

Sint-Niklaas, 22 January 2015

BSA, The Software Alliance
Marnixstraat 32
2060 Antwerpen

Dear Sir,
Dear Madam,

Open Letter to The Software Alliance – BSA

Software licensing raises questions

Software licencing and compliance are key priorities for BELTUG's members. In particular, many companies and public organisations have serious questions about how license models are evolving with the growth of mobile devices and cloud services.

At the request of several of our members, we began working on the issues in June 2013. We initiated discussions with software vendors, set up events on software asset management and software contracts, and organised sessions for members to exchange know how and experiences.

We wish to be clear that **we urge our members to use only properly licensed software**. At the same time, we call upon software vendors to clarify their policies and to provide clear, unambiguous and balanced licensing terms and conditions that are understandable to non-lawyers.

BELTUG members receive letters from BSA

Recently The Software Alliance, known as the Business Software Alliance (BSA), has been targeting a number of BELTUG members with letters¹ urging them to activate their corporate The Software Alliance profile via <http://www.bsa.be/>. According to these letters, profile activation would allow the responding organisation to download The Software Alliance tools that – so the letters assert - would help the organisation to manage its software licenses.

The letters also state that The Software Alliance, after informing and urging the targeted organisation to act, could decide to take legal action if a preliminary investigation indicated possible regular illegal use of software. They specify that organisations unsure about their possible unlicensed use of software should register with The Software Alliance and install The Software Alliance-provided tools to verify licensed software usage.

BELTUG fully recognises the right of software vendors to defend their intellectual property (IP) and to combat illegal use of their software. However, BELTUG cannot agree with some of the methods used by The Software Alliance².

BELTUG's concerns with the letters and their message

A few critical remarks concerning the letters sent:

¹ Member feedback has revealed that different versions of the letter exist, but with an essentially similar messaging.

² The [members](#) of The Software Alliance/BSA

1. The tools are made available by The Software Alliance. The latter is, as a representative for its members, a potentially involved party in what could become a legal dispute over IP infringement. This creates a conflict of interest. Targeted organisations therefore cannot be expected to have blind faith in The Software Alliance's tools. These tools were not developed and/or audited by a neutral party. Hence it would be better to "open source" these tools and to allow an independent third party to audit and certify their source codes.
2. From our activities regarding software asset management, it is very obvious that software audit tools are generally complex, and often targeted to specific vendors and/or software. BELTUG members would like to know how the tools from The Software Alliance match up to various software products and/or vendors.
3. It is not clear why a targeted organisation must first activate its "The Software Alliance enterprise profile" to access the tools. The letters seem to suggest this registration is necessary to access the enterprise's The Software Alliance status. However, the letter does not explain what information is provided by this status nor how The Software Alliance intends to use the information stored in the activated profile. Enterprises are understandably reluctant to activate this profile without detailed information on the potential consequences of activation. Additionally, we note that software vendors have not always correctly tracked the licenses sold to their customers, raising additional distrust in the methods used by The Software Alliance. After all, software license management requires reliable tracking of both entitlements and actual usage.
4. There would be more trust in the tools, and the call to use them would be more successful, if companies were confident that their data would not come in the possession of The Software Alliance. It would be preferable that the data go to a neutral third party, which would then advise the organisation on the steps to take to become fully compliant. In this way, organisations would consider the tools to be a useful support to check their compliance status and to achieve compliance, whereas currently organisations consider the tools rather as a means to incriminate themselves and to provide The Software Alliance with data that may be used against them to initiate legal proceedings.
5. A large majority of enterprises are bound to use best practices for both corporate and IT governance. It is therefore out of the question to install The Software Alliance tools without detailed technical, organisational and legal information concerning them. Several questions related to the use of these tools arise. These include for example:
 - what is the exact functionality provided?
 - what is the logic used by these tools?
 - how can these tools be managed?
 - how and by whom are these tools supported?
 - who is liable for potential problems triggered by the installation and use of these tools?
 - what is the legal value of the information generated by these tools?
 - how is the information collected, used by the Software Alliance and/or its members?

Companies need to remain free to use the tools they find technically and commercially most accurate.

