

Monitoring License Agreement Financial Compliance and Auditing

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Licensors and licensees alike spend enormous amounts of time negotiating license agreements for intellectual property. This investment of time will hopefully result in a license agreement that is clear and palatable to both parties. After the agreement is signed, however, the license is often put in a file drawer, never to be looked at again except when problems arise. Why don't licensors spend the same amount of time and effort in license monitoring as they do in securing the license agreement? After all, in a typical business transaction, parties do not rely on trust alone to document the exchange of goods and services. For example, payment amounts often are compared against invoices, shipping logs, or other documents from an accounting system.

However, sometimes in licensing, due to a lack of resources or based on a concern that a monitoring program will send the wrong message, there is a lack of financial monitoring. License agreements can be complex, with the actual royalty calculation based on variable data from many sources. In addition, the licensee staff members who are responsible for royalty calculations and monitoring compliance with the license agreement usually are not the same people who negotiated the license agreement. Further, the university office staff members who are responsible for monitoring compliance may be unfamiliar with the license terms.

These facts alone signal the need for a monitoring program. The development of a systematic license-monitoring and compliance program sends a clear message to the marketplace that such a program has become a normal and routine part of your licensing practice. (It also sends a message that the university is treating this as a business.) Just as sales customers are not angered by payment-to-invoice verification, licensees will not be angered by similar examination of royalty streams (and other payment obligations and actions required by the license agreement).