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When IP Clauses Fail:

Common Dispute Triggers in Technology and Commercial Agreements

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Introduction

In technology and commercial transactions, intellectual property (IP) is often the most valuable asset in the room. Yet disputes rarely arise because parties ignore IP entirely. They arise because IP clauses are poorly drafted, misaligned with commercial expectations, or silent on critical risk allocation issues. When this happens, what was intended to safeguard value becomes a trigger for costly and disruptive litigation.

In today's digital economy, businesses derive significant competitive advantage from intangible assets such as software, proprietary processes, brand identity, confidential data, algorithms, and technical know-how. In Nigeria, as in many emerging and developed markets, small and medium-sized enterprises (SMEs) rely heavily on innovation, branding, and technology-enabled services.[1] Effective intellectual property protection is therefore not merely a legal safeguard, it is central to commercial sustainability, investment readiness, and long-term enterprise value.

The legal framework governing IP in Nigeria, including the Copyright Act 2022, the Patents and Designs Act, and the Trade Marks Act provides substantive protection for creative and industrial assets. However, statutory protection alone does not prevent disputes. In practice, the allocation, licensing, transfer, and enforcement of IP rights are primarily determined by contract.

It is within technology agreements, Software as a Service (SaaS) arrangements, joint ventures, outsourcing contracts, distribution structures, and M&A transactions that IP clauses perform their most critical function. They define ownership, regulate use, allocate risk, and preserve commercial certainty. Where these clauses are vague, incomplete, or commercially unrealistic, disputes are almost inevitable.

This article examines the role of IP clauses in technology and commercial agreements, identifies common drafting failures that trigger disputes, and highlights practical strategies for mitigating legal and commercial risk with particular reference to Nigerian law and cross-border transactions.

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[1] Oyinkansola Komolafe, 'Intellectual Property, SMEs and Economic Recovery in Nigeria' (WIPO Magazine September 29 2021) https://www.wipo.int/en/web/wipo-magazine/articles/intellectual-property-smes-and-economic-recovery-in-nigeria-55919?utm_source=chatgpt.com (accessed 17 January 2026).

Understanding the Role of IP Clauses in Tech and Commercial Agreements

Intellectual property clauses form the legal architecture of modern technology and commercial agreements. They determine who owns valuable intangible assets, how those assets may be used, and what restrictions apply. In practice, these clauses often decide whether a transaction succeeds or becomes a source of dispute. At their core, they answer two fundamental questions: what is being created or supplied, and what rights does the customer actually receive?

2.1. Common Agreements Where IP Clauses are Critical

IP Clauses are critical in certain agreements such as licensing, SaaS, joint ventures, outsourcing, distribution, and mergers & acquisitions. Each category presents distinct IP considerations: Licensing allows businesses to derive commercial gain from their IP by granting rights to use, reproduce, distribute, or display protected works.[2] SaaS arrangements raise unique questions about access versus ownership, as customers typically receive a right to use software without acquiring underlying IP rights. Joint ventures require careful allocation of background IP contributions and foreground IP created during collaboration. Outsourcing contracts must address ownership of deliverables, particularly where third-party contractors develop custom solutions. Distribution agreements need clear terms on trademark use, territorial restrictions, and quality control to preserve brand integrity. M&A transactions require comprehensive IP due diligence to identify ownership gaps, encumbrances, and risks that may affect valuation. In granting any of these rights, care must be taken to ensure that the IP clauses are properly drafted to protect the interest of the grantor. Thus, the IP clause must state if the grantor intends to grant a sole licence, exclusive licence, or non-exclusive licence.

[2] Aderonke Alex Adedipe and Olawale Atanda, "Intellectual Property Licensing in Nigeria" < https://pavestoneslegal.com/intellectual-property-licensing-in-nigeria/> (accessed 17 January 2026).

