

Online Software Purchases – The Good, The Bad and The Ugly

By Christopher Barnett

Businesses understandably want to reduce both the time spent shopping for software licenses and the amount to be paid to acquire those licenses. However, efforts to minimize license spends online can have negative unintended consequences. If you are shopping at a software publisher's own online marketplace (such as Adobe's or Autodesk's stores), then you usually can rest assured that you at least have the tools available to purchase the correct kind and quantity of genuine licenses. However, the pricing available at those stores often is higher than the pricing available through third-party resellers.

Unfortunately, the further you stray from the publishers' stores in a search for lower prices, the more likely it is that you may make a costly error in your purchasing decisions. Here are three big reasons why:

1. You may not realize what you are getting. Those high prices and the publishers' stores come with benefits, one of which usually is assistance with available license types and an assessment of license needs, especially if you are contemplating a higher-cost transaction. If you purchase through third-party sites with lower prices (like Amazon) or through auction or "marketplace" sites (like eBay or, in some cases, Amazon), then you often are on your own in assessing your needs. As a result, some businesses end up purchasing incorrect licenses – such as academic-edition licenses for prohibited commercial purposes or upgrade licenses without a valid, qualifying, full-version license – usually on non-refundable terms.

2. You may not be getting anything at all. In some cases – especially at the auction and "marketplace" sites – the advertising sellers may have no right whatsoever to resell the software licenses they are offering, making those licenses worthless to the purchaser. Autodesk in particular is well known for challenging such sales, because its standard license agreement expressly prohibits the transfer of software licenses without its consent. In the event of an audit, invoices from such sales typically not only are rejected as proof of license-ownership but also may damage a business' credibility in attempting to negotiate a resolution, especially if the price identified on the invoice is far below MSRP.

3. You may be getting more than you expected. In the worst cases, and again, most commonly when purchasing software through marketplaces or auction sites, what you receive may actually result in damage to your files or computer systems. It is not unheard-of for software shipped following such sales to consist of unauthorized, corrupted copies or whole-cloth counterfeits of the advertised products. Such software can result in loss of data that may be significantly more valuable than full-price licenses for the software in question. In those situations, businesses may find themselves without the license-proof they need in the event of an audit and without the files they need to service their customers and make money.

This is not to say that all online license transactions are a bad idea or that business should not attempt to manage their licensing costs when possible and appropriate. However, it is a good, general rule of thumb that the further you get from full MSRP for a software license offered on the Internet, the more cautious you should be before proceeding. In close cases, it also may be worth the effort to get an opinion from your attorney.



About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher's practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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