

AI – Challenge to ‘Traditional’ Tech Contracting Positions

IP Clauses

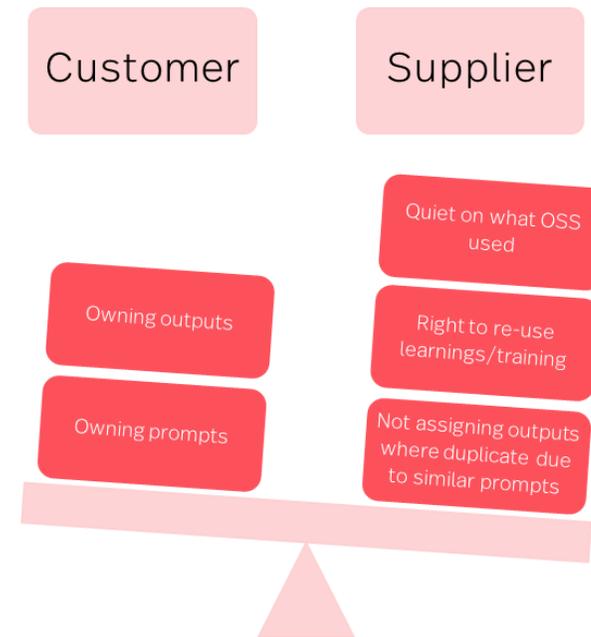
What might cause a new approach?

- GenAI and duplicate responses
- IP ownership for GenAI output
- Licensing of training data and prompts

AI Potential Impacts on Contracts

- IP law (currently) remains relatively unchanged amidst the rise of GenAI. However, consultations occurring e.g. UK
- Likely assignment/licensing clauses need to think about ownership of outputs, prompts and models
- Technical challenge on ownership of duplicate responses

Results from our AI Agreement ‘Market-o-Meter’™



Summary

- Relatively ‘balanced’ approach in the market
- The ‘new’ IP questions are often answered (generally supplier friendly)
- Re-use/training discussions are already identified as key



KEY LEARNING

AI does ask some ‘new’ IP questions the agreements need to deal with.



KEY LEARNING

Upfront discussions needed on prompts, duplicates, training

Legislation might change (common AI theme) so ‘future proof’ for IP to be considered

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Limitation / Exclusion

What might cause a new approach?

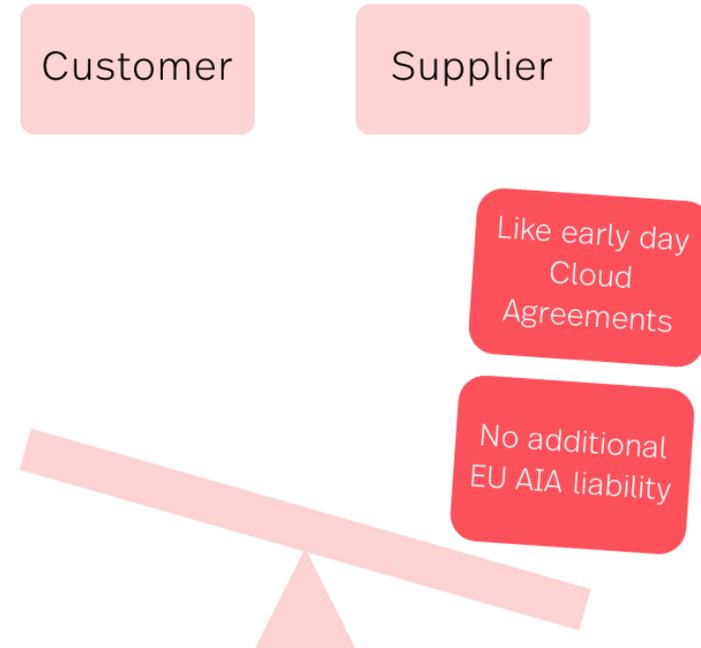
Limitation

- Quantum – e.g. the potential exposure is greater as a breach may be noticed later
- Duty to mitigate – harder to identify the reasonable steps to reduce loss
- Agentic AI and agency - a newer risk and there is a lack of a ‘fat finger’ rule and/or the challenge of relying on the law of mistake

Exclusion

- Causal connection can be challenged
- What is Hadley v Baxendale 1st/2nd limb re AI
- Indirect + Direct reputation or third-party contract loss back on the table?

