

***PRACTICEWORKS, INC. V. PROFESSIONAL SOFTWARE  
SOLUTIONS OF ILLINOIS, INC.***

*No. JFM-02-1205, 2004 U.S. Dist. LEXIS 11645 (D. Md. June 23, 2004)*

The court ruled that a reseller violated the Copyright Act by loading a software product into its computers' random access memory (RAM) to provide technical support and services to third-party customers after termination of the reseller's contract with the software owners.

PracticeWorks, a provider of information management technology for dental health practitioners, holds copyrights for a software product called SoftDent® Dental Management System. It granted Professional Software Solutions of Illinois, Inc. ("PSSI") exclusive rights to resell the software within parts of Illinois and Ohio. In addition to exclusive resale rights, the relevant contracts allowed PSSI to provide local software support and service to end-users. The contracts stated that upon their termination, PSSI was to return to PracticeWorks "any and all materials regarding the [software] in any form whatsoever . . ." PracticeWorks later terminated the contract and sued for a declaration regarding the termination. PSSI returned some copies of the software and other materials, but retained a few copies in order to continue providing technical support and service for its customers.

The court held that PSSI violated the Copyright Act in continuing to use the software for technical support because this activity required the software to be loaded into RAM, and loading the software into RAM constituted copying of the software. Following termination of the resale and support agreements between PracticeWorks and PSSI, such copying violated the exclusive rights of copyright ownership. PSSI argued that viewing the software on its computers fell within an exception to the Copyright Act codified at 17 U.S.C. § 117(c), covering computer maintenance and repair. The court held that this exception applied only to cases of loading software in order to repair the machine onto which the program is loaded. Thus, the exception did not apply to repairs of the software itself, nor did it cover repair or maintenance of a third party's machine.

The court also held that PSSI violated its contractual obligations by retaining copies of the software after PracticeWorks terminated their resale agreements. PSSI argued that the contracts with PracticeWorks did not restrict the use of copies of the software obtained as end-users. The court responded that the contracts unambiguously implied that PSSI could act only as dealers, not as both dealers and end-users. Any copies of the software that PSSI used to provide services to customers were subject to the contracts. The court also brushed aside PSSI's overly literal reading of the contract requiring return of materials "regarding the [software]" as not applying to the actual software itself.

