

BSA Pursues Software Audits Despite Questionable Information from Informants

By Keli Johnson

The Business Software Alliance (BSA) regularly targets small-to-medium sized businesses for expensive software audits to determine whether those businesses are in compliance with their BSA-member software licenses. In furtherance of that effort, the BSA offers cash rewards to disgruntled current or former employees who provide information about allegedly unlicensed software installed on their employers' computers.

However, in many cases, businesses targeted by the BSA discover that there appear to be significant discrepancies between the information apparently provided by the BSA's confidential informants and the actual license-compliance status of those businesses. Many businesses suspect that the cause of the discrepancy is the informants' desire to profit from the [BSA's reward program](#). Regardless of the cause, however, when the audit materials submitted in an audit matter do not conform to the information supplied by the confidential informant, the BSA typically disputes the results. The business then ends up incurring additional legal fees in an effort to authenticate those results and move the matter forward to a resolution.

Worse, though, even when the BSA discovers that its informant may have provided false information, it typically will not stop pursuing the copyright infringement claims. The BSA's loose definition of "unlicensed" software covers any software with no proof of purchase. Therefore, even though business records are only required to be kept for seven years for tax purposes, because the BSA requires dated proof of purchase in order to credit a business with license ownership, it effectively expects its business targets to keep their invoices for software license purchases forever. The BSA thus justifies its continued pursuit of businesses, even in the face of an apparently unreliable informant, based less on principles of copyright law than on potentially inadequate accounting practices.

There is usually little recourse against the BSA or the informant for initiating legal action based on false information. In some cases, a company may consider suing the informant on a breach of contract or breach of confidentiality claim, depending on the existence of any prior agreements with the informant, but the expense of such an action would be prohibitive for most businesses. For these reasons and others, it is important for all companies, regardless of whether they are faced with a BSA audit, to be prepared to document their license ownership, to keep confidential all information relevant or potentially relevant to an audit, and to seek the assistance of counsel.



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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