2.2 Objectives of IP clauses: ownership clarity, risk allocation, and commercial certainty

The primary objective of including IP clauses in commercial contracts is risk management. Properly drafted IP provisions clarify ownership of intellectual assets, define licensing parameters for commercial exploitation, and prevent unauthorized use or misappropriation by third parties. They also embed confidentiality protections for proprietary information and ensure compliance with applicable legal and regulatory requirements. Without this structural clarity, parties expose themselves to disputes, enforcement challenges, and unintended dilution of valuable intellectual property rights. [3]

Common IP Clause Failures and Dispute Triggers

3.1 Ambiguous Ownership Provisions:

Uncertainty around intellectual property ownership remains one of the most frequent and commercially damaging triggers of disputes in technology and commercial agreements. In many transactions, parties focus heavily on deliverables, timelines, and payment structures, while treating IP ownership as an afterthought. The result is ambiguity that only becomes visible when the relationship breaks down or the asset increases in value.

At its core, ownership ambiguity arises where contracts fail to clearly distinguish between Background IP [4], Foreground IP [5], and Derivative or Improvement Rights [6].

Where these distinctions are not expressly defined, parties are left to rely on default statutory rules and judicial interpretation, a risky position in high-value transactions.

I. Statutory Default Rules Under Nigerian Law

Under the Copyright Act 2022, copyright generally vests initially in the author of the work, subject to statutory exceptions, including certain employment relationships and commissioned works. This means that absent clear contractual assignment language, a developer, consultant, or independent contractor may retain ownership of software, databases, documentation, or creative materials produced for a client.

Similarly, under the Patents and Designs Act, rights in inventions typically vest in the inventor unless there is an express contractual provision assigning those rights to an employer or commissioning entity.

These statutory defaults frequently conflict with commercial expectations. Many customers assume that payment equals ownership. Legally, that assumption is often incorrect.

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3 E. Shudharshini, "Significance of IP Clauses in A Commercial Contract: Analysis" 7(6) International Journal for Multidisciplinary Research <https://www.ijfmr.com/papers/2025/6/61615.pdf> (accessed 17 January, 2026).

4 Pre-existing intellectual property owned by a party prior to the transaction.

5 IP developed in the course of the engagement.

6 Modifications, enhancements, translations, adaptations, or upgrades.

II. *Judicial Approach: Courts Will Not Rewrite Contracts*

Nigerian courts have consistently held that they will not rewrite contracts for parties under the guise of interpretation. In ***Vital Investment Ltd v. Chemical And Allied Products***[7], the Supreme Court reaffirmed that where contractual terms are clear, courts must give effect to them and where parties fail to provide clarity, courts will not supply missing provisions.

Applied to IP disputes, this principle means that courts will interpret the agreement based strictly on its wording, not on presumed commercial intention. The implication is significant: poorly drafted ownership clauses can result in the unintended transfer, or retention of valuable intellectual property rights.

Consider a hypothetical scenario: a Nigerian fintech company engages an independent software developer to build a mobile payment application. The contract specifies payment terms and delivery milestones but contains no express IP assignment clause. Upon completion, the developer asserts ownership of the source code and demands additional compensation for its transfer. The fintech company, having assumed that payment conferred ownership, faces a difficult choice: negotiate a further payment or litigate. This scenario, which arises frequently in practice, illustrates the commercial risk of relying on unexpressed assumptions rather than clear contractual language.

III. *Common Drafting Failures*

Ownership ambiguity typically arises in the following scenarios:

a) Failure to include express assignment language

Statements such as "the client shall own the work" may be insufficient if not accompanied by clear words of present assignment. Best practice requires language such as:

"The Consultant hereby assigns, by way of present and future assignment, all rights, title and interest…"

b) Silence on derivative works and improvements

Where a vendor modifies its proprietary platform to accommodate a client, questions arise:

i. Does the client own the customization?

ii. Does the vendor retain rights to reuse the enhancement for other customers?

iii. Are improvements to background IP automatically assigned?

Without express drafting, these issues frequently escalate into disputes, particularly in SaaS and enterprise software transactions.

c) Joint development arrangements without allocation mechanisms

In joint ventures or co-development projects, parties often assume "joint ownership" is a fair compromise.

