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EVOLVING SOFTWARE NORMS REQUIRE PROACTIVE FONTS LICENSING:

IS YOUR ORGANIZATION SAFE NOW?

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Font software managers, buyers, and users *now* need to know and meet their license commitments. Merely delivering creative designs and work, meeting customer project deadlines, and collecting invoices, isn't enough any more for sustainable businesses that rely on fonts.

What's new, in font acquisition and usage? Were rules or reality *revised*, for artisans enabled by digital fonts? Why should graphic designers, advertising professionals, and other typography users know or care about their font "supply chain"?

The answer is: a mix of old and new, makes mindfulness and effective management now a requirement for font software deployment. The new reality is a combination of (i) broader, more globally accessible utilization and display of fonts, plus (ii) long-standing, enforceable font software licensing obligations - both voluntarily, by your contracts, and automatically, under applicable copyright law. This updated reality means that ignoring font licensor rights is a recipe for business pain and the negative financial impacts - like fines, lawsuits, bad publicity, career repercussions, or more.

What's new, in font and other software ownership, protection, and enforcement by those "upstream" providers of electronic tools for creativity? Have vendors morphed in their business practices, in ways that impact font software users? Yes.

First, some suppliers' enforcement standards have escalated. There's a higher bar, to be a compliant "citizen" (customer), in some software contracts.

Specifically, creation and ongoing deployment of internal usage "controls" by licensees is a new mandate in some software contracts. So some users of font and other e-tools have promised to (i) regularly, accurately track software usage in their organization, (ii) self-investigate, document and report their amount of usage, upon vendor request, and/or (ii) electronically or otherwise prevent unauthorized quantities or types of usage. Indeed, a lawsuit filed in October 2017 by a leading font house against a large, globally-famous consumer-brands corporation complains that non-compliance with such reporting is a "material breach" of their agreement. (Another lawsuit this year by the same foundry against another global company seeks $1,500,000 in damages.)

Also, other software industry segments reveal an aggressive megatrend. License "compliance audits" are now required by many software contracts. What is it? At a licensor's option, the customer must provide data enabling an assessment of faithful tracking of license limits. In big-ticket enterprise software, now the norm is either independent CPA firms or often-aggressive, commission-driven "compliance consulting" vendor staff drilling deep into customers' digital records. These audits often yield assessments of big gaps in supervision, reporting, and/or license fees, with resulting large-dollar "true-up" invoices, and, increasingly, related enforcement litigations. There are even type foundries who sell products that enable users to scan their networks looking for font usage. These products may not always give the help desired, and can easily lead to an inappropriate use invoice for fonts installed, copied, or used.

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What changed? Why are software vendors becoming more aggressive in customer oversight and compliance-checking? Several industry forces contribute to this global shift.

First, the open source software movement has diluted potential growth in many software sectors. Long gone are the days when "shareware," "free software," and other Internet-born crowd-created software were shamed, feared, and banned from sane business use. Now you can find decent Open Source fonts from a variety of locations, such as Google Fonts, and many others. That being said, open source licenses can and do vary significantly, with many specifically prohibiting the use of a font in commercial enterprises, so tracking "free" fonts just like any other licensed product is not just wise, but even a requirement.

Second, software economics explains supplier shifts. Compliance audits are a profitable sales channel now for many software companies. Some vendors find that new revenue and profit margins are more easily found via enforcing prior contracts with current customers, rather than hunting, finding and successfully selling to new prospects. For example, SAP has asserted a $600MM (U.S. dollars) pending claim against Anheiser-Busch AB. SAP already won a London litigation battle involving over $55MM. $100MM has been demanded after auditing and in litigation between tech companies, in a software component relationship. $100MM was the new revenue quota set by executives for its internal "compliance consulting" team, other litigation revealed. Moreover, many local and state government units have confessed 7-figure settlements with their software suppliers, post-audit. While font houses haven't yet displayed the aggressive methods for which Oracle, Attachmate, IBM, and other suppliers have become famous (or infamous) among many software and IT managers and buyers, the leaders of your typography licensors will hear about and consider such possible additions to their "business playbook."

Finally, increasingly some behemoth software companies are owned and managed by investors and finance professionals, rather than craftspeople founders. Now, unlike in the past, private equity firms with billions in capital hunt, study, and selectively buy-up exclusively software companies, to overhaul and make

more profitable. After software companies and products are bought up and "mashed up" into other vendors, customers encounter changed supplier priorities and behaviors. Still to be seen is whether or not this increased pressure comes to fonts.

