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Information Technology Services Division

Software Piracy Software License Restrictions and Provisions	**Document Number:** **ITGS0004**
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1.0 Purpose

This is intended to advise agencies on the proper and legal use of computer software and provide effective strategies and tactics for managing software license assets. Information is included to instruct agencies on applicable licensing restrictions and provisions as related to the acquisition and use of computer software, and monitoring and combating the use of unauthorized computer software.

2.0 Scope

The scope of the software license restrictions and provisions is to give effect to copyrights associated with computer software by observing the relevant provisions of federal law, including the U.S. Copyright Act, and applicable licensing restrictions. Each State agency shall work diligently to prevent and combat computer software piracy.

3.0 Background

Executive Order 02-11 sets forth the policy of the State of Missouri that each State agency shall work diligently to prevent and combat computer software piracy in order to give effect to copyrights associated with computer software by observing the relevant provisions of federal law, including the U.S. Copyright Act, and applicable licensing restrictions. The order also requires that the Office of Information Technology ("OIT") shall be the principal interagency forum to improve State agency practices regarding the acquisition and use of computer software, and monitoring and combating the use of unauthorized computer software. OIT, in consultation with the Information Technology Advisory Board, shall provide advice and make recommendations to State agencies and to the Chief Information Officer regarding appropriate government-wide measures to carry out this order. The Chief Information Officer ("CIO") shall utilize appropriate oversight mechanisms to foster agency compliance with the policies set forth in this order. In carrying out these responsibilities, the CIO shall consider any recommendations made by OIT under section 3 of Executive Order 02-11

regarding practices and policies to be instituted on a government-wide basis. State agencies shall cooperate fully in implementing this order and shall share information as appropriate that may be useful in combating the use of computer software in violation of applicable U.S. copyright laws or applicable licensing restrictions.

4.0 References

4.1 Executive Order 02-11, An Executive Order to Prevent and Combat Computer Software Piracy.
http://www.sos.state.mo.us/library/reference/orders/2002/eo02_011.asp

4.2 No Electronic Theft Act (NET Act), **H.R.2265**
http://thomas.loc.gov/cgi-bin/toGPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_public_laws&docid=f:publ147.105

4.3 The United States Copyright Act
http://www.copyright.gov/title17/circ92.pdf

4.4 Digital Millenium Copyright Act (DMCA)

4.5 CIO Letter to Director of Records Services at Secretary of State's Office requesting records retention requirements for software license agreements
http://www.oit.state.mo.us/policies/CIO%20request%20for%20software%20license%20retention.pdf

4.6 Letter issued by Secretary of State's Office outlining records retention requirements for software license agreements
http://www.oit.state.mo.us/policies/software%20licence%20retention%20letter.pdf

4.7 Sample Software License Inventory
http://www.oit.state.mo.us/policies/Licensing%20Inventory%20Sample.xls

4.8 Review and comments from Microsoft Corporation:
http://oit.mo.gov/standards/Microsoft_Review_and_Comments.doc

4.9 Letter issued by Secretary of State's Office regarding scanned images as license proof
http://oit.mo.gov/standards/RetentionPeriodofSoftwareLicenseAgreements

5.0 Revision History

Date	Description of Change
01/29/2003	Initial OIT Recommendation Published
04/28/2003	Statement entered indicating policy is articulated in Executive Order 02-11
08/15/2003	Changed language to limit agency responsibility to where they have administrative control
01/31/2005	Added reference to letter issued by the Office of the

	Secretary of State on January 28, 2005 regarding scanned images as license proof
03/25/2005	Inserted recommendation from the Secretary of State Records Management regarding proof of software license
07/01/2005	ITSD Consolidation Update

6.0 Definitions

What is a software license?

