American Conference Institute's **18th Annual**

The Practical and Tactical Art of the Deal in

IT Service Agreements and Licensing — Cloud, Open Source & Software

Negotiating and drafting sophisticated agreements that achieve business and technical goals

November 17 – 18, 2014 • Hotel Nikko • San Francisco, CA

Benchmark Your Information Technology Practices Against:

Citrix Systems, Inc.

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Hitachi Data Systems Corporation

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JM Family Enterprises, Inc.

MasterCard Worldwide

MATRIXX Software, Inc.

Microsoft Corporation

Mindjet Corporation

Nationwide Mutual Insurance Company

NetApp, Inc.

NVIDIA Corporation

Open Invention Network

Oyxgen Cloud

Proofpoint, Inc.

Qualcomm Technologies, Inc.

Sencha Inc.

Symantec Corporation

Verizon Communications, Inc.

Featuring an updated agenda to respond to the needs of contract professionals, senior information technology officers and attorneys, join us as our Distinguished Co-Chairs lead an open discussion on IT service agreements and licensing:

Mark Grossman
Counsel
Tannenbaum Helpern Syracuse
& Hirschtritt (New York, NY)

Rebecca Hamilton Gahete
Deputy General Counsel and Director,
Information Management
JM Family Enterprises, Inc. (Deerfield Beach, FL)

CIOs, CTOs, software and IT attorneys, and contract professionals will leave having honed their negotiation skills and license drafting, while gaining valuable insights and new strategies for:

➢ Understanding the **evolution and the future of open source and cloud technologies**

➢ Mastering the **security and privacy risks** associated with IT service agreements

➢ Assessing **how data ownership is determined in connection with cutting-edge technology**

➢ Developing cost-effective tactics **to ensure business continuity** and **reduce interruptions in service**

➢ Navigating the **international standards for data protection** in the global market

Attend the In-depth Interactive Boot Camp and Live Mock Negotiation to Make the Most of Your IT Transactions:

A IT Licensing Boot Camp: Drafting Contracts That Meet Current Business Needs While Avoiding Unwanted Outcomes

B Live Mock Negotiation: Strategies for Avoiding Common Stumbling Blocks

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According to Gartner, **global IT spending** will GROW to
$3.7 TRILLION in 2014, with cloud and SaaS spending
GROWING 3.8% to TOTAL $967 BILLION in 2014.[1]

MEMORANDUM

To: All Professionals Managing Software, Cloud and IT Service Agreements
From: Bolam Kim, Legal Analyst & Conference Director
Re: 18th Annual IT Service Agreements and Licensing — Cloud, Open Source & Software

Revamped and more comprehensive than ever in its 18th iteration, the American Conference Institute is proud to bring you an updated version of our previous **Software Licensing Agreements** event: **IT Service Agreements and Licensing — Cloud, Open Source & Software,** in November in San Francisco, CA. Offering a revised agenda, this is the only program where senior IT and contract professionals and attorneys will gather together in order to discuss solutions and best practices for overcoming the current challenges in negotiating software, cloud, and IT agreements. In addition, back by popular demand, this unique event will provide up-to-date, practical strategies and concrete examples of specific contract language to help you minimize risk and maintain secure services while maximizing your rights and profit margins.

Companies face many legal and business hurdles as they struggle to keep up with rapidly evolving technologies and the overwhelming amount of data that becomes aggregated. At the same time, companies' security concerns are intensified as they face increasing government request for access to confidential information and attacks from malicious third-parties. Many once standardized and routine agreements are being examined more closely than ever as companies seek to protect their rights and obtain the most valuable IT service agreements.

In response to the changing landscape, ACI has assembled a stellar faculty including senior in-house professionals from **Qualcomm, Microsoft, Intel, Hitachi Data Systems, Verizon, MasterCard,** and more, to provide their expert guidance and share their insights on how to resolve the most pressing challenges facing the industry today, including:

• Formulating best practices on how to comply with licenses and agreements
• Determining how international laws and standards on data protection will affect your company
• Minimizing the risks involved when data in the cloud is moved overseas
• Analyzing how patent and copyright strategies impact open source and cloud licenses
• Planning effective exit strategies while preserving your data

Make the most of this unique conference experience and sharpen your tactics on licensing and negotiating tough IT agreements.

