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## EXTERNAL SOFTWARE INFRINGEMENT AUDITS: DEVELOP YOUR RESPONSE PLAN

by [Stephanie Chandler](#)

The term AUDIT strikes fear in most business owners, but the auditor you may soon face might be a software company, not the IRS.

Software vendors are becoming more and more aggressive in working to ensure compliance with the licenses that they have granted to use software they provide. Also, they are making sure that companies are following licensing terms, especially those terms in relation to the number of machines that their software is installed upon. Industry watch dogs, such as Business Software Alliance (BSA), which is best known for its advocacy for Microsoft, initiate audits of companies just like yours regularly. How do they decide who to audit?

Often the target is placed on your company as a result of complaints the watch dogs receive through websites and toll free hotlines. For example, often a company finds itself targeted by BSA when an employee leaves the company and decides that its going to blow the whistle on their former employer regardless of whether there is any basis for the complaint that they have launched.

Additionally, BSA tends to target specific industries. For example, last year school districts were a target. This year architecture firms are finding themselves in the target. Small to medium size companies make up over 90% of the complaints received by BSA and 69% of the companies that end up paying fines related to the complaints.

Settlements for infringement also continue to increase from 88,000 on average in 2001 to 92,000 in 2002.

Each company should establish a policy to avoid non-compliance with license and infringement regardless of whether it is intentional or unintentional. Such policies need to be broad based and avoid instances such as employees bringing software to the company and installing without the authorization of the company or other similar actions which could result in liability without the company taking any action itself. This policy should, for example, institute internal training procedures in relation to the appropriate usage of software, create a central person who deals with compliance, and create and maintain a license agreement data base.

If you find yourself targeted by BSA, contact competent counsel experienced in this area immediately. We have found that certain strategies result in efficient resolution of the audit situation. We have also found that companies attempting to negotiate settlements often find themselves paying more to an angrier BSA. Please let us know if we can help you when the auditor comes knocking.

***This article is for general informational purposes only. It may not be applicable depending upon your particular circumstances. Please contact Stephanie Chandler at Jackson Walker L.L.P. at***

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