

Identifying Legitimate Software from Authorized Vendors to Avoid Copyright Infringement Claims

By Keli Johnson Swan

The International Data Corporation (“IDC”) reports that more than one-third of all software sold is counterfeit, despite often being marketed as authentic or legitimate by a third-party reseller. In addition to counterfeit software, some vendors sell heavily discounted software that is legitimate, but is sold in violation of its license agreement. The Copyright Act shifts the burden to the end user to prove he or she owns a legitimate license for the software, or risk facing monetary penalties for potential copyright infringement from software publishers or auditing entities such as the Business Software Alliance (“BSA”) or Software & Information Industry Association (“SIIA”).

Because many resellers market heavily discounted software as having “genuine keys” or “legitimate serial numbers,” it is almost impossible to detect unauthorized or counterfeit software. There are a few red flags that can help software purchasers identify risky software.

- 1) The software is discounted more than 10% off of MSRP. Software auditors typically assume that all software sold for less than 90% of its value is counterfeit or being illegally sold or transferred. Often a consumer believes it acquired a valid license from an authorized reseller, and only during the course of an audit discovers that the software is invalid. It is important to purchase from reputable, authorized resellers. Some software publishers offer a list of authorized vendors on their websites.
- 2) The software is sold as an “OEM” license as a standalone package. Typically, original equipment manufacturer (“OEM”) licenses are designed for software that is pre-installed on hardware. Sometimes a vendor may attempt to sell a standalone OEM license without the hardware, which violates the terms of the license agreement. There are some exceptions to this rule, so it is important to understand the rules if the purchase involves OEM software.
- 3) The software is sold as a home, student, or academic version, which are all restricted from commercial use. Although versions of software designed for academic or home use are generally less expensive than software designed for commercial use, most license agreements specifically prohibit using the software in a commercial setting. Some vendors insist to customers that the licenses are valid and the software may be used in a business or commercial environment, but it is the responsibility of the consumer to verify compliance. This restriction renders the license invalid for commercial use, and exposes the end user to potential copyright infringement claims. Do not be deceived into buying the incorrect license for the software.

These are just a few of the red flags to be aware of when selecting software and an authorized vendor. It is important to research license agreements to discover any potential restrictions. If in doubt, contact an attorney experienced in software licensing and copyright infringement matters.



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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