To maximize your networking and learning at this program, ACI is proud to present our highly successful interactive workshops, geared specifically towards providing guidance on how you can obtain the best deal for your company.

Workshop A: IT Licensing Boot Camp: Drafting Contracts That Meet Current Business Needs While Avoiding Unwanted Outcomes will provide you with an overview of the IT licensing process, with factors that CIOs, CTOs, contract licensing professionals, and attorneys should examine carefully to close deals with confidence.

Workshop B: Live Mock Negotiation: Strategies for Avoiding Common Stumbling Blocks provides a hands-on seminar led by a group of experienced licensing professionals to walk you through the real world issues commonly encountered during licensing negotiations.

Register early to lock in the best rate by calling **888-224-2480** or by visiting us online at **www.AmericanConference.com/ITService**. I look forward to seeing you in November in San Francisco.

[1] Steven Norton, *Gartner Predicts 2.1% Growth in Global IT Spending for 2014,* WALL STREET JOURNAL, Jun. 30, 2014.

WHO YOU WILL MEET

Software Manufacturers, Vendors and Solution Providers, ISPs, ASPs, Major End-Users, and Other Computer and Technology Companies:

➢ **Chief Operating Officer**
➢ **Chief Information Officer**
➢ **Chief Technology Officer**
➢ **Chief Information Security Officer**
➢ **Vice President**
➢ **General Counsel**
➢ **Patent/IP/Licensing Counsel**
➢ **Senior Counsel**
➢ **Attorney**
➢ **Director, Vice Presidents, Managers of:**
  • Business
  • Finance
  • Licensing
  • Procurement
  • Purchasing
  • Strategic Business and Corporate Development
  • Vendor Management
➢ **Contract Professionals with the following titles:**
  • Administrator
  • Analyst
  • Manager
  • Negotiator
  • Specialist

Law Firm Counsel practicing in:

➢ **Business Technology Transactions**
➢ **E-Commerce**
➢ **Intellectual Property**
➢ **Licensing**
➢ **Software**

9:00 am – 12:00 pm (Registration begins at 8:15 am)

A

IT Licensing Boot Camp: Drafting Contracts That Meet Current Business Needs While Avoiding Unwanted Outcomes

Jon D. Grossman
Partner
Dickstein Shapiro LLP (Washington, DC)

Eleanor Hynes Yost
Partner
Goodwin Procter LLP (Washington, DC)

Adam Mishcon
General Counsel
Sencha Inc. (Redwood City, CA)

IT service agreements are negotiated by CIOs, CTOs, non-lawyer contract professionals, attorneys, and IT managers at various levels during the contract negotiation process. This licensing boot camp will provide you with a comprehensive overview of the business, legal, and technical issues that drive IT service agreements in order to help you close deals with ease. Join your colleagues as they drill down into the licensing fundamentals and nuances in this interactive workshop. Through a series of practical examples, lawyers and non-lawyers alike will have the opportunity to learn and discuss the essential terms to consider in any licensing agreement while balancing the business, financial, and technical motivators.

Workshop highlights include:
- Drafting a clear and unambiguous license grant
  - Delineating the scope of uses of the product
  - Assigning the rights to make or control derivative works
- Defining ownership, use limitations, and affiliate use restrictions
- Revisiting standard clauses and what constitutes reasonable or customary contract positions by licensors and licensees
  - Outlining the payment terms
  - Clarifying the remedies and choice of forum
  - Addressing payment collection and interest on late payments
- Tackling confidentiality and risk assessment concerns
- Anticipating and incorporating future M&A needs in the present agreement
- Overcoming conflicts between legal and business interests
- Protecting your position when agreements incorporate evolving pricing and licensing models
  - Maneuvering challenges raised by alternative delivery mechanisms
  - Understanding the issues associated with software downloads to mobile devices
  - Utilizing appropriate pricing models to achieve your goals
  - Facilitating accurate licensing procurement assessments in a world of virtual servers and multi-core processors
- Identifying contract hazards to avoid
- Establishing and ensuring adherence to an internal protocol to safeguard efficiency and consistency across all company licenses and agreements
- Avoiding creating a franchise agreement which can result in a hidden minefield
- Incorporating additional cost-saving options into your negotiating strategies

