

Litigating Software Audit Disputes

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Xerox vs. Aptean

Xerox sued Aptean for declaratory judgement after Aptean claimed that Xerox breached the license agreement by refusing to deploy 3rd party audit tool.

Does audit clause that says:

“Any such audit shall be conducted during regular business hours at Licensee's facilities and **shall not unreasonably interfere with Licensee's business activities.**”

Require the licensee to run a vendor provider script?

Is refusal to run a 3rd party script grounds to terminate the license?

The Levy Group v. Adobe

Adobe sued Levy Group for copyright infringement and breach of contract following an SIIA audit.

- Is the Adobe Creative Suite a Compilation under Section 504 of the Copyright Act
- What is the proper measure of damages for excess installations of the Adobe Creative Suite.
- What is the licensee's obligation to preserve evidence in a software audit?

ACS v. Cincom

ACS sued Cincom for declaratory judgement after Cincom alleged that ACS' outsourcer license was invalidated by ACS' merger with Xerox.

- Does the licensee have the right to transfer a license to a successor in interest where the license agreement is silent on the issue of transfer?
- Does an outsourcer forfeit fees paid to provider services to a licensee when undergoing a reverse triangular merger?
- Does a licensor who trolls corporate M&A activity to seek additional fees for licenses previously granted abuse its copyright?

Applied Electronics v. Autodesk

AEC sued Autodesk and the SIIA for declaratory judgment and conspiracy in restraint of trade.

- Does the mere presence of software on computer constitute “copying” where the software was never executed or run
- Does the SIIA’s Anti-Piracy Program constitute a conspiracy in restraint of trade?
- Does the licensor alleging over use by a licensee have a claim for copyright infringement or are they limited to breach of contract damages?

Microsoft vs. TRG

Microsoft sued TRG for copyright infringement and breach of contract after a contested audit performed by Delloite

- What is the licensor's burden in proving the validity of the auditors finding in Court?
- Does an audit target waive its right to contest audit findings during the audit or it raise objections for the first time in court?
- How do the Court's handle a battle of the experts in connection with disputed audits findings?

Lexis-Nexis vs. Informatica

Lexis-Nexis sued Informatica for wrongful termination and sought injunction to continue using the software, Informatica filed counter claims for copyright infringement and breach of contract.

- Does failure to pay disputed audit findings give publisher the right to terminate licenses?
- Does excess use otherwise within the license grant give rise to copyright infringement claim or is claim limited to breach of contract?
- Is the publisher obligated to honor contractual prices discounts at the time of the alleged breach?

Questions?



Thank You

