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TECHNOLOGY ATTORNEYS



Hot Topics in Adobe Licensing

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Agenda

- How Adobe Initiates An Audit
- Focus of Adobe Audits
- Theories of Liability
- Audit Provisions in Adobe Agreements
- Valuing The Dispute
  - Collecting Deployment Information
  - Reviewing Entitlements
  - Settlements and Releases
- Potential Penalties
- Managing Future Compliance

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Adobe Audits

Initiated by:

- Adobe's software review team
- Business Software Alliance "BSA"
- Software & Information Industry Association "SIIA"

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Focus of Adobe Audits

- License Compliance
  - Desktop software installed on servers
  - Over-deployment of desktop software
  - Invalid serial numbers
- Pirated Software
  - "cracked" or illegitimate copies

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Theories of Liability

- Copyright Infringement
  - Direct
  - Vicarious and Contributory
- DMCA Circumvention
- Breach of Contract

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Audit Provisions in Adobe License Agreements

- Basis for Adobe's request for audit
- Often contain deadlines to respond of 30 days
- May outline remedies in the event of not compliance
- Provisions are often customized, so it is critical to review at the onset of audit

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Valuing the Dispute: Collecting Deployment Information

- Internal tools – SCCM, etc.
- Adobe Scripts
- Manual discovery

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Valuing the Dispute: Challenges With Collecting Deployment Information

- Audit tools are unreliable and sometimes present free products as full versions
- Creative Suite bundles reported as separate component installations
- Validation required before inventory submitted to Adobe

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Valuing the Dispute: Reviewing Entitlements

- Gather all internal documentation
- Contact vendors to get vendor entitlement records
- Determine additional sources of license records, if any

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Valuing the Dispute: Challenges with Reviewing Entitlements

- Adobe records incomplete
- Lack of centralized purchasing
- Records in many locations or often in many countries
- Vendor out of business

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Valuing the Dispute: Settlement and Release

- Rely on audit provisions in the agreement to determine settlement options
  - Purchase through reseller or Adobe directly
  - Full retail price or historical discounts
- Scope of release needs to match scope of audit

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Potential Penalties

- Actual damages for Copyright Infringement
- Statutory damages for Copyright Infringement
- Damages for willful infringement
- DMCA statutory damages
- Loss of historical discounts
- Auditors' fees
- Attorneys' fees
- Contract damages

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Managing Future Compliance

- Employee Confidentiality Agreements
- Software Use Policy
- Routine Self audits
- Record Maintenance
- Administrative Rights and Restrictions
- Identify Authorized Resellers

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Questions?

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