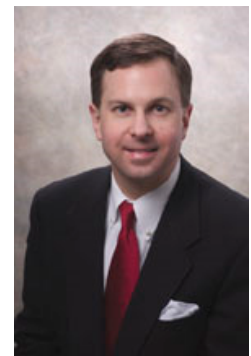August 16, 2010

Client Alert: Protect Your Business with Good Software Management Strategies

Companies that haven't determined whether their software is properly licensed are at risk for fines, embarrassing publicity

During the past several years, North Carolina companies have been opening their mailboxes to find letters from attorneys for a group called the Business Software Alliance ("BSA") alleging that their computers contain "illegally duplicated" software and demanding that the companies conduct an internal audit to determine whether they have unlicensed copies of BSA members' software programs installed on their office computers.

If you assume that the chances are slim that the BSA would take the time to target your business, think again. The BSA – whose members include Adobe, Apple, Cisco Systems, Dell, HP, IBM, Intel, McAfee, Microsoft, and Symantec – has a "Know It, Report It, Reward It" program designed to encourage people to report unlicensed software use in their current or former workplaces. The program awards up to $1 million for qualifying reports received via its hotline or online reporting form. In December 2009, the BSA announced that it has paid more than $274,000 in rewards since 2008.

After receiving such a report, the BSA's first step is to send a stern letter accusing the recipients of copyright infringement while promising them that they can avoid litigation by complying with the BSA's demands. The BSA's favored practice is to settle with companies for tens of thousands of dollars and then announce those settlement amounts in press releases.

Mike Mitchell
Bio I 919.821.6670
mmitchell@smithlaw.com

Kelli Ovies
Bio I 919.821.6696
kovies@smithlaw.com

SMITH ANDERSON
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.

150 Fayetteville Street
Raleigh, NC 27601
www.smithlaw.com

Legal counsel experienced in dealing with the BSA can help your company negotiate a confidentiality agreement that will keep your company's name off of the BSA's website and out of the local papers. Additionally, legal counsel can work with the BSA on your behalf to manage and negotiate other details of the audit process, including the schedule and deadline for the audit and the scope of the audit. The audit need not interfere with your business, but the scope and timing of it must be understood and managed.

Once the audit is underway, legal counsel can review your company's records of software licenses to help you determine whether your company owns the correct number of licenses for each software product at issue and whether your company has adequate documentation to prove its ownership of those licenses. After the audit is completed, legal counsel can review any settlement demand from the BSA and negotiate a settlement if one is appropriate under the circumstances. After the matter is settled, legal counsel can help your company develop and implement a software asset management policy to ensure that only properly licensed software programs are installed on your company's computers.

For additional information concerning BSA-initiated software audits or software asset management policies, please contact Mike Mitchell or Kelli Ovies in Smith Anderson's Intellectual Property Litigation Group.

Smith Anderson publishes *Alerts* periodically as a service to clients and friends. The purpose of this *Alert* is to provide general information about significant legal developments. Readers should be aware that the facts may vary from one situation to another, so the conclusions stated herein may not be applicable to the reader's particular circumstances.