Results from our AI Agreement ‘Market-o-Meter’™



Summary

- Current ‘market’ is very supplier friendly
- Little market appetite to pick up any EU AI Act liability
- Risk position feels like ‘early day cloud’ agreements



KEY
LEARNING

AI does challenge limitation/exclusion approaches – users will begin to challenge



KEY
LEARNING

Low risk approach currently not out of kilter with rest of market

Expectation is that risk position will move as market matures

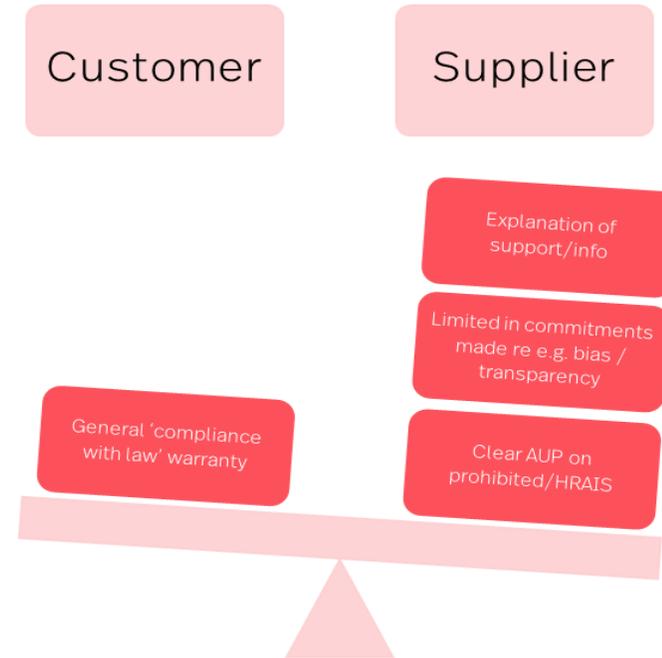
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Compliance with laws

What might cause a new approach?

- AI has its own specific regulatory regime(s) – e.g. in the EU, US, China – and undoubtedly soon elsewhere
- Lots of guidelines / enacting legislation still to come – requirements still not clear
- Provider/deployer status not yet a core discussion – but anticipated it will become one

Results from our AI Agreement ‘Market-o-Meter’™



Summary

- Some efforts to alleviate the customer worry on EU AI Act issues
- Recent requests for AI-specific contractual clauses and proactive compliance measures reflects efforts to adapt to AI's rapid development and regulatory challenges
- The lack of understanding of AI technology complicates negotiations and risk assessments between parties



KEY LEARNING

The evolving regulatory landscape means a necessarily complicated approach to AI usage and governance needed



KEY LEARNING

Some supplier movement to offer some regulatory comfort

Strong push to rely on 'compliance with law'

AUPs are key to supplier protection

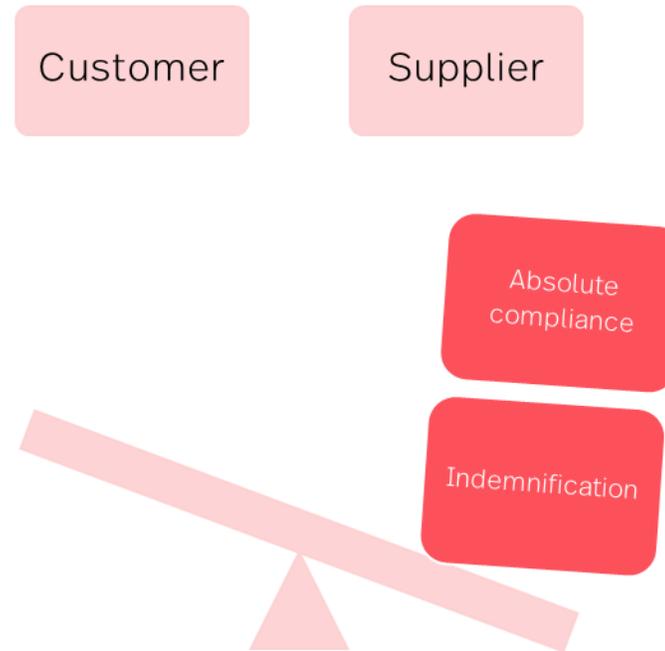
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Agency and AUPs

What might cause a new approach?

- Legal personality of the agent is relevant
- Grant / termination of agency
- Acceptable use policies (AUPs) are commonplace post Cloud – and status in the agreement is key

Results from our AI Agreement ‘Market-o-Meter’™



Summary

- There are material gaps in desired responsibility between suppliers and users
- It is triggering an importance of clear AUPs which have contractual ‘teeth’
- Typically quiet on agency terms
- The possibility of agent to agent interactions in the future raises additional complexity



KEY
LEARNING

Agentic AI means that the law of agency will impact on agreements



KEY
LEARNING

AUP can be your best ‘shield’ and ‘sword’

It is time to start thinking about agency terms if your AI is / may be agentic

Smart supplier series: exploring tech and transactions



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