

# "THOU SHALT NOT STEAL"

## You, Computer Software, and the Law

### Copyright

Most computer software is protected by U.S. and international copyright law. Even "shareware" is usually copyrighted software. The purpose of copyright is to prevent the theft of the intellectual property and marketing rights in computer software. Developers spend months or years and thousands or millions of dollars to develop and market their products. Copyright protects that investment.

### Infringement

Any copying or sharing act prohibited in the software's End User License Agreement (EULA) constitutes infringement. Examples include making multiple copies for sale or use by others than the registered user, giving any unauthorized copy to another individual, installing an unauthorized copy on any machine, copying to or from a bulletin board service unless specifically permitted, and rental of software for use by others. In a network additional considerations apply.

### Legal penalties

The law provides both civil and criminal penalties for copyright infringement. Civil penalties include injunction and actual or statutory damages up to \$100,000 per infringement. Criminal penalties include fines up to \$250,000 and jail terms up to five years, or both.

### Ownership records

Copyrighted software is not sold; it is licensed. Legal ownership remains with the developer. The registered user is required to keep and be able to present proof of purchase of all copyrighted software. This should include the sales receipt, End User License Agreement (EULA), manuals, and original media. Some software comes with a Certificate of Authenticity (COA). This is not proof of purchase but only certifies that the copy it accompanies is a legitimate original.

### Transfer of ownership

End User License Agreements stipulate the terms for transfer of "ownership" (licensure). These terms generally include notification or prior permission in writing of the software developer or copyright holder, transfer of all original materials and proof of purchase, together with any prior versions replaced by upgrade, to the new user, and destruction by erasure of all machine-readable copies on machines and backup media in your possession.

### System vs. application software

System software makes the computer start and run. DOS and Windows are system software. Most other software is application software. Application software does your work. System software is usually sold with the computer. Application software may be sold separately. Word processing, spreadsheet, and database programs are application software, as are most utilities—calculators,

calendars, personal information managers, and other tools. System software is always licensed as one copy per computer only. Application software licenses may permit nonconcurrent dual use, on a home or portable machine as well as an office desktop. The End User License Agreement will say whether such use is permitted.

### **Upgraded software**

When software is upgraded with a newer version, the prior versions still remain under copyright and licensed to the same user. The new version is generally provided at a reduced price in consideration of the prior investment in the original. In short, when you buy software as an upgrade, not a new, original license, you must retain and protect the replaced version the same as the new version. You cannot use both versions, except that you may be permitted to keep both installed temporarily, during a reasonable conversion period, after which the old version must be removed from your machine. If you transfer your license to another user, all upgraded materials, media, and purchase documentation must accompany the transfer.

### **Shareware**

So-called shareware is computer software distributed freely in lieu of marketing through retail channels with its attendant costs. Since it costs less to market, it costs less to license. It is still the means of livelihood of its developer, and both ethics and law demand that this be respected. Shareware may be copied freely and given away or sold for no more than the nominal value of the media onto which it is copied. Users who find it useful, after trying it for a reasonable time (typically 30 days), are expected to pay for a license to continue to use it. If you keep and use it but do not pay for the license you are in violation of copyright. The license usually gets you additional materials, access to technical support, and the right to later upgrades.

### **Legitimate copies**

End User License Agreements stipulate what copies you may make and keep legitimately. Terms may differ for system and application software. Typically you may make one backup copy of the original distribution media; you may install one copy on your computer or on a network server for your regular use; and, though it is generally not stated, it is commonly accepted that copies of the installed version may be included in your regular backups of the drive where it is installed. The copy of the original media must be labelled much the same as the original, with the name of the product and developer, version, and facts of copyright. Your records or practices must enable you to locate all copies at any time.

### **Use in a network**

Installing copyrighted software on a network server is not implied permission for all attached users to use it. Users not familiar with network administration should not install copyrighted software onto a network server, certainly not without the approval of the network administrator. The network administrator is required to ensure that none but the licensed users can use the software. Some software comes with a package license for network use. This license grants its use by a fixed maximum number of users concurrently; any network user can use it provided that no more than the maximum use it at the same time. Usage metering is or should be employed to limit usage to the maximum.