[7] (2021) LPELR-58457(SC)

However, joint ownership without defined exploitation rights, licensing authority, and commercialization pathways can create deadlock and limit monetization.

d) Misclassification of independent contractors as employees

Where a developer is engaged as an independent contractor rather than an employee, statutory vesting rules may operate differently. Absent assignment, ownership may remain with the contractor.

IV. Commercial Consequences of Ownership Ambiguity

The consequences of unclear IP ownership extend beyond litigation risk:

i. Inability to license or sublicense technology

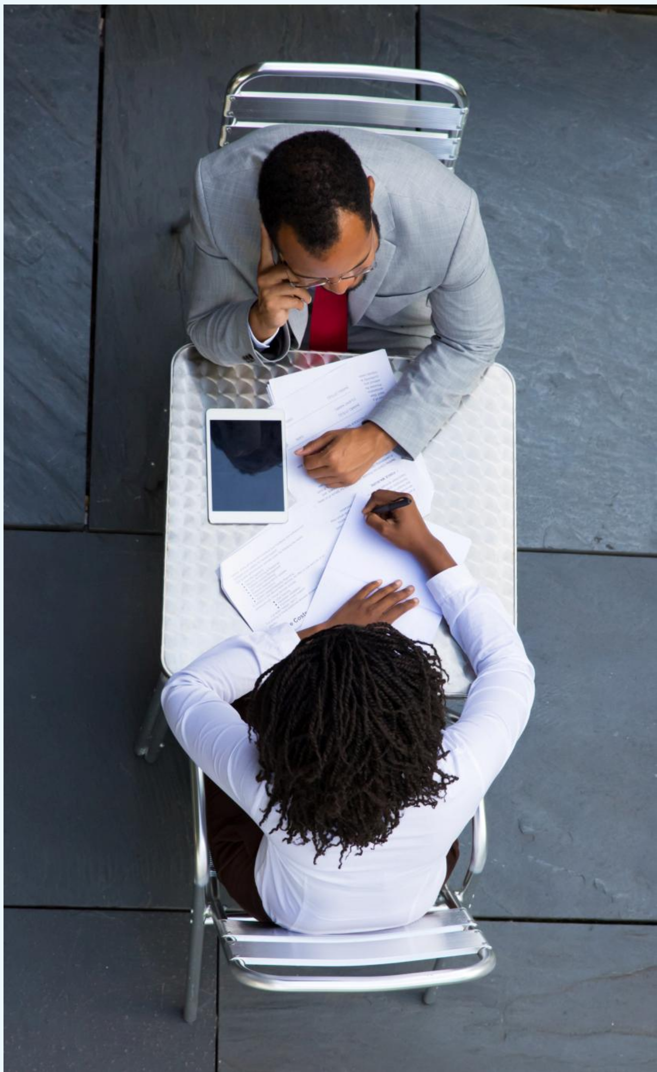
ii. Impediments in due diligence during M&A transactions

iii. Valuation discounts in investment rounds

iv. Regulatory and disclosure complications

v. Exposure to infringement claims by original creators

In cross-border transactions, the risk is amplified. Multinational template agreements often assume UK or US vesting principles, which may not align perfectly with Nigerian statutory provisions. Without jurisdiction-specific drafting, unintended gaps may emerge. For instance, a US-style "work made for hire" clause may not achieve the same effect under the Nigerian Copyright Act 2022, potentially leaving ownership with the creator rather than the commissioning party.



3.2. Inadequate Licensing Terms:

Even where ownership is clear, poorly structured licensing provisions frequently trigger disputes. In technology and commercial agreements, the licence not ownership often determines the real economic value of the transaction. Ambiguity around scope, duration, territory, exclusivity, or permitted use can quickly escalate into allegations of overreach or infringement.

