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Software copyright watchdog clamps down on small business

Industry group secures expensive punishments aimed at stopping product piracy

By Brian Bergstein Associated Press

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WASHINGTON: Michael Gaertner worried he could lose his company. A group called the Business Software Alliance was claiming that his 10-person architectural firm was using unlicensed software.

The alliance demanded \$67,000 — most of one year's profit — or else it 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 lucrative for the Business Software Alliance, the main copyright-enforcement watchdog for such companies as Microsoft Corp., Adobe Systems Inc. and Symantec Corp.

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

The BSA is well within its rights to wring expensive punishments aimed at stopping the willful 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 software experts say the picture has more shades of gray. Companies of all sizes inadvertently break 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 that are hard to master.

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, 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 in the hubbub of running his company.

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

In the United States, the largest software market, piracy rates have not budged since 2004. BSA critics say that is because making examples out of small businesses has little deterrent effect, since many company owners don't realize they're violating copyrights.

"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," said Barbara Rembiesa, head of the International Association of Information Technology Asset Managers.

Yet the BSA is getting more aggressive. Its CEO says software licenses are not as difficult as critics contend. It has dropped an amnesty campaign. And this year it began dangling \$1 million rewards to disgruntled employees who anonymously report their bosses for using 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."

Much of the BSA's fight against counterfeit software and illegal copying happens overseas. In countries with the highest piracy rates, like China, the BSA pushes governments to crack down, arguing that greater respect for intellectual property would stimulate investment in their economies.

One result is that the BSA says the worldwide percentage of software that was illegitimately obtained has dropped to 35 percent, from 43 percent in 1996. However, the BSA says piracy still takes a \$40 billion bite out of a \$246 billion industry annually.

In the United States, where the piracy rate is a worldwide-low 21 percent, the BSA works with law enforcement and Web sites like eBay to stop suspiciously cheap software sales online.

Far more contentious, however, is its focus on forms of what it calls piracy by business users. The money harvested in these crackdowns stays with the alliance to fuel its operations.

Many BSA audits originate when a whistle-blower reports that a company is brazenly copying one program onto multiple PCs. In extreme cases, the BSA will get court approval to raid companies in search of evidence.

But there are ways to get in trouble that do not begin with intentional cheating. Companies often simply fail to follow the letter of the licensing agreements that accompany software programs. The problem is big enough that there are companies that help other businesses manage their software.

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