Revisiting Your SaaS Company's Key Customer Contracts in a Sluggish Economy

It has become increasingly clear over the past few months that businesses are in a cost-cutting mode, as the economy has become more and more sluggish. While your software company is likely focusing on its own cost-cutting strategy, have you stopped to consider whether your most significant customers might be doing the same?   Is it possible those key customers may be focusing on how to cut the cost of their contract with your business? Could they be talking to one of your competitors? Could they be building their own proprietary product to replace the cost of your product?

A sluggish economy is the perfect occasion to audit and review your key customer contracts for weaknesses that might allow your customer to walk out the door as a cost-cutting move.

You might wonder why you should spend any resources on contracts when business is already sluggish: isn't this exactly the time when you should be reducing legal expenses, along with all your other cost-cutting efforts?

Well, no, actually. While, it has been my experience that this is in fact what most software companies do; however, I have been practicing now for 26 years and had the occasion to see a lot of sluggish economies, and given that experience, I would argue that it is exactly the wrong move to make in a sluggish economy. Why would I say this?

Imagine this: it is two months in the future. Over the last 30 days, all of your key customers have stopped paying on their contracts with you and have advised you that they are suspending performance. You are confident that they are just cutting costs and have no grounds to terminate the relationship. You pull out the executed contracts and send them to your software attorney to review for the first time, confident that he or she will confirm your assessment. However, instead of confirming your position, your software attorney tells that the signed contracts were poorly drafted and that the customers may have had valid grounds to terminate.

In this scenario, if you had known there was something you could do to interrupt this chain of events and shore up the customer relationships before they collapsed, would it have been worthwhile to do it? Presumably, yes. If the customers were your truly your key customers, you probably had a lot riding on the continuation of those relationships.

If the fact pattern seems far-fetched, I've actually seen it play out many times during sluggish economies. The larger and more expensive the contract, the more at risk it is for termination in a sluggish economy. If you are confident it won't happen to your company, consider what kind of representation you had for the drafting and negotiation of that contract? Did you work with experienced software counsel who had advised other software and SaaS companies through multiple bad economies, and involve that counsel at every stage of the negotiation and drafting process and then implement all of his or her recommendations? Or did you cut a few corners in getting your deal done? Perhaps handled a lot of the negotiation and drafting without counsel, or relied on less experienced counsel that was more affordable? If you are like many software companies, you probably cut at least a few corners—perhaps you even cut a lot of corners—and the contracts executed by you and your key customers are full of holes.

What would truly be the impact to your software company of a complete loss of your three largest customers? Your six largest customers? Your ten largest customers? How fast could you really recover in a sluggish economy?

If the prospect of this kind of business loss fills you with terror, then this is precisely why you should revisit your significant contracts now.

So, what is it that you can do to shore up your key client relationships now? Well, skilled software counsel can evaluate those contracts and identify the potential liabilities and then work with you to develop a strategy to renegotiate them. By taking the opportunity to renegotiate a weak contract before the contract terminates, you can extend the term of the relationship, fix the legal problems in the contract, and keep the customer happy in the first place by giving the customer a concession that the customer really wants in exchange for the longer relationship term that carries the relationship through the down economy.

Isn’t this a better outcome than losing a key customer altogether over a vulnerability in your contract that is exploited in a cost-cutting effort?

If your software company has not had its key software contracts evaluated recently by an experienced software lawyer, schedule a consultation today at https://calendly.com/prinzlawoffice. Let’s identify the vulnerabilities in your key contracts before a key customer exploits the vulnerabilities as a cost-cutting move and resolve potential problems in the relationships before they arise and become the reason you lose those relationships.