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Enterprise AI Series: Value, Control and Accountability

Exploring the legal, commercial and governance issues arising from enterprise AI adoption.

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Enterprise AI Contract: Where Value, Control and Accountability Are Really Allocated

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In our earlier article, "The Hidden Ownership Question in Enterprise AI", we explored why retaining rights in and control over data does not necessarily mean retaining the value generated from it.

That observation has an important practical consequence.

Many of the most significant issues arising from enterprise Artificial Intelligence ("AI") are not determined by the technology itself. They are determined by the contractual arrangements governing how AI systems are procured, deployed and managed within organisations. As AI moves from experimentation to business-critical deployment, those arrangements increasingly shape where value resides, who controls the resulting capability and who bears responsibility for its consequences.

> **"AI contracts often function as the mechanism through which governance expectations are converted into operational obligations.**

Data Ownership Is Only the Starting Point

Most AI contracting discussions begin with ownership of the underlying data. That remains important, but it is rarely the end of the analysis.

In many commercial arrangements, the parties can identify the information supplied or controlled within the arrangements. The more commercially significant issues often concern how that information may be used after it has been supplied during the arrangement. A right to process information in order to deliver a particular designated service is one thing. A right to use the same information for testing, benchmarking, analytics, model development or future service improvement is something quite different.

For this reason, an effective contract review should consider permitted use as well as ownership and control. The question is not simply whether a provider can access information. It is whether, and for what purposes, the provider can derive value from that information beyond the immediate foreseeable scope of the engagement.

Future Value Is Shaped by Data Use and Improvement Rights

One of the most important aspects of an AI contract concerns how customer information may be used. Two agreements may both provide that the customer retains its rights in information supplied for the purposes of the engagement, yet produce materially different commercial outcomes.

One may permit prompts, outputs, feedback or usage information to be used to evaluate, train, fine-tune or improve the provider's broader systems. Another may restrict their use to providing, securing and supporting the contracted service. Even where model training is prohibited, separate rights may permit analytics, benchmarking, safety monitoring or product development.

These activities are technically and commercially distinct. The contract should therefore identify the relevant categories of information, the purposes for which each may be used, the systems that may benefit and whether any restrictions continue after the engagement ends. These are important facets of negotiation and contract-drafting – which many may not be paying full attention to.

Many AI-enabled services may become more valuable through accumulated feedback, evaluation and workflow refinement. Whether that value benefits the customer, the provider, or both depends on the technical architecture, the contractual allocation of rights, and how future benefits are shared between the parties.

Intellectual Property Is Becoming More Complex

Artificial intelligence has also complicated and revolutionised traditional assumptions about intellectual property.

Many organisations assume that ownership of data naturally extends to ownership of everything created from it. In practice, AI projects often involve a combination of proprietary information, licensed content, third-party models and newly created assets that emerge during implementation.

Customer-specific knowledge bases, prompt libraries, retrieval configurations, evaluation frameworks, agent workflows and integrations may become commercially valuable in their own right. The associated rights may be divided among the customer, provider and other independent technology suppliers.

Questions concerning whether intellectual property rights subsist in AI-assisted or AI-generated outputs, who may exercise any such rights, the treatment of customised models and the reuse of project-specific improvements are becoming increasingly significant. The answer may depend on the applicable law, the degree and nature of human contribution, and the relevant contractual arrangements.

In some AI projects, commercially significant intellectual property and know-how may emerge progressively through implementation, customisation and operational learning rather than existing at the outset.

Control May Prove More Important Than Ownership

Enterprise AI introduces a challenge that is not always visible during procurement: dependency.

Many organisations build strategically important capabilities around technologies supplied or controlled by third parties, often without fully appreciating the resulting dependencies. This does not necessarily create a problem. However, it does mean that ownership of surrounding assets may provide limited protection if access to the underlying capability changes. Pricing, functionality, service availability and strategic direction can all affect the practical utility of an AI system, regardless of who owns the data supporting it.

Organisations reviewing these arrangements should therefore consider portability, exit rights, transition assistance and vendor concentration risk. Procurement is no longer simply about acquiring technology. It is increasingly about preserving strategic flexibility and avoiding excessive dependence on any single provider.

AI Contracts Are Becoming Governance Documents

Many organisations continue to view AI contracts primarily as procurement documents. Increasingly, they also form part of an organisation's AI governance framework. They cannot substitute for internal governance, but they can translate governance requirements into obligations concerning information, data management, testing, monitoring, security, audit support, incident response, change management and human oversight.

AI governance frameworks commonly emphasise accountability, human oversight, transparency, auditability, appropriate monitoring and clear allocation of responsibilities across the AI lifecycle. In Hong Kong, the Privacy Commissioner's Artificial Intelligence: Model Personal Data Protection Framework provides a set of recommendations and best practices regarding governance of AI for the protection of personal data privacy for organisations which procure, implement and use any type of AI systems. These expectations have practical contractual consequences. Questions such as who monitors system performance, assesses material changes or performance degradation, investigates incidents, maintains relevant records, supports human review and responds to regulatory enquiries cannot be addressed through governance policies alone.

As a result, the line between AI procurement and AI governance is becoming less distinct. AI contracts often function as the mechanism through which governance expectations are converted into operational obligations.

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Accountability Does Not Necessarily Follow Ownership

One of the most important observations is that ownership and accountability often move in different directions.

One provider may control access to the underlying model or service. Another may operate the infrastructure. A systems integrator may develop customer-specific workflows or integrations. Yet when concerns arise, regulators, customers and other stakeholders may still look to the organisation deploying the system and relying upon its outputs, notwithstanding the involvement of third-party providers.

For organisations operating in regulated environments, ownership of the technology provides only a partial picture. The deploying organisation may retain significant governance, oversight and operational responsibilities even where the system, model or infrastructure is supplied by third parties. Contractual allocation can manage aspects of the relationship

between the parties and potentially change the default position under the applicable law or regulation, if the law itself permits any variations. Careful planning, contract drafting and risk allocation can therefore be important when adopting AI services.

This is one reason why AI governance and procurement increasingly extend beyond traditional software licensing concepts to issues such as explainability, testing, safety, auditability and human oversight.

A Practical Perspective

An effective review of AI contracts should not begin and end with the ownership clauses.

A more useful approach is to consider three broader themes.

- **VALUE**: Where does the value created by the system ultimately accrue?
- **CONTROL**: Who controls the capability if technology, commercial relationships or strategic priorities change?
- **ACCOUNTABILITY**: Who remains accountable when the system produces unexpected outcomes?

These considerations often reveal more about the true allocation of risk and opportunity than any single contractual provision.

How We Can Help

AI procurement increasingly sits at the intersection of technology, intellectual property, data privacy, governance, compliance and commercial strategy.

Our experience in intellectual property (including but not limited to copyright, trademark and patent), technology contracting, governance and regulatory risk enables us to assist organisations considering or reviewing AI-related arrangements. Relevant issues may include permitted data use, model improvement rights, ownership and licensing, technology dependencies, oversight and the allocation of responsibility among participants.

If your organisation is procuring, deploying or reviewing AI capabilities, a focused review can help determine whether existing arrangements appropriately address value, control and accountability, and whether they remain aligned with your broader commercial and governance objectives.

We would be pleased to discuss how these issues may affect your current or proposed AI arrangements.

About the Authors

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Together, Eddy and Kennis bring perspectives from governance, technology risk, intellectual property and technology contracting to issues arising from enterprise AI adoption and deployment.

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