

Prinz Law Opens New Atlanta Office

The Prinz Law Office is pleased to announce the opening of its new Atlanta Office. To read the press release announcing the opening, please click on the link below:

The Prinz Law Office press release 12.31.15.

Acquisition International Recognizes Prinz Law for Software and SaaS Expertise

Acquisition International recently recognized The Prinz Law Office as “Best for Software and SaaS Licensing” in the USA. The link to the notice is attached below:

<http://www.acquisition-intl.com/2015-the-prinz-law-office>

Prinz Law Announces Opening of San Jose Office

The Prinz Law Office is pleased to announce the opening of its new San Jose Office. To read the press release announcing

the opening, please click on the link below:

**The Prinz Law Office Opens San Jose Office Press Release
12.21.15**

Prinz Law Launches New Copyright Meetup Group

The Silicon Valley Software Law Blog announces the launch of the new copyright meetup group Prinz Law is organizing and provides some additional information about the group in the following blog post:

<http://www.siliconvalleysoftwarelaw.com/prinz-law-launches-new-meetup-group-on-copyright-law-meetup>

The Prinz Law Office Launches New Copyright Law Meetup Group

The Prinz Law Office has launched a new copyright law meetup group in conjunction with the High Tech Section of the Santa Clara County Bar Association, as is further discussed in the link below:

<http://www.siliconvalleyiplicensinglaw.com/the-prinz-law-office-launches-new-copyright-law-meetup-group/>

SaaS Lawyer Kristie Prinz Invited to Speak at SaaS Contract Negotiation Webinar

SaaS Lawyer Kristie Prinz has been invited to speak at the upcoming webinar on SaaS Contract Negotiation further described in this link below:

<http://www.siliconvalleysoftwarelaw.com/silicon-valley-software-law-blogger-to-be-featured-at-upcoming-cle-program>.

SaaS Attorney Kristie Prinz Speaks on “Negotiating Software as a Service Contracts”

SaaS Attorney Ms. Kristie Prinz presented a webinar on “Negotiating Software as a Service Contracts” for Arlington, Virginia-based Clear Law Institute on Monday November 2, 2015.

SaaS Attorney Kristie Prinz Shares Powerpoint Presentation on “Negotiating Software as a Service Contracts” for Clear Law Institute Event

SaaS Attorney Kristie Prinz has made available for viewing her Powerpoint presentation prepared for the recent event “Negotiating Software as a Service Contracts.”

“Negotiating Software as a Service Contracts” November 2, 2015
Powerpoint

SaaS Lawyer Kristie Prinz to Speak on Negotiating Software as a Service Contracts Hosted by Clear Law Institute

SaaS Lawyer Ms. Kristie Prinz will be featured as a speaker for the webinar “Negotiating Software as a Service Contracts” for the Arlington, Virginia-based Clear Law Institute on Monday, November 2nd at 10 a.m. PST/1 p.m. EDT. For more information about the upcoming webinar, please [**click here**](#).

SaaS Lawyer Kristie Prinz Shares Powerpoint Presentation on “Negotiating Software as a Service Contracts” for Stafford Publication Event

SaaS Lawyer Kristie Prinz has made available for review her Powerpoint presentation prepared for the recent event “Negotiating Software as a Service Contracts”:

“Negotiating Software as a Service Contracts” by Kristie Prinz.

SaaS Attorney Kristie Prinz Presentation on “Negotiating Software as a Service Contracts”

SaaS attorney Kristie Prinz recently participated in a webinar on “Negotiating Software as a Service Contracts” with Reed Smith’s Kelley Miller. A recording of that presentation can

be accessed through the link attached below:

<http://www.siliconvalleysoftwarelaw.com/recorded-webinar-of-negotiating-software-as-a-services-contracts>

SaaS Lawyer Kristie Prinz to Speak on SaaS Contract Negotiation at Upcoming Webinar

SaaS Lawyer Kristie Prinz has agreed to speak at an upcoming webinar for the Arlington, Virginia-based Clear Law Institute on Monday, November 2nd at 10 a.m. PST/1 p.m. EDT as further discussed in this link:

<http://www.siliconvalleysoftwarelaw.com/silicon-valley-software-law-blog-author-to-be-featured-at-upcoming-saas-webinar>

SaaS Lawyer Kristie Prinz Speaks on “Negotiating Software as a Service Contracts”

Ms. Prinz was featured as a speaker for a webinar on “Negotiating Software a Service Contracts” on Tuesday, September 8, 2015 for Atlanta-based Stafford Publications.

