



601:Software Licensing Audits

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Faculty Biographies

Anne M. Kelley

Anne Murphy Kelley is a senior attorney with Microsoft Corporation, practicing in the intellectual property group of the Microsoft law & corporate affairs department. Her current emphasis is patent and technology licensing. Prior to working in the IP group, Ms. Kelley worked in LCA's worldwide sales group, focusing on license compliance and anti-piracy enforcement in the United States.

Prior to joining Microsoft, Ms. Kelley worked at Arter & Hadden in Los Angeles. Her primary areas of concentration were anti-piracy and anti-counterfeiting litigation on behalf of Microsoft and others and civil prosecution of savings and loan fraud on behalf of the RTC, FDIC, and FSLIC.

Ms. Kelley is immediate past chair of the Lawyer's Conference of the ABA's judicial division, where she focuses on issues related to technology and the administration of justice, including federal judicial pay increases, improving state judicial evaluation procedures, and judicial outreach.

Ms. Kelley graduated with a BA from the University of California at Berkeley. She obtained her law degree from the University of California, Hastings College of Law, where she served as executive editor of the *Hastings International & Comparative Law Review*.

Wendi E. Okun

Wendi E. Okun is assistant general counsel for Liberate Technologies in San Carlos, California. Her responsibilities include drafting and negotiating software licenses, OEM and distribution agreements, consulting services agreements, joint development, and marketing agreements. She also works on employment law issues and mergers and acquisitions at Liberate.

Prior to joining Liberate, Ms. Okun was senior corporate counsel for Wind River Systems, Inc. in Alameda, California. While at Wind River, her practice included software licensing, SEC compliance, and mergers and acquisitions. Before going to law school, Ms. Okun worked in Paris at the Organization for Economic Cooperation and Development.

She is currently the president of the board of governors of the University of San Francisco School of Law, and serves as a director and cochair of ACCA's Intellectual Property Committee for the San Francisco Bay Area Chapter.

Ms. Okun received a BA from the American University of Paris (France) and is a graduate of the University of San Francisco School of Law.

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Scenario

SloppyCo is a software company with a promising product, but the company is running out of money. SloppyCo's software product includes software components provided under written license agreements from various 3rd parties. SloppyCo's engineers use many software applications on their desktop computers while they develop software, and there is a small administrative staff that uses commercially available desktop software to handle its tasks.

SloppyCo has been cutting a few corners to save money. Two quarters ago, they laid off their financial analyst in charge of reporting third party royalties. Last week, they laid off most of their IT staff. Senior management has been discretely "shopping" the company to its competitors in hopes of salvaging the team and the technology.

One of SloppyCo's larger competitors, BurnedCo, is very interested in acquiring SloppyCo. They have made an initial offer of \$50 million for the company, pending the results of due diligence. One of the items BurnedCo has asked for is all agreements relating to the purchase of desktop software and software that is bundled in SloppyCo's software products. BurnedCo's CEO was greatly embarrassed last year when a disgruntled employee anonymously tipped the Business Software Alliance (BSA) stating that BurnedCo was using illegal copies of desktop and development software. The BSA audited BurnedCo and the company was later fined \$x and its CEO was humiliated by the negative publicity the audit results generated. Since then, BurnedCo has had a no tolerance policy for software piracy. In fact, BurnedCo's CEO recently told SloppyCo's CFO that if SloppyCo has even one instance of an illegal copy of any software, the price he is offering will go down by \$10 million.

You are SloppyCo's General Counsel. Your boss has asked you to quietly populate a data room with the information requested on the due diligence list. As in all acquisitions, the executives want things to move quickly, but you must not alert the other employees that a possible merger is afoot. You check with the finance person now responsible for tracking royalty payments, and she tells you she hasn't looked into that yet. You go to the IT department to ask for the license agreements for the desktop software all employees have, and the help desk person who is there starts making a list and looking for the jewel cases.

What do you do next?

Business Software Alliance

Software Piracy and the Law

United States Information on Software Piracy in the U.S.

What Is the Law Regarding Software Piracy?

Most people would never consider stealing something that did not belong to them. But those who copy software without authorization are, in fact, stealing someone else's property — their intellectual property. And they are breaking the law.

