



Protecting IP in Cloud Computing and Data Contracts

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Outline

1. **What do these terms mean?** – SaaS contract, cloud services contract, data contract ...
2. **Are these IP license agreements?**
3. **When do we grant a license? What do we say about ownership of IP?**
4. **Who gets protected in an IP indemnity and from what?**
5. **What should be excluded from the IP indemnity? What exceptions?**
6. **If there's no IP license, does viral open source software matter?**

1. What do these terms mean?

- Software License
- Software-as-a-Service (SaaS) Agreement
- Cloud Services (Cloud Computing) Agreement
- Data Agreement / Data License (and “Big Data License”)

2. Are these IP license agreements?

- Software License: **Of course.**
- Software-as-a-Service (SaaS) Agreement: **No!**
- Cloud Services (Cloud Computing) Agreement: **No!**
- Data Agreement / Data License (and “Big Data License”): **It’s complicated.**

3. When do we grant an IP license? What do we say about ownership of IP?

- Ownership clauses
- Licenses, or not, in the core/transactional clause
- Licenses to downloaded software and deliverables in cloud services agreements
- Licenses to data

Stuff that might be subject to a license:

- *The software that provides the SaaS or other cloud services* (nope)
- *Downloaded supporting software* for SaaS or other cloud services
- *Deliverables* in SaaS or cloud services
- *The core data provided* in data contracts
- *Anonymized versions* of the data
- *Other derivative works* of the data
- *Derived data*

4. Who gets protected in an IP indemnity and from what?

- *Typical vendor IP indemnity*, cloud services
- *Content IP indemnity*, from cloud services customer
- *Data IP indemnity*, from data licensor
- *Data IP indemnity*, from data recipient – re recipient's use, derivative works, derived data

5. What should be excluded from an IP indemnity? What exceptions?

1. Customer breach of contract
2. Unauthorized revision of tech or data (tech = downloaded software/deliverable)
3. Failure to incorporate updates/upgrades to tech (tech = downloaded software/deliverable)
4. Specifications provided by customer/licensor: **orange flag**
5. Combination w/ 3rd party tech: **red flag** (not relevant to data)

6. If there's no IP license, does viral open source software matter?

- **Copyleft:** using copyright to require that any distribution operate under open source terms.
- **No restriction if you never distribute** – if there's no license.
- **But enter the AGPL ...**

Resources

Tollen, *THE TECH CONTRACTS HANDBOOK, Cloud Computing Agreements, Software Licenses, and Other IT Contracts for Lawyers and Businesspeople* (ABA IP Section 2015)

TechContracts.com: form contracts, articles, etc. – all free

The Big Data Licensing Issue-Spotter, article at <https://techcontracts.com/2015/12/08/the-big-data-licensing-issue-spotter/>

Tech Contracts Academy™: training on drafting and negotiating IT contracts, for lawyers and businesspeople, www.TechContracts.com

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