SaaS Lawyer Kristie Prinz to Present on Negotiating Software as a Service Contracts for Program Hosted by Strafford Publications

SaaS Lawyer Ms. Kristie Prinz will be featured as a speaker for the webinar “Negotiating Software as a Service Contracts” for Atlanta-based Strafford Publications on Tuesday, September 8 from 1 p.m.-2:30 p.m. EDT. To review the itinerary or sign up to attend, please click [**here**](#).

The Prinz Law Office Announces Opening of Orange County Office

The Prinz Law Office is pleased to announce the opening of a new San Diego Office. To read the press release on our announcement, please click on the link below:

The Prinz Law Office Announces Opening of Orange County Office.

The Prinz Law Office Announces the Opening of a new San Diego Office

The Prinz Law Office is pleased to announce the opening of its new San Diego office. To read the press release issued by the firm on the announcement, please see here: The Prinz Law Office Press Release on Opening of San Diego Office.

Software Industry Considers

Consequences of Supreme Court Decision on Patent Validity Defense to Claim of Induced Infringement

The U.S. Supreme Court has just issued an opinion in the *Commil vs. Cisco Systems* case, prompting members of the software industry to consider how the ruling will impact member software companies, as we further explored in our recent Silicon Valley Software Law Blog Posting:

<http://www.siliconvalleysoftwarelaw.com/silicon-valley-software-industry-considers-impact-of-supreme-court-decision-on-patent-invalidity-defense-to-claim-of-induced-infringement>

Supreme Court Decision Reached on Case Dealing with Patent Invalidity Defense to Induced Patent Infringement

The U.S. Supreme Court has issued an opinion in the case of *Commil USA v. Cisco Systems* finding that patent invalidity is no defense to a claim of induced infringement. The Court's decision is discussed in the following blog posting by the Silicon Valley IP Licensing Law Blog:

<http://www.siliconvalleyiplicensinglaw.com/supreme-court-rules-patent-invalidity-is-not-a-defense-to-induced-patent-infringement-claim-in-commil-usa-case-against-cisco-systems/>

Taking Time to Date Before Pursuing an IP Acquisition “Marriage”

How do you choose the right acquisition partner? The Silicon Valley IP Licensing Law Blog evaluated this issue in the following blog post:

<http://www.siliconvalleyiplicensinglaw.com/taking-time-to-date-before-pursuing-an-ip-acquisition-marriage/>

Should You Follow This Start-up’s Lead if Approached by a Patent Troll?

Should you take a combative approach if approached by a patent troll? The Silicon Valley IP Licensing Law Blog evaluates the response by one start-up in the following blog post:

<http://www.siliconvalleyiplicensinglaw.com/should-you-follow-the-advice-of-this-start-up-if-approached-with-a-demand-letter-by-a-so-called-patent-troll/>

Senate Cybersecurity Bill May Increase Government Surveillance Pressures on Cloud Companies

Privacy groups have voiced concerns about the Senate Intelligence Committee's recent introduction of a cybersecurity bill, as was further explored by the firm in the following Silicon Valley Software Law Blog posting linked below:

<http://www.siliconvalleysoftwarelaw.com/new-senate-cybersecurity-bill-may-expand-government-surveillance-pressure-on-cloud-companies>

Congress Considers Copyright Reform Bill

Copyright reform is back on the table in Congress, as the Silicon Valley IP Licensing Law Blog discussed in its recent blogpost:

<http://www.siliconvalleyiplicensinglaw.com/copyright-reform-on-the-table-in-congress-songwriter-equity-act-of-2015-introduced-in-the-house-of-representatives/>.

Lessons from the Copyright Infringement Verdict Against Robin Thicke and Pharrell Williams

The Silicon Valley IP Licensing Law Blog recently looked at the copyright infringement verdict against Robin Thicke and Pharrell Williams and explored some of the lessons to be taken away from the verdict in the following blog post:

<http://www.siliconvalleyiplicensinglaw.com/lessons-from-the-copyright-infringement-verdict-against-robin-thicke-and-pharrell-williams/>

Pitfalls in Negotiating and Drafting Exclusive Licensing Deals: Lessons from Macy's Dispute with JcPenneys over the Martha Stewart Product

Line

Entering into an exclusive licensing deal can be a business decision that you may live to regret, as the Silicon Valley IP Licensing Law Blog explored in the case of the dispute between Macy's and JcPenneys over the Martha Stuart product line in the link below:

<http://www.siliconvalleyiplicensinglaw.com/pitfalls-in-negotiating-and-drafting-exclusive-licensing-deals-lessons-from-macys-dispute-with-jcpenneys-over-its-martha-stewart-product-line/>

