

By ANDY ZAVOINA, CRCM

Copyright

SOMETIMES WORKING SMARTER, NOT HARDER MEANS risk management. As compliance professionals we are all aware that an ounce of prevention is worth many pounds of cure, especially when civil money penalties, fines, lawsuits, and reputational risk are involved. This is why, even when cutting corners looks like the short-term solution, we must be aware of the risk of copyright and software license infringement.

On a regular basis you may need to write new policies, procedures, audit worksheets, compliance information for the employee newsletter, or press releases. While we all need to be cau-

has exclusive rights to the materials. Copying such work is an infringement on those rights. Many believe that information on the Internet is in the public domain, available for free, but that is simply not the case. When a copyright is automatically in place. The Copyright Act of 1909 included a test that made publication key to claiming copyright. To protect the material, it also needed to be identified as copyrighted, such as with the symbol ©. This changed in 1978; publication is no longer a key element, nor is there a requirement to register the work with the U.S. Copyright Office in Washington D.C. (www.copyright.gov).

Copyright is assumed in most instances, but to enforce the owner's rights in court, the work must be registered at the Copyright Office—a legal formality that establishes a public record of the copyright claim and allows the Copyright Office to assist in validation of the claim.

Owning a copy of a policy is not “ownership” for these purposes—that is, the right to re-use or re-sell the work. Unless unlimited use is given, only the rights to that one copy are expressed. If one person thinks of a great spreadsheet application for

compliance, and another person creates it, the second is the owner and the first simply had a good idea but didn't act on it.

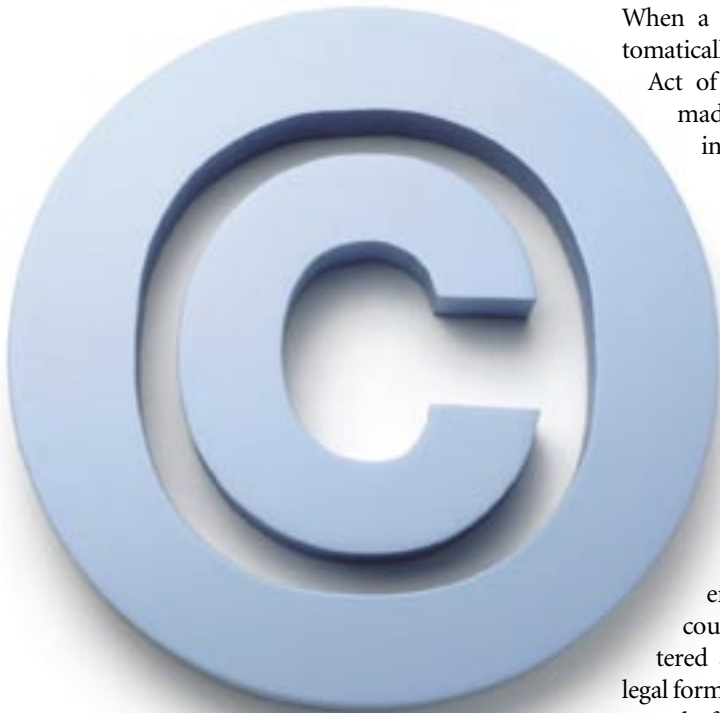
Some things cannot be copyrighted, such as facts or ideas. Tables of data that consist entirely of information would be common property—for example, a listing of banking regulations with additional citations of law these implement, and highlights of the requirements of the regulation. Works by the U.S. government are owned “by the people” and are not eligible for copyright protection. You can legally use these documents in your work. Fair use of copyrighted materials is also allowed—reviewing that work, commenting on it, and criticizing it, as well as using it for some educational purposes. (It is difficult to teach about something that may not be quoted.)

Things which may be copyrighted include

- literary works
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

tious about not copying someone else's work, we also do not want someone to copy our work unless we agree to it. We have all heard about copyright infringement and know it is wrong, but what is it, really?

A copyright owner is the person who owns the original work; he or she



These categories are in reality, very broad. Computer programs are literary works for the purposes of copyright law and may be registered as such. Topographic maps used in census and demographic data may be registered as pictorial, graphic, and sculptural works.

Copyright may be obtained by filing the proper forms, including copies of the work and a \$30 fee with the Library of Congress.

Protection of computer software licenses is often enforced through the Business Software Alliance (www.bsa.org). BSA is certainly an acronym already near and dear to bankers' hearts, doubly so if you have ever worked through a Business Software Alliance audit.

