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**Software & Technology
Agreements: Nightmares and
How to Avoid Them**

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Software & Tech Agreements



- <http://dilbert.com/> February 23, 2011

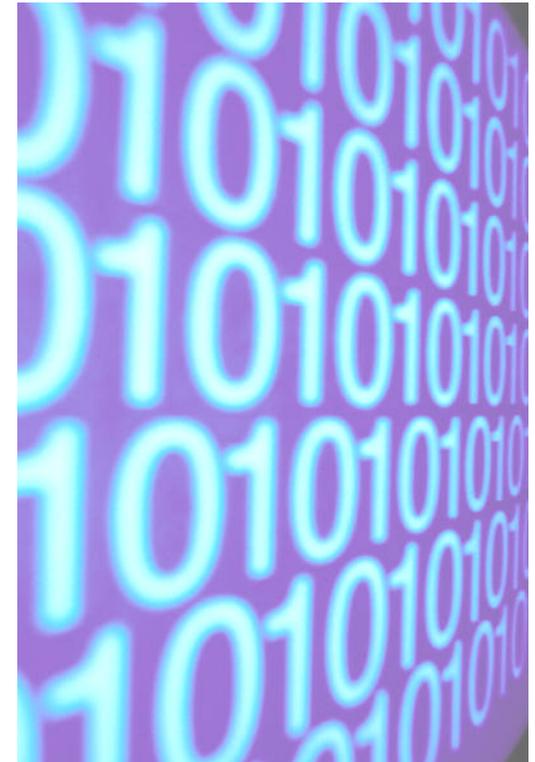
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- **Schedules & Scope Creep**
- **Derivatives & Developer**
- **Joint Development**
- **Competing with Suppliers**



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■ Schedules & Scope Creep—Scenario

- Purchaser of custom software
- Signs a Master License and Service Agreement With the developer
 - schedule of milestones and deliverables attached
 - testing procedures to be developed by client
 - (never filled in)
- Purchaser makes most of the payments
- 3 years go by

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■ Schedules & Scope Creep—Problems

- ❑ Agreement signed but no follow through on the details
- ❑ Framework for accountability was there but not used
- ❑ Paid too soon under pressure
- ❑ Purchaser's personnel got too close to the developer
- ❑ Result: litigation in 2 states

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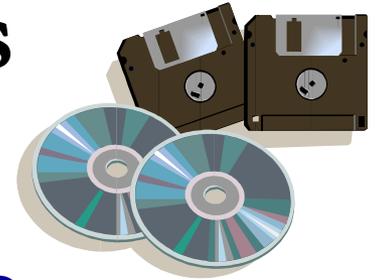


■ Schedules & Scope Creep—Improve

- Cure: sweat the small stuff
 - Use the deliverables/accountability frameworks as set out in the documents
 - Don't prepay
 - Design real testing procedures and document
 - Be careful who staffs the project
 - Settlement for a loss on all money spent including fees (lone wolf developers are judgment proof)
 - Bonus: Purchase v. License—be clear



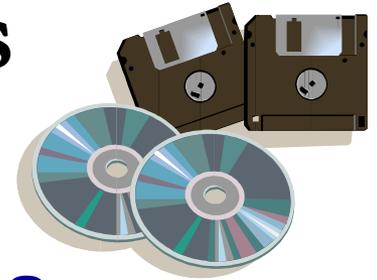
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■ **Derivatives & Developer—Scenario**

- ❑ Developer starts custom code maintenance project with client
- ❑ No agreement signed
- ❑ Code base is significantly enhanced/altered
- ❑ Project branches into two common code-bases
- ❑ Disagreements develop

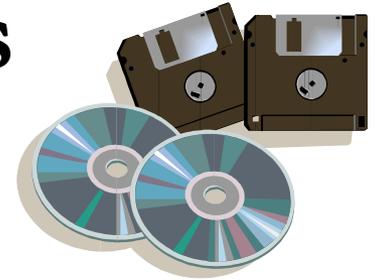
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■ Derivatives & Developer—Problems