How to Choose Your Start-up's Name

What issues should you consider when choosing the name of your start-up? The Silicon Valley IP Licensing Law Blog looked at this issue in the following blog post:

<http://www.siliconvalleyiplicensinglaw.com/practical-tips-on-choosing-your-start-ups-name/>

Software Companies Consider

Impact of FCC Decision on Net Neutrality

The Federal Communications Commission (“FCC”) recently adopted rules on the issue of net neutrality. The Silicon Valley Software Law Blog looked at the recently decision and contemplated the impact in the link posted below:

<http://www.siliconvalleysoftwarelaw.com/fcc-decision-on-net-neutrality-what-does-this-mean-for-the-software-industry>

Software Licensing vs. Software-as-a-Service (“SaaS”) : The Importance of the Technology Model to Contract Drafting

Updated 6.11.24

When I am first retained by a software or SaaS company, I inevitably have a conversation with my contact at the company about their technology model: what is your technology model: “SaaS” or “software license”? Nine times out of ten the client either will be unable to answer the question or will say that they are working under one technology model and send you contracts that reflect the exact opposite.

Why do I ask the question? Drafting an appropriate software contract (or even reviewing and providing feedback on a particular software contract is going to be dependent on whether or not the terms reflect the model. If either the client or the drafter are unclear on the model, then the contract is not going to be a high quality contract.

What is the distinction between a “software license” and a “SaaS agreement”?

In software contracts, perhaps the single most common issue that gets confused is the difference between a software license and a SaaS agreement. But the concepts are very different. In a software licensing model, the software company offers a physical piece of software via cd-rom or electronic download from a website to be downloaded, installed, run, and operated on a piece of hardware that is typically physically on site at a particular company or residential location. There may be one user or multiple users of the software. The software may be installed on a single piece of hardware or multiple pieces of hardware. There may be services associated with the software that are offered to the licensee such as implementation, customization, training, maintenance, and technical support. In some cases, the company may even offer separate hosting services. However, the software itself is made available to the licensee as a tangible product.

How the SaaS Model is Different

What is different about the SaaS model? In the SaaS model, the software company generally makes no tangible software product available to its users, and the product itself is only available “on the cloud” as a hosted platform. As in the licensing model, there may be one user or multiple users of the platform. But the platform itself is only accessible through the cloud. Thus, the quality of the various services provided is critical because the ability to access and use the

hosted platform is entirely dependent on the quality of the experience delivered. In the SaaS model, there is no separate maintenance service provided because that is all expected to be included as part of the hosted platform service package, along with the hosting and technical support. You may still have separate implementation, customization, and training services, however, that are made available separately from the hosted platform. The key feature of this model, though, is the very fact that you are offering a “service” model rather than a “tangible product” model.

Key Mistake SaaS Companies Make with their Contracts

What is the primary issue I see contractually? More often than not, companies say they are offering a “SaaS” model but their contract is in fact based on the software licensing model. What alerts me to this fact? Usually it’s the presence of a license grant to the software and the lack of any clauses explaining all the various services provided pursuant to the platform. It’s also not uncommon to see a maintenance agreement attached to the agreement, which is not what I typically expect to see in the hosted platform model. Also, there is often a lack of attention to any of the issues or concerns that you would have in a model where you never receive a physical product, and where you have absolutely no control over data security, your ability to save or download the data on the platform, or how well you can access the platform in the first place. Another problem that you may see is a lack of concern over how you are charged for accessing the model when some sort of set up process is involved. Obviously, if you are being charged on a monthly basis for accessing a platform and a set of related services, you don’t want to be charged until set-up is complete and you can access the platform and immediately use it. This is less of an issue in a licensing model where the fee is usually billed once and not charged again during the life of the product.

Why it is important to understand the difference between the two technology models?

The bottom line is that these two models are very distinct business and technology models and the contract will absolutely not be correctly set up if the appropriate technology model is not determined and/or understood in advance of drafting. The same is true in contract reviews: it is impossible to provide accurate feedback in reviewing a contract if the technology model is not thoroughly understood before the review is started. Everything starts with the technology model.

Be Prepared to Explain to Your Software Attorney Your Technology Model

So, if you retain an attorney like me to work with your software company on contracts and you are asked about your technology model, be prepared to answer the question. Thoroughly sorting out the terms as they relate to the model is critical to the proper drafting or proper revision of your contracts, and spending billable time on this issue is time very well spent, as the job cannot be done properly otherwise.

Has your software or SaaS company been using the wrong technology model for your contracts? Schedule a consultation with us today to discuss how to update your contract to the right technology model at [this link](#).

