

## WORKSHOP 3: Terms for data in contracts 9 February 2021

### **Minna Aalto-Setälä, Finland Chamber of Commerce: Taking data into account in Chamber of Commerce IT terms and conditions (translation of transcript to English)**

*"...what probably interests you is that IPRs, in principle, are retained by the software developer, so the one who makes the software retains the rights in principle, but the client gets the access rights necessary. So this is something that is much discussed and it is something that is – one could say – under constant investigation: how it's done correctly and who gets the IPRs principally."*

Good morning. I'm Minna Aalto-Setälä and I currently work as a lawyer at the Finland Chamber of Commerce. Thank you, Anna and the Ministry of Education and Culture, for giving me the chance to tell you about IT terms and conditions and the reform this year concerning IT terms and conditions, concerning a set of terms and conditions related to information technology. The background of these goes way back. You could say the preliminary versions of these date from the 1980s – ADP terms and conditions. And ever since, they have been... there were the IT2000 terms and conditions, as well as IT2010 terms and conditions, IT2015 terms and conditions; currently we have IT2018 terms and conditions – those are the newest terms and conditions. And they will be reformed this year. So things are speeding up. The world is changing faster and faster, which is the reason why we currently have a three-year cycle in which we examine whether the terms and conditions should be revised – to see what's going on in the world. Right now, the terms and conditions comprise ten special terms and conditions, in addition to which there are nine model agreements. One can download these model agreements on the internet free of charge, and the idea is that one can – when using them – modify them, but the IT special terms and conditions and the related general terms and conditions are chargeable. And one is not allowed to modify those. Of course, it is possible to make an agreement to do that, but in that case, it has to be done in the agreement document itself – for example, by stating that the parties have come to a different agreement on section X in the general terms and conditions. This is a set of terms and conditions that currently pretty much – one could say – has the status of general terms and conditions in the field. And their goals – which have formed during years of development and modified further. To ease making agreements in the IT field. What is particularly important regarding that is lowering the expenses related to the agreement.

In Finland, more than 95 per cent of companies lie in the SME sector. What these terms and conditions are specifically targeted towards is our software developers, our software industry, one could say. Most of them are small, medium-sized, or even micro-companies. And the idea is that the company would get a safe bundle; especially when you start doing business, you can get a ready-made bundle of terms and conditions, and once you get more competent, you can refine it yourself – what

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kind of business you do, what kinds of agreements you make with your clients. So this would be a base from which you could learn. And this is precisely what has happened during the past decades when people have been coming up with the terms and conditions. Currently, many Finnish big companies – with regard to computer programming – back in the day, for example, the IT2000 terms and conditions were used by everyone, and gradually, differentiation has occurred, so currently, I would say that this set of terms and conditions is targeted precisely towards SMEs, but nothing stops bigger companies from using these, too. Currently, the goal is to keep the terms and conditions up to date. And we try to follow the developments in the field. And like I said earlier, currently, the management has decided that terms and conditions get revised every three years, so they keep up with the times and the global changes. Another thing that is necessary is to increase the use of the terms and conditions, so it also means raising awareness. It is easy to familiarise oneself with the terms and conditions at [it-ehdot.fi](http://it-ehdot.fi), so all terms and conditions – even if they were chargeable – are readable there, but copying and using them is forbidden unless one buys the annual licence, which we have tried to keep affordable for SMEs. There has been much discussion on whether they should be free-of-charge, but the fact that we have been developing these for 40 years means that, if it cost you nothing, you seldom value anything that you get free-of-charge. So the fact that it costs you means, I would say, in practice, that it gets updated and that people – the big group of people I will introduce to you – have an interest in furthering these things. So what we have in the project now – IT2021 terms and conditions which have been planned for publication late this year. The work is already in progress. Following the current agenda, the purpose is to make special terms and conditions regarding use of data. The model terms and conditions already made by the Technology Industries of Finland will be taken into account. The IT terms and conditions are not by the Chamber of Commerce per se – we're one of the right holders. And currently, the entire platform is run by the Chamber of Commerce, so in that sense, this is very close-knit with the Chamber of Commerce, but we will soon go over who the other organisations in the background are – there's the Technology Industries of Finland among others. In the working group that's making the terms and conditions, there is a lawyer who has been involved in making the model terms and conditions by the Technology Industries of Finland, so we have a good basis. But the idea now is that, in the special terms and conditions regarding use of data, in the IT terms and conditions, we will take into account how the software developer and, on the other hand, the client for whom we're making the software for different purposes... so in this relation, how the data will be taken into account.