You may not realize it, but software development involves a team effort that blends the creative ideas and talents of programmers, writers and graphic artists. And like most creative works, such as books, music and films, computer software is protected by U.S. copyright laws.

When you purchase software, you do not become the owner of the copyright. Rather, you are purchasing the right to use the software under certain restrictions imposed by the copyright owner, typically the software publisher. The precise rules are described in the documentation accompanying the software — the license. It is imperative that you understand and adhere to these rules. Most often, they state that you have the right to load the software onto a single computer and make one backup copy. If you copy, distribute or install the software in ways that the license prohibits, whether you are swapping disks with friends and coworkers or participating in widespread duplication, you are violating federal copyright law. Even if you only help someone else make unauthorized copies, you are still liable under the copyright law.

Many businesses, both large and small, face serious legal risks because of software piracy. Under the law, a company can be held liable for its employees' actions. If an employee is installing unauthorized software copies on company computers or acquiring illegal software through the Internet, the company can be sued for copyright infringement. This is true even if the company's management was unaware of the employee's actions.

Quite simply, to make or download unauthorized copies of software is to break the law, no matter how many copies are involved. Whether you are casually making a few copies for friends, loaning disks, distributing and/or downloading pirated software via the Internet, or buying a single software program and then installing it on 100 of your company's personal computers, you are committing a copyright infringement. It doesn't matter if you are doing it to make money or not — you are exposing yourself to severe civil and potentially even criminal penalties. For example, those individuals using the Internet to list, sell or distribute pirated or counterfeit software programs through online auctions and "warez" sites may be criminally prosecuted, even if they do not profit from the illegal activity.

What Are the Penalties for Pirating Software?

Software theft is a serious matter. If you or your company is caught copying software, you may be held liable under both civil and criminal law.

If the copyright owner brings a civil action against you, the owner can seek to stop you from using its software immediately and can also request monetary damages. The copyright owner may then choose between actual damages, which includes the amount it has lost because of your infringement as well as any profits attributable to the infringement, and statutory damages, which can be as much as \$150,000 for each program copied. In addition, the government can criminally prosecute you for copyright infringement. If convicted, you can be fined up to \$250,000, or sentenced to jail for up to five years, or both.

Apart from legal consequences, using copied or counterfeit software also means:

- Greater exposure to software viruses, corrupt disks, or otherwise defective software
- Inadequate or no documentation. No warranties
- Lack of technical product support available to properly licensed users
- Ineligibility for software upgrades offered to properly licensed users

What Are Your Responsibilities As a Software User?

Your first responsibility as a software user is to purchase only legitimate software products. When buying software, make sure you get genuine disks, manuals, and license documentation. Avoid loose or hand-labeled disks or software that is offered at prices "too good to be true." Be wary of unscrupulous Internet vendors who advertise attractive deals on "genuine" software that was overstocked or otherwise discounted for inventory reasons. Keep in mind that a high percentage of software sold through online auctions is illegal.

Next, you have a responsibility to install and use your software in accordance with the license agreement. Since these agreements differ from publisher to publisher, you need to read them carefully. When someone else installs the purchased software, be sure that individual provides you with proof that the product is properly licensed. If you have outsourced your information technology needs to a consultant or application service provider, you are still responsible for software license compliance.

Software piracy is not a victimless crime. Piracy denies the software developer its rightful revenue and harms consumers and the industry as a whole. All software developers, both big and small, spend years creating software. A portion of every dollar spent in purchasing original software is funneled back into research and development, so that newer, more advanced software can be produced. When you purchase illegal or counterfeit copies, your money goes straight into the pockets of software pirates.

What Is the Economic Impact of Software Piracy?

In the United States, 25 percent of all business software is unlicensed. The Business Software Alliance (BSA) estimates that in 2001 the industry lost more than \$1.8 billion in revenue in the United States alone due to software theft. But software piracy's damaging economic impact is not just confined to the software industry. In fact, software piracy has an effect on the economic health of the nation as a whole. In 2000, the United States suffered a staggering 118,000 job losses, \$5.6 billion in lost wages and \$1.6 billion in lost tax revenue due to pirated software.

What More Can You Do to Prevent Piracy?

For more information about software piracy, to obtain a free software management guide, or to report piracy, call the toll-free BSA Anti-Piracy Hotline at 1-888-NO-PIRACY or log on at www.bsa.org.