A software license is a contract between a copyright holder and the licensee. It is a legal contract between a software application author or publisher and the user of that application. The license is somewhat similar to a rental agreement; but it relates to rights to use intangible intellectual property rights instead of tangible goods. Under a typical license, the user agrees to pay for the privilege of using the software, and promises the software author or publisher to comply with all restrictions stated in the license agreement. It is these license restrictions that this recommendation intends to enforce.

What is a copyright?

A copyright is the legal right of an author or publisher to control the reproduction, distribution, adaptation, and performance of his/her/its work, including software. The copying of a copyrighted work without a license or other form of permission from the author or other copyright holders may subject the copier to both civil and criminal penalties.

What is computer software piracy?

Computer software piracy is the use and or distribution of copyrighted computer software in violation of the copyright laws or applicable license restrictions. Several forms of computer software piracy exist. Common forms include end user piracy, counterfeiting, and hard-disk loading. End user piracy occurs when an individual or organization reproduces and/or uses unlicensed copies of software for its operations by making more copies of the software than it is licensed for. Counterfeiting is the illegal duplication or distribution of software. Hard-disk loading occurs when a computer hardware reseller loads unauthorized copies of software into the machines it sells.

What is a State Agency?

A State Agency is a department, commission, authority, office, college or university of this state

What is Manufacturer Authorized Software?

Manufacturer Authorized Software means that (1) the software provided by the contractor does not violate any copyrights, (2) that the contractor has the legal right to distribute the software, (3) and is in accordance with the provisions, terms, and conditions of the contractor's reselling/distributor contractual agreements, if applicable, with the original manufacturer of the software (i.e., the software's intellectual property owner). Software packages known as "OEM" (Original Equipment Manufacturer) software that are intended for bundled sale, and/or installed on hardware are not authorized or approved for distribution to the State of Missouri's using agencies.

7.0 Inquiries

Direct inquiries about this document to:

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Proof of Software License
Secretary of State Records Management Recommendation

Secretary of State Records Management recommends that proof of software license be retained for a 5-year period after the software is no longer in use and recommends agencies retain the original paper license while the software is actually in use. SOS indicated in the absence of the original paper license, the purchase order or scanned image is an agency's proof of license.

Method for accessing license Information on the web

If the agency has signed an Enterprise or Select agreement with Microsoft there should be an agency administrator that can access Microsoft's website with a logon password and enrollment number to obtain license information, including license certificate confirmations. It is good to have a copy of your purchase order so that you can match up the information with Microsoft's website to confirm that the license order has made its way through WWT to Software Spectrum to Microsoft. So, an agency would not need to keep copies of their purchase order after they confirm that the license certificate has been placed on Microsoft's website.

Software License Restrictions and Provisions

Policy: The policy of the State of Missouri with regard to software licensing and software piracy is articulated in Executive Order 02-11. Said policy is restated below:

1.1 Policy. It shall be the policy of the State of Missouri to give effect to copyrights associated with computer software by observing the relevant provisions of federal law, including the U.S. Copyright Act, and applicable licensing restrictions. Each State agency shall work diligently to prevent and combat computer software piracy.

(a) Each agency shall adopt policy consistent with the guidelines and model policy developed by the State's Information Technology Advisory Board and establish appropriate procedures to ensure that the agency does not acquire, operate, or maintain computer software in violation of U.S. copyright laws and applicable licensing restrictions.

(b) Each agency shall adopt policy consistent with guidelines and model policy developed by the State's Information Technology Advisory Board and establish appropriate procedures to ensure that the agency has present on its computers and uses only computer software not in violation of U.S. copyright laws and applicable licensing restrictions. These procedures shall include:

1) Preparing agency inventories of the software present on its computers;
2) Determining what computer software the agency has the authorization to use; and
3) Developing and maintaining adequate record-keeping systems for such inventories.

