

## Top Copyright and Trademark Infringement Mistakes Small Businesses Make (Part 2 of 3)

By Keli Johnson Swan

The second mistake in this 3-part series applies to a broader range of businesses, and involves improperly licensed computer software.

While there are many industries that rely on computers and software to conduct business operations, some have computers or tablets for non-essential tasks. Regardless of how each computer is used, a company is responsible for any software installed on that machine, even the operating system. For example, one of my former clients was an auto repair company that owned tablets issued for free by a car manufacturer to keep track of service repairs. The tablets had Microsoft Windows operating systems pre-installed and no other software. However, when audited by BSA the Software Alliance “BSA”, acting on behalf of Microsoft, the company was required to produce proof of purchase information for the installations. Because the company was unable to provide proof of ownership of the software, it faced a demand of several thousand dollars for copyright infringement. The most common software copyright infringement claims arise from the following scenarios:

- a. Unauthorized installations: Despite best efforts at controlling employee access to computers and software, sometimes an audit may reveal that employees are installing unauthorized software such as iTunes, video games, apps, word processors, and other software on company machines that are not authorized or properly licensed.
- b. Destruction of records or receipts: Software publishers, as the owners of the copyrights, may require a company to produce proof of ownership of all of the software installed on its network, no matter how old the software may be. This is often difficult for companies that may have poor record-keeping or with document retention policies that require the destruction of records after several years.
- c. Improper licenses for version installed: One of the most common copyright infringement claims arises from improperly licensing a product installed on a company’s network. For example, a company may sometimes discover that it has a different Microsoft Office suite installed than it has licensed, or, alternatively, it failed to completely remove all of the remnants of the prior version before installing an upgrade.

All of these three scenarios can cause a software publisher to claim that the business engaged in copyright infringement based on the Copyright Act. It is important for a company to restrict authority to installing unauthorized software through procedures and protocol to lock down the machines, and routinely audit to ensure that it owns the correct license for the software installed. Additionally, it is important to enact a diligent and thorough record-keeping policy for all licenses for copyrighted material.



**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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