



# **Compliance and Legislation**

---

---

PUBLISHED BY

IAITAM Publishing, LLC  
1137 State Route 43  
Suffield, Ohio 44260

Copyright ©2008 by IAITAM Publishing, LLC

All rights reserved. No part of the contents of this book may be reproduced or transmitted in any form or by any means without the written permission of the publisher.

When assessing any legal matter, do not rely solely on materials published by third parties, including the content in this paper, without additionally seeking legal counsel familiar with your situation and requirements. The information contained in the IAITAM Best Practice Library™ and each of its volumes is provided for informational and educational purposes and does not constitute legal or other professional advice. Furthermore, any applicability of any legal principles discussed in this paper will depend on factors specific to your Organization, situation, and location. Consult your corporate legal staff or other appropriate professionals for specific questions or concerns related to your corporate governance and compliance obligations. IAITAM makes every effort to ensure the correctness of the information we provide, to continually update our publications, and to emend errors and outdated facts as they come to our attention. We cannot, however, guarantee the accuracy of the content in this paper, since laws change rapidly and applicability varies by reader. The information in this publication is provided on an “as is” basis without warranties of any kind, either expressed or implied. IAITAM Publishing, LLC disclaims any and all liability that could arise directly or indirectly from the reference, use, or application of information contained in this publication. IAITAM Publishing, LLC specifically disclaims any liability, whether based in contract, tort, strict liability, or otherwise, for any direct, indirect, incidental, consequential, punitive or special damages arising out of or in any way connected with access to or use of the information in this paper. IAITAM Publishing, LLC does not undertake continuous reviews of the Web sites and other resources referenced in this paper. We are not responsible for the content published by other organizations. Such references are for your convenience only.

For further information on where IAITAM Publishing, LLC books are available, contact IAITAM Publishing, LLC at [info@iaitam.org](mailto:info@iaitam.org) or by calling 1.866.9IAITAM. Visit our website at [www.iaitampublishing.org](http://www.iaitampublishing.org).

IAITAM Best Practice Library and Best Practice BluePrint are trademarks of IAITAM Publishing, LLC.

ISBN-13: 9781-935019-07-7

ISBN-10: 1-935019-07-4

# Table of Contents

|   |    |
|---|----|
| Compliance Management.....  | 1  |
| Introduction to Compliance Management.....  | 1  |
| Definition of Compliance Management .....   | 1  |
| Purpose of Compliance Management.....   | 1  |
| Why Compliance Management Relates to IT Asset Management.....   | 1  |
| Implementation of Compliance Management Goals .....   | 2  |
| GOAL 1: The Organization is Prepared to Respond to Compliance Events .....  | 2  |
| GOAL 2: Control Must be Gained Over Assets .....  | 3  |
| GOAL 3: A Software and Hardware Discovery Process Must be Enabled.....  | 3  |
| Self-Assessment and Action Planning .....   | 5  |
| Measurements and Verifications Examples .....   | 8  |
| Response to Compliance Event.....   | 9  |
| Overview of the Sub-process Areas, How They Relate to this Process, and How<br>this Key Process Relates to Other Key Process Areas..... | 11 |
| Key Process Scope .....   | 11 |
| Compliance Management.....  | 12 |
| Review Current Licenses.....  | 13 |
| Analyzing Current State of Building Blocks .....  | 13 |
| Compliance Management.....  | 17 |
| Document Management .....   | 19 |
| Financial Management .....  | 20 |
| Inventory / Configuration Management.....   | 20 |
| Upgrade and Migration Management .....  | 21 |
| Version Control Management.....   | 21 |
| Usage Management .....  | 22 |
| Disposal Management.....  | 22 |
| Vendor Management .....   | 22 |
| Prioritizing SAM goals.....   | 23 |
| Organizational Goals .....  | 23 |
| Business Unit Goals .....   | 23 |
| IT Department Goals .....   | 24 |
| Personal Goals .....  | 24 |

Table of Contents

---

|  |    |
|--|----|
| Outside Entity Goals .....   | 24 |
| Identify and Quantify Support.....   | 25 |
| Establish Time Line .....  | 26 |
| Compliance .....   | 28 |
| Noncompliance .....  | 28 |
| Compliance Enforcement.....  | 29 |
| Software Industry Member Organizations.....                                  | 31 |
| Other Compliance Enforcement Entities .....                                  | 63 |
| What is Software Piracy?.....  | 65 |
| Internet Piracy .....  | 65 |
| Hard Disk Loading.....   | 66 |
| Soft Lifting .....   | 67 |
| Counterfeiting .....   | 67 |
| Software Rental.....   | 68 |
| Bundled Package (Suite) Breaking .....                                       | 68 |
| Taking Action Against Piracy.....  | 68 |
| What Constitutes Compliance?.....  | 69 |
| Requirements for a Compliance Event.....                                     | 69 |
| The Basic List of Documentation.....   | 69 |
| Proofs of Purchase.....  | 71 |
| Sample Audit Scenario 1: Notification Letter of Audit, Without Cause.....    | 72 |
| Sample Audit Scenario 2: Notification Letter, With Cause.....                | 74 |
| Sample Audit Scenario 3: Request for Self-Audit .....                        | 76 |
| What Happens in an Audit .....   | 77 |
| Personality Profiles Concerning an Audit.....                                | 77 |
| Building your Audit Team.....  | 78 |
| Persons Who Should be on your Team .....                                     | 78 |
| A Final Note on Organizational Responsibility During a Compliance Audit..... | 83 |
| Master Media .....   | 83 |
| Defusing a Software Compliance Audit .....                                   | 84 |
| How do you Become a Target? .....  | 86 |
| What Should you do when you Become a Target? .....                           | 86 |
| Executive Task Force .....   | 87 |
| Enterprise Action Teams .....  | 87 |
| Rule One: Convey Only the Truth .....  | 88 |

