The ITAM Review

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- Welcome -

Audit Defense, The Legal Perspective

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Publisher Enforcement on the Rise

- BSA Audits
- SIIA Audits
- SAM Engagements
- Big Four Audits
- Publisher Enforcement Programs

Investigation & Evaluation

- Inventory of Software Installed
- Review and Analysis of Purchase Documentation
- Analysis of License Agreements
- Understanding Use Cases

Determining the Amount in Controversy

- May be difficult to determine because contractual audit provisions often do not specify a formula for resolving licensing gaps.
- Two to three times MSRP is usually a good target.

Calculation of Damages

- The copyright plaintiff can elect either statutory damages or lost profit.
- Software compilations should be treated as one work for purposes of calculating damages.

Assessing the Publisher's Case

Probability of success on the merits of ambiguous contractual provisions may be the most likely scenario for litigation.

When to File a Declaratory Judgment Action

- A declaratory judgment action can be an excellent forum shopping strategy.
- Often changes the dynamics and stakeholder with the publisher organization.

How to Avoid Escalation

- Software audit disputes usually evolve over a period of months or years.
- Many disputes can be resolved through improved communication.

Negotiating when Litigation is Probable

- Clients should cooperate without jeopardizing their legal rights.
- There is a “right” resolution framework for each situation.
- Litigation is necessary in rare cases.

Drafting Settlement Agreements

- Update license terms including grant, 3rd party access, and geographic rights.
- Secure a broad release of all claims.
- Secure audit forbearance for 1 to 3 years.

Recent Cases

- ACS v Cincom
- Xerox v Aptean
- Mars v Oracle
- Adobe v Levy Group

Questions?

Thank You

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