
SPA's higher education initiative on software piracy

Software Publishers' Association

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Abstract

Describes steps that can be taken by all members of the campus community to prevent software piracy. Details the application of copyright law for works of software, then goes on to advocate the development and implementation of a software policy and software audits.

Campus crime has been elevated to a far more advanced and technologically sophisticated level as more schools are wiring dorms, libraries and classrooms to the Internet. While such improvements are often used to promote educational diversity and the sharing of information they can also lead to serious civil and criminal wrongdoing, placing all sectors of the campus community at risk.

The Software Publishers Association (SPA) is the principal trade association of the PC software industry. Our 1,200 members look to us to protect against the unauthorized reproduction and distribution of their copyrighted material, commonly known as software piracy.

SPA has traditionally balanced its anti-piracy efforts between enforcement and education. As such, we have been proactive in providing users with the tools and information necessary to protect themselves against software piracy and associated liability. Recently, we have received numerous calls from university officials seeking our help to stem the tide of software piracy on campuses. As a result, SPA has developed the higher education initiative to educate and promote awareness of these issues within the halls of academia. Information is available at www.spa.org/piracy/highered/.

Software piracy on college campuses may be generally divided into two categories. The first occurs when the institution itself is violating copyright law. This results when installations of software programs are in excess of the terms stated in the licensing agreement or under law. For example, software that is licensed for use on a single machine is installed on many computers or on a network server, allowing unlimited access. Oftentimes, the school is unaware of the problem as a result of poor or no software management. In other instances the school simply cannot afford to buy software and chooses to risk the infringements.

Students more commonly conduct the second type of piracy. In this scenario the piracy often takes place on the Internet where students trade or simply give away software programs as one would trading cards. If the students are using the school's network or computers to

facilitate their illegal activity, the college itself may be held liable.

All members of the campus community can take steps to prevent such illegal activity and minimize misuse of computer resources. It is important to promote an understanding of the law and to ensure that specific procedures and protocols are implemented to establish a foundation on which illegal activity may be prevented.

The Copyright Act and fair use

The Copyright Act (17 USC Sec 106) gives the owner of a copyrighted work the exclusive right to reproduce the work, to prepare derivative works, to distribute copies of the work, and to perform or display the work publicly. In most cases, no one can make copies of a copyrighted work without the copyright owner's permission, and anyone who does so is an infringer of the copyright and may be held liable to the full extent of the law.

The Copyright Act sets forth four factors that courts are to consider in determining whether copying of someone else's work is permitted by the doctrine of fair use:

- (1) The purpose and character of the copying, including whether the use is of a commercial nature or is for non-profit educational purposes – i.e. copying for nonprofit educational uses may be more likely to qualify as fair use.
- (2) The nature of the work being copied – i.e. copying from works that are primarily factual in nature (science book) is tolerated more than copying from more creative works.
- (3) The amount and substantiality of the portion that is copied in relation to the copyrighted work as a whole – i.e. the more that is copied, or the more significant the portion that is copied (regardless of the quantity) the less likely that fair use will apply.
- (4) The effect of the copying on the potential market for, or value of, the copyrighted work – i.e. has an adverse impact on the market for the original work. (Copying an entire supplemental science software program, rather than buying it, would not be fair use, but piracy.)

Determining whether fair use exists depends on particular circumstances.

To assist educators in evaluating whether their intended copying of copyrighted works will violate the law, the legislative history of the Copyright Act includes a set of guidelines, "Agreement on guidelines for classroom copying in not-for-profit educational institutions", that help define what constitutes "fair use" for classroom copying. However, these guidelines only cover the reproduction of books, periodicals, and musical compositions, not software.

It is difficult to know when something is "fair use." The best strategy is to contact the publisher to find out if a license is available for your specific needs.

The Copyright Act provides other exemptions that may apply to specific educational activities. The US Copyright Office publishes an excellent summary of Section 107 of the guidelines. The publication entitled *Circular 21 – Reproduction of Copyrighted Works by Educators and Librarians* can be requested by calling the Forms Hotline at (202) 707-9100.

Software piracy and audits

The most important first step is the development and implementation of a software policy. SPA has made available draft policies that may be adapted to a specific environment (www.spa.org/piracy/info.htm). Within the policy specific guidelines for legal software use should be established. First and foremost this should include a prohibition against using software in violation of applicable licensing agreements and copyright law. The policy should also describe procedures to legally acquire additional copies of software or new software so users may be aware of the alternative to pirating copies. All users of the campus computer system should be required to sign the policy as a condition of employment or matriculation.

A key element of any policy is enforcement. A software policy is enforced through periodic audits. SPA recommends audits take place at least once a year although advances in auditing and metering software allow constant monitoring to ensure compliance. Such software may be installed on a network server and configured to permit limited use of applications in accordance

with the terms of the license agreement the school has obtained.

In addition to compliance, audits reveal what new software may be needed, what applications are no longer used and may be removed, if additional licenses should be purchased, or if too many have been purchased, indicating future orders may be reduced. Audits also permit maintenance of hardware ensuring multiple copies of the same product are not installed on a single machine, wasting valuable memory.

In a recent case, SPA audited a technical institute in Pennsylvania. (A press release is available at www.spa.org/piracy/releases/berks.htm.) As a technical institute the school had acquired a considerable number of computers to facilitate the teaching of its students. However, as the school grew and additional hardware was obtained, software was simply copied from machine to machine. It was clear the school lacked a software policy and management procedures to ensure and promote compliance. Ultimately, the school was reported to SPA and paid a fine of \$100,000 for violations of SPA members' copyrights.

Internet piracy

Internet piracy is growing at an exponential rate. SPA's investigations have revealed a large portion of this activity is attributable to college students. Hiding behind the presumed veil of their campus network, students log on to unlawfully reproduce and distribute copyrighted material valuing millions of dollars. However, as the students are often using a university owned network or computers, they are placing the university in a position of liability as well.

SPA has resolved numerous cases of this form of piracy in cooperation with college officials. In the matter of Andrews University in Berrien Springs, Michigan, university network administrators noticed unusual activity on the campus network. On tracing the source activity, two students were identified and implicated in the piracy. Campus safety officers impounded the students' computers and university officials then contacted SPA for assistance.

SPA settled with the students along similar terms we have used in previous, related incidents. (A press release is available at www.spa.org/piracy/releases/andrews.htm.) The students agreed to a permanent injunction and 50 hours of community service. Should these obligations not be fulfilled, the settlement calls for a payment to SPA of \$100,000. In addition, SPA seized the students' computer equipment which was used to conduct the illegal activity.

As described above, students and faculty should be asked to sign a policy stipulating to certain conditions before being granted access to the school's computer system. In regard to Internet piracy, the policy should clearly state that use of the campus network is not private and activity may be logged. In addition, suspicious account activity will be monitored and violators will lose privileges and be reported to SPA and/or the authorities.

Five point solution

SPA offers a simple five point solution to enable schools to be software legal:

- (1) Appoint a software manager.
- (2) Create and implement a computer usage policy, including software and Internet access.
- (3) Conduct periodic software audits.
- (4) Establish and maintain a software log of licenses and registration materials.
- (5) Teach and promote awareness of software compliance.

SPA resources

SPA has a variety of resources available to promote the legal use of software. These include our anti-piracy hotline, (800) 388-7478, the Certified Software Manager (CSM) and Internet in the Workplace courses, SPAudit and KeyAudit auditing software, the Software Management Guide videos including the university targeted, "A shared set of values", posters and other awareness materials. More information on SPA's software piracy efforts can be found at www.spa.org/piracy.