

Know the Publisher's Audit Rights: Notice

By Brian Kirkpatrick

When companies receive an audit notice, many are surprised when they realize that the notice is so short. Companies want to know if they are receiving a reasonable notice based on the industry norms. That often prompts the question: How much notice is normal for audit matters?

The straight answer is not much. Because notice of an audit is usually short, you need to be prepared to drop everything for this event. Unless a subject company is lucky enough to have an agreement with a time frame longer than “*upon notice*,” it should be prepared for response times as short as 7 days’ notice up to 45 days’ notice. There are even vague notice requirements, such as “reasonable” notice. In many instances, companies may wonder what the *notice* requirement means to them. Notice means the date from the time when an auditor notifies you that it intends to conduct an audit to the time when the auditor will expect to have access to your information. Under tight notice requirements, there is little time for preparation.

Most proceed more quickly than a time frame that seems “reasonable.” Auditors sometimes are more lenient when companies demonstrate a good faith effort to schedule conferences and prepare audit materials. Conducting a well-organized and thoughtful audit preparation can help make a software audit less disruptive while producing the most accurate results. On the other hand, poor preparation can cause an auditor to become skeptical of the results and probe deeper while making the process more disruptive with less accurate results.

It is usually helpful to employ the assistance of someone experienced with responding to software audits to advise you on the alternative means and methods of preparing and delivering your materials when given such little notice.



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.

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