Black Friday for Software Copyright Infringement Settlements

As the year comes to a close, many software publishers and trade associations with calendar year accounting are resolving as many outstanding software audits as possible, writes **Keli Johnson Swan** in the Software Audit Blog on the website of **Scott & Scott**. Companies currently engaged in a software audit may be able to negotiate favorable resolutions to their audit matters.

The following are a few tips to reach an amicable resolution by the end of the year:

1) Finalize audit results and locate entitlement information. In many instances, smaller companies that are targets of software audits have trouble dedicating resources to quickly audit its network and obtain proof of purchase documentation. However, if a company is interested in a quick resolution, it may be advantageous to dedicate the necessary resources to finalize the audit now in order to potentially settle by the end of the year.

2) Formulate a settlement strategy. If a company is unable to locate the proof of purchase documentation for all of its software, it will likely be required to pay a penalty for any deficiencies in order to obtain a release of liability from the auditing entity. Once a company receives a settlement demand for the copyright infringement damages, it is important to formulate a strategy with the necessary officers or shareholders in order to enter into negotiations with the auditing entity. Agreeing upon a settlement strategy facilitates negotiations and streamlines the process to reach a quicker resolution.

3) Do not compromise on key issues simply to settle by December 31st. Often software publishers encourage targeted companies to reach a resolution by the end of the year, and may offer purportedly discounted settlement payments. However, it is important to look closely at the terms and the settlement payment in order to avoid agreeing to unfavorable settlement provisions. Some companies chose to forego a confidentiality provision in order to save money on the settlement payment. Often these companies are surprised and dismayed when a press release is issued by the auditing entity, disclosing the terms of settlement and naming the company.

Negotiating a settlement is an important process and it is critical to understand the terms of the agreement. If in doubt, contact an attorney experienced in software licensing and copyright infringement matters.