2 Million Tuesday – Amount in piracy fines announced in the U.S. by a single software license compliance enforcement company on a single day in October, 2004.*
- *\$100,000 – Fines paid by a private university in Pennsylvania for possession of incorrectly licensed software.*
- *\$65 million – Total accumulated fines collected as of 4Q2004 by a single software publisher license enforcement team.*
- *\$50,000 – Reward offered by an American software piracy enforcement company to whistle blowers for reporting companies for possessing and using incorrectly licensed software.*

(Due to hidden settlement fees, the conservative total cost of each of the audits you see throughout this book is estimated to exceed three to six times the published settlement.)



Is your company ready for a software license compliance audit? Would anyone in your company be completely familiar with the requirements of proving compliance? Do you know what documentation the enforcement entities expect you to produce? More importantly, does anyone know where all of the proper documentation is filed? Life has changed for the technology consumer since shortly before the infamous Y2K technology frenzy.

*Side Bar - Revenue Streams – Between 1998 and 2003, software sales in developed countries significantly tapered off. Economies flexed dynamically with the changes in the century and in technology implementation growth. Corporate consumers had finally concluded building their initial technology infrastructures. Most companies were concentrating on making more effective use of the technologies they already had in place rather than blindly buying into **the next big thing**. Software industry profits, while still high, diminished and copyright holders began looking for new revenue streams. Copyright compliance enforcement activities increased while ever more complex licensing schemas began to emerge to tap into additional sources of revenue. Piracy litigation became a significant recognized revenue stream.*

Whether you own two computers or two million computers, you and your company are exposed every day to the potential for illegal possession and use of copyrighted products. This exposure isn't a matter of corporate size. In terms of copyright violations, company size is irrelevant. Instead, piracy is a symptom of an overall lack of control—control over your technology environment—the failure to proactively manage technology assets. Do you know—absolutely know—what software or other copyrighted products your company uses? Few of us do, or far worse, many who believe they are compliant tend to base those claims merely on a technology employee giving their unfounded opinion that corporate use of copyrighted materials is perfectly legal.

Hint: Don't rely on personal opinions regarding copyright compliance. They are useless in a piracy litigation event. For the most part, the majority of our business personnel are (unfortunately) clueless when it comes to the realities of discovering, removing, or preventing copyright violations. Thousands of corporations become victims of this lack of understanding every year.



Real World –

“On average, at least one company is caught and confronted with threat of legal proceedings every business day.”

Attorney for Microsoft™ Corporation



This statement represents the experience of only one of the multitude of enforcement entities working the anti piracy landscape. Think about your environment in relation to this statistic.

Settlement: CA – Media Services Co. - \$145,000

Will today be your day to become a target of the software police? The reality of this question is that it's not a matter of *if* you will be audited but of *when* you will be audited. Please remember that statement—it is critical to your company.

Let's take a quick test of how you might prepare for a software piracy audit. Try answering the following questions with only *quantifiable* answers—answers that can be clearly supported by documentation. Keep in mind that best guess figures will indicate that your process is not effective—nor will it be legally defensible.

- Can you or your company produce a clear and detailed purchase trail for every operating system, software application, licensed font, licensed graphic, copyrighted music title, game, or video title on every computer, PDA, or cell phone you possess?
- Can you produce a current automated audit that accurately documents the presence and location of every copyrighted product on every computer?
- Can you prove that the software titles you possess are not counterfeit?
- Are your receipts properly detailed and are they from valid suppliers?
- Can you produce the proper documents, stamps, seals, or certificates of authenticity for any applicable products in your possession?
- Can you produce all of your licenses and their respective terms and conditions of use?

Let's pretend that you have already been targeted for non compliance and you have less than thirty days to acquire and present this information. What are your real world chances of collecting and detailing the data for every software title on every system in your possession? Can I make a prediction? Slim to none?

Why take chances? Read the rest of *Modern Pirates* - Available now through bookstores!

Settlement: CA – HVAC Co. - \$65,000