Who Should Attend:

CIOs, CTOs, contract and licensing professionals, attorneys experienced and new to software licensing, and IT managers

12:00 **Networking Luncheon for Workshop A Participants**

12:30 **Main Conference Registration Begins**

1:00 **Co-Chairs' Opening Remarks**

1:15 **Delving into the Future of Open Source and Cloud Technologies: Understanding the Present and Embracing the Opportunities Ahead**

Jeffrey Kaufman
Patent Counsel – Open Source Legal Group
Qualcomm Technologies, Inc. (San Diego, CA)

Alex Teu
Executive Vice President and General Counsel
Oxygen Cloud (Redwood City, CA)

Helen Tieh
Director, Open Source and Technology Transactions
NVIDIA Corporation (Santa Clara, CA)

Michael T. Yang
Vice President, General Counsel and Secretary
Proofpoint, Inc. (Sunnyvale, CA)

Companies must make strategic decisions to advance technological needs while understanding the legal risks and accurately predicting how the technology will evolve in the near future. The benefits of open source and cloud computing are increasingly touted for lowering costs and conducting business activities more efficiently. On the other hand, due to the rapid advances in technology and security concerns, companies remain wary of adopting new forms of technology too quickly. This panel will address the current state of affairs with open source and cloud computing while understanding the imminent changes to come in this landscape.

Open Source
- Assessing open source software and appreciating the benefits of incorporating open source in a commercial product
- Grasping the interplay between open source and its potential impact on proprietary software
- Evaluating viral licenses and understanding whether an open source license is appropriate
  - Determining when an open source license creates a category of derivative work
  - Comprehending how to mitigate unfriendly terms in an open source license
- Establishing the use of open source code in software development
  - How is the proprietary use of the software affected?
- Implementing open source review boards to examine open source licenses
- Devising protocols to track whether open source software is being used in tandem with proprietary or commercial software
  - Analyzing how the use of open source may affect future M&A activity
    - Defining and attributing ownership during joint ventures and post-consolidation
- Scrutinizing the future of open source software and its effect on technological innovation
  - Exploring how mobile operating systems are propelling forward the use of open source software
  - Predicting the implications of open source APIs for the Internet of Things

Cloud
- Demystifying the differences between Infrastructure as a Service ("IaaS"), Platform as a Service ("PaaS"), Software as a Service ("SaaS"), and the hybrid models of these services
  - Resolving which cloud services to utilize as part of a business decision
  - Recognizing the difference between cloud services and data hosting
- Exploring the shift between on-premises software and cloud computing
  - Understanding how moving to the cloud model has shifted norms from licensing agreements to subscription-based services
- Appreciating the benefits of cloud computing in big data analytics
- Examining whether a move to the cloud is tenable given the business, legal, and regulatory factors

- Making the transition to the cloud at a reasonable cost
- Analyzing when an on-premises solution is still the best option
- Being cognizant of the differences between cloud and virtualization: what exactly is being licensed?

2:30 **Protecting Your Data: Managing Security and Privacy Risks in a Nebulous Environment**

Lothar Determann
Partner
Baker & McKenzie LLP (Palo Alto, CA)

Sheila M. FitzPatrick
Worldwide Legal Data Governance Counsel
& Chief Data Privacy Counsel
NetApp, Inc. (Sunnyvale, CA)

Bill Hayden, CIPP/US
Senior Attorney
Microsoft Corporation (Redmond, WA)

Cynthia Sarno, CIPP/US, CIPP/IT
Chief Privacy Counsel
Farmers Group, Inc. (Los Angeles, CA)

