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HOLLAND & HART LLP

The Law Out WestSM

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Is Your Company Committing Software Piracy? (Before You Answer - Chances Are 1 in 4 That It Is!)

The Facts

- Your company uses commercial software products on a daily basis.
- Management relies on a single IT person or IT department to install all of the company's commercial software products.

The Problem

If statistics don't lie, then one out of every four software programs or applications that your company has installed is **pirated** (that is, 25% of your company's computer software probably has been illegally installed and subjects your company to claims of copyright infringement).*

How It Happened

One or more of the following occurred:

- Software previously purchased by your company for one workstation routinely was copied onto new computers and servers purchased by your company without purchasing new licenses or additional "seats" for such software;
- Your IT person or department did not retain the license agreements, purchase orders, invoices, or receipts proving that your company purchased such software; and/or
- Software or computer purchase receipts do not specify the type of software purchased or the number of permitted users of such software.

Any one of these scenarios results in your company being unable to prove that it has purchased—and has the legal right to use—the software that it currently has installed.

Who's Looking and How They Know

Your former employees, your current unhappy employees, and your competition are encouraged by the Business Software Alliance (BSA) and Software and Information Industry Association (SIIA) to report your company's unauthorized use of software by contacting their toll-free "anti-piracy hotlines" or web sites (with a guarantee that their identities will not be disclosed to you). Have you heard their advertisements on the radio? The goal of these associations is to eliminate software piracy, and they are supported by a software industry that lost approximately \$11.75 billion to software piracy in 2000 alone.

Hard (and Expensive) Lessons That Your Company Doesn't Have to Learn

- Software piracy and copyright infringement occurs upon copying (installation), and NOT upon actual use.
- What you don't know CAN hurt your company.

*According to the International Planning and Research Corporation's 2000 Global Software Piracy report, approximately one in four business software applications installed in North America (United States and Canada) is pirated.

Technology Law Alert

- Ignorance of the facts or law provides no excuse or protection from a copyright infringement claim.

The Hard Way To Find Out

The BSA and SIAA will send a letter to any company for which they have received information regarding the possible illegal duplication of commercial software products. Generally, the letter will state that unauthorized duplication of software constitutes copyright infringement and that the software companies that such association represents are fully prepared to pursue all available legal remedies, but will offer the company an opportunity to conduct an internal, company-wide software audit and investigation to determine the circumstances that led to such copyright infringement. The letter also will prohibit the deletion or de-installation of any software currently installed that is published by the software companies represented by the association and will prohibit your company from negotiating with any sales representatives or vendors to purchase additional software licenses in order to remedy existing shortfalls. If you choose not to respond to the letter, then there is a risk of a lawsuit being filed or your company becoming subject to an unannounced audit (with the assistance of the United States Marshal's Office).

What To Do If You Get "The Letter"

If your company receives a letter from the BSA or the SIAA, you should consider contacting an

attorney. Holland & Hart LLP has extensive experience in defending software audit requests and in defending or settling copyright infringement claims. If your company decides to cooperate with the BSA or SIAA to settle an infringement claim, then your company will be required to (1) delete all unauthorized copies of software currently installed, (2) pay a penalty with respect to such deleted software (usually calculated by multiplying the MSRP of the software by a multiplier (as high as 1.5)), and (3) buy appropriate licenses for any newly installed software. We have worked with various software "watchdog" associations, and the good news is, they do negotiate!

An Ounce of Prevention ►

Holland & Hart LLP routinely advises its clients on how to eliminate legal liability and financial exposure associated with software piracy and copyright infringement claims. To that end, we have included with this Technology Law Alert a form of Employee Software Use Policy that your company should consider including in its employee handbook and/or having each existing and new employee sign. It will help to educate your workforce about proper software use and demonstrate that your company has taken steps to comply with copyright law.

If you have any questions regarding this Technology Law Alert or the other services that Holland & Hart LLP provides, please contact us immediately. We are here to help.

For More Information About This Technology Law Alert, Contact:



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Dan Glivar has been practicing general corporate and transactional law with Holland & Hart LLP in Denver since September 1992. His high technology practice has included the negotiation and drafting of various agreements, including:

- Software applications and network development & license/purchase agreements
- Hardware development and purchase agreements
- Web site development and hosting agreements
- Analog, digital and other electronic equipment development, manufacturing and purchase agreements for the television, satellite and telecommunications industries
- Audit requests and settlement agreements with various software "watchdog" and enforcement groups

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Employee Software Use Policy

[Insert name of your company] ("Company") routinely licenses computer software programs and applications ("Software") from various independent vendors and manufacturers (such as Microsoft Corporation, Adobe Systems Incorporated, etc.). All Software is subject to specific purchase or license agreements and related user documentation (collectively, "Software Agreements"), and Company and its employees are required to use all Software in accordance with the terms of such Software Agreements.

To ensure that each of our employees understands the proper and permissible uses of the Software and to ensure Company's compliance with the Software Agreements, [insert name of employee] (referred to in the first person below) acknowledges and agrees as follows:

1. Unless specified otherwise in writing to me, the Company licenses, and does not own, the Software. Accordingly, my use of the Software must be in accordance with the applicable Software Agreements or as directed by the Company's designated Software Manager, who currently is [insert name of Software Manager].
 2. Unless specified otherwise in writing to me, any installation, re-installation, reproduction or other duplication of Software (except for permitted backup and archival purposes by the Software Manager) constitutes a violation of federal copyright law and Company's standard of conduct for employees. Company does not condone and will not tolerate the unauthorized duplication of any software product.
 3. I have not in the past, and I will not in the future: (a) copy, install, re-install, reproduce, or otherwise duplicate or use any Software or Software Agreements, whether for use on office, home, laptop, or other computers; (b) copy, install, re-install, reproduce or otherwise duplicate or use any other software product (i.e., software products and documentation not owned or licensed by Company), whether for use on office, home, laptop, or other computers; or (c) download or upload unauthorized software products over the Internet, in each case without the prior written permission of the Company's Software Manager.
 4. I will use all Software in accordance with the Software Agreements and as directed by the Company's Software Manager.
 5. Upon learning of any misuse of Software or Software Agreements, I will notify the Company's Software Manager, the Company's General Counsel, or the Company's other in-house legal counsel.
 6. Federal copyright law provides that persons involved in the illegal reproduction of software may be subject to civil statutory damages of up to \$150,000 per software product infringed as well as criminal statutory penalties of up to \$250,000 and imprisonment for up to five years.
 7. If I have any questions regarding the duplication or use of the Software or any other software products, I will contact the Company's Software Manager prior to such duplication or use.
- By signing this Employee Software Use Policy, I acknowledge that I have read and understand the foregoing seven statements of policy and that I agree to be bound and abide by such policies. I understand that my violation of any of the above policies may result in the termination of my employment with Company as well as subject me to the fines and penalties stated above.

Employee's Signature _____

Date _____

For an electronic version of this form, contact Dan Glivar at dglivar@hollandhart.com.

Looking Out for Our Clients

The Technology Practice Group's Quarterly Technology Law Alert

Our technology lawyers are leading practitioners in the areas of equipment and software development, procurement, licensing, Internet, and e-commerce.

The Rocky Mountain region has become one of the leading centers for computer, software, Internet, cable television, satellite telecommunications, telephony, and other advanced technology businesses.

Holland & Hart LLP has participated in every step of this evolution in the region's economic base and its communications and technology lawyers are recognized nationwide for having the experience and expertise necessary to provide premium legal services to sophisticated, cutting-edge companies.

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