

## Know the Publisher's Audit Rights: Cooperation

By Brian Kirkpatrick

When a publisher sends an audit notice, many companies wonder why they have to cooperate with the audit. In almost all cases, if anyone in the company has installed the software, the company has granted the publisher audit rights that can't simply be ignored. In fact, many license agreements expressly state that an end-user must cooperate with an audit. And, cooperation doesn't just mean reports. Being cooperative may sometimes mean providing access to facilities, systems, and records. In most instances, the audited company has to actively participate in the audits.

Publishers will often initiate audits as part of their contractual right, which a business usually grants by installing the software. The audit itself usually requires your cooperation, but to what extent can be unclear. Such audits can be as much about money as for the sake of a true-up. Any found deficiencies can usually be resolved by paying the publisher for back license fees, back maintenance fees, and back support fees at a price set by the publisher.

Other audits are initiated by organizations like the Business Software Alliance (BSA) and the Software Information Industry Association. Here, cooperation may ultimately be required, but the manner and timing of how the business cooperates during the audit may work to resolve its matter with very different outcomes.

Many companies elect to conduct proactive, internal audits to regulate compliance, ensure uniformity among corporate system infrastructure, and for self-certification.

Regardless of the type of audit, it is usually helpful to employ the assistance of someone experienced with responding to software audits to make sure the publishers do not overstep their audit authority.



### About the author Brian Kirkpatrick:

Brian practices exclusively in intellectual property and technology law. He has drafted and negotiated hundreds of software contracts with a wide breadth of complexity including large-scale master services agreements (MSA's), software as a service (SaaS) agreements, and End-User License Agreements (EULA's). Before entering the legal profession, Brian was a licensed securities representative and Vice President level middle-market commercial banker.

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