- Dissecting the motivations behind the vendor and customer's security policies
- Integrating clear terms for how the data will be protected in the agreement
  - Understanding the importance of knowing exactly how your data can be used, will be used, and is being used
- Exploring state laws on private information, and scrutinizing them in the context of data breaches
- Defining "personally identifiable information" and how PII creates special data privacy considerations
- Auditing a vendor's or service provider's security protocols and appreciating what to look out for to protect your data and privacy
  - Developing best practices for due diligence of subcontractors and other third-parties handling and storing the data
- Inspecting the applicable privacy policies for a service and understanding the relationship with companies' in-house privacy policies
  - Mitigating risks to ensure compliance with legal or regulatory guidelines
  - Addressing a vendor's privacy policies in an agreement to confirm that the agreement overrides any posted privacy policies
  - Understanding the risks involved on the vendor and customer sides
- Conducting due diligence into a provider's offering to understand the impact on data security
  - Single tenant vs. multitenant hosting
- Complying with legal, regulatory, and industry standards to safeguard data in the cloud
  - Global Data Protection Laws
  - EU Cloud Computing Directive
  - APAC Cloud Computing Privacy Code
  - Gramm-Leach-Bliley Act
  - Health Insurance Portability and Accountability Act ("HIPPA")
  - Sarbanes-Oxley Act
  - FCC
  - FTC
  - Payment Card Industry Data Security Standard
  - Understanding where there are no industry standards
- Comprehending vendor concerns with respect to customers' data on the cloud
  - Devising strategies to prevent illegal materials on the cloud
- Balancing vendor responsibilities to conduct software security screenings with the customer's duty to conduct due diligence
  - Determining liability to third-parties
- Examining disclosure and remediation requirements to address privacy or security breaches
  - Understanding who bears the burden and at what cost
- Establishing data security concerns in licenses that cross international borders
- Surveying government access to data and the industry's reactions
  - Case study: Gathering industry reactions to government request for data and exploring its evolution

- *In the Matter of a Warrant to Search a Certain E-Mail Account Controlled and Maintained by Microsoft Corporation,* 13 Mag. 2814 (Apr. 25, 2014).
  - Electronic Communications Privacy Act
- Observing how companies and governments abroad handle access to confidential information
  - European governments' access to Vodafone's network and/or user data
- Exploring unique ways for governments and companies to cooperate in collecting, reviewing, and analyzing big data sets

3:45 **Critical Compliance Issues: Fulfilling the Conditions in Subscriptions, Licenses, and Agreements to Avoid Risks and Liabilities**

Anthony Bishop
VP and Divisional General Counsel
SaaS Division
Citrix Systems, Inc. (Santa Barbara, CA)

Jeremy Logsdon
Assistant General Counsel
Nationwide Mutual Insurance Company (Columbus, OH)

Nissa M. Strottman
Senior Counsel, Cloud Computing and Open Source
Hewlett-Packard Company (Palo Alto, CA)

Businesses routinely struggle with IT service agreements, which can be a complex and time-consuming process. At the same time, companies face the threat of audits and even litigation, as vendors and organizations seek to impose compliance with its customers' legal obligations. In addition, the legal obligations associated with open source may become more complicated as the technology increasingly becomes more advanced. On the other hand, with cloud services, customers must scrutinize the terms of their subscriptions meticulously in order to adhere to their obligations. Points of discussion shall include:

- Understanding the common obligations in an open source license
  - Focusing on General Public License ("GPL") and its potential issues in a commercial environment
    - Assessing companies' strategies to address the issues associated with GPL
  - Knowing which actions trigger certain obligations under the open source license
  - Can a licensor prevent reverse engineering?
- Establishing in-house open source compliance programs and managing the software supply chain
  - Forecasting potential outcomes when not complying with an open source license to make the case for a compliance program
  - Incorporating open source code into products in an organized fashion
- Defining a "user" on the cloud
  - Managing the relationships between the "customer," "employee," "subsidiary," "subcontractor," "affiliate," and "joint venture"
  - Covering an employee outside of the United States
- Identifying the differences between the various license models
  - Concurrent license model
  - Number license model
  - Usage based license model
  - Named user license model
    - What happens when a licensed employee leaves the company?
- Incorporating clear terms into the agreement to address auditing
  - Establishing the practical need for audits on the vendor side while respecting confidentiality and privacy needs on the customer side
  - Identifying the triggers for conducting audits
  - Addressing who will conduct the audits
  - Determining which party assumes the cost of conducting an audit
- Exploring self-reporting obligations in the agreement and understanding whether it helps lessen the frequency of audits
- Formulating creative strategies for how an audit can be conducted to save costs

5:00 **Conference Adjourns to Day Two**

7:15   **Registration and Continental Breakfast**

8:00   **Co-Chairs' Opening Remarks and Recap of Day One**

8:15   **Achieving International Expertise: Attaining a Comprehensive Understanding of Global Approaches to Data Protection**