At a minimum, a well-drafted IP licence should clearly address:

i. Whether the licence is exclusive, sole, or non-exclusive;

ii. The territorial scope of permitted use;

iii. The duration of the licence and renewal mechanics;

iv. Rights to sublicense;

v. Whether the licensee may modify, adapt, or create derivative works;

vi. Post-termination rights and obligations.

Failure to define these parameters exposes both parties to risk. A licensee may assume broader commercial rights than intended, while a licensor may inadvertently restrict its own ability to exploit the IP elsewhere.

In Nigeria, certain IP transactions particularly assignments of trademarks and patents require compliance with statutory formalities under the Trade Marks Act and the Patents and Designs Act. Failure to properly record or structure such transactions may weaken enforceability and create complications during regulatory filings, financing, or due diligence.

In cross-border technology transactions, additional complexity arises where licensing templates are imported from jurisdictions with different statutory assumptions. For example, moral rights limitations, software protection standards, and registration requirements may differ significantly. Without jurisdiction-specific tailoring, a licence that appears comprehensive may prove commercially inadequate.

Ultimately, licensing clauses must do more than grant permission, they must allocate risk with precision and reflect the commercial architecture of the deal. Where licensing terms are vague, disputes are not a possibility; they are a probability.[8]

3.3 Misalignment Between IP Clauses and Commercial Reality

Misalignment between IP clauses and commercial reality frequently occurs where legal drafting does not reflect how the technology will actually be deployed or monetised. This disconnect can result in operational restrictions, lost revenue opportunities, and valuation concerns[9].

Beyond traditional ownership and licensing issues, modern technology agreements must address open-source components, SaaS deployments, and AI training data areas that frequently generate unintended liability.

i. General Public License (GPL) and open-source licensing: Incorporating open-source code without careful review can "contaminate" proprietary software, requiring the release of derivative work under GPL terms. Contracts should clearly define the use, modification, and redistribution rights of open-source components.

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8 Actovox, 'Understanding the Risks Associated with Licensing Agreements in Insurance' https://actovox.com/risks-associated-with-licensing-agreements/ (accessed 17 January 2026).)

9 Ms. Shudharshini E, 'Significance of IP Clauses in A Commercial Contract: An Analysis' [2025] Volume 7 (Issue 6) International Journal for Multidisciplinary Research https://www.ijfmr.com/papers/2025/6/61615.pdf (accessed 18 January 2026)

ii. Software as a Service and on-premise deployment: Licensing and ownership expectations differ significantly between cloud-based SaaS and on-premises solutions. SaaS contracts often grant access without transferring IP, which may conflict with a customer's assumption of ownership.

iii. AI training data and model outputs: Ownership of AI models and derivative outputs is increasingly contentious. Agreements must clarify whether the licensee can use, commercialize, or modify models, and who retains rights to data used for training or refinement.

Incorporating these considerations into IP clauses is essential to prevent disputes, preserve commercial value, and ensure compliance with both Nigerian law and international IP norms.

3.4 Confidentiality and Trade Secret Leakages

Trade secrets protect commercially valuable information that derives its value from confidentiality. Unlike patents or trademarks, trade secrets are not registered; their protection depends entirely on contractual and organisational safeguards. As a result, confidentiality clauses are often the most critical protective mechanism in technology and commercial agreements[10].

Confidentiality agreements are legally binding contracts that create a confidential relationship between the parties. The parties agree that any confidential information they obtain will not be disclosed to third parties or used for purposes other than those outlined in the contract.[11] When such clauses are breached, courts frequently treat it as a breach of contract and, in certain situations, as trade secret misappropriation. [12] Key elements that should be found in a complete confidentiality clause include: a clear definition of what constitutes confidential information; the duration of the confidentiality obligation; exceptions to confidentiality (such as information already in the public domain or independently developed); and remedies in case of non-compliance, including injunctive relief and damages. [13]

3.5 Inadequate IP Protection and Enforcement Clauses

Generally, inadequate IP Protection in technology and commercial agreements sooner or later will result in disputes. In many technology and commercial arrangements, parties neglect to specify who is responsible for registering IP, maintaining renewals, monitoring infringement, or taking enforcement action against third parties. This lack of clarity frequently results in delayed responses to infringement, inconsistent enforcement strategies, and disputes between the contracting parties themselves.

