



## **BUSINESS SOFTWARE ALLIANCE MONITORS SOFTWARE USE**

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One of the main problems with software piracy is the fact that numerous businesses that do not possess the appropriate licences for their software are not conscious of the illegal nature of their operations or the scope of the problem until they receive a denunciation. However, faulty acts, even if they are involuntary, can have grave consequences.

The *Business Software Alliance* (hereinafter "BSA") is often involved in important interventions against businesses for the illegal use of software. The BSA is an association that fights against software piracy and whose members include software developers, such as Adobe, Microsoft and Symantec, whose products are frequently used by companies. Interventions are usually a result of a denunciation of non-compliance transmitted to the BSA by an individual having precise information with respect to this matter.

There are several measures that can be taken to ensure compliance with software licences and to avoid being a target of the BSA. For example, companies can adopt best practices in Software Asset Management (also known as "SAM"), or, at the very least, carry out regular internal audits. Such an audit can include: (i) an inventory of installed software (software tools to carry out such a task do exist); (ii) an inventory of acquired licences (taking into account the number and types of authorized installations and versions of the software used); (iii) a comparison between the tracked software and the acquired licences; and (iv) a conformance activity consisting in either deleting non-licensed software or purchasing missing licences, as appropriate. This process should be repeated regularly.

In addition to the above-mentioned auditing measures, certain practices can facilitate verification, including: (i) centralizing purchases of software; (ii) documenting purchases by keeping the proof of purchase of licences; and (iii) registering the licences with the appropriate software companies. It is also a good practice to ensure that, when purchasing computer hardware sold with preinstalled software, the invoice specifies what software is included. Finally, companies should

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develop and maintain a policy for software installation and use applicable to all employees of the company.

When a company has been denounced and the BSA intervenes, it is important to keep in mind the following. A company should have as much information as possible surrounding the use of the software in question as of the date of the BSA notice of non-compliance in order to reduce the risk of subsequent contradictions. More information should be obtained with respect to the evidence the BSA has and which justifies its intervention. If there is a significant difference between the actual situation and that perceived by the BSA, this can be argued in favour of a reduction in the amount claimed by the BSA. Every allegation of the BSA should be verified in order to ensure that the alleged illegal behaviour is related to hardware owned by the company, as opposed to, for example, personal hardware used by employees or management. If the software was installed without the knowledge of company management or if the software was installed and used outside the scope of the employee's functions, this can be considered when determining liability.

Furthermore in the event that a particular situation results in judicial proceedings or settlement discussions, it is important to note that the BSA is not the official owner of the copyright in the software of the companies it represents.

Legal counsel experienced in such matters, if notified early in the process, can help in resolving the issue more favourably for the targeted company



