Software Audits Will Increase in 2012: How Targets Can Prepare

Scott & Scott, LLP, an intellectual property and technology law firm, with a practice area focused on software audit defense, predicts a rise in publisher initiated software audits in 2012 and suggests how companies can prepare for a software audit.

Southlake, Texas (PRWEB) December 28, 2011 -- The number of software auditsrequested by software publishers and their trade groups including the Business Software Association (BSA) and Software & Information Industry Association (SIIA) will increase dramatically in 2012 predicts intellectual property and technology law firm Scott & Scott, LLP.

"We are witnessing an increase in the number of prospective client calls and a surge in our software defense case load during the fourth quarter of 2011. Based on a number of factors including worldwide economic conditions affecting software publishers' revenues, businesses can expect to receive more software audit requests in 2012 than ever before", reports Robert J. Scott, Managing Partner of Scott & Scott, LLP, whose law firm has a practice area dedicated to software audit defense and software litigation.

According to The ITAM Review, July 4,2011, Gartner, a leading technology research company, reported in March 2011 that 61% of their survey recipients were audited by at least one software vendor in 2010. This number was the highest percentage of any comparable Gartner survey. Respondents identified the following companies with the most audits: IBM (41%), Adobe (40%), Microsoft (35%), and Oracle (17%). The Gartner Survey Analysis is available at http://www.gartner.com/DisplayDocument?ref=seo&id=1569814.

"The trend among the major publishers is to increase the frequency of software compliance audits for customers of all sizes. IBM has boldly embarked on an initiative to audit all customers world-wide while Microsoft has considerably increased audits conducted by itsGlobal Compliance Group evidencing a considerable shift in philosophy from recent years. We are also seeing increases in reseller auditing including IBM OEM agreements and Microsoft SPLA customers," Scott said.

As companies finalize their budgeting for 2012, they should include funding for software asset management and implementation of SAM policies.

Scott & Scott, LLP recommends the following:
*Create Standardized Agreements With Publishers: Many companies do not realize that they have leverage when negotiating license agreements with publishers. In fact, companies can incorporate less one-sided terms into software license agreements with the assistance of their own legal counsel. Favorable provisions can include "no audit" clauses or voluntary "true-ups" to reduce the costs of compliance management and the total costs of ownership.

*Retain Proofs of Purchase and Keep Accurate Records: Contrary to popular belief, trade associations and publishers only accept dated proofs of purchase, with an entity name matching that of the audited company. Anything less will fall short of publishers' mandated proof of ownership and therefore, repurchase of the assets in question may become necessary.

*Choose Integrated, IT Asset Management Tools: Asset management should be built into every company's ongoing business processes to ensure that this process and license compliance become core competencies. The

ability to conduct routine reconciliations is required to ensure software license and Sarbanes-Oxley compliance.

*Obtain Expert Assistance in the Event of An Audit: Audit defense is most effective with the representation of specialized legal counsel to avoid the common mistakes that may jeopardize a company's legal position. Any automated discovery that is conducted under the supervision of legal counsel will be protected by attorney-client and work-product privileges, should an out-of-court resolution not be possible.

Because many software publishers are focusing on license reviews to increase revenues, companies should actively review their compliance with licensing terms. Companies that are proactive with their software asset management programs can minimize the time necessary to respond and reduce the potential exposure that typically results from a software audit.

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