(c) Each agency shall require its contractors and recipients of State financial assistance where there is an employer/contractor or employer/employee relationship and administrative control rests with the agency, including grants and loan guarantee assistance, to certify that they have appropriate systems and controls in place to ensure that State funds are not used to acquire, operate, or maintain computer software in violation of U.S. copyright laws or applicable licensing restrictions. If an agency becomes aware that contractors, grantees, or other recipients of State financial assistance, where the agency has the aforementioned relationship and administrative control, are using State funds to acquire, operate, or maintain computer software in violation of U.S. copyright laws or applicable licensing restrictions, the agency shall take such corrective measures as the agency head deems appropriate and consistent with the requirements of law.

(d) The Office of Information Technology shall develop appropriate language for inclusion in State contracts to prohibit the use of State funds for the acquisition, operation or maintenance of computer software in violation of U.S. copyright laws or applicable licensing restrictions. Such language shall be

required in all state contracts involving the purchase or utilization of computer software in the performance of such contracts.

(e) State agencies shall cooperate fully in implementing this policy and shall share information as appropriate that may be useful in combating the use of computer software in violation of applicable U.S. copyright laws or applicable licensing restrictions.

1.2 Responsibilities of Agency Heads. In connection with the acquisition and use of computer software, the head of each State agency shall:

(a) Ensure agency compliance with U.S. copyright laws protecting computer software and with the provisions of this order to ensure that only authorized computer software is acquired for and used on the agency's computers;

(b) Utilize performance measures as recommended by the Office of Information Technology pursuant to section 1.3 of this order to assess the agency's compliance with this policy;

(c) Educate appropriate agency personnel regarding copyrights protecting computer software and the policies and procedures adopted by the agency to honor them; and

(d) Ensure that the policies and practices of the agency related to copyrights protecting computer software are adequate and fully implement the policies set forth in Executive Order 02-11.

1.3 Office of Information Technology. The Office of Information Technology ("OIT") shall be the principal interagency forum to improve State agency practices regarding the acquisition and use of computer software, and monitoring and combating the use of unauthorized computer software. OIT, in consultation with the Information Technology Advisory Board, shall provide advice and make recommendations to State agencies and to the Chief Information Officer regarding appropriate government-wide measures to carry out this order. OIT issued its initial recommendations regarding Executive Order 02-11 on January 29, 2003.

1.4 Chief Information Officer. The Chief Information Officer ("CIO") shall utilize appropriate oversight mechanisms to foster agency compliance with the policies set forth in Executive Order 02-11. In carrying out these responsibilities, the CIO shall consider any recommendations made by OIT under section 3 of Executive Order 02-11 regarding practices and policies to be instituted on a government-wide basis to carry out the Executive Order.

1.5 Judicial Review. Executive Order 02-11 is intended only to improve the internal management of the executive branch. The Executive Order does not create any right or benefit, substantive or procedural, at law or in equity by a party against the State of Missouri, its agencies or instrumentalities, its officers or employees, or any other person.

1.6 Severability. The invalidity of any portion of Executive Order 02-11 shall not affect the validity of the remainder thereof.

Procedures

It is critical that each State agency maintains accurate software licenses, and that the number purchased is aligned with or greater than the number of copies in use.

2.1 Establish or revise existing software use policy.

Each State agency shall adopt policy and follow guidelines consistent with the "ITAB Guidelines and Model Policy" developed by the State's Information Technology Advisory Board (Appendix A).

2.2 Use standard contract language when acquiring computer software.

Each State agency shall use the appropriate "Contract Language" (Appendix B), developed by the Division of Purchasing and Materials Management in cooperation with the Office of Information Technology when issuing Requests for Proposal or Invitations for Bid for acquisition or development of computer software.

2.3 Inventory current software license totals.

Each State agency shall complete a software license inventory within six months of the effective date of the Office of Information Technology Software License Restrictions and Provisions Policy Statement. One of the first steps in managing software licenses is providing an inventory of existing licenses. An inventory involves analyzing the software products installed on agency computers and comparing that to the actual licenses owned. An inventory of existing software licenses should include at least the following: product name, version, type of license, expiration date, and proof of purchase. Once the initial assessment has taken place and additional licenses required have been purchased, the agency is prepared to begin monitoring software licenses on an ongoing basis. [Use of this file is not mandatory, however a sample software license inventory template has been developed and may be downloaded for agency use from the OIT Intranet site].