Business Software Alliance

1150 18th St. NW, Suite 700, Washington, DC 20036

www.bsa.org



Person performing due diligence _____

Date document reviewed _____

Document ___ of ___

<p>Name of other party</p>	<p>Type of Agreement:</p> <ul style="list-style-type: none"> <input type="checkbox"/> In-bound <input type="checkbox"/> Outbound development license <input type="checkbox"/> Outbound marketing agreement <input type="checkbox"/> Outbound distribution agreement <input type="checkbox"/> Services Agreement <input type="checkbox"/> Other _____
<p>Effective Date:</p>	<p>Renewal terms:</p> <ul style="list-style-type: none"> <input type="checkbox"/> No <input type="checkbox"/> Auto renew unless either party provides ___ days notice <input type="checkbox"/> Auto expire unless either party provides ___ days notice <input type="checkbox"/> Length of additional term(s)
<p>Term:</p> <ul style="list-style-type: none"> <input type="checkbox"/> __ years <input type="checkbox"/> perpetual <input type="checkbox"/> other, explain 	
<p>Unexpected assignment of IP to other party? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>Joint ownership of any IP? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>Explicit patent licenses? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>MFN / right of first refusal terms? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>Penalty Clauses? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>Exclusivity terms? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	<p>Assignability:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Notice only <input type="checkbox"/> Needs consent in all cases <input type="checkbox"/> Needs consent unless merger/acquisition or to an affiliate <input type="checkbox"/> Other, Explain
<p>Unusual warranties? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>Termination for change in control? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	
<p>Governing Law:</p>	
<p>Jurisdiction:</p>	
<p>Non-solicitation clause? <input type="checkbox"/> No <input type="checkbox"/> Yes, explain</p>	

Examples of License Audit Provisions

Sample #1

Book and Records. Licensee agrees to maintain adequate books and records relating to its compliance with the terms of this Agreement, including the distribution of Titles, during the term of this Agreement and for a period of three (3) years thereafter. Such books and records shall clearly and separately set forth, without limitation, as to each item separately licensed hereunder, at least the following information: the computation of all royalties and any other amounts owing to Licensor. Such books and records shall be available at Licensee's place of keeping for inspection, at Licensor's expense, by a mutually agreed upon auditor, for the purpose of determining whether Licensee has complied with the terms of this Agreement. Any audits will be performed during normal business hours and will not unreasonably disrupt Licensee's business. Licensor shall have the right to conduct such an audit upon at least 30 days advance notice. In the event that any such audit discloses an underpayment, such underpayment shall be promptly paid and, if the amount of such underpayment is greater than 10% of the amount that was due, Licensee shall be responsible for paying the costs of such audit.

Sample #2

Audit Rights. Licensee shall maintain for a period of two (2) years after the end of the year to which they pertain, complete records of the Software distributed by Licensee and to Licensee Customers in order to calculate and confirm Licensee's royalty obligations hereunder. Upon reasonable prior notice, Licensor will have the right, exercisable not more than once every twelve (12) months, to appoint a representative, at Licensor's expense, to examine such books, records and accounts during Licensee's normal business hours to verify the royalties due by Licensee to Licensor herein. Licensor may audit more than once every twelve (12) months if there has already been a previous audit and some discrepancy of payment has been found. In the event such audit discloses an underpayment or overpayment of royalties due hereunder, the appropriate party will promptly remit the amounts due to the other party. If any such audit discloses a shortfall in payment to Licensor of more than five percent (5%) for any quarter, Licensee agrees to pay or reimburse Licensor for the expenses of such audit.

Sample #3

Audit Rights. Licensee agrees to keep complete and accurate books of account and records covering all of the revenues described in Paragraph 4 and amounts due under this Agreement at Licensee's address set forth above and shall permit Licensor or its agents to inspect such books of account and records during reasonable business hours (upon prior reasonable written notice) no more frequently than once during any twelve (12) month period for the purpose of verifying the reports to be provided hereunder. In the event that any such inspection reveals that Licensee has underpaid Licensor by five percent (5%) or more with respect to the Royalty Period(s) which is the subject of such inspection,