Gabriela Kennedy
Partner and Head of Asia IP & TMT Group
Mayer Brown JSM (Hong Kong)

Christine E. Lyon
Partner
Morrison & Foerster LLP (Palo Alto, CA)

Fabian Niemann
Partner
Bird & Bird (Frankfurt, DE)

John O'Connor
Partner
Matheson (Dublin, IE)

- Anticipating variations in the culture of licensing in the U.S. versus abroad by conducting pre-licensing due diligence
- Examining how differences in foreign laws, contract styles, expectations of local practices and variations in language can impact your deal
- Preparing for Europe's General Data Protection Regulation ("GDPR") and its impact on multinational companies and cloud computing
  - Tackling the GDPR's definition of the "cloud"
  - Focusing on how the GDPR will affect the U.S. market for cloud computing
  - Assessing the factors that trigger when U.S. companies will be subject to European data protection laws
    - Analyzing how the EU will most likely enforce the data protection laws against U.S. companies with no physical place of business in Europe
  - Evaluating the GDPR's potential effect on big data analytics
- Bracing for the reform of the U.S.-EU Safe Harbor Framework
- Exploring legal regulations and business practices unique to specific jurisdictions
  - Observing contractual hazards and contract enforceability issues that arise when dealing in Asia and Latin America
- Determining when you may need to set up a business unit or operations in a particular country
- Identifying how the product will be protected
  - Negotiating a procedure in the contract for identifying unauthorized copies
  - Investigating whether a regulatory scheme is in place to help prevent unauthorized copying and distribution of the software
- Considering the impact that local tax regulations can have on your deal

9:30   **Managing the Movement of Data in the Cloud When Data is Transferred Overseas Without Your Permission**

Jasbir Kaur Khalsa, CIPP/US
North American Regional Counsel
& Assistant Corporate Secretary
Hitachi Data Systems Corporation (Santa Clara, CA)

John Pavolotsky, CIPP/US
Senior Attorney
Intel Corporation (Santa Clara, CA)

Paola Zeni
Director, Global Privacy
Legal and Public Affairs
Symantec Corporation (Mountain View, CA)

- Integrating clauses in the agreement to prevent data hosted on the cloud from being moved to another country without your prior approval
- Exploring a vendor's motivation for moving data off-shore
- Incorporating terms and clauses in the agreement to maintain control over the data that is hosted in the cloud
  - Working with cloud vendors to control where the data will be sent
- Responding to the security and privacy issues that arise when hosted data is moved offshore
- What happens when the movement of data overseas causes the customer to violate a law overseas?
- Gaining best practices for enforcement in a foreign jurisdiction in case of data breach overseas
- Export considerations: Understanding when cloud users and providers are subject to export requirements
  - Analyzing the relationship between the Export Administration Regulations ("EAR") and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") with respect to the export of data on the cloud
  - Considering the export obligations that may be triggered with certain types of encryption

10:30   **Morning Refreshment Break**

10:45   **Repositioning Your Company's Open Source and Cloud Strategies: Patent and Copyright Approaches in the License Agreement**

Keith Bergelt
Chief Executive Officer
Open Invention Network (Durham, NC)

Karen F. Copenhaver
Partner
Choate Hall & Stewart LLP (Boston, MA)

Theodore McCullough
Senior IP Counsel
EMC Corporation (Santa Clara, CA)

- Cloud Service Companies v. Product Companies — Understanding the best ways to ensure differentiation of your service and product offerings via an IP strategy that includes open source licensed software
  - What the open source licensing model tells us about using open source licensed software to enforce service and product differentiation?
    - Labor based v. IP based service and product differentiation — human capital as critical to preserving differentiation, not traditional IP rights
    - The importance of "Hacking" — time to market and first mover advantages arising from using open source licensed software
  - What *Oracle America, Inc. v. Google, Inc.* (Fed. Cir. 2014) tells us about using copyrights to enforce service and product differentiation?
    - Defining IP ownership on improved or modified software using open source
    - Understanding Oracle's effect on the Internet of Things
  - What *Alice Corp. PTY. LTD v. CLS Bank Int'l (2014)* tells us about using patents to enforce service and product differentiation?
    - Obtaining the newest updates on the patentability of software
    - Patent development strategies for cloud service and product companies in light of *Alice*
- Uses and misuses of content — Addressing the implications of *American Broadcasting Companies, Inc. v. Aereo, Inc.* (2014) on cloud computing
  - Dissecting Aereo's technology and deciphering the significant implications on Internet streaming on the cloud
  - Clarifying how copyright infringement affects cloud computing
  - Predicting the possible repercussions on cloud storage and cloud innovation
- Assessing organizational vulnerabilities to infringement suits
  - Declining enforceability of patent rights v. the increasing enforceability of copyrights and trade secrets
    - Curtailing of patent rights — *Transcore, Myriad, Nautilus, Alice*
    - Enhancing of copyrights and trade secret rights — *Aereo, Altavion v. Konica Minolta*

