Why “SaaS Agreements” are not “SaaS Licenses”

Have you ever heard the term “SaaS license” or “SaaS Licensing” being used among lawyers and businesspeople?

There is a misconception that there is such a concept as a “SaaS license.” However, in fact, two principles are actually being confused: the “software license” and the “SaaS agreement.” Why does this matter? Well, if you do not know the type of agreement that you are drafting, you are going to confuse the important terms in the agreement, and this is going to have a huge impact on what you draft or negotiate. In addition, if you do not know what you are drafting, this is going to impact other terms beyond the agreement such as taxes and revenue recognition. So, the bottom line is that it does matter what you draft.

What is different about the concepts of “SaaS agreement” and “Software license” ?

Also, the concepts of “SaaS agreement” and “software license” are completely different. In the case of a software license, the licensor grants to the licensee the rights to use a specific piece of intellectual property, the software, under certain conditions and limitations, and if you exceed the parameters of the grant, you will be infringing on the intellectual property. The license grants licensee the right to use the software for the length of the copyright or other specific period of time and will specify who can use the software, how the software can be used, and under what conditions the software can be used. In contrast, in the case of the SaaS agreement, no intellectual property rights will be granted in the software. Instead, the grantee receives access rights in the software in the cloud and in a bundle of services. The rights that the grantee receives are more along

the lines of what someone might receive to intellectual property in content posted on a website on the Internet. The internet user might have the right to view the posted content, but that right does extend to doing anything to the content beyond just viewing it.

What rights are provided in a “SaaS Agreement?

In the case of the SaaS agreement, you may have rights to certain services in addition to access rights, such as hosting, maintenance, and technical support by way of the SaaS agreement, but your rights are to services and not to intellectual property in the software.

What rights are provided in a “software license”?

In the case of the software license, the rights to hosting, maintenance and technical support are generally going to be obtained through other agreements.

Another difference between the two concepts is that in the case of the software license, you have more control and the ability to change service providers if a service is not being provided at the level you require. In the case of the SaaS agreement, you are “stuck” if you are unhappy with the quality of any service. So, the quality of the service delivered is far more important in the case of SaaS agreements than in the case of the software license. You cannot just easily move your content if you are unhappy with a particular service, as you have no direct control over the content in the case of the SaaS agreement. In essence, you delegate that control to a third party, the SaaS provider.

So, the “SaaS agreement” and the “software license” are two fundamentally different concepts, and the term “SaaS license” or “SaaS licensing” is just a confusion of those two concepts.

If you have questions about whether your SaaS agreement was incorrectly drafted as a SaaS license, please schedule a

consultation with us today at https://calendly.com/prinzlawoffice.