Licensee agrees that it shall reimburse Licensor for the reasonable costs for any such inspection. All books of accounts and records relating to each report to be provided under this Agreement shall be retained by Licensee for at least two (2) years after the termination or expiration of this Agreement and Licensor's rights under this Paragraph 5.02 shall survive termination or expiration of this Agreement for a period of 2 years. Licensee shall pay to Licensor the amount of any deficiency discovered by Licensor with interest as described in Paragraph 5.03 from the date such deficiency was originally due, and, if applicable, the costs of the inspection, within fifteen days after receipt of notice thereof from Licensor. Licensee acknowledges that Licensor may delegate its rights hereunder to Licensor's affiliates and may use outside accountants to conduct such inspections. Licensee shall not interfere with Licensor's inspectors in the performance of their duties. In addition, Licensee expressly acknowledges that its agreements with third parties involving the Licensed Products or the Licensed Property, any reports issued thereunder by the third parties, and any revenue therefrom are part of the books and records subject to inspection under this Paragraph 5.02. Licensee shall require each MSO Distribution Partner to agree in writing to permit Licensee and Licensor to access its books and records to confirm compliance with the applicable access agreement or sublicense. Should Licensor elect to exercise its rights with respect to the inspection of the books and records of any MSO Distribution Partner, Licensee shall fully cooperate, at Licensee's expense, in connection therewith.

Sample #4

Audit Rights. Licensee shall retain records and supporting documentation sufficient to document the fee payable under this Agreement in any particular year in which this Agreement is in effect for at least three years following the end of such year. Upon no less than 30 days prior written notice, Licensee shall provide to a nationally recognized independent public accounting firm (the "Auditors") designated in writing by Licensor access during normal business hours to Licensee's personnel, outside accountants and data and records maintained in connection with this Agreement, in each case to the extent necessary or appropriate for the purpose of determining whether calculations of the fees payable under this Agreement are accurate and in accordance with this Agreement (an "Audit"). Audits will be conducted by Licensor no more frequently than once per calendar year. Licensee shall use commercially reasonable efforts to assist such Auditors in connection with such Audits. Any such Audits shall be conducted at Licensor's sole cost and expense, subject to clause (c) below. Licensor shall cause its Auditors to provide a copy of their final report to Licensee and Licensor simultaneously, but in any event within ten Business Days following the conclusion of the applicable Audit. If it is determined that Licensee underpaid Licensor in a particular period, Licensee shall reimburse Licensor the applicable amount, plus interest from the date upon which such erroneous payment was made to the date upon which such reimbursement is made at an annual rate equal to the published prime rate of Chase Manhattan Bank as in effect from time to time during such period, or the maximum rate permitted by law, whichever is less. If such underpayment was equal to or greater than 3% of the fee payable under this Agreement during the

audited period, Licensee will promptly reimburse Licensor for Licensor's reasonable expenses incurred in connection with such audit. If it is determined that Licensee overpaid Licensor in a particular period, Licensee shall be entitled to offset such overpayment against amounts payable to Licensor pursuant to this Agreement.

Sample #5

Audit Rights. During the term of this Agreement and for three (3) years thereafter, Licensee agrees to keep all usual and proper records and books of account and all usual and proper entries relating to the Licensee Product and the OEM Product. Records and books of account include, but are not limited to, information regarding the number of Licensee Product and OEM Product units distributed or subscriptions activated. Licensor may cause an audit and/or inspection to be made of the applicable Licensee records in order to verify statements issued by Licensee and Licensee's compliance with the terms of this Agreement. Any such audit shall be conducted by an independent certified public accountant selected by Licensor, and reasonably acceptable to Licensee. Such independent certified public accountant shall provide a summary of its findings regarding its verification of the statements by Licensee and Licensee's compliance with the terms of this Agreement. Any audit and/or inspection shall be conducted during regular business hours at Licensee's facilities with reasonable notice. Licensee agrees to provide Licensor's designated audit or inspection team access to the relevant Licensee records. Licensee shall pay Licensor the full amount of any underpayment revealed by the audit plus interest from the date such payments were due under the terms of this Section 4. Notwithstanding the foregoing, if such audit reveals an underpayment by Licensee of more than five percent (5%) for the period covered by the audit report, Licensee shall pay all of the fees and costs associated with such audit and the amount underpaid with interest from the date such payment was due pursuant to this Section 4.