2.4 Conduct annual software audits.

Each State agency shall conduct annual software audits and submit to the Office of Information Technology in December of each year a letter certifying completion of the annual software audit and shall upon request by the Chief Information Officer (CIO) make available within ten (10) working days a report of the most recent agency software audit.

2.5 Purchase any additional licenses required.

2.6 Utilize Performance Measures to assess agency compliance.

Pursuant to Executive Order 02-11, it is the responsibility of Agency Heads to utilize performance measures as recommended by the Office of Information Technology to assess agency compliance. It is the recommendation of the Office of Information Technology, that each agency shall at a minimum utilize the following performance measures to assess compliance with this order.

2.6.1 Identify appropriate agency personnel to be trained regarding copyrights protecting computer software and the policies and procedures adopted by the agency to honor them and maintain a record of the personnel that have completed the training.

2.6.2 Track on an annual basis the number of software found during the annual audit to be out of compliance with software licensing requirements.

2.7 Educate appropriate agency personnel.

Pursuant to Executive Order 02-11, it is the responsibility of Agency Heads to educate appropriate agency personnel regarding copyrights protecting computer software and the policies and procedures adopted by the agency to honor them. At the recommendation of the Office of Information Technology, the Chief Information Officer (CIO) has established the following employee education guidelines. Each State agency should:

2.7.1 Provide specific guidance in the Employee Handbook regarding what software may be installed on State agency computers.

2.7.2 Provide specific guidance in the Employee Handbook regarding employee responsibility related to software copyright laws.

Appendix A:

ITAB Guidelines and Model Policy

[State agency] Software Use Policy

1. General Statement of Policy. It is the policy of the State of Missouri to give effect to copyrights associated with computer software by observing the relevant provisions of federal law, including the U.S. Copyright Act, and applicable licensing restrictions. Each State agency shall work diligently to prevent and combat computer software piracy. State of Missouri shall not acquire, operate, or maintain computer software in violation of U.S. Copyright laws or applicable licensing restrictions. [State agency] will take all steps necessary to prohibit users from duplicating any licensed software or related documentation for use by [State agency] or its contractors and recipients of State financial assistance including grants and loan guarantee assistance. [State agency] must not permit any employee to use software in any manner inconsistent with the applicable license agreement, including giving or receiving software or fonts from clients, contractors, customers and others.

2. Acquisition of Software. All Requests for Proposal (RFP) or Invitations for Bid (IFB) issued for acquisition or development of software must include the contract language developed by the Office of Information Technology and the Office of Administration Division of Purchasing and Materials Management. Software acquisition channels must be restricted to ensure that [State agency] has a complete record of all software that has been purchased for [State agency] computers and can register, support, and upgrade such software accordingly. This includes software that may be downloaded and/or purchased from the Internet.

3. Software Record Keeping. When [State agency] receives software, the designated department or designated software manager must receive the software first to complete registration and inventory requirements before installation. Software must be registered in the name of [State agency] and department in which it will be used. Due to personnel turnover, software will never be registered in the name of the individual user. The designated department maintains a register of [State agency] software and will keep a library of software licenses. The register must contain: a) the title and publisher of the software; b) the date and source of software acquisition; c) the location of each installation as well as a unique identifier of the hardware on which each copy of the software is installed; d) the existence and location of back-up copies; and e) the software product's serial number if applicable, and purchase order and/or payment voucher information. A software license is a contract and [State agency] shall retain all software license records for the duration of its use plus five (5) years in order to defend any lawsuits challenging the state's lawful use of the software.

4. Installation of Software. After the software record keeping requirements above have been met, the authorized staff will install the software. Once installed, the original media will be kept in a safe storage area maintained by the designated department. User manuals, if provided, will either reside with the user or reside with the software manager.

