

Scuttling the pirates

By Beverley Head

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If car theft ran at the same rate as software theft, one in every four new cars on the road would be stolen. It's a compelling picture painted by the [Business Software Association of Australia](#), an anti-piracy group. In its 13-year history, the organisation claims to have significantly reduced software theft. Even so, the BSAA says unauthorised copying still costs software manufacturers \$264 million in lost revenue, resellers and retailers another \$286 million, reduces the number of jobs and the amount of innovation in software production - and forces higher prices on legitimate users.

But the BSAA's detractors say its statistical base is flawed; that a pirated copy of software does not translate directly to lost revenue. They say the BSAA is looking for easy scapegoats by launching legal actions against small and medium businesses rather than the more powerful (and, to the software vendors, more lucrative) corporate and government sectors.

It has been suggested that software vendors ought to use more technology and simpler licensing structures to curb copiers.

Nobody disputes the fact that software copying is theft. The BSAA tackles piracy with a three-pronged approach of education, assistance and litigation. Its members are also encouraged to use technology to stymie copying where appropriate.

The core issue is copyright. Peter Leonard, a partner in the law firm Gilbert & Tobin, explains that in Australia, when someone infringes by copying or distributing a copy of a work, "they are in breach of the law". The copyright owner can sue for loss of income and damages.");document.write

When the copying is done by organised groups, application of the law seems clear. It is more uncertain regarding employers' liability when unlicensed software is on the premises, Leonard says.

"In the last couple of years, Section 101a (of the Copyright Act) was added to help determine the extent of (the employer's) power to prevent copying, the nature of the relationship between employer and employee, and the steps taken to prevent copying," he says.

"The reason this was introduced was because through the Internet it was easier for employees to download infringing copies. Following sections like that, employers should prudently take steps to monitor what software is on computers and publish policies about what is permitted to be on those systems."

In the early days of personal computing, a sure-fire way for employers to stop employee piracy was to remove the disk drives from office computers.

It cut back copying, but hobbled users.

Today there are asset-management tools (some of which are available free through the BSAA and its members) that can regularly audit software on networked computers, providing a more benign yet still controlled environment.

In large companies with robust IT management, such centralised anti-copying measures are now commonplace, and in very small businesses it is relatively simple for management to know what software is installed, and where it came from.

The big challenge now is among small and medium enterprises, which often have fast-growing IT systems but fledgling IT management and policies. Not surprisingly, SMEs are the main target of the BSAA.

The BSAA rejects suggestions that it is going after soft targets, saying that unless copying was blatant, it would be unlikely to target companies with fewer than 25 PCs, and that it has "never taken action against a small business with one two or three copies". It does, however, widely publicise its court wins against SMEs and runs a "Pirates on Parade" page on its website (bsaa.com.au).

Peter Leonard says that prosecuting SMEs only makes sense for the BSAA if the resultant publicity acts as a deterrent - as the recovery of funds from a prosecution is generally far less than the cost of the action. The BSAA says it costs about \$50,000 just to get a directions hearing for a legal action.

Ulysses Chioatto, a director of SSAMM Management Consulting, dismisses much of the BSAA's approach as "scaremongering".

He says he has conducted 280 reviews of software portfolios inside big enterprises and SMEs, and, although there are a few organisations that set out to copy software, most are confused about their licences and what they permit. About 30 per cent were not properly licensed.

"It's a real conspiracy theory by the BSAA to say there are IT managers out there rubbing their hands together and saying 'Let's rip off the IT industry', " Chioatto says. "I agree that there are some but they are such a small minority they are not worth bothering with."

Chioatto believes that only when software users recognise software as an asset rather than an expense will licence problems fade away.

He says software vendors should focus on education, not litigation, lest they further antagonise their customers.

Microsoft risked antagonising customers last year when it introduced product activation on its Windows XP release.

On installation the software runs some basic routines, which identify the PC configuration to create a "hardware hash".

To activate the software, the user provides Microsoft with this hardware hash, plus the product identification number printed on the disk packaging (generally over the Internet), which activates the software.

It is intended to cut back on casual copying, and Microsoft SME director Mark Iles says it has worked in 70 million activations worldwide with very little negative feedback from users.

But, he says, there is still a long way to go, and the company hopes to be able to further limit copying once DVDs become widespread in PCs, because DVD content can be protected from casual copying more effectively than CD-ROMs.

Iles believes vendors' use of other anti-piracy measures, such as edge-to-edge holograms on CDs and heat-sensitive stickers on packaging, will further reduce piracy which, he says, cost Microsoft \$US1.7 billion (\$A3 billion) last year.

BSAA chairman Jim Macnamara says technology is an ally, if not an antidote, in the war against copying. It will, he says, help bring copying to a more "acceptable" level. "A zero rate is likely an impossibility - it's up to the companies to determine what they would accept," Macnamara says.

The software companies that fund the BSAA must still think they are getting value for money. They provide about \$500,000 a year for public relations and communications programs, and a revolving fund of "several million dollars" to fund legal action.

"We recover possibly half it," Macnamara says. **The bounty on your head**

Imagine that you decide to audit your IT systems - to find out what you have, find out whether you have the right number of software licences, upgrade or amend them where necessary and generally squeeze value from your infrastructure.

Imagine that the person charged with this task discovers that you have unlicensed software. Imagine that - in return for a \$5000 payment - he hands it over to the Business Software Association of Australia, which then takes you to court. Imagine that the BSAA won't name the whistle-blower, so you can't sue him for breach of an employment confidentiality contract.

Well, imagine no longer - that is precisely how one company was caught in the BSAA's net and subsequently fined. The company feels its treatment was pretty harsh, given that it was attempting to get its house in order - but it asks not to be named for fear of further negative publicity compounding that suffered when it was identified as part of the BSAA's "Pirates on Parade" campaign.

If Microsoft gets its way, however, companies caught with unauthorised software will face worse. In representations to the Attorney-General as part of the Copyright Law Review process, software companies including Microsoft have requested that criminal as well as civil penalties be made available for software piracy, bringing Australia in line with the situation in the United States and Britain, where criminal penalties have helped cut piracy rates to 25 per cent.

Poaching peaks, as compliance becomes a 'luxury'

By 1999, the global rate of software piracy had been ground back to 36 per cent, yet in both 2000 and 2001 it rose, first to 37 per cent and then 40 per cent.

The Business Software Association (the global equivalent of the BSAA), now conducting its seventh annual global survey of piracy, partly blames the economic downturn.

It notes that "compliance with software licences is at risk of being seen as an economic luxury that can be abandoned in difficult times".

But, the association argues, it is an expensive luxury, paid for by vendors. It says global losses caused piracy rose to \$US10.97 billion in 2001, \$US4.7 billion of it attributed to piracy in the Asia-Pacific region, where there is a piracy rate of 54 per cent.

The BSA assesses software piracy rates by examining the number of personal computers in the market, then calculating how many software applications each machine is likely to have loaded on to it (based on polls of legitimate software users in the US). It then compares that with the number of software licences actually sold. Historically, far fewer software licences have been sold than the BSA would expect - and it characterises the mismatch as piracy or unauthorised copies. The technique is flawed, but consistently so, allowing for some meaningful interpretation over several years.

This story was found at: <http://www.theage.com.au/articles/2002/11/25/1038173686043.html>