Sample #6

Verifying compliance. You must keep records relating to the products you and any affiliate participating under a license agreement run. We have the right to verify compliance with any license agreement, at our expense, during the term of the license agreement and any enrollment and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates participating under a license agreement use. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of

products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of the applicable license agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement (including any license or services agreement incorporating these terms) or to protect our intellectual property by any other means permitted by law.

Sample #7

Verifying compliance. You agree to keep all usual and proper records relating to the products you run. We may request that you conduct an internal audit of all Microsoft products in use throughout your organization, comparing the number of products in use to the number of effective licenses issued in your name, at any time up to one year after the authorization number expires. Following any audit, you agree to deliver to us a written statement signed by your authorized representative, certifying that either (i) you have sufficient licenses to permit all usage disclosed by the audit or (ii) you have ordered sufficient licenses to permit all usage disclosed by the audit. By requesting an audit, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

IP Due Diligence Questionnaire

A. Technology

- _____ 1. Copies or descriptions of the Company's established policies (whether written or oral) regarding trade secrets and other proprietary rights and actions taken to protect the Company's trade secrets or other proprietary rights.
- _____ 2. Copies of confidentiality agreements. If a standard form of agreement is used, please furnish a copy of that form and list of those who have signed such agreement and note any material deviations from that standard form for any signatory, as applicable.
- _____ 3. Identification of inventions, discoveries, improvements, writings, materials, works, etc., which the Company seeks to protect by copyright, patent, trade secret or other means.
- _____ 4. Copies of all material agreements relating to the license to or other use by others of the Company's patents, copyrights or other intellectual properties, or the license to or other use by the Company of others' patents, copyrights or other intellectual property, including in each case research and development agreements, manufacturing licenses and distribution and marketing agreements.
- _____ 5. List of all United States and foreign patents, trademarks, service marks, copyrights and mask work rights, including pending applications, with descriptive titles, registration numbers, trademark clearance opinions, jurisdiction and effective and expiration dates. In the case of unregistered marks, a list of such unregistered marks together with date of first use and jurisdictions where such marks are used.
- _____ 6. All documentation relating to any conflicts, interferences, third-party claims and suits, patent oppositions, internal memos and external reports regarding possible infringement of rights of third parties or of the Company's rights by third parties.
- _____ 7. Listing of all software products of the Company, either owned or licensed as the case may be.
- _____ 8. Copies of any development, open source and/or share ware agreements that contain any royalties, restrictions or requirements, including but not limited to any GPL (GNU General Public License), or any other third party license requirements.

B. Material Agreements

- _____ 1. All standard form agreements or other documents, including form end-user license agreements, beta test agreements, and forms of warranties and guaranties for products or services offered.
- _____ 2. Material sales and purchase contracts; major supply contracts.
- _____ 3. Schedule of and agreements with significant customers, suppliers, etc.
- _____ 4. All material service contracts.
- _____ 5. Documents relating to acquisitions or dispositions by the Company of subsidiaries, lines of business or substantial assets.
- _____ 6. Any agreements with employees or third parties relating to the development of software products, royalty agreements.
- _____ 7. Any agreements restricting the ability to conduct business or sell any product in any geographical territory or otherwise or the ability to conduct any type of business.
- _____ 8. Any Software Escrow Agreement or other arrangements providing third parties with source code access or use.
- _____ 9. Any independent software vendor agreements
- _____ 10. All agreements whereby the Company licenses software or other intellectual property from third parties, including copies of all applicable end-user license agreements, volume licenses, and site licenses (including number of seats).

C. Personnel

- _____ 1. Information on confidentiality or non-competition agreements to which key employees and consultants may be parties from prior employment. Information regarding confidentiality and rights to inventions and works for hire of employees, including software developers in particular.
- _____ 2. List of any employees, contractors or others who have been involved in the development of the software products being assigned, including employment or other agreements with the Company and/or for software development services. List of any prior inventions claimed by any such employees, contractors or others.

D. Export Compliance

- _____ 1. List all validated export licenses for the Company's products issued under United States law.

E. Legal Matters

- _____ 1. List and description of all pending or threatened litigation, regulatory or administrative proceedings.
- _____ 2. Litigation files, including pleadings, opinions of counsel, correspondence and analyses of material litigation status, consent decrees, injunctions, etc.
- _____ 3. All correspondence dealing with actual or alleged infringement of patents, trademarks or copyrights.
- _____ 4. Settlement Agreements.
- _____ 5. Listing of warranty claims.

