Software makers' tactics against piracy questioned

Adobe, Microsoft, and other software makers routinely demand hefty settlements from small businesses if they suspect unlicensed software is being used. (Associated Press)

By Associated Press / November 26, 2007

WASHINGTON - Michael Gaertner worried he could lose his company. The Business Software Alliance had written him to claim his 10-person architectural firm in Galveston, Texas, was using unlicensed software.

The letter demanded $67,000 - most of one year's profit - or else the BSA would seek more in court.

"It just scared the hell out of me," Gaertner said.

An analysis by The Associated Press reveals that targeting small businesses is a lucrative strategy for the alliance, the main copyright-enforcement watchdog for such companies as Microsoft Corp., Adobe Systems Inc., and Symantec Corp.

Of the $13 million the BSA reaped in software violation settlements with North American companies last year, almost 90 percent came from small businesses.

The BSA is well within its rights to wring expensive punishments aimed at stopping the willful, blatant software copying that undoubtedly happens in many businesses. And its leaders say they concentrate on small businesses because that's where illegitimate use of software is rampant.

But technology managers and software consultants say the picture has more shades of gray. Companies of all sizes say they inadvertently run afoul of licensing rules because of problems the software industry itself has created. Unable or unwilling to create technological blocks against copying, the industry has saddled its customers with complex licensing agreements. In that view, the
BSA amasses most of its bounties from small businesses because they have fewer technological, organizational, and legal resources to avoid a run-in.

In Gaertner's case, some employees had been unable to open files with the firm's drafting software, so they worked around it by installing programs they found on their own, breaking company rules, he said. And receipts for legitimate software had been lost.

"It was basically just a lack of knowledge and sloppy record-keeping on my part," said Gaertner, who ended up with a settlement that cost him $40,000.

US software piracy rates have not budged in years. BSA critics say that is because making examples out of small businesses has little deterrent effect, since owners like Gaertner don't even realize they're violating copyrights.

"If they were going after actual pirates, that would be a different story, but they're going after hardworking companies," said Barbara Rembiesa, head of the International Association of Information Technology Asset Managers.

She founded the group to educate businesses on how to manage their software because she felt the industry wasn't doing enough of that, even as it was imposing steep penalties.

"If you were driving down the street and you got a speeding ticket, and there was no speed limit sign, it probably would be thrown out of court," she said.

Yet the BSA is getting more aggressive. It says software licenses aren't as difficult as many users contend. It has dropped an amnesty campaign for businesses. And this year it began dangling rewards of up to $1 million to employees who anonymously report unlicensed software.

"The software vendors have every right to collect the license fees they're entitled to," said Tom Adolph, an attorney who has defended against BSA claims. "It's the tactics of the BSA that rankle me."

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