5. Home Use. [State agency] computers are organization-owned assets and must be kept both software legal and virus free. Users are not permitted to bring software from home and load it onto State agency computers. Generally, software owned by [State agency] cannot be taken home and loaded on a user's home computer. If a

user is to use software at home for [State agency] business, [State agency] will purchase a separate package and record it as a [State agency] owned asset in the software register. However, some software companies provide in their license agreements that home use is permitted under certain circumstances. If a user needs to use software at home, he/she should consult with the software manager or designated department to determine if appropriate licenses permit home use. Any user installing [State agency] owned software on their home computer shall read and sign a [State agency] Employee Home Software Use Guideline.

6. Shareware. Shareware software is copyrighted software that is often distributed via the Internet. It is the policy of [State agency] to pay shareware authors the fee they specify for use of their products. Under this policy, acquisition and registration of shareware products will be handled the same way as for commercial software products.

7. Audits. Within six months after the effective date of the ITAB Software Piracy Policy, the designated software manager or designated department will conduct an initial audit of all [State agency] computers to ensure that [State agency] is in compliance with all software licenses. The designated department will maintain a register of all [State agency] software and will keep a library of software licenses as outlined in paragraph three (3) of [State agency] Software Use Policy. [State agency] will submit a letter in December of each year to the Chief Information Officer (CIO) certifying they have completed an annual audit and are properly maintaining a register of all software and adhering to the terms of all software licenses to which [State agency] is a party.

(Adapted with permission from SPA Anti-Piracy)

Employee Software Use Guidelines for [State agency]

Software will be installed and used only in accordance with its license agreement. Unless otherwise provided in the license, any duplication of copyrighted software, except for backup and archival purposes by software manager or designated department, is a violation of copyright law. In addition to violating copyright law, unauthorized duplication of software is contrary to [State agency] standards of conduct. The following points are to be followed to comply with software license agreements:

1. All users must read and understand [State agency] Software Use Policy and use all software in accordance with its license agreements and [State agency] Software Use Policy. All users acknowledge that they do not own this software or its related documentation, and unless expressly authorized by the software publisher, may not make additional copies except for archival purposes.

2. [State agency] will not tolerate the use of any unauthorized copies of software or fonts in our organization. Unauthorized reproduction of software is a federal offense. All users must not condone illegal copying of software under any circumstances and anyone who makes, uses, or otherwise acquires unauthorized software will be appropriately disciplined.

3. No user will give software or fonts to any outsiders including clients, contractors, customers and others. Under no circumstances shall an unauthorized user load any

software on his/her office computer. Any software not loaded by authorized staff is subject to removal and may generate other discipline. **4.** Any user who determines that there may be a misuse of software within the [State agency] will notify the designated software manager, department manager, or legal counsel.

5. All software used by the [State agency] on [State agency]-owned computers will be purchased through appropriate procedures.

6. No user may bring in software from home and install it on [State agency] owned computers. Such installation could introduce harmful viruses on the [State agency] computer network.

(Adapted with permission from SPA Anti-Piracy)

Employee Home Software Use Guidelines

PURPOSE

Consistent with paragraph five (5) of [State agency] Software Use Policy, employee use of [State agency] software at home is strictly prohibited unless express permission is received from [State agency] software manager or designated department. If the software manager or designated department determines home use is permissible under the relevant software license agreement, then in exchange for the privilege of home use, employee must expressly agree to the following terms and conditions of home software use:

1. To install only the permissible number of copies of [State agency] software to home computer as determined by [State agency] software manager or designated department under the relevant software license agreement;

2. To use the [State agency] software consistently with the software's license agreement and [State agency] Software Use Guidelines, including, but not limited to, restricting the software's use to [State agency] business only; AND

3. To remove the [State agency] software from my computer and return any materials that I may have relating to [State agency] software back to [State agency] should I cease to work for [State agency], or when otherwise directed.

