

Introduction

This book examines some of the fundamental issues that both vendors and customers may confront in the negotiation of a software license and a cloud computing agreement, including related issues such as software development, professional services, as well as maintenance and support. It also discusses ancillary issues such as software development kits (SDKs), application program interfaces (APIs), service level agreements (SLAs), and escrow agreements. The book focuses primarily on non-mass-market production licenses, as most “retail” or mass-market “off-the-shelf” software is governed by non-negotiable “shrink-wrap,” “browse-wrap,” and “click-wrap” licenses. Nonetheless, the principles of software licensing are generally the same for shrink-wrap, browse-wrap, click-wrap, and custom-developed software.

This book does not discuss software transactions with the government, as the laws relating to government contracting are beyond the scope of this treatise. For an overview of intellectual property rights related to government contracting, see *Nash & Rawicz, Intellectual Property in Government Contracts* (6th ed).

The structure and context of every software license differs depending on the needs of the parties. While this book discusses some of the most important issues and includes numerous forms, D.C. Toedt III, Esq., in conjunction with the Computer Programs Committee of the Information Division of the Section of Intellectual-Property Law of the American Bar Association, created a model license that, although voluminous, is quite thorough and educational. Toedt’s license was created to be a resource but is not commercially viable due to its complexity and length. It is included as Form B.7.1. For a detailed discussion of this license, see Toedt, *The Model Software License Provisions: Precursor to a Gap-Filling Uniform License Statute*, 18 RUTGERS COMPUTER & TECH. L.J. 521 (1992).

Finally, the nature of software licensing is trending toward vendor-hosted delivery models, commonly referred to as cloud computing, and thus Chapter 9 discusses several of the most common alternative delivery methods and the principal issues associated with each. Further, Chapter 17 examines licenses and issues arising from the marketing and distribution of software through third parties.