

To copy or not to copy

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In last month's issue of *Campus Computing & Communications* I wrote two articles about software piracy. (See "It's a crime" and "Software licences" in the July/August issue.)

These articles discussed the four types of software (commercial, shareware, freeware and public domain) in terms of copyright and covered some of the ramifications of software piracy and the efforts that the software industry is taking to prevent it.

Don't do it

It is in everyone's best interest to use software in a legal and ethical manner. Since the use of each piece of software is subject to different restrictions, please review the licence agreements that come with your software carefully.

In general, you do not have the right to:

- Receive and use unauthorized copies of software.
- Make unauthorized copies of software for others.
- Leave a copy of commercial software on public computers.

Some common feedback

Not long after the newsletter was distributed, I began to receive e-mail from people regarding their views on software copyright. Some of the more common opinions expressed were:

- People often feel that if they purchase software they own the software rather than just a licence to use it and therefore they can do whatever they want with it.
- Students cannot afford to purchase software so they are justified in copying software from those who can afford to purchase it.
- People often feel that they are not hurting anyone by violating software copyright.
- People often feel that the copyright laws need to adapt to the current reality.

Why copyright exists

Before I address these concerns, it is important to understand why software copyright laws exist.

According to Pamela Samuelson in the July 1996 issue of *Communications of the ACM*, a publication of the Association for Computing Machinery, "copyright law has traditionally balanced the interests of authors, publishers, and the consuming public.

The goal of this law has not been to maximize the degree of control authors or publishers can exercise over all copies or uses of their works but

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rather to provide enough control over works and performances to give authors and their publishers sufficient assurance that they will benefit from commercial exploitation of their works so that they will share their works with the public and thereby promote learning." This description of general copyright law applies to software copyright as well.

Purchase is not ownership

Some of the people who contacted me feel that they are the owners of any software they purchase and that means they can do with it what they want. If they wish to distribute

copies to their friends, they can. If a friend of theirs is a legal owner and does not mind them copying software, they feel this is all right. In fact, these are violations of software copyright laws.

The rights of individuals who purchase software are similar to the rights of individuals who rent or lease vehicles. Only the registered renters are authorized to operate the vehicles. Renting a vehicle does not give them the right to take the vehicle apart nor does it give them the right to loan it to another driver. Similarly, software licences state that only the registered owner of the software may use it.

When renting a vehicle, there are provisions for multiple drivers at an extra cost. Most software companies have site licences or network licences that allow multiple users to purchase copies of software.

For example, the UBC community can take advantage of the lower software prices made possible through site and network licences from Computing and Communications' site licence program or Mercury service. [Ed. For more information about the site licence program see "UBC site licence program" this issue. For more information about Mercury see "Update on the Mercury service" this issue.]

"Shrink-wrap" licenses okayed by court

The validity of the "shrink-wrap" licenses that many software publishers rely on for copyright protection was bolstered by a recent appellate court ruling in Chicago. Last month, the Seventh Circuit Court of Appeals reversed a lower court's finding that shrink-wrap agreements were unenforceable. Plaintiffs in the case, ProCD vs. Zeidenberg et al., charged the defendants with distributing the software program via the Internet. The defendants had argued that they couldn't be held to the license terms because they'd had no chance to negotiate or object to parts of the agreement. They also said the license agreement should be printed on the outside of the box, where it could be read before purchasing. The latest ruling found this suggestion to be an onerous burden, but did say the box must have a notice saying there's a licensing agreement inside, and that buyers should be able to return the software if they don't agree to the license once they read it. (Investor's Business Daily 3 Jul 96 A5)

-excerpted from *Edupage*, 4 July 1996, written by John Gehl and Suzanne Douglas. *Edupage*, a summary of news items on information technology, is provided three times each week as a service by Educom, a Washington, D.C.-based consortium of leading colleges and universities seeking to transform education by information technology.

Finally, if a rental car is in an accident while being driven by an unauthorized driver, insurance will usually not cover the incident. If individuals are found violating software licences they may face lawsuits.

Affordable alternatives available

Another point made by some of the students who e-mailed me is that, as

students, they are on a limited budget. They feel that this gives them justification for copying software from those who can afford to purchase it. Is it generally accepted that if you can't afford something it's alright for you to steal it? No matter how you look at it, stealing is against the law. Making unauthorized copies of software is theft.

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To copy or not to copy (cont.)

There are many provisions for people who cannot afford to purchase software. They can rent time on computers. If they have access to the necessary computer hardware, the UBC Bookstore has educational prices on most software. These prices are available to all faculty, staff and students at UBC.

Another way to obtain low-cost software is to use shareware or freeware software or to take advantage of the deals offered through Mercury or the site licence program. There really is no excuse for making illegal copies of software.

Copyright infringement affects everyone

Some of the people who contacted me also believe that making illegal copies of software does not affect anyone. This is a common misconception. Unauthorized copying of software by individuals can harm the entire university community.

If unauthorized copying proliferates on campus, UBC may incur a legal liability. UBC may also find it more difficult to negotiate agreements that would make software widely available to members of the university community at low prices.

The software industry also loses revenue every time software copyright is violated. This revenue could be used to develop more software and thus provide jobs. As reported on the International AntiCounterfeiting

Coalition's Web site (<http://www.ari.net/iacc/economic.html>), "in 1993 the US Customs Service projected that total American job loss

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due to product counterfeiting was 750,000."

Without adequate protection of the software industry's emerging technologies, the future of one of the world's fastest growing industries is threatened.

With countless copies of licensed, copyrighted software programs currently available on electronic bulletin boards and the Internet, the potential for computer users worldwide to download data and software free-of-charge readily exists. This situation serves to discourage authors and creators from distributing their works over on-line services.

If you believe that making illegal copies is not hurting anyone, think again.

The future of software copyright

Finally, some people feel that copyright laws need to adapt to the current reality. The current reality is that copyright can easily be violated, and as a result the laws are being challenged (see sidebar on page 17). However, for the reasons outlined above, copyright laws and the methods used to protect copyright need to be strengthened.

What is the future of software copyright laws? Proposals have been made in the United States to regulate software reproduction technologies. In other countries, a tax is imposed on the sale of all videocassette recorders and videocassettes. These funds then are distributed proportionately to copyright owners.

Eventually, anti-copying mechanisms may be installed in, for example, hardware capable of duplicating CDs. Copying will not be possible unless the individual knows the authorization code.

Software copyright laws exist to protect both the developers and users of software. As Pamela Samuelson states, "the challenge facing us is how to develop a new equilibrium for digital information in networked environments that will not unduly tilt the balance of power in favor of either copyright owners or the public."□

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