I have read [State agency] Employee Home Software Use Guidelines and the preceding terms apply to the home use of [State agency] software. I am fully aware of the [State agency] software use policies and agree to abide by them. I understand that violation of any of the [State agency] software use policies, including, but not limited to, the terms above, may result in appropriate disciplinary action.

Employee Signature Date

For questions concerning this policy, your obligations under the policy, or to report a violation of this policy, please contact:

[insert appropriate contact information]

(Adapted with permission from SPA Anti-Piracy)

Appendix B:

Contract Language

Manufacturer Authorized Software:

The software provided by the contractor shall be manufacturer-authorized and approved for distribution to the State of Missouri's agency(s). Software packages known as "OEM" (Original Equipment Manufacturer) software (intended for bundled sale, installed on hardware) are not authorized or approved for distribution to the State of Missouri's using agencies. The contractor shall warrant that any software provided under the contract does not violate OEM copyrights.

Software Rights & Protections:

The State of Missouri acknowledges that the licensed products are proprietary and are the intellectual property of the contractor. The State shall only use the software in accordance with the licensing terms and conditions as provided in this ***IFB/RFP***. The State shall not permit the licensed products, acquired under this contract, to be used by any other person except for employees, agents and/or consultants of the ***NAME OF AGENCY*** ("Authorized Agency") who need to use the licensed products in the performance of their duties for the state and who are authorized and enabled by the State of Missouri to access and utilize the licensed products.

The State of Missouri shall have the right to make two (2) copies of the licensed product for archival and disaster recovery purposes only. In the event of a disaster or a failure of the operating environment or the software system, the agency may, for the duration of the emergency, use the applicable licensed software on a backup system and/or maintain a backup/archival copy of the licensed software, subject to any provisions herein defining and/or relating to authorized users.

It shall be the contractor's responsibility and expense to thoroughly educate and inform state agencies and their software end users regarding the software usage and copyrights. In the event that agency personnel or the contractor discover any misuse of the software or related documentation within the state agency(s), they must immediately notify the designated software manager, department manager, or legal counsel. Unauthorized reproduction of software is a federal offense. Offenders may be subject to damages, fines, and penalties in accordance with United States Copyright Law.

Audits:

In the event that the contractor undertakes an audit of the agency's facility in which the software is installed: (1) the contractor must provide at least three (3) business days prior written notice to the agency, (2) the scope of the audit shall be limited to a review of the agency's written records, (3) the agency shall have an equal right to audit the contractor's compliance with its license obligations hereunder, (4) all information transmitted to the contractor pursuant to the above shall be held in confidential status by the contractor, and (5) no penalty shall be levied against the State for unlicensed software found during the course of the audit. If the agency is

determined to be using unlicensed software, the maximum liability to the State shall be the cost of licensing the subject software.

NOTE: The contractor shall have the right to submit a formal written request to the applicable state agency requesting that an audit not be limited to the agencies' written records. Such request must be delivered to the state agency at least ten (10) working days prior to any intended audit. The request must clearly explain and provide justification as to why the audit should not be limited to the agencies' written records. The applicable state agency shall respond within five (5) working days after receipt of said request indicating whether permission is granted to extend the audit beyond written records. If such request is granted, the contractor shall conduct such audit at a time of day that is convenient to the state agency and that will not necessarily cause substantial interruption to the agency's business operations.

Software Piracy Prohibition:

No state or other public funds payable under the contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The contractor hereby warrants and certifies that the contractor has in place appropriate systems and controls to prevent such improper use of public funds. Under no circumstances in the course of providing products, services, or any other performance of their duties/obligations to the State shall the contractor directly or indirectly utilize tools, equipment, and/or software programs that are in violation of third parties' legal copyrights. If the State determines that the contractor is in violation of this paragraph, the State may exercise any remedy available at law including, without limitation, immediate termination of the contract and any remedy consistent with United States copyright laws.