ACCA Annual Meeting **Software Licensing Audits**

Wendi Okun, Laura Wagerman & Anne Kelley

October 9, 2003
San Francisco, California

Why Manage Software Assets?

- Maximize Your Investment in IT Resources
- Improve Data Security
- Increase Staff Productivity
- Sends the Message: “We respect the law, others’ IP—as they should respect ours”
- Avoid Risks of Infringement Claims

Maximizing Your Investment in IT

- Control costs of acquisition
 - Avoid acquiring unnecessary software
 - Free space on hardware to avoid acquiring unnecessary new hardware
- Avoid risks of unlicensed software such as lack of technical support and lack of upgrade eligibility
- Take advantage of license terms; know scope of rights
- Take advantage of volume discounts offered by software publishers
- Ensure software quality and reliability

Improve Data Security

- Avoid damage to PCs and entire networks
- Avoid counterfeit software or software from home that may contain viruses
- Avoid corrupt disks and defective software

Staff Productivity

- Businesses are increasingly dependent on technology--using reliable, licensed software enables business to run smoothly
- Uniform platforms and versions improve workflow and efficiency by alleviating communication and data transfer problems
- In a corporate merger or acquisition situation, good software asset management can dramatically facilitate due diligence

Avoid the Risks of Software Infringement Claims

- Criminal penalties for copyright infringement
 - Imprisonment up to 5 years
 - Fines up to \$250,000
- Civil penalties for copyright infringement
 - Actual Damages
 - Statutory Damages (up to \$150,000 per work)
 - Injunction
 - Attorneys fees
- Company executives individually liable
- Reputation

How to Manage Software Assets

- Create the right organizational environment
- Take inventory
- Know the warning signs of illegal software
- Prepare to take corrective and preventative action
- Exercise care during mergers, acquisitions, divestitures, etc.
- Think ahead -- budgeting issues

The Right Organizational Environment

- Employee education
- Communicate a clear software policy
- Obtain employee acceptance
- Identify, distribute and regularly update a list of supported software
- Keep licenses & media in a central place
- Implement software procurement procedures

Take Inventory

- Count the number of PCs, laptops and servers your company has in use and the type of software installed on each
- Compare this information against the number of legitimate software licenses
 - Locate and gather license documentation
 - Identify unauthorized and unsupported software-
 - counterfeit
 - improper distribution
 - Identify over-installation

Take Action

- **Corrective Action**
 - Identify license deficiencies and acquire necessary licenses to bring your organization into compliance
- **Ongoing Assessment**
 - Maintain baseline inventory
 - Periodically review software procurement records
 - Conduct periodic inventories
 - Establish software disposal procedures

Warning Signs

How to Avoid Unauthorized Software

- **Look for obvious signs**
 - Quoted price is “too good to be true”
 - Documentation or media states restriction on distribution
 - Hand written or photocopied labels/documentation, package not shrink-wrapped
 - Evident inferior quality
 - Be especially careful on the Internet

- **Check with the software publisher if you are unsure about authenticity**
 - check the publisher's web site
 - specific security features to look for

Managing Software Assets During Mergers & Acquisitions

- Companies involved in both sides of the transaction should exercise care
- Acquiring company should ensure that it is not acquiring costly liabilities in the form of pirated software (go beyond reps & warranties)
- Acquisition target company must make truthful representations and warranties (investigate)
- Follow proper license transfer requirements or the transfer may be invalid

Think Ahead: Budgeting Issues

- Setting reasonable budgeting expectations for software acquisitions is an essential step to ensure that the company does not acquire counterfeit software or engage in end-user copying
- Control software acquisition costs
 - identify planned software expenditures in a separate line item of your IT budget
 - track your actual v. planned expenditures
 - facilitate accurate evaluation of needs

Helpful Sites

Business Software Alliance

www.bsa.org

- Links to audit tools
- Software asset management policies
- Employee memos and education

Software Information Industry Association

www.sija.net

Better Business Bureau

<http://www.bbb.org/library/pastip.asp>

Microsoft

www.microsoft.com/sam

Software asset management guide

Inventory analyzer

Tools and resources