

Don't Buy Software Twice—Ensure Licenses Come from Authorized Resellers

By Christopher Barnett

For many small to medium-sized businesses, software license procurement may involve little more than an Internet search for the lowest price. Budgeting constraints often demand it, and especially in the wake of costly software audits by organizations like the Business Software Alliance (BSA) or the Software & Information Industry Association (SIIA), companies may be bordering on desperate to find the best deal available. Unfortunately, that impulse can lead to trouble if the company ends up giving its money to a vendor that is not authorized to resell valid licenses.

Most software publishers will refuse to recognize license credit based on invoices from vendors that are not authorized resellers. In the context of a BSA or SIIA audit, this can have two important consequences. First, if audit results are submitted that include documentation of invalid license purchases, the auditor likely will demand payment of a penalty for any software installations that had depended on those purchases. For every software installation that is unsupported by a license, that penalty often is calculated as the license MSRP at a 2x or 3x multiplier. Due to the strict-liability nature of copyright law, the auditors typically do not care whether the company was an innocent victim of the unauthorized reseller. The second consequence can arise after negotiating a settlement of the audit, pursuant to which the audited business almost always is required to submit a certificate of compliance demonstrating that any licensing discrepancies have been remediated. If the business attempts to satisfy its post-settlement compliance obligations by purchasing invalid licenses, the auditor may reject the certificate, forcing the company to re-purchase the licenses from an authorized reseller.

In order to avoid these risks, CIOs and IT teams need set appropriate procurement policies and to do their homework before undertaking any significant license purchases. Three important tips to keep in mind include the following:

- **Avoid the Bargain Bin.** If the prices of licenses advertised on the Internet look too good to be true, they likely are too good to be true. Retail licenses with unit prices that are significantly below MSRP run a much higher risk of being scrutinized and rejected by auditors. Similarly, purchases from vendors selling through third-party sites like eBay or the Amazon Marketplace should be avoided, since there usually is no reliable way to verify that those sellers are offering valid licenses.
- **Avoid Old Licenses.** Many businesses with installations of older-version products that are determined to be unlicensed are inclined to try to obtain licenses for those versions in order to satisfy their licensing obligations. This is another mistake. Publishers typically stop offering licenses for older versions soon after newer products are released, so these offerings often are questionable, especially where several months or years have passed since the older versions were discontinued. One option for businesses in this situation is to pursue license purchases under a publisher's volume-licensing framework—such purchases often include downgrade rights permitting use of prior versions.
- **See What the Publishers Say.** Most software publishers offer at least some level of guidance on their websites in order to steer customers toward authorized license sources. Those sites include the following:
 - **Adobe**
<http://adobedealreg.force.com/PartnerSearch?lang=en>
Hint: Select "UNITED STATES" in the "Country" drop-down menu, then click "Search." Click the "Company" column header to sort the results by reseller names.

- **Autodesk**
<http://usa.autodesk.com/adsk/servlet/ps/searchform?siteID=123112&id=1088201>
Hint: For a longer list, select the largest search radius from the “Location” drop-down menu and “AutoCAD” from the “Product” drop-down menu.
- **Mastercam**
<https://secure.mastercam.com/findareseller/Default.aspx>
- **Microsoft**
Guidance only (no reseller list) is available at the following site:
<http://www.microsoft.com/en-us/howtotell/default.aspx>
- **SolidWorks**
<http://www.solidworks.com/sw/purchase/varlocator.htm>
- **Symantec**
<http://partnerlocator.symantec.com/public/search;country=United%20States;v=advanced/>
Hint: For a longer list, select the largest search radius next to “Proximity”.



About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher’s practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

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