11:45   **Getting What You Sign For: Developing Best Practices for Drafting IT Service Agreements to Minimize Risks, Liabilities, and Ambiguities**

Mia Chiu
Associate General Counsel
Mindjet Corporation (San Francisco, CA)

Janet P. Knaus
Partner
Warner Norcross & Judd LLP (Grand Rapids, MI)

Kenneth Labach
General Counsel
Datalex (New York, NY)

William A. Tanenbaum
Partner, Head, IP & Technology Transactions Group
and Green Tech & Sustainability Group
Kaye Scholer LLP (New York, NY & Palo Alto, CA)

- Distinguishing whether the IT service in question is the appropriate choice for the customer
  - Recognizing any potential gaps in the service required by the customer and provided by the vendor
- Understanding when a deal is ripe enough to go to the lawyers to reduce costs
  - Knowing the problems involved when a deal is under ripe versus overripe
- Identifying key contract provisions to be including in any IT service agreement:
  - Disclaimers, conditions, and exclusions
  - Representations and warranties
  - Limitation of liability caps
  - Consequential
  - Discussing and agreeing to restrictions on damages
- Managing contentious negotiations over the circumstances that can trigger unlimited liability under the exceptions to indemnity obligations
  - Breach of IP
  - Breach of confidentiality
  - Gross negligence conduct
  - Functionality of the software product in a virtual environment
- Ensuring provenance of the code through specific terms pertaining to software ownership
- Developing a formula for determining appropriate representations and warranties based on the extent to which open source code is used
- Detecting when it makes sense to obtain cybersecurity insurance rather than obtaining warranties
  - Resolving the conflicting business and financial interests between the vendor and customer
- Distinguishing how negotiations are evolving as we move away from perpetual license models to subscription-based pricing models
  - Classifying when concessions can be made with subscription-based licenses
  - Comprehending a vendor's profit margins with respect to perpetual license models and subscription-based license models to assess driving motivating factors in negotiations
- Determining when standardized agreements can be negotiated

12:30   **Networking Luncheon**

1:30   **Breaking Up is Hard to Do: The Importance of Having a Well-Defined Exit Strategy**

Mark Grech
General Counsel
MATRIXX Software, Inc. (Mountain View, CA)

Mark Grossman
Counsel
Tannenbaum Helpern Syracuse & Hirschtritt (New York, NY)

Rebecca Hamilton Gahete
Deputy General Counsel and Director, Information Management
JM Family Enterprises, Inc. (Deerfield Beach, FL)

- The importance for each party of having a clear exit strategy — Understanding the mechanics and consequences of early termination
  - What are your rights and remedies when the other party stops cooperating?
  - What types of breaches should trigger termination?
  - Knowledge transfer from the vendor (making sure key resources are available after termination for a period of time)
  - Has the vendor created project artifacts (install guides, architecture diagrams, etc.) that the customer will need?
  - How to make sure that SLAs in the agreement can actually help you with termination leverage?
  - Non-solicitation issues (in case the customer may need to poach talent from the vendor)
  - Termination for convenience
    - When is it appropriate?
    - Costs and consequences
  - Intentional Breach Scenarios
    - Business justifications
    - Consequences
- Are you adequately protected by your contract's "end-of-life" provisions?
  - Data migration and other post-contract assistance
  - Post-termination data access:
    - How long will my provider store my data after the contract is terminated and is this affected by the type of termination (e.g., non-payment vs. vendor's uncured breach)?
    - What is a meaningful process and time frame for retrieving my data after termination?
  - Impact of privacy and export laws on a customer's ability to retrieve data.
- What happens if the vendor ceases to exist:
  - Bankruptcy considerations
  - Merger or acquisition
  - Understanding when the vendor officially still "exists," but has ceased operations or its operations are seriously or fundamentally impaired
  - Is your agreement consistent with your obligations to your customers and liabilities under applicable laws (e.g., HIPAA, Gramm-Leach-Bliley (GLB) Act)?
  - Source code escrow
    - Release conditions
    - Viability of this alternative
- Exploring how to change vendors without sacrificing continuity of service
  - Formulating strategies to transfer data while minimizing the risk of data breaches or loss of data
  - Understanding how to move back to an on-premises solution from the cloud

