

## What is Really Driving the BSA's "Record Period of Settlements"?

By Christopher Barnett

The Business Software Alliance recently issued a breathless [press release](#) touting what it characterizes as a "recent wave of high-value unlicensed software cases." The release goes on to describe eight recent software-audit settlements ranging in amounts from \$120,000 to \$625,000, with some settling businesses identified by name and others identified only by industry (likely to avoid breaching [confidentiality clauses](#) in the corresponding settlement agreements). The implication of the release appears to be that the "significant uptick in high-value cases of unlicensed software" correlates to some increase in the actual incidence rate of "piracy."

I doubt that. A more likely explanation, in my opinion, is that the BSA and its members invented the alleged "wave" by ramping up their enforcement efforts. During the recent recession that hit the U.S. economy and throughout the prolonged recovery, we have noticed that almost all major publishers have sought to shore up their revenues by auditing their customers and demanding large compliance purchases to address any shortfalls. The BSA and its [members](#) are no different. Most BSA audit matters have a lifespan of anywhere from 6 to 18 months, so the settlements referenced in the press release likely arose from audits that were initiated while the economy was in worse shape than it is now.

In addition, it is important to keep in mind the fact that settlement with the BSA does not mean that infringement has occurred. In many cases, businesses simply are unable to produce documentation for software licenses that they previously purchased, and they make a calculated business decision to resolve the audit with a payment to the BSA in lieu of the immense costs that would be associated with forcing the BSA to prove its case in court through litigation.

Businesses contacted for software audits by the BSA or by its attorneys need to tread carefully with the assistance of counsel in order to avoid needlessly amplifying their audit-related legal exposure.



### About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher's practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

Get in touch: [cbarnett@scottandscottllp.com](mailto:cbarnett@scottandscottllp.com) | 800.596.6176