- ❑ Two common code-bases means copyright/IP overlap
- ❑ No written agreement
- ❑ Cuts both ways
- ❑ Verbal agreement not enforceable
- ❑ Original development did not include hardware or live functioning environment

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■ **Derivatives & Developer—Improve**

- Work for hire agreement
- License/Assignment

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■ Joint Development—Scenario

- Two entities co-develop a software tool by jointly paying programmers and unifying some software products
- One entity picks a conservative development strategy
- The other picks an aggressive development strategy

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■ Joint Development—Problems

- Who gets the benefit of derivative improvements?
- Who has the right to make such improvements?
- How do you get back together?

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■ Joint Development—Improve

- Put the IP in a special purpose entity that is co-owned and controlled so that investment return and other legal issues are defined with buy sell provisions etc.

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■ Competing with Suppliers— Scenario

- Provider of technology and software services supplies a large part of the needed tools for its customer base
- Outsources some discrete functionality to a third party to improve its offerings to its customers
- Signs some agreements with non-competition provisions



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- **Competing with Suppliers—
Problem**
 - Marketing your product looks like competition when the supplier loses business



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- **Competing with Suppliers—
Improve**
 - Define non-competition clauses precisely



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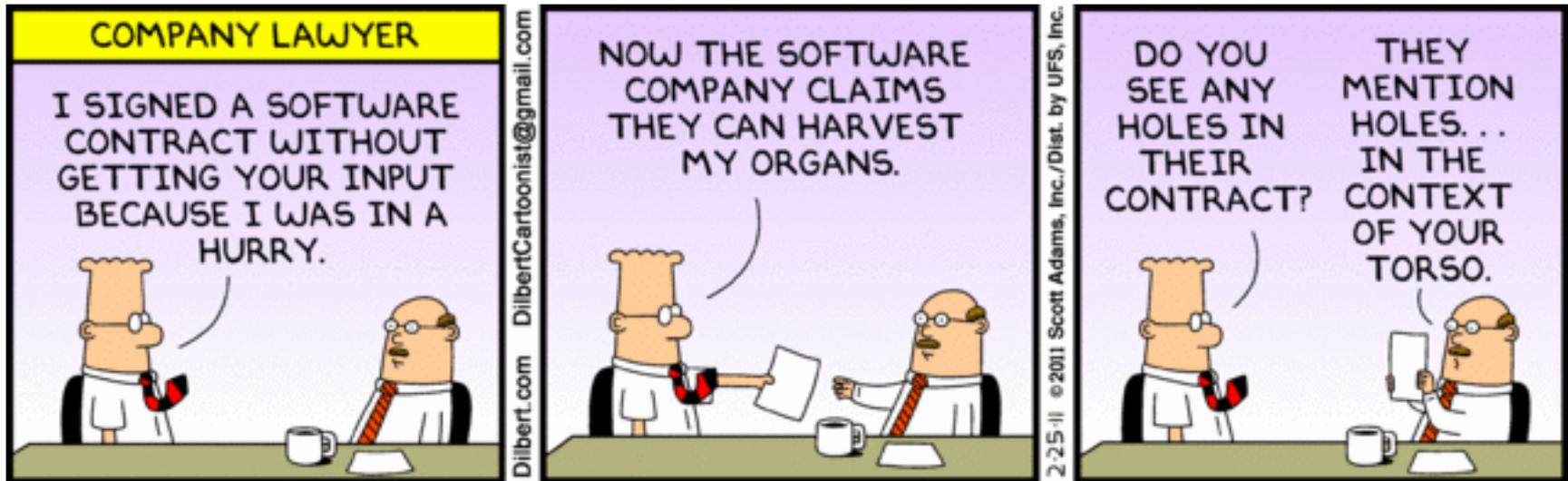
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■ Improvements

- Define non-competition clauses precisely
- Sweat the small stuff
- Use work for hire agreements
- Use Licenses/Assignments
- Use special purpose entities for development

Thank You

- <http://martinpringle.com/rcstevens>



- <http://dilbert.com/> February 25, 2011

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