Owning a car or a home, or even a personal computer, requires active, ongoing management. Homeowners consider and procure insurance, pest control, and security technologies and services. Vehicle buyers must remember and spend on post-acquisition, intermittent tune-ups, oil-changes, safety inspections, and tires alignments. Laptop users must use smart tools after that initial purchase, like virus filters and firewalls. So too smart font and software managers plan for and executive post-licensing action items, to protect their investment – and their organization's reputation.

To stay safe in a shifting software supply scene, what should IT, software, and font managers do? To avoid being a "copyright crook" and contract breaker, which action items should be added to project plans, job descriptions, and inter-departmental processes?

First, confirm the ***actual, accurate*** "rules of your road." Software licenses vary widely. Pricing might be per employee, computer, business location ("site"), hardware horsepower (e.g., server processor "cores"), or other metrics. And pricing or license rules can be ***-changed-*** between product versions! Also, later "clickwraps" or end user license agreements often purport to modify – or even entirely replace – prior contracts. Moreover, unknown, unauthorized "rogue" software procurement by well-meaning but contracts-unaware designers or other employees (or even by independent contractors) is a common but predictable problem, particularly when suppliers often offer easily-downloaded "trialware" for little or no up-front payment. So "what we've agreed to" often is a bad, unclear set of assumptions, and an elusive and moving target. Determine the current status of your organization's business commitments, by hunting and gathering in-place, in-force contracts. (If you fear or find financially-significant non-compliance, first follow the best practice [at least in the U.S.] of enabling internal candor and confidentially by coordinating self-investigation through outside counsel, to enable a non-disclosure buffer against later demand via the attorney-client non-disclosure privilege.)

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Second, study your specifications. Interpret your obligations. Tease out the action tasks set by the now-applicable licenses. Also, is periodic internal counting and record-creating (e.g., covering the quantity of usage) an already-agreed requirement?

Third, confirm commitment to copyright congruence. Alert and advise all colleagues of the organizational commitment to compliance with all software licenses – in writing, with specific instruction on their individual and departmental particular do's and don'ts. Train font users about what their privileges are, and aren't. (Did usage on home, personally-owned computers get bought, or not? What about use by the same person but on different devices? Who is and is not permitted to download or license font software?) Provide a specific liaison to answer any employee questions. Formally include "software asset management" in the job description of the selected staffer. Such prior, documented "good citizenship" efforts often are helpful in later instances of compliance audits and challenges. Implement a font management solution to manage the distribution and access of fonts in your organization.

Fourth, budget adequately for needed software. Employees need enablement with digital tools. Some may seek sketchy freebies that might not have the proper commercial licensing over the Internet. "Smoking gun" emails by staffers, complaining of unrealistic software funding, have emerged in post-audit litigations.

Finally, find and deploy useful tools to monitor and manage all software procurement, deployment, tracking, and use. Nobody now needs (or respects) "white-out" text-correction fluid, "shoeware" schlepping when videoconferences will do, or abaci when spreadsheet software is available. Similarly, manual labor, informal counting, and hunches aren't optimal to track, document, and be able to prove your organization meeting its prior promises to licensors, for font or any other software. Implement a font management solution to manage the distribution and access of fonts in your organization.

Fierce font fights: fictional or factual?

Have font software rights ever led to lingering litigation? Have management distraction, large litigation lawyering costs, and long organizational uncertainties ever arisen from digital typography contracts, copyright, and trademarks? Or are such wars-about-digitization confined to bigger-ticket industrial software?

Yes, type foundries and font distributors do litigate. They must, when necessary in particular instances, to protect their hard-created intellectual property. And publicly-traded vendors owe their shareholders the legal obligation of active stewardship of corporate assets.

For example, one company believed baking font software that was contributed by a distant individual into its software was an authorized use. Upon discovery, protest, and demand for compensation from a software vendor, it denied and disputed the problem. Both companies filed lawsuits, in their respective headquarters cities. 18 months later, the font software recipient paid off font owner Monotype, to settle and end the litigation. The court case papers were sealed and secret, but Red Hat's shareholder disclosures revealed a $500,000 corporate charge (settlement cost).

Similarly, font software disputes can be protracted, hence costly. One vendor's policing project required over three and a half years and over 300 courthouse-filed pleadings, to obtain a permanent injunction against unauthorized usage. And three new enforcement lawsuits filed in four months in 2017 by one foundry, is evidence that facts can be forced to filter out, in courthouses, for font software users who ignore their licensing obligations.

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