|  |     |
|--|-----|
| Rule Two: Only Legal Counsel Speaks to Compliance Entity .....                                   | 88  |
| Rule Three: Everything is Negotiable .....   | 89  |
| Rule Four: No Changes During Formal Audit .....  | 89  |
| Preliminary Discussion .....   | 89  |
| Preliminary Compliance Status Report .....   | 91  |
| Begin Immediately Preparing the Status Report.....   | 91  |
| Next Step: Formal Documentation Process.....   | 92  |
| Legislation.....   | 99  |
| Core Processes for Effective Legislation.....  | 99  |
| Organizational Goals for Legislation .....   | 99  |
| Introduction to Legislation .....  | 99  |
| Definition of Legislation .....  | 99  |
| Purpose The Legislation Process Area .....   | 100 |
| Why Legislation Relates to IT Asset Management.....  | 100 |
| Organization Has Awareness of Current Legislation.....   | 101 |
| Commitments .....  | 101 |
| Capabilities.....  | 102 |
| Self-Assessment and Action Planning .....  | 102 |
| Verifications Examples .....   | 103 |
| Activities and Products .....  | 103 |
| Legislation Tracking .....   | 104 |
| Legislation Impacting Software Asset Management .....  | 104 |
| Intellectual Property Rights.....  | 104 |
| WIPO: World Intellectual Property Organization.....  | 105 |
| Paris Convention for the Protection of Industrial Property (1883) .....                          | 105 |
| Berne Convention for the Protection of Literary and Artistic Works (1886,<br>amended 1979) ..... | 106 |
| The “Internet Treaties” .....  | 107 |
| WIPO Copyright Treaty (WCT) (1996).....  | 107 |
| WIPO Performances and Phonograms Treaty (1996).....  | 109 |
| WTO: World Trade Organization .....  | 109 |
| The Agreement on Trade-Related Aspects of Intellectual Property Rights<br>(TRIPS).....           | 109 |
| UCITA – US .....   | 112 |
| Digital Millennium Copyright Act – US (Global impact).....                                       | 118 |

Table of Contents

---

|  |     |
|--|-----|
| No Electronic Theft (NET) Law.....                   | 132 |
| Title 17 .....                                       | 133 |
| Electronic Communications Privacy Act (ECPA).....    | 138 |
| Sarbanes-Oxley Act .....                             | 139 |
| Clinger-Cohen Act: Synopsis .....                    | 144 |
| Additional Laws that Apply to Federal Agencies ..... | 146 |
| Additional Laws that Regulate Private Firms.....     | 148 |
| Laws that Establish Cyber Crime Laws.....            | 148 |
| Upcoming Legislation .....                           | 161 |
| European Union Legislation.....                      | 207 |
| The EU Copyright Directive (2001) .....              | 207 |
| The EU Database Directive (1996) .....               | 209 |
| The EU WEEE Directive (2003) .....                   | 210 |
| EU RoHS Directive (2003) .....                       | 212 |
| The RoHS Enforcement Process.....                    | 214 |
| Australian Legislation: Synopsis .....               | 215 |
| Canadian Copyright Regulations and Remedies .....    | 223 |
| Penalties for Infringement .....                     | 224 |
| Roles and Responsibilities .....                     | 227 |
| Templates, Workflows and Whitepapers .....           | 239 |
| Audit Response Process .....                         | 239 |
| Compliance Initial Letter Sample .....               | 245 |
| Federal Court Compliant Sample .....                 | 248 |
| Internal Lawyer Letter Sample .....                  | 257 |
| Internal Legal Argument Sample.....                  | 260 |
| No Response Letter Sample .....                      | 262 |
| Settlement Offer Sample .....                        | 265 |
| Software Conclusion Letter Sample .....              | 269 |
| Offer – Counteroffer Summary .....                   | 271 |
| Proof of Purchase Summary Report .....               | 275 |
| Audit Results Summary.....                           | 278 |
| Outside Counsel Letter .....                         | 281 |
| Compliance Agency Initial Letter Sample2.....        | 284 |
| Glossary of Terms .....                              | 293 |