Distinguishing Between the

Software License and the SaaS Contract

The Silicon Valley Software Law Blog looked at what the differences are between the software license and the SaaS contract models in a recent blog posting linked below:

<http://www.siliconvalleysoftwarelaw.com/software-licensing-vs-software-as-a-service-saas-the-importance-of-the-technology-model-to-contract-drafting>

Good Drafting of SaaS and Software Licenses Requires Knowledge of Technology

Updated 6.25.24

There seems to be a common universal belief among many companies that there is a single form agreement circulating among software lawyers with the perfect terms that can just be cut and pasted into their agreements if they can just find the right attorney who can furnish that ‘perfect’ form agreement. I have lost count of the number of times I have been told by clients that they don’t need anything from me other to provide said ‘perfect’ template. A few have even equated my or another attorney’s ability to provide them with the ‘perfect’ form template to the level of expertise of the attorney.

Why Reliance on a Template is the Wrong Way to

Draft a Software Agreement

The reality, of course, is that merely cutting and pasting from a form agreement—even a very well-written form agreement—is precisely the wrong way to draft this type of agreement. In fact, I would take this one step further and take the position that it is precisely the wrong way to draft all technology agreements. Furthermore, it is my opinion that an attorney's willingness to provide any document purported to be a 'perfect' software template is likely to be inversely correlated to his or her level of drafting experience in the space. I certainly was far more comfortable with the idea of furnishing a template in response to a client request of that nature as a very junior and inexperienced attorney than I am today, when I know better. I've seen all too well how companies may take the 'perfect' template provided and rely on it for years and years without understanding that the form required many long hours of attorney customizations and revisions before it was ever put into use for their business.

Knowledge of the Specific Product Described in the Contract is Essential

While there absolutely are standard terms that you will find in all software agreements—whether SaaS or software licenses—which may form the basis of high quality software template for either the software license or SaaS model, a well-drafted contract is more than just an assortment of the "right" terms, it reflects the actual product offering to customers. Thus, the drafter needs to not only know and understand how to draft these contracts but also have a very high level understanding of what the product offering to customers is. Otherwise, the contract will be of a very poor quality, regardless of how good the lawyer was that put the original form agreement together that the contract may be based upon.

For example, in the enterprise license model, a company may purchase a license allowing a set number of user rights. In such a model, a well-drafted license would at least explain what constitutes a user, how users can be added and deleted, what rights the users have to the various license grants made (which should go beyond the simple 'use of the software'), the cost of purchasing new users, and the cost of purchasing the initial set of users. But the decisions on how to structure each of these terms would be entirely dependent on the business model and product offering made available by the specific software company. Thus, if the terms selected are being cut and pasted from an unrelated form agreement, it is almost certain that the terms chosen will be wrong and make no sense.

The same problem occurs with the cutting and pasting of SaaS agreements. In the enterprise model, again, you may similarly have users with different access rights, which are the SaaS equivalent to a license. Your enterprise customer may want to start with 100 users and anticipate needing to add 100 more in a period of months. Your enterprise customer may also anticipate losing some users and want to get some sort of credit for the users lost. You may have different pricing based on when the timing of the purchase of new users. Given all these different drafting and business model choices that can be made, if the terms selected are simply being cut and pasted from an unrelated form agreement, again, it is almost certain that the resulting agreement simply will make no sense.

The structural choices in how you draft these kinds of agreements do not end with the user rights. For example, there are choices that the drafter has to make based on what type of data is being collected by the product, where the data is being stored, the level of risk to the company if the data is accessed by a third party, and what needs to happen to the data at the end of the relationship. Also, there are choices

that need to be made based on whether use of the product depends on importing pre-existing data into the software and effectively reading such data. It is not uncommon for enterprise customers to have much higher requirements with respect to data than a small business client would generally have. Fees, technical support, and training are other common areas of significant variation from product to product.

A Well-Drafted Agreement Will be Structured Around the Unique Features of the Specific Product

The bottom line is that a well-crafted software license or SaaS agreement will be structured around the technology, features, functionality, and business model of the applicable product and will not be based merely on a set of “perfect” terms from any template. As a software company, that means that if you retain an attorney to advise you on your contracts, your attorney should absolutely be pushing you to provide significant details about how the technology, features, functionality, and business model of your product work, among other issues. If you are not getting those kinds of questions from your lawyer, then it is highly likely that the terms of any contracts that your attorney reviews or drafts for you will reflect a similarly low level of understanding about those same concepts.

If you are concerned that a software license or SaaS agreement your software company is relying on has not been structured around the unique features of the specific product addressed in your contract, I invite you to reach out and schedule a consultation with me today at [this link](#).