6. An extract of The Software Alliance letter reads as follows: *"Each time, if a preliminary investigation suggests that your enterprise uses on a regular basis unlicensed software, it (The Software Alliance)*

*may decide to launch legal proceedings*³. This extract is unclear about whether non-activation of the profile is regarded by the Software Alliance as part of “*a preliminary investigation*”. The fact that this is not clearly stated in the letter points to another endemic problem with The Software Alliance, namely a notorious lack of transparency and the use of threats and intimidation to force the targeted organisation to take actions it might regret later.

In this context, we note that in June 2013 the Brussels Court of Appeal found earlier practices of The Software Alliance and its members unlawful⁴. In that proceeding, the Court deemed that The Software Alliance deliberately concealed information and intentionally misled the software users: “*The Court determines that the defendants (The Software Alliance) acted deceptively, including by intentionally concealing information, with the intentional goal of misleading the claimants and forcing them to conclude a contract...*”⁵

BELTUG’s position on improving software licensing issues

In addition to our remarks concerning the recent The Software Alliance letters, BELTUG would also like to state the following regarding software licensing in general:

1. BELTUG urges software vendors to take a proactive approach regarding the tools used to manage software licenses. Currently, many BELTUG members feel the vendors themselves are facilitating illegal use by, for example, enabling non-free options by default during the installation of software products or by facilitating the activation of non-free features by unauthorised users. Subsequently they instigate expensive litigation. Technically, it should be obvious to implement proper software license management mechanisms in an open, industry-standard fashion, but unfortunately BELTUG has the impression that some software vendors deliberately refuse to do so.
2. Organisations are faced with increasingly complex, opaque and volatile software licensing terms and conditions, which even software vendor representatives cannot explain in a coherent way. For instance, audit clauses used in standard licensing agreements are often very brief and imbalanced in the favour of the software vendor. Therefore, BELTUG urges software vendors to deliver with their software clear, unambiguous and balanced licensing terms and conditions, understandable to non-lawyers. These should be stable and permanently accessible. Forcing unilateral changes in licensing terms and conditions without the explicit approval of the customer is unacceptable.
3. Transparency and honest and open communications are essential for solving customer/supplier conflicts. As such, the *modi operandi* of too many software vendors and of The Software Alliance itself leave room for improvement. Most organisations want to be compliant but encounter major obstacles, many of which can be traced back to the complexity and inflexibility of the licensing schemes forced upon them by the software vendors.

Taking all of these factors into account, BELTUG finds itself forced to recommend that its members not supply any information to The Software Alliance and that they refrain from downloading and installing

³ “*Toutefois, si une enquête préalable laisse supposer que votre entreprise utilise régulièrement des logiciels sans licence, elle [the Software Alliance] peut décider de lancer une procédure juridique*”.

⁴ See <http://tweakers.net/nieuws/89673/belgisch-hof-handelwijze-bsa-was-onrechtmatig.html>, <http://www.zdnet.be/business/131769/bsa-wij-zijn-conform-de-belgische-wet/>, <http://www.zdnet.be/beveiliging/131759/antipiraterijclub-bsa-onder-vuur/> and <http://datanews.knack.be/ict/nieuws/bsa-teruggefloten-door-rechtbank/article-normal-291247.html>

⁵ “*Het Hof oordeelt dat er door geïntimeerden in casu kunstgrepen aangewend werden, waaronder het bewust verzwijgen van informatie, met de bewuste bedoeling om appellanten te misleiden en hen ertoe aan te zetten om te contracteren...*”.

any of The Software Alliance-provided tools. At the same time, we urge BELTUG members to use only properly licensed software and to always employ proper software asset management practices. We also encourage BELTUG members to consider the software vendor's license policy and practices during software selection.

BELTUG remains available to The Software Alliance and the individual software vendors for an open dialogue on the software licensing issues affecting both the vendors and the users of software. We hope that this letter will be the first step in developing a more mutually beneficial approach to an issue which is equally a priority for the two sides of the user-vendor relationship.

The present is written without any detrimental recognition and whilst reserving all rights, both for BELTUG and for its members.

Yours sincerely,

Danielle Jacobs
General Manager

About BELTUG

With over 1,200 members, BELTUG is the largest Belgian association of ICT managers. We defend the interests of our members with public entities and ICT service providers. Each year, we organise more than 30 events for exchanging experiences. BELTUG also plays an active role in INTUG, which represents business ICT users at the European and international levels.

<http://www.beltug.be>