

Autodesk Audits: Managing Independent Contractors

By Keli Johnson Swan

Autodesk, Inc. uses a variety of resources to identify potential audit targets. Many of these targets are small architecture or engineering firms that employ independent contractors in lieu of full time employees as CAD operators.

A typical Autodesk software audit letter requests information regarding any installations of Autodesk products on company machines. The following are three possible scenarios involving independent contractors that have differing licensing implications:

1) Independent Contractor using company-owned Autodesk software on a company-owned machine.

Section 18 of Exhibit A of Autodesk's most recent [End User License Agreement](#) defines a licensee as "(a) the company or other legal entity on behalf of which Autodesk Materials are acquired, if the Autodesk Materials are acquired on behalf of such an entity (e.g., by an employee, independent contractor, or other authorized representative), or (b) if there is no such entity, the individual who accepts this Agreement."

Autodesk relies on the EULA, Copyright Act, and many other legal theories to support its claims that a company may be responsible for any potential copyright infringement for unlicensed software installed on computers it owns. Therefore, it is important that companies are cognizant of the software compliance of its entire network in order to avoid potentially costly copyright infringement claims.

2) Independent Contractor using personal Autodesk software on company-owned machine.

This scenario is quite common with smaller companies seeking a cost-effective alternative to hiring a full time employee and purchasing expensive Autodesk software. An independent contractor with his or her own copy of Autodesk is highly marketable, but might be a risky investment.

Section 24 of Exhibit A to the most recent Autodesk EULA specifically addresses independent contractors, defining personnel as "(a) Licensee's individual employees and (b) individual persons who are independent contractors working on Licensee's premises and who Install and Access the Licensed Materials only on and through Computers owned or leased and controlled by Licensee."

It is critical to fully vet each potential independent contractor purporting to own a valid copy of Autodesk software to determine whether the license is legitimate, and is valid for commercial use. The EULA specifically precludes any Educational or Not For Resale versions from being used in a commercial setting.

3) Independent Contractor using personal Autodesk software on a personal machine.

This scenario does not appear to be covered under Sections 18 or 24 of Exhibit A to the EULA, which means software on a personal machine is arguably not subject to an Autodesk audit. However, it is still important to verify that any independent contractors are using licensed software while working on behalf of the company.

Routine internal software audits are an important step in preventing potential copyright infringement claims. A company would be wise to regularly conduct an internal audit to ensure employees or independent contractors are not installing potentially unlicensed software on its computers, for which it would be liable. Companies facing a software audit should contact an attorney with experience defending against software copyright infringement claims.



About the author Keli Johnson Swan:

As an associate attorney at Scott & Scott, LLP, Keli is primarily focused on software licensing and copyright infringement matters. She advises clients in a variety of industries to ensure compliance with software licenses and develop strategies for maximizing the value of software licenses.

Get in touch: kjohnson@scottandscottllp.com | **800.596.6176**

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