

## **Copyright Infringement Implications for Commercial Restrictions in Software Licensing**

**By Keli Johnson Swan**

Copyright infringement relating to software licensing is a complex issue. The Copyright Act allows software publishers to pursue copyright infringement claims against consumers who fail to adhere to specific terms of the license agreements, even if the consumer purchased a license.

One of the most common mistakes in software asset management is purchasing the wrong license for the product installed. Smaller companies sometimes purchase computers with software pre-installed, such as Microsoft operating systems or Microsoft Office Suites. One particular issue affecting smaller companies involves the commercial restriction found in Section 12 of the Microsoft Office End User License Agreement. In order to obtain the most favorable price on new machines, a business may order the computers pre-installed with Microsoft Office Home & Student Edition instead of Microsoft Office Home & Business. This distinction is significant, because the license agreement prohibits the Student or Academic version from being used in a commercial setting.

Unfortunately, some businesses find out too late that this is a costly mistake that not only involves a penalty, but also requires the business to purchase the appropriate version in addition to the penalty.

Microsoft and its authorized copyright enforcement entity, the Business Software Alliance (“BSA”), pursue copyright infringement claims against businesses by initiating software audits. If a company is found to have improperly licensed software, Microsoft or the BSA will demand a penalty for the allegedly unauthorized use of the software, often up to three times the MSRP value of the product at issue.

Microsoft is not the only software publisher that offers academic or student versions of products that are less expensive. Autodesk is another publisher that offers student versions of some of its products, but all of the student versions also contain commercial use restrictions.

Ultimately, it is the consumer’s responsibility to ensure the proper license is purchased for the software installed, regardless of whether a software vendor, or even a representative of the software publisher itself, originally sold the products to the consumer.



**About the author Keli Johnson Swan:**

As an associate attorney at Scott & Scott, LLP, Keli is primarily focused on software licensing and copyright infringement matters. She advises clients in a variety of industries to ensure compliance with software licenses and develop strategies for maximizing the value of software licenses.

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