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## Soft-Aid E-Newsletter for Law Firms

**Helping Assess the Legal Issues of Software Compliance, License Evaluation and Best Usage**

**April 2004**

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In this issue

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Dear David,

Welcome to the third issue of Soft-Aid's E- Newsletter designed to help law firms assess the legal issues of software license compliance and evaluation.

Forced Compliance -- Communicating with the BSA - Presentations, Negotiations, and Other Dealings (Part II)

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Last month's E-Newsletter reviewed how to respond initially to copyright infringement allegations presented by the BSA or its proxy law firms (the "BSA"). We also discussed how to respond to their direct inquiries. **In this issue, we elaborate on how to present a formal package of audit data to the BSA and then discuss negotiation tactics and strategies.**

**Responding to the BSA's direct inquiries is imperative. Soft-Aid can assist by putting together a package to present to the BSA with relevant information.**

**Equally important is conveying the below sentiments.** This can be accomplished in a cover letter attached to the aforementioned presentation of audit findings and is typically drafted by the

client's lawyers with assistance from Soft-Aid.

**The cover letters contents should cover:**

- An explanation (in a way that reflects well on your client) of how the noncompliance occurred. Was their third party involvement? And what role did the client's IT staff or senior management play (or, hopefully, NOT play)
- An inclusion of contextual elements that paint your client in a favorable manner. Does your client's line of business have a social or not-for-profit mission?

**So here are some key phrases to include in this cover letter:**

- Your client "is concerned about, and has taken seriously, the allegations made."
- Your client is "prepared to correct deficiencies and purchase licensed software for those applications that have been found to be unlicensed. Mistakes have been made, but [your client] did not intend to infringe any copyright."

**Now, let's review negotiation tactics.**

When under forced compliance, your client starts the remediation process without much leverage. The BSA and its members are solely "calling the shots"; however, your client's conduct will impact their ability to regain some control. The conduct essential to getting a favorable settlement can best be described as acting in "good faith."

**What are elements of good faith dealings?**

- Being professional and consistent in demeanor (avoid confrontation, at all costs!)
- Being open, accessible, and timely to BSA questions and requests, no matter how elementary (remember, your client's computer network begins as mystery to them). Establishing open lines of communication is highly important.
- Presenting complete and accurate information and doing so in a clear concise manner

**For More Information**

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For more information on preparing and negotiating a response to a BSA inquiry, please contact us at info@aid.com or via our [on-line form submission tool](#). Our Soft-Aid licensing consultants would be happy to schedule a conference call with you to discuss licensing issues.

Please also take time to review our web site, www.aid.com

Please note: We are independent consultants and not formerly affiliated with any software vendor.

Past and Future Issues

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Next Soft-Aid E-Newsletter on Legal Issues of Software License Compliance and Evaluation: We continue to discuss the BSA settlement process: the compensatory and punitive elements and the order/timing of the entire process, for instance.

To read past issues, go to <http://www.aid.com/enewsletters/>

**We Welcome Your Input**

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Please send along your thoughts and comments on our e-newsletters.

We welcome your input.
Call us: 617-848-5800
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What Our Laywers Made Us Say

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