2:45   **Afternoon Refreshment Break**

3:00   **Ensuring the Continuity of Business Operations to Raise Profits and Curtail Interruptions in Service**

Ian G. DiBernardo
Partner
Stroock & Stroock & Lavan LLP (New York, NY)

Sidney Gottesman
Executive Vice President, Business Information Officer
MasterCard Worldwide (Purchase, NY)

Rebecca Hamilton Gahete
Deputy General Counsel and Director, Information Management
JM Family Enterprises, Inc. (Deerfield Beach, FL)

- Incorporating key provisions in the agreement regarding:
  - Payment structure
  - Acceptance testing
  - Service level agreements
  - Dispute resolution and liquidated damages
  - Personnel assigned to perform services, including terms and conditions for background checks
  - Bug fixes, upgrades, and new versions of the product

- Remote access agreements
- Security and protection of information
- Factoring the interplay of timing on acceptance, warranty, and start of support into the agreement
- Minimizing ambiguity by negotiating warranty provisions from the outset to address:
  - Remedies, repair, and replacement
  - Cost of replacement products, including returns and refunds
  - Virus warranties and remedies
- Defining the parameters for support of the product
- Establishing the methods of delivery and hours of availability for support
- Formulating the plan for renewals and extensions of the licenses
- Identifying vendor versus customer responsibilities
- Exploring alternatives to software escrow agreements
- Understanding the basic elements of revenue recognition and comprehending its impact on information technology licensing and agreements
  - Distinguishing the basic elements of revenue recognition
  - Formulating revenue recognition as it applies to common licensing models
  - Balancing a vendor's revenue recognition objectives and the customer's need for certainty and vendor accountability

4:00 **Examining Data Ownership in Light of the Advances in Technological Innovation: Evolving Data and Smart Applications**

Kimberly Cilke
Assistant General Counsel
GoDaddy Operating Company, LLC (Scottsdale, AZ)

Daniel Pepper
Assistant General Counsel
Verizon Communications, Inc. (Basking Ridge, NJ)

The amount of data stored, analyzed, and collected is proliferating at a rapid speed as the world becomes more and more connected through social media, smart cars, smart homes, smart health, wearable devices and more. Mobile devices are also driving advances in technology at an unparalleled pace. As companies increasingly turn to open source, the cloud, and big data analytics to develop pioneering technologies, the idea of who owns the data becomes progressively more difficult to characterize. Points of discussion shall include:

- Understanding the trend of escalation in open source software and the cloud
- Calculating the issues to consider when negotiating a commercial agreements
  - Assigning ownership of data in the agreement
    - Incorporating ownership of data when a relationship terminates in the agreement
  - Can you sublicense data?
  - Can you make representations of the data itself?
- Exploring data and considering whether to purchase or license
  - Entering into a contract with a cloud vendor engaging in big data analytics
  - Determining liability in the event of federal agency enforcement action
- Governing the limitations of use on data
- Establishing data ownership in connection with cutting-edge technology
  - Identifying the parties involved with potential ownership claims to the data
- Evaluating unique IP considerations and infringement issues with new forms of technology: comprehending where you can get into trouble
- Examining the relationship between privacy and consumer protection laws with data ownership

5:00 **Conference Adjourns**

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ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 11.0 hours. An additional 3.0 credit hours will apply to workshop participation.

You are required to bring your state bar number to complete the appropriate state forms during the conference. CLE credits are processed in 4–8 weeks after a conference is held.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and **ACI** will make every effort to process your request.

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