But that's it, and we're working on it now, which is why I cannot tell you much about it, other than that it's good to keep an eye on it and see what comes out of it, because after all, since the train is moving now and the terms and conditions are currently a work-in-progress, I would say that we're keeping up with the schedule quite well: we will have a publication event in the autumn, at which point we will know what kinds of special terms and conditions regarding use of data will be recommended, concerning the relation when making software for the client's needs.

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Another thing that is also very timely is the revision of special terms and conditions concerning the use of personal data. In the IT terms and conditions, we launched the special terms and conditions concerning the use of personal data in 2018 – just before GDPR, the General Data Protection Regulation by the European Community concerning the use of personal data, came out, we launched it in February, and it was a much-anticipated reform. And now, already at this stage, we want to see how these special terms and conditions have worked out in practice. Most likely, we will revise or make a new model agreement for the users. And like I said, the model agreements are available to anyone free-of-charge. So in that sense, one could say, in a small society like Finland, the purpose here is that we can advance good agreement practices. It takes some studying from the operators in the field – what this means, juridical terms are naturally used – but it plays a major role that companies will not offer their products without terms and conditions, rather that the general policies are well established in the terms and conditions. We have a very professional team of lawyers working on the terms and conditions.

Another thing I'd like to mention is that the way in which we revise the terms and conditions is that we listen carefully to the field; last autumn, we did a user enquiry, and that's precisely where we realised that the special terms and conditions concerning the use of personal data must be revised. They expressed a wish for a new model agreement. They expressed a wish that we would make a so-called small agreement or small supply model agreement, and that would also be free-of-charge for the field to use, so there would be... especially when, one could say, non-lawyers... for there are many terms and conditions and different things to consider, so we're trying to make a simpler agreement, a shorter one for light and simple situations. I want to stress that the business points of view differ from lawyers' points of view. In 2015, when we made agile terms and conditions, in neighbouring countries – in Denmark and Norway – similar terms and conditions covered around 80 to 100 pages, whereas in Finland, if I recall correctly, we didn't get to even seven pages when making agile terms and conditions. So the length of the terms and conditions is always very relative. In the Anglo-American world, they make extremely long terms and conditions in comparison to the Finnish way of making them. So it has its pros and cons. In addition to that, we go over all our existing terms and conditions – both special and general – and check that they're up to date.

I want to shed light on how these are prepared. So we do this work in different working groups. And as I already said, we also ask the users and licence receivers, but what we usually do – for example, the Chamber of Commerce carries out a public user enquiry, so that everyone who gets messages from us or visits the it-ehdot website is allowed to take part in the user enquiry. So we're trying to be as open as possible and to hear the information and output from the field as to how terms and conditions should be revised. We have a management that consists of right holders who make decisions on terms and conditions, and there we have an outside chairperson, and right holders include the Technology Industries of Finland, the Finnish Software and E-business Association. There's also LOGY, Tivia, and the

