

Timing is Key for Software Audit Settlements

By Keli Johnson Swan

More than 90 percent of software audits initiated by software publishers or representative entities, such as the Business Software Alliance (“BSA”) and Software & Information Industry Association (“SIIA”), are settled out of court after negotiating a final settlement payment and terms. Although there are a number of factors that affect an ultimate resolution, timing of settlement is often important.

Generally, the BSA and SIIA are particularly motivated to resolve outstanding audit matters by the end of each calendar year, or by December 31. Often the audited company’s interest aligns with the auditors in seeking a resolution to avoid carrying over legal and financial obligations into the new year.

The month of December is often marked by a flurry of settlement negotiations in an effort to resolve an audit. The following are a few tips to take advantage of the auditing entities’ motivation to settle quickly.

- 1) Consider “cutting to the chase” and increasing the settlement offer in an effort to resolve the matter quickly.
- 2) Offer a lump-sum payment where feasible instead of payment terms that may extend past the end of the year.
- 3) Request any potential revisions to the settlement terms up front to avoid a lengthy discussion after the payment terms are agreed upon.

It is important to be mindful of settlement goals when negotiating the best resolution possible. A settlement agreement contains complex terms, which should be read carefully and understood prior to executing the agreement. If in doubt, a company should consider consulting an attorney experienced in software audits to ensure the terms of settlement are advantageous.



About the author Keli Johnson Swan:

As an associate attorney at Scott & Scott, LLP, Keli is primarily focused on software licensing and copyright infringement matters. She advises clients in a variety of industries to ensure compliance with software licenses and develop strategies for maximizing the value of software licenses.

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