

## BSA Software Piracy Audits – A Legal, Not IT issue

By Robert J. Scott

The Business Software Alliance, an influential trade organization, made up of some of the leading software publishing companies in the world including Microsoft, IBM, Adobe, Autodesk, and Symantec is aggressively going after small and mid-size businesses, accusing them of software piracy. Many businesses are already under investigation, and facing potentially steep fines and bad publicity that could hurt their reputation with customers and business partners.

Despite the fact that this issue involves software, BSA audits should not be handled solely by the IT department. Because of the complexities involved, companies that are under investigation – or concerned about potential exposure – should strongly consider hiring attorneys with extensive experience in software compliance and asset management to conduct the necessary audits. Attorneys with experience handling BSA investigations know the intricacies of such investigations, and they are best able to advise clients on software licensing and audit issues. There are alternatives to hiring a law firm, such as using internal IT staff or third-party IT vendors, but these options invite unnecessary risks.

IT staffers or other employees most likely will not be familiar with the legal aspects of software licensing, nor have the time and resources to dedicate to the task of auditing the software installed on all company owned computers. Software license agreements can be very complex, and IT professionals – whether they're management or staff – should not be relied upon to interpret legal documents.

IT vendors, while adept at helping companies inventory their existing software licenses, in many cases do not have the legal background or expertise to provide sound advice to targets of BSA audits. In the event that a company is subject to a lawsuit related to software licensing, IT vendors would not be able to provide legal representation.

Among the major benefits of hiring attorneys to conduct software audits is that the results will be fully protected by the work-product and attorney client privileges. The attorney-client communications and the attorney's work-product cannot be revealed and used against a company in the event of litigation. Internally prepared and IT vendor audits, on the other hand, are subject to discovery in the event of litigation.

In addition to supervising software audits that are privileged and confidential, an experienced law firm will be able to advise the business regarding software compliance issues, assist the business in procuring software at wholesale prices, and represent the business in any litigation that may arise.

The threat of investigation is not to be taken lightly. It has become quite common today for mid-sized and small organizations to become targets of the Business Software Alliance. The group often relies on disgruntled employees and software vendors to instigate investigations into unauthorized software use. Recently, a company in New York City, paid out \$325,000 to the Business Software Alliance in settlement.

Statutory fines for willful copyright infringement can reach as high as \$150,000 per violation, so senior business and technology executives must take the issue very seriously.

Illegal use of software can happen for a number of reasons. Sometimes companies try to keep costs down by installing programs on more than one workstation to increase access to the application without paying more in licensing fees. At some companies, employees make unauthorized copies of programs and then distribute them to coworkers. Software licensing is so complex that most companies don't even realize that they are out of compliance.

When choosing software compliance counsel, select a firm that has both the technology and legal expertise necessary to achieve IT operational goals, while protecting the business against legal liability.



**About the author Rob Scott:**

As the managing partner of Scott & Scott, LLP, Robert has built a global practice representing clients on issues where technology, media and the law intersect. A boutique firm with international reach, Robert ensures that Scott & Scott is committed to legal excellence, unparalleled customer service, and cost-effective strategies that deliver positive results. Representative clients range from multinational corporations to local mid-market businesses spanning all industries.

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