

## Management's Ignorance Is Not a Defense to Copyright Infringement Claims

By Keli Johnson Swan

Software publishers, acting alone, or through a proxy such as the Business Software Alliance ("BSA") or Software & Information Industry Association ("SIIA"), regularly audit customers or potential customers to ensure license compliance and deter against copyright infringement.

For mid-sized or larger companies that employ an in-house or external IT resource to manage software purchases and installation on their networks, it can be difficult for executives to oversee software licenses. In many instances, management defers to the IT resource to make all hardware and software purchases, and to manage the network with very little oversight. One of the most common reactions to an initial audit letter is that management had no knowledge of any potential violations, that the IT personnel behavior violated corporate policy, and that management did not authorize the IT staff's actions.

Unfortunately, a civil violation of the Copyright Act (17 U.S.C. §501, 504) does not require knowledge of the problem. A company can be legally responsible for illegal software, even if the executives had no knowledge or intent. A company may, however, use lack of knowledge to defend against enhanced damages for willful copyright infringement. It is important for a company to take steps beyond simply hiring competent IT resources. Periodic audits must be conducted to ensure that the company management is aware of current level of compliance. Software licensing is often complex and nebulous, and requires an in-depth analysis of the company's software needs, a use case analysis, and a thorough background of the current license terms of each software product.



### 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.