California Agrees to Delay Enforcement of Net Neutrality Law

The State of California has just agreed to delay the enforcement of S. B. 822, also known as the California Internet Consumer Protection and Net Neutrality Act of 2018, until litigation is decided regarding whether the FCC can preempt state net neutrality laws is decided by the US Court of Appeals for the District of Columbia Circuit. Attached is a copy of the **stipulation and agreement** filed in the US District Court for the Eastern District of California. As **Ars Techica** reported, California has agreed to refrain from enforcement of the law until after the US Court of Appeals case has been decided and any appeals have been exhausted.

As the **Washington Post** reports, the outcome of the case before the D.C. Circuit could result in the rejection of the FCC's 2017 rule change, which then would mean that S.B. 822 would become redundant. However, both the **Washington Post** and **Fortune** are reporting that the D.C. Circuit could rule on the issue of preemption as well, which could potential impact S. B. 822 and other similar state laws.

Silicon Valley SaaS Attorney Kristie Prinz to Speak at

Webinar on “Negotiating SaaS Agreements: Drafting Key Contract Provisions, Protecting Customer and Vendor Interests”

Silicon Valley SaaS Attorney Kristie Prinz will present a webinar on “Negotiating SaaS Agreements: Drafting Key Contract Provisions, Protecting Customer and Vendor Interests” on October 26, 2018 at 10:00 a.m. The program will be sponsored by Virginia-based Clear Law Institute. To register for the event, sign up at https://clearlawinstitute.com/shop/webinars/negotiating-saas-agreements-drafting-key-contract-provisions-protecting-customer-and-vendor-interests-102618/. Clear Law Institute has made available a discount code for the course: you can receive a 35% discount with the promo code: KPrinz119433.

Why SaaS Companies Need to Anticipate Insurance Requirements in Advance of Negotiations

If your SaaS company is like most, you postpone the procurement of insurance policies until you absolutely have to obtain them, expecting to be able to obtain whatever you need

on demand.

However, if your SaaS company anticipates a significant deal is on the horizon, you should be anticipating your needs in advance of actually starting those negotiations, or you may find yourself in a situation where you have to commit to maintaining insurance during the relationship that you may not actually be able to buy on the open market. Why is this a problem? Well, this puts you in the position of potentially breaching the terms of the "significant" deal before you ever start performing those terms, which can obviously have serious consequences for your company's business if your breach is ever discovered. Since the usual insurance terms in these types of deals require the submission of certificates of insurance as proof of coverage, any failure to procure the insurance required is not likely to stay undiscovered for an extended period.

Notwithstanding the foregoing, even if you do not breach the terms of the negotiated deal, it is far better to negotiate the scope of indemnification risks you will be incurring with advance knowledge of the terms of the insurance policies you already have in place, as you can then negotiate limits of liability within the coverage of the insurance coverage previously obtained.

So, what types of insurance requirements should a SaaS company anticipate when it goes to negotiate a significant deal?

First and foremost, SaaS companies should anticipate the requirement of a general commercial liability policy. This is a standard commercial insurance policy that every business, regardless of whether or not in the software industry, should keep.

Second of all, SaaS companies should anticipate the requirement of a commercial auto insurance policy to cover the risk that employees or contractors may have an accident while

traveling back and forth to a customer or business partner's work site.

Third of all, SaaS companies should anticipate the requirement of an errors & omissions policy to cover the risk that company workers will intentionally or negligently act in a way that harms the customer or business partner.

Fourth, SaaS companies should anticipate the requirement of a cyberinsurance policy to cover the risks of hack attacks, data breaches, and third party cybercrimes, as well as notification costs and other costs to remedy a breach after it occurs.

Fifth, SaaS companies should anticipate the requirement of an umbrella policy to cover losses in excess of the insurance limits available.

What types of limits of coverage should a SaaS company anticipate? In my experience, larger deals will come with larger expectations, so the more significant the deal, the more insurance your company should be lining up in advance.

The bottom line is that doing some advance planning with respect to insurance before your software company commences negotiations on a significant deal will save your company the worry down the road of being discovered to be in breach of the deal you just closed if you find that meeting the insurance requirements you agreed to is not quite as easy as you anticipated. Furthermore, it will enable you to go into negotiations better prepared to be able to negotiate terms that actually protect your company.

If you have questions about your SaaS company's insurance planning, please schedule a consultation today at **https://calendly.com/prinzlawoffice**.

California Governor Signs Net Neutrality Law

Governor Jerry Brown has signed into law **S.B. 822,** also known as the California Internet Consumer Protection and Net Neutrality Act of 2018. The law is intended to go into effect on January 1, 2019 and, according to **CNN**, will establish the "strictest net neutrality protections in the country."

