

Avoid Copyright Infringement Claims for Affiliates and Subsidiaries

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Companies with complex corporate structures sometimes encounter difficulties with properly licensing software for all of the related entities, affiliates, and subsidiaries, even if a software asset management program is in place. Even if a company purchases all necessary licenses for its affiliates or subsidiaries, it is possible that a software publisher may make a claim of copyright infringement if the license agreement does not allow sharing or transferring licenses between entities. Even when companies have central procurement departments to acquire and license software, there are still potential risks.

Some software license agreement terms specifically prohibit sharing software across entities without permission from the publisher. For example, Autodesk's current License and Services Agreement specifically prevents a company from sharing licenses with subsidiaries and affiliates. Other software publishers' license agreements contain similar provisions.

If a company needs to have the ability to share licenses across legal entities, the company must review the software license agreement and determine whether the company may share licenses between its affiliates. If not, the next step is to negotiate the language for affiliates and subsidiaries into the appropriate license or services agreement.

Companies that enter into more complex agreements with software publishers potentially have the bargaining power to

specifically define the “customer” or “licensee” to include affiliates, joint ventures, and subsidiaries. The definitions section of a license agreement is very important in determining whether the company may share licenses.

Additionally, it is important to identify whether any geographical restrictions prevent licensing sharing between other entities. Some software is restricted for use in the territory it was purchased, which may be problematic for global corporations.

Although many software vendors now offer services for software asset management, it is important to consult with legal counsel experienced in technology and software licensing to navigate complex licensing agreements.