

APPENDIX 1

Copyright Information

Illegal software does not have to be sold for direct financial gain to constitute a criminal offence. Section 132 (1) (a) of the Copyright Act has been amended to make it a criminal offence if a person makes an infringing copy of software with the intention of obtaining a commercial advantage or profit and if the person knows or ought reasonably to know that the copy is infringing copyright.

Use of illegal software in a business or organisation can constitute a criminal offence as commercial advantage is inherent in using any software in a business or professional context and because commercial advantage has been derived from making an illegal copy of the software instead of buying a licence for it. The offences regime in Section 132 applies to all forms of activity referred to as business end-user piracy.

Further significant infringements of copyright, whether or not these have any direct or indirect financial gain, are also illegal. This covers situations such as large-scale piracy not in a commercial business and Internet piracy where illegal software may be distributed for free. Under sections 132 (5) (DB) and (5) (DC) of the Copyright Act it is a criminal offence if a person engages in infringement of copyright on a commercial scale and it has a substantial prejudicial impact on the copyright owner.

Importantly, it is a criminal offence if a person knows or "ought reasonably to know" that software is infringing copyright. Managers and officers of organisations would normally be expected to know what is happening in their organisation and so they (personally) and the organisation could be held liable even if they are unaware or not directly involved in piracy.

Shareware / Freeware

All software is protected by copyright and so can only be used with the permission of the copyright owner.

In some cases, the copyright owner does not seek a licence fee for use of the software and agrees to "share it" with users for free, or for a small fee to cover administration - hence the names shareware and freeware.

Users of shareware and freeware obtain a licence to use the software on certain terms and conditions specified by the copyright owner. You should always check the terms and conditions applying before copying or using software as these vary from program to program.

Freeware applies to software which is distributed or made available free of charge. However, always check terms and conditions carefully. While free, there may be terms and conditions applying in relation to the number of copies that can be made, passing on to friends, altering the software, incorporating it into other software etc.

Shareware developers may request a small fee for use; ask for a donation to a charity; specify a trial period of use; and/or specify instructions for use and distribution.

It is important to note that freeware and shareware are copyright protected in the same way as other software, the difference being that the owners do not seek commercial licence fees or royalties.

There are other sources of software including open source programs. These are also protected by copyright in the same way as other software, but again the owners do not seek commercial licence fees or royalties.

You should always check the terms and conditions of use of all software including shareware, freeware and open source carefully.

This information is from the Business Software Alliance of Australia

Open Source Software

Open source software is a type of computer software defined by several specific attributes that relate to its licensing and legal framework. Often it also involves a distinctive development and distribution model. At present the primary arbiter of what constitutes open source software is the Open Source Initiative. The Initiative sets out various rights and obligations for developers, distributors and users of OSS. These rules define the basic licence conditions under which software must be released to be considered "open source".

Information from the Australian Government Information Management Office

Creative Commons Licences

Creative Commons licenses are copyright licenses which are designed to facilitate and encourage more versatility and flexibility in copyright usage. The scheme exists as a series of licenses that are customised to the specific needs an author may have.

Creative Commons licenses may be tailored by the author to allow free distribution of their material on the basis of certain criteria such as acknowledgement of author and non commercial usage.