Inadequate enforcement clauses also create uncertainty as to who bears responsibility for monitoring infringement, initiating legal action, and funding enforcement proceedings. Without this clarity, parties may delay action against infringers, weakening the commercial value of the IP and creating avoidable internal disputes.

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10 Nicaragua, 'Trade secrets and Intellectual Property: Protection strategies' (Consortium Legal, 14 February 2025) https://www.lexology.com/library/detail.aspx?g=9f3c78db-2a1b-4adb-87db-5cc4cdba4b9f#:~:text=Intellectual%20property%2C%20meanwhile%2C%20covers%20a,to%20include%20in%20an%20NDA: (accessed 18 January 2026).

11 'WIPO Guide to Trade Secrets and Innovation' WIPO https://www.wipo.int/web-publications/wipo-guide-to-trade-secrets-and-innovation/en/part-iv-trade-secret-management.html (accessed 18 January 2026).

12 Ms. Shudharshini E (n.9)

12 Nicaragua (n.10)

3.6 Termination and Post-Termination IP Rights

IP disputes frequently arise at the end of contractual relationships, particularly where post-termination rights and obligations are unclear. Termination does not automatically extinguish all intellectual property rights unless expressly provided. Without carefully drafted provisions, former licensees or collaborators may continue using proprietary technology, confidential information, or know-how, exposing both parties to legal and commercial risk.

Well-drafted post-termination clauses should address the following key issues:

i. ***Return or destruction of materials:*** All tangible and digital copies of proprietary materials should be returned or securely destroyed. In technology-driven arrangements, this obligation must expressly extend to cloud storage, backups, and distributed systems.

ii. ***Reversion or retention of rights:*** The agreement should clearly state whether ownership of IP created during the relationship ("foreground IP") reverts to a specified party or remains with the original owner. Reversion should not be assumed; it must be expressly provided.

iii. ***Ongoing licence restrictions:*** Any licence granted during the subsistence of the agreement, including sublicensing rights or rights to create derivative works should be clearly defined as terminated, with express prohibitions against continued exploitation.

iv. ***Residual knowledge and confidentiality:*** While employees or contractors cannot be required to "erase" general skills or experience acquired during the engagement, confidentiality obligations should survive termination, particularly in respect of trade secrets and sensitive commercial information.

Failure to address these issues creates significant legal uncertainty. Continued use of IP after licence expiry may constitute infringement or breach of contract. In some cases, parties are forced to rely on common law principles to determine whether rights survived termination, an avoidable risk in properly structured agreements.

Clear and practical post-termination drafting preserves enterprise value, protects trade secrets, and ensures that the conclusion of a commercial relationship does not become the beginning of a dispute.

Practical Drafting Lessons and Risk Mitigation Strategies

4.1 Importance of precise definitions and clear ownership structures

The rights and obligations pertaining to the ownership and control of IP produced or utilised within the parameters of a contract are outlined in the intellectual property ownership clause. In order to avoid future IP rights issues, it usually defines whether the author retains the IP rights, transfers them to another party, or divides them among the parties.

Well-drafted IP terms should be included in all important contracts for the development of new IP, such as service/commissioning agreements and employment contracts. A well-written intellectual property provision will specify exactly who is the owner of the IP and what rights each party has to utilise it. The IP clause should specify that the author or inventor agrees to assign the IP to the designated owner if the person who created the work or innovation is not to be the owner.[14]

4.2 Periodic review and updating of IP clauses as technology evolves

It is essential to thoroughly review and customise the contract in order to guarantee that IP clauses correspond with the technology licensed. Collaborate closely with lawyers who focus on technology licensing contracts. Clearly state the precise IP rights being transferred as well as the extent of the licensed technology. Provide thorough explanations of the leased intellectual property, covering copyrights, patents, trademarks, and any other pertinent elements. Establish procedures for managing updates, enhancements, or changes to the licensed technology and clearly state any restrictions on its use. Review and amend the agreement on a regular basis.

