Navigating the Future of IP
Current trends and hot topics in AI licensing

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Speaking with you today

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Scenario – The Company

Weyland Corporation ("**Weyland**") conducts geological surveys.

Customers commission a survey of a parcel of land, and Weyland conducts the survey and provides its customers with the survey report, often with associated analysis, valuations, and advisory services.

Weyland was founded in the UK, but also has offices in Germany.

CEO Charles Weyland is keen to leverage the value of the huge database of survey information, reports and analysis that the company has accumulated over the years.

Scenario – The Product

Weyland decides that the company will develop a new product, an AI-powered system which will automatically generate valuation reports for parcels of land. The system, dubbed '**Nostromo**' will be used in three ways:

- internally by analysts (i) to draft the bespoke reports commissioned by individual customers or (ii) to draft general reports which can be purchased by any customer; and

- (iii) externally on a paid-for basis to allow customers to generate their own reports, either generated solely by Nostromo, or augmented by the customer inputting additional data they may have about the sites.

Weyland engages third party software development company Yutani Corp ("**Yutani**") to create the Nostromo system or, more precisely, to develop a Weyland-specific version on Yutani's AI platform. Yutani suggests utilising mapping data from a third-party source to which Weyland subscribes and from which Weyland in-licenses the relevant data.

AI System Side (Part I)

*"Weyland engages third party software development company Yutani Corp ("**Yutani**") to create the Nostromo system or, more precisely, to develop a Weyland specific version on Yutani's AI platform."*
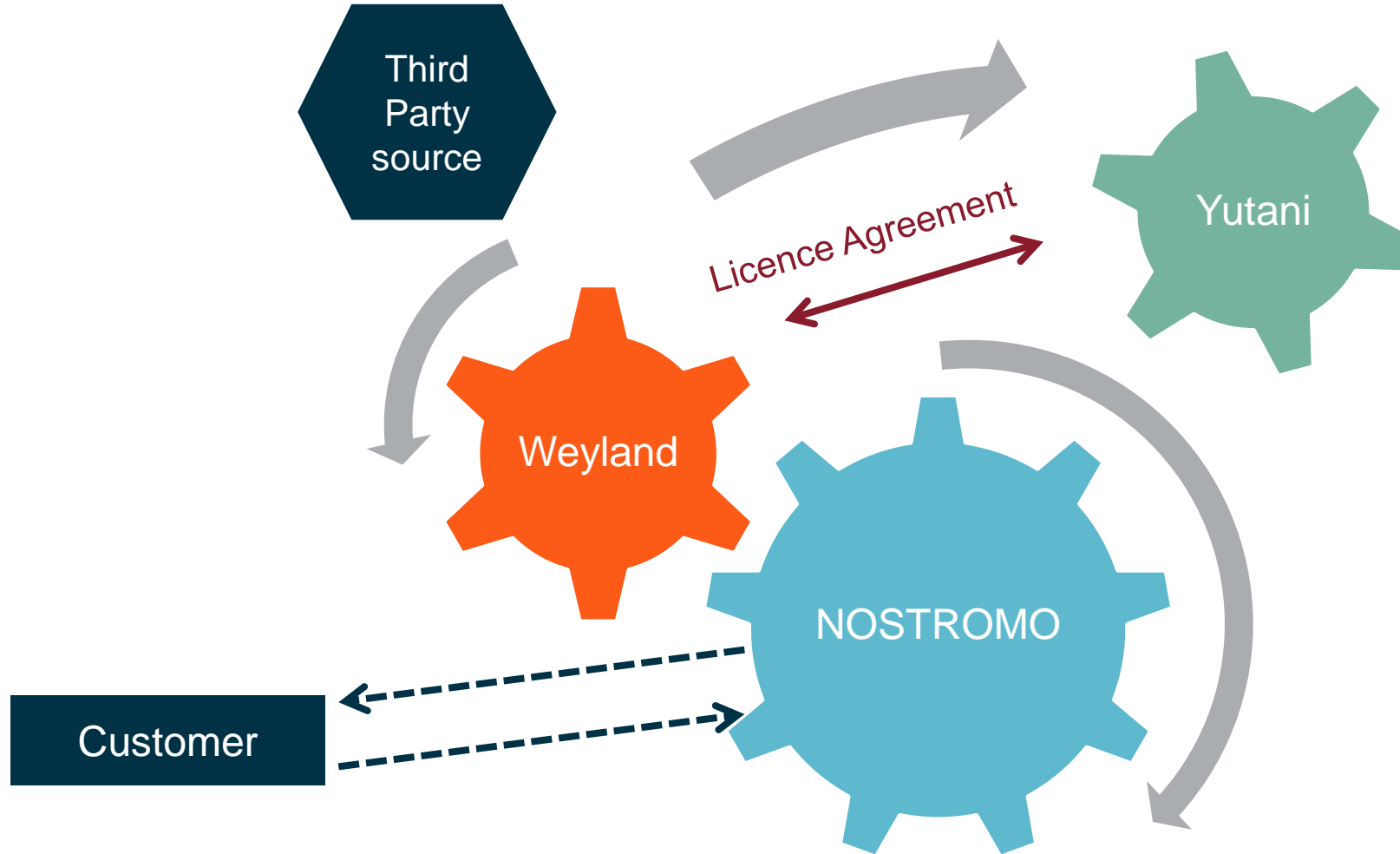
Licensing of AI Platform + development of certain Weyland specific features

How is AI Licensing different from traditional software or tech licensing?

AI System side (Part II)

Third Party source

Yutani

Licence Agreement

Weyland

NOSTROMO

Customer

- Certain overlap of terms and conditions as in traditional licensing agreements

- But: Certain particularities to be taken into consideration, mainly re individual AI components:

  - **AI Solution**: Tool for desired output

  - **Training Data**: Data set used to train the AI

  - **Production Data**: Data entered to produce the AI output

  - **AI Output**: Outcome after production data was entered

  - **AI Evolutions**: Further developments (iterations) of AI model/solution

These components may serve as guidance to structure the AI licence agreement – but how?

AI System Side (Part IV)

Relevant key terms for AI Licensing Arrangement:

IP ownership and rights: Available IPR? Ownership of AI model, training data, production data, output and evolutions

IP infringement/Indemnification: Tailoring indemnifications clauses

Warranties: The known stuff? Sufficiency/