

Free, as in, We Own Your IP

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There are many performance monitoring companies vying for your attention, often using free trials and prizes. By signing up for a free trial I could win a mini helicopter, iPhone, or macbook! This is big business: over [2 billion](#) was spent on application performance monitoring last year.

Do you read the T&Cs when you accept a free trial? Sorry, that's a bit like asking if you floss your teeth... Here's an excerpt from one (company name changed to "NiftyMon"), covering any feedback and ideas you provide during the trial:

FREE TRIAL!

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FREE TRIAL!

By accepting our free trial
you agree to our
[service terms and agreement](#)

By submitting any Ideas, Customer and Authorized Users agree that:
... (iii) **all right, title and interest in and to the Ideas, including all associated IP Rights, shall be, and hereby are, assigned to NiftyMon.**

The average person reads at 250 words per minute, and slower than that when reading and comprehending on-screen text. This was part of a 6082 word agreement, which would take *at least* 24 minutes to read. Maybe flossing your teeth is a bad analogy, since you aren't expected to saw away at your gums for 24 minutes.

I'm not a lawyer, but my company has plenty, so I asked for a professional opinion. They said that they would **not** want to agree to clause (iii).

By agreeing to this clause to continue with a "free" trial, my understanding is that you'd also be agreeing to hand over your intellectual property rights for any good ideas you disclosed. Myself, and my coworkers, already have plenty of good ideas in this space, especially since we are senior performance engineers working in one of the most extreme performance environments on Earth. And, we're implementing these ideas on our own anyway. It's quite possible that if I was engaged in a free trial, I'd mention such ideas in the hope that the company would implement them, making it worthwhile to be their customer. But if they didn't implement the idea, I'd walk away having lost the IP rights. This isn't acceptable.

I emailed the CTO and co-founder of the company, along with a sales person who had contacted me earlier, to say that I wouldn't accept their free trial because of this clause. After two weeks I have not heard a response.

Most T&Cs I see do not have this clause, but a few do. Another reads "you hereby irrevocably transfer and assign to XXX all intellectual property rights", which even covers oral feedback. I wonder if the company executives know this clause is there, and if they'd fix it if they find out. And that's why I'm writing about it.

For comparison, here's a similar clause from another performance monitoring company (again, name changed):

Cview, Inc. shall have a royalty-free, worldwide, transferable, and perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, or other information provided by you or any Authorized User relating to the Service.

That one seems fine to me.

My advice if you are going to try out a "free trial": read the T&Cs. And if you don't like the look of something, ask your company lawyers for a professional opinion. They are there to help both you and your company.

UPDATE: This post appeared on [hackernews](#), and one company has now fixed their T&Cs, and another seems likely. Looks like I have some free trials to try out!

You can comment here, but I can't guarantee your comment will remain here forever: I might switch comment systems at some point (eg, if disqus add advertisements).