However, the U.S. government has responded to the California action by seeking a preliminary injunction to block the law from going into effect. A DOJ press release announcing the suit is attached **here,** in which the DOJ asserts that "Once again the California legislature has enacted an extreme and illegal state law attempt to frustrate federal policy."

However, according to the **Electronic Frontier Foundation**, the core argument by the DOJ and FCC articulated in the court filings is not that states cannot pass net neutrality laws but that a pending lawsuit in the D.C. Circuit filed by the California Attorney General challenging the FCC's repeal of net neutrality should be decided before the legality of the passage of the California Internet Consumer Protection and Net Neutrality Act of 2018 can be decided.

Wired reports that the dispute between California and the federal government "raises novel questions about the relationship between the federal government and the states." At the heart of the dispute is whether California has the legal right to pass a law on net neutrality, and whether the FCC has the legal right to prevent states from adopting net neutrality laws. While in general pre-emption only occurs when there are incompatible state and federal rules, **Wired** reports

that “[i]t’s not unheard of for the federal government to preempt state or local regulations when those regulations conflict with federal policy, even when the federal policy is not to regulate.” In contrast to the current facts, however, **Wired** reports that the past example of this type of pre-emption involved a decision by Congress as opposed to a federal agency.

Clearly, California and the federal government are now headed for a legal show-down in federal court. The Silicon Valley Software Law Blog will keep you posted as the legal battle further develops.

Why Big Development Projects Can Equal Big Legal Headaches without Well-Drafted Agreements

If your company has just landed a big tech or software development project for a third party, do not underestimate the importance of the agreement in protecting the revenue stream you are being offered in exchange for your development services.

The typical tech or software development agreement requires lump sum payments in installments throughout the term of the relationship. Also, the typical development agreement will have at most a statement of work connected with the project and will rarely be accompanied by technical specifications or milestones, with respect to which approval can be sought at the various phases of the development.

Why can this be a problem? Well, if your company agrees to take on a large tech or software development project and has not defined contractually in detail the technical specifications and standards required to be performed, or developed detailed milestones that can be tied to satisfaction of particular phases of the project, how exactly can you prove that you earned the money paid in installments if the customer pulls the plug on the project at any stage? How exactly do you prove that you fulfilled your responsibilities with respect to the development project if you never actually reached agreement as to the technical terms of the development project?

The reality is that it can be very hard to enforce an agreement when the key terms of the relationship were never actually memorialized in writing. While the risk of not being able to enforce your agreement may be low in low dollar value development projects, that risk escalates dramatically as the dollar value of the project also increases into the hundreds of thousands of dollars or even millions.

In general, when I see disputes involving tech or software development projects, the dispute can almost always be attributed to a poorly drafted agreement between the parties.

So, what can you do to minimize your risks of taking on a tech or software development project?

First and foremost, obtain help from experienced technology transactions counsel when your company is first approached with a potential development project. An experienced attorney in this space can guide you through the negotiation process at the early stages, so that you don’t have to renegotiate terms that have already been agreed to by the potential development partner. It can be very hard to get partner buy-in on developing and memorializing good technical terms when the parties are already weeks or months into the negotiation the deal.

Second of all, ensure that the technical specifications and requirements for the project have been defined in detail, and develop milestones throughout the development process, which can be approved. Also, develop a process that is very well-defined within the contract to obtain that approval. If a specific timeline is required at any part of the process, develop terms that reflect the agreed upon timeline as well.

Third, instead of merely requiring payment by installments through the development work, develop payments that are tied to the accomplishment of specific well-defined milestones, in order to ensure that your company is can prove that any payment received was earned a s a result of the successful accomplishment of the applicable milestone(s).

The bottom line is that a big tech or software development project should be accompanied by a very detailed, technically-specific development agreement if a company prefers to avoid big legal headaches down the road. It is in your company's best interest to ensure that any development agreement that the parties execute is drafted to protect the anticipated revenue stream from the development project.

If your company is contemplating a tech or software development project and is concerned about avoiding future legal headaches, schedule a consultation today at **https://calendly.com/prinzlawoffice**.

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Press Release 10.3.18

The Prinz Law Office to Launch New Alternative Billing Solution

The Prinz Law Office is pleased to announce the launch of a new alternative legal billing solution for our clients in the software/SaaS, tech and health tech/digital health, and IT/healthIT industries: the subscription billing model. We have been following the recent popularity of this model with California companies, and have decided to adopt our own version. We believe that it may be a good fit for clients with ongoing firm needs, particularly in the transactional space. Our new plans will be based on daily and half-daily billing, eliminating traditional hourly timekeeping for clients who choose this option. For more information on how a subscription solution would work, please contact Kristie Prinz at kprinz@prinzlawoffice.com or 408.884.854.