

Managing Risk When Buying New Technology

Failing to plan and prepare effectively before purchasing new technology risks exposing your business to unnecessary liability and the potential for financial loss.

By understanding the potential liability and risks, and by following the practical steps that can be taken to manage and mitigate those, a business can be better prepared.

Risks

- **Business disruption**

Delays are not uncommon when new technology is introduced; system downtime can interrupt and, in the worst case, prevent trading.

New technology can be exciting, but if it's not going to integrate successfully with existing systems and benefit the business, it can be an expensive misstep.

- **Data loss and breach**

If the data that the technology collects and stores is vulnerable to theft, a data breach could be very embarrassing even lead to fines and a total loss of customer trust. Weak security can also lead to successful cyberattack and a premature end to trading.

- **Intellectual property rights infringement**

The use of the technology can expose a user, albeit unwittingly, to liability for infringing a third party's IP, through for example, the unauthorised use of software.

- **Software Licence Breach**

If the wrong software licence is purchased, for example, if there are an insufficient number of users provided for, the licence may be easily breached, resulting in legal action from the licensor.

Managing Risks

- **Due diligence**

Whilst you have the right to expect the technology to confirm to what was originally sold to you, the supplier will often try to exclude liability or pre-contract promises about the technology.

Being aware of potential problems can help you avoid them. Does the technology do what you want it to do? Are there some common issues with the technology or limitations to be aware of?

Doing your homework on the supplier and the technology can help you avoid making an expensive mistake.

- **Plan**

Another practical consideration is planning: how will the technology be implemented or installed? You need to understand the likely timescale for implementation and how that will work with your business; have a contingency plan for lack of performance.

- **Contract: Terms and Conditions**

Whether it is a bespoke commercial agreement, or a set of 'standard Terms and Conditions', a contract is helpful: it defines the parties' relationship, setting out their obligations and liabilities to one another.

Absent contractual terms, ambiguity in a relationship leaves room for dispute, which can delay or prevent an out-of-court resolution.

When looking at contractual terms, the following are some of the more relevant and important considerations for inclusion (but this is not an exhaustive list):

- Payment – when and how it is to be made.
- Downtime – how long it will take for the new technology to become operational.
- Functionality – a clear description of the technology and its intended functionality.
- Data and Privacy – an understanding of: the type of data captured; how it is held; where; by whom; and who has access to it. Also, a consideration of GDPR, data processing and control.
- Security – clarification on the security in place to ensure that the data captured and processed is safe.

The reality is that it's not always possible renegotiate contract terms (such as with 'standard T&Cs') in which case, if there are risks of some concern, it may be possible to purchase an insurance policy to mitigate potential loss.

If you don't understand what you're agreeing to, it is recommended that you seek legal advice.

Conclusion

By understanding the inherent commercial risks when buying new technology, and the practical steps that can be taken to manage and mitigate those risks, a business is better prepared and protected.

If you would like to discuss the legal and practical issues raised in this article, Child & Child is able to provide clear advice in respect of commercial protection.

William Charlesworth is a commercial dispute resolution lawyer at Child & Child, specialising in intellectual property and technology disputes. The law relating to this area of law is complex and constantly developing. The purpose of this note is to assist in providing an overall understanding of the legal context within which such issues operate. This note is not intended as specific legal advice.

If you have any questions, or you believe you require further guidance, then please contact William Charlesworth at williamcharlesworth@childandchild.co.uk or on +44 (0) 207 201 1889.