

Resolution of Liability in BSA Settlement Agreements

By Keli Johnson

The Business Software Alliance (BSA) hunts down and audits companies when it receives information that those companies may have software products that are not properly licensed. If a company audited by the BSA is found to have more installations of software products than is reflected in its licensing documentation, it is generally more cost effective to settle than to bring the fight to court. Scott & Scott, LLP represents hundreds of companies and assists in defense against these audits.

A key part of reaching a settlement agreement is to resolve the potential liability arising from the BSA's allegations of copyright infringement, so that the BSA cannot later file claims against the company for alleged violations that occurred prior to the settlement agreement. Before the BSA will agree to release its claims, however, the targeted company will need to negotiate an agreed settlement payment to the BSA. The negotiations process can vary in length, depending on the nature of claims, the BSA's alleged damages, and whether or not the company wants to include certain provisions, such as a confidentiality clause, in the settlement agreement. After the parties reach an agreement on the payment amount, the BSA will propose a written agreement, which include its release of liability. The release is typically contingent on certain actions by the company, as defined in the settlement agreement. These include the company's certification of present compliance, accompanied by up-to-date proof-of-purchase documentation, and a warranty that the company will continue to comply with licensing agreements in the future, among others.

It is important to note that if the BSA subsequently learns that a company did not fully disclose all information during the audit process, or that it later did not comply with applicable licensing requirements, it may hold the company in breach of the settlement agreement and pursue legal action. In order to prevent this, it is vital that a targeted company consult with knowledgeable, experienced counsel to assist it with mitigation strategies, settlement negotiation and compliance advice.



About the author Keli Johnson:

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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