4.3 Role of legal due diligence and contract audits

Due diligence in the sphere of intellectual property allows the prospective transferee to evaluate the transferor's portfolio of rights and to foresee potential risks.

In the event of a complete or partial sale, it also allows the audited firm to take the necessary steps to guarantee that the intellectual property assets are valued.

Lastly, whether it is the transferor or the transferee, the company concerned will be able to rectify the points raised in the light of the risks identified and the recommendations made by the auditor.

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[14] AJPark, "Guide to Intellectual Property Ownership Issues" < https://www.ajpark.com/assets/Uploads/Commercial-Guide-to-intellectual-property-ownership-issues.pdf> (accessed 17 January 2026).

4.4. Consult IP Counsel

Engaging experienced IP counsel is particularly important in complex, high-value, or cross-border transactions. What is assignable in one nation could not be in another. For instance, while waivers are frequently permitted in the US, moral rights under European copyright law are frequently prohibited. Similar to this, India does not accept software patents unless they show a technological impact, even if it acknowledges software as copyrightable. [15]

An experienced IP attorney can: navigate jurisdictional differences, ensure statutory compliance, advise on the registration and enforcement mechanisms, draft clauses that align with the commercial intent of the deal. [16]

4.5 Register Assignments

To make IP assignments legally effective, ensure they are correctly recorded, executed, and registered with the relevant government agencies. Some consequences of failure to register assignments include loss of priority rights, ownership challenges in court, and an inability to successfully claim or license rights. [17]

IP Clause Drafting Checklist

The following checklist summarises key considerations for drafting effective IP clauses in technology and commercial agreements:

i. Ownership: Clearly define and distinguish Background IP, Foreground IP, and Derivative Works. Include express assignment language where ownership transfer is intended. Address joint ownership arrangements with defined exploitation rights.

ii. Licensing: Specify whether licences are exclusive, sole, or non-exclusive. Define territorial scope, duration, renewal mechanics, and sublicensing rights. Address rights to modify, adapt, or create derivative works.

iii. Technology-Specific Issues: Address open-source component usage and licensing obligations. Clarify SaaS access rights versus ownership. Define ownership and use rights for AI training data and model outputs.

iv. Confidentiality: Define confidential information with precision. Specify duration of obligations, exceptions, and remedies for breach. Ensure trade secret protections survive termination.

v. Enforcement: Allocate responsibility for IP registration, maintenance, and renewal. Specify who monitors infringement and initiates enforcement action. Address cost allocation for enforcement proceedings.

vi. Termination: Address return or destruction of proprietary materials. Clarify reversion or retention of IP rights. Define ongoing licence restrictions and confidentiality obligations post-termination.

[15] Ms. Shudharshini E (n.12)
[16] Ibid
[17] Ibid

Conclusion

Intellectual property clauses are designed to protect intangible value and provide commercial certainty in technology and business transactions. Yet when they are poorly drafted, vague, or misaligned with operational realities, they become catalysts for dispute rather than instruments of protection. The most common dispute triggers examined in this article include ambiguous ownership provisions that fail to distinguish between Background IP and Foreground IP; inadequate licensing terms that leave scope, duration, and exclusivity undefined; misalignment between contractual language and commercial deployment; weak confidentiality protections that expose trade secrets; insufficient enforcement mechanisms; and unclear post-termination rights.

In an economy increasingly driven by innovation, software, data, and brand equity, contractual precision is not optional. Effective IP drafting requires more than reliance on precedent templates; it demands careful alignment with the structure of the transaction, the applicable legal framework, and the parties' long-term commercial objectives.

Clear, forward-looking IP provisions remain one of the most powerful tools for managing risk, preserving enterprise value, and preventing avoidable disputes. Practitioners and commercial parties should approach IP drafting not as a formality, but as a strategic exercise in risk allocation and value protection.

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