

## Treat Audit Demands Like A Litigation Hold Letter

By Keli Johnson Swan

Software publishers are regularly auditing customers to ensure compliance with license agreements, and may initiate audits directly, or through entities such as BSA|The Software Alliance, and the Software & Information Industry Association (“SIIA”). These entities send a letter that asks the customer to conduct a full audit of its network or potentially face copyright infringement claims for noncompliance with the license agreements.

Often targeted companies do not take these letters seriously, either intentionally or unintentionally disregarding the audit request. In some instances, a company may choose to attempt to remediate deficient software by uninstalling or replacing it with new licenses. Unfortunately, this may compromise a company’s legal position if the publisher chooses to file a copyright infringement lawsuit.

The key reason to treat an audit request like a litigation hold letter and preserve all information is if the auditing entity believes a target has ignored an audit request and made changes to software installations, it may choose to file a copyright infringement lawsuit and request the court to issue sanctions for spoliation of evidence. This is a particularly serious charge and may impact the ultimate outcome of the case. In addition to potentially resulting in sanctions, a court may determine that significant remediation may indicate that a company has engaged in willful copyright infringement pursuant to The Copyright Act, and assess punitive damages.

It is critical to preserve the installation information starting the day the audit request is received until the case reaches an ultimate resolution and a release of liability is granted in order to avoid spoliation claims and additional monetary penalties.



### About the author Keli Johnson Swan:

As an associate attorney at Scott & Scott, LLP, Keli is primarily focused on software licensing and copyright infringement matters. She advises clients in a variety of industries to ensure compliance with software licenses and develop strategies for maximizing the value of software licenses.

Get in touch: [kjohnson@scottandscottllp.com](mailto:kjohnson@scottandscottllp.com) | 800.596.6176

[Click here](#) for a complimentary subscription to Scott & Scott, LLP’s *Business & Technology Law* newsletter.