The BSA promotes itself as the "foremost organization dedicated to promoting a safe and legal digital world." One of the BSA's goals is ensuring that software is used only by those who legally have rights to it. These companies include Microsoft, Apple, Adobe, Cisco Systems, Dell, and Hewlett Packard. The BSA is a nonprofit trade association that helps enforce the license agreements of its members. It also offers some free tools that may be of use to you. These tools include software that will inventory the software on your institution's personal computers—an excellent way to maintain compliance with software license agreements.

In an all-too-common scenario, a bank runs afoul of these agreements when a supervisor purchases a new computer. He or she has certain programs on his or her PC that he or she wants to keep, so in the set-up process the original CDs—already owned—are used to load the programs on the new PC. A co-worker receives the old PC as a hand-me-down. If the protected programs are not deleted

from that old PC, the single-license program is now on two PCs—an unauthorized use.

It is important to read the software agreements most of us quickly click through. At one time it was possible to put a copy on two PCs you owned, as long as they would only be used one at a time, as is often the case when a single person uses a desktop and a laptop PC. You will use both, but not simultaneously. Many of today's license agreements do not allow for this, and when a single-user license is granted, it is often actually a single-PC license.

If you multiply this by the number of PCs you have replaced since Y2K, you could have significant problems if you have not implemented strong software management policies. And it has happened that companies have purchased bulk licenses and those licenses, unbeknownst to the financial institution, were counterfeit. State governments have also fallen prey to such swindles.

Civil damages can rise to \$150,000 per infringed work. Criminal penalties are up to \$250,000, incarceration for up to five years, or both. The BSA has collected over \$70 million in settlements in the United States alone. In one such case, the Los Angeles Police Federal Credit Union paid a \$60,000 fine for unauthorized use of software. While potentially negotiable, a common settlement for software copyright infringement may be the cost to obtain the proper license agreements for all the programs in use, plus a fine equal to two or three times that amount and a promise to maintain better controls and records to avoid higher, repeat-offense penalties.

Join us for the 19th Annual 2006 Tax Reporting & Withholding Seminar

*The Tools You Need to Cope with
IRS Tax Compliance & the Information Returns Program*

**May 7-9, 2006
Westin Hotel, Arlington, VA**

- Timely strategies to help you avoid information reporting penalties
- Expert speakers from the industry and IRS
- Continuing education credits including the new Tax Reporting Institute Certification

Reach this advertiser through <http://links.aba.com>

For more information and to register, call 336-884-1098

The BSA (www.bsa.org) offers several free utilities that will assist you in your software management program. These range from white papers to inventory tools and even PowerPoint training programs and videos. Your institution should also have in place a policy and controls to prevent the unauthorized installation of software. The BSA makes software asset management policy templates available for your use. This is important on many fronts, including copyright protection and to avoid virus/Trojan infections. It is also important to note that employees who are aware of software license abuse are often the first to report an employer to the BSA.

It is advantageous to create a solid system that contains the software itself, license, receipt, and other pertinent information in one place or in a database. This allows machines to be inventoried one at a time and is very "clean." A rudimentary example would be a three-ring binder that contains the information above for each PC, kept in a safe area. This facilitates updates, removals, sale, and all the controls necessary.

The bottom line is that working smarter, not harder, means doing things in an easier and more efficient manner. Avoiding copyright problems and protecting yourself before there is a problem is doing just that. BC

ABOUT THE AUTHOR

Andy Zavoina, CRCM, is an executive vice president with the Gila Group, best known for its involvement with *BankersOnline.com*, where he is also a *BankersOnline Guru*. He joined Gila in 2003.

Mr. Zavoina, who has been in finance and banking for 23 years, was the 2003 recipient of the American Bankers Association's Distinguished Service Award for his involvement and accomplishments in the field of regulatory compliance management. He is a past chairman of the ABA Compliance Executive Committee and served on the ABA Bank Compliance Editorial Advisory Board, and currently serves *Compliance Action* magazine, and the ABA Compliance School Board. He also served on the Texas Bankers Association's Compliance Committee.

He is a graduate of the ABA National Commercial Lending School, National Compliance and National Graduate Compliance Schools, and is a Certified Regulatory Compliance Manager with the Institute of Certified Bankers. You can reach Andy on the Internet by using his e-mail address, andyz@bankersonline.com, or visiting his personal Web site at <http://home.hot.rr.com/zavoina/home.html>.



CRCMs

Earn CE Credits for Reading this *magazine*

Make even more use of *ABA Bank Compliance* magazine as a benefit of your CRCM certification! Read the articles and follow the instructions for the 10-question quiz on the last page of the magazine. If you score at least 70 percent you will earn one CE credit. Do this with each issue of your magazine, and you'll have made a substantial dent in your continuing education requirement.



Institute of Certified Bankers