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Finland Chamber of Commerce. We also have a lawyer working group – I’m the chairperson – and there are seven lawyer members, and we also have a monitoring group. And you will see who are involved with the work. So the management – as I said – consists of right holders, and we have an outside chairperson – an ex-attorney Kimmo Rekola who was retired... I think it was just over a year ago. So he has been involved with the terms and conditions ever since the previous millennium, so I wonder if he... he always laughed about it, wondering if he was already involved as a young lawyer in the 1980s with the ADP terms and conditions. So he has a very long experience, he used to be a standard member in our lawyer group, and now he’s the chairman of the management. So he has a long experience from what terms and conditions include and what should be done with them and what should be fixed or modified. So it’s precisely his independence with respect to the software supplier as well as the client who orders the software that is very important – he is a genuine expert and currently independent. Earlier, he represented right holders in the lawyer working group, but currently, his standpoint is completely neutral. The management is in charge of the terms and conditions, governing them, and it organises the other groups – the lawyer working group, the monitoring group, and in case there’s need for steering, because the groups ask questions such as, hey, now we can make a decision like this or that, on which they comment and make decisions. Policies as to what is included in the terms and conditions and where the “church will be located in the village” – so to say - they make those decisions. And ultimately, after they have been made by the lawyer group and commented on by the monitoring group and after the comments have been taken into account, to the extent that lawyers have considered possible, the management makes the final decision on how the terms and conditions will be revised. Let’s move on. Here are the names of those who are making the decisions, so as I said, Kimmo Rekola is the chairman, then there’s Markku Henttinen from LOGY, Anne Horttanainen from the Chamber of Commerce, Jussi Nissilä from Tivia, Jussi Mäkinen from the Technology Industries of Finland, Seppo Takanen from the Finnish Software and E-business Association, and I act as the secretary of the working group. As for the lawyer group, let’s go over this quickly, they make the proposal in Finnish, then the English version gets checked, which we also offer; currently, when you get terms and conditions, you get them in both languages. As I said earlier, they make a proposal on completed terms and conditions to the management. The international situation is monitored through the working group. The monitoring group comments on the lawyer group’s work, and the management decides on the policies when lawyers ask about which direction to go. Here are the names of the members of the lawyer group. As you can see, there is a wide range of Finnish attorneys and lawyers. We have representatives from big offices. Having acted as the chairwoman of the lawyer group for a long time, I’ve noticed the role is quite minor, for this is a working group that works and communicates extremely well, and everyone does this work pro bono, not getting any compensation for their work per se, but I must say that the names of the people involved guarantee the good quality of the terms and conditions for the field. Let’s move on. As for the monitoring group, the purpose is that we get authentic comments from the field. The chairperson and the vice-chairperson are neutral. Let’s

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move on. The purpose of the working group is to bring forth opinions from the field and to comment on the lawyer group's work. Here you can see that our chairman is Matti Rudanko who has already retired from Aalto University, but he used to act as our chairman, and he wanted to continue the work. The vice-chairwoman is Viveca Still from the Ministry of Education and Culture. And then there are representatives of the field from bigger and smaller companies, and then there are representatives of both software developers and client companies, so for example, Sanoma – who do not necessarily use these in their own work – do a good job at bringing forth the clients' point of view as to what the terms and conditions should include. We also have public administration representatives: there's Ari Koivumaa from the National Police Board who acts as a lawyer in the Information Technology Centre of the Police. And this working group is governed by Tivia – represented by Jussi Nissilä who acts as a secretary. So that's how it is, and as I said, you can explore the terms and conditions at [it-ehdot.fi](http://it-ehdot.fi). You can explore all terms and conditions even though you cannot copy them, but model agreements are freely available. If you have any questions, I'm glad to answer them, or at least try to answer them. This is a world of its own and myself I do think that this is very fascinating and challenging as well.

One thing more - regarding the special terms and conditions concerning the use of personal data, the European Data Protection Board has given recommendations, and these recommendations, or recommendation, will be taken into account. So it comes from the work of the lawyer group. I don't know if you're familiarised yourself with the work of the Data Protection Board: their recommendations are always – how should I put it – very verbose. So it is a great thing that we have competent lawyers who daily work with personal data and GDPR, knowing what has to be included and taken into account when making terms and conditions in Finland. But that is definitely on the agenda when it comes to these terms and conditions, for example. But when it comes to data terms and conditions, the work is only beginning, and we have thought about how it works with the relation between the software developer and the client. What I didn't mention earlier and what probably interests you is that IPRs, in principle, are retained by the software developer, so the one who makes the software retains the rights in principle, but the client gets the access rights necessary. So this is something that is much discussed and it is something that is – one could say – under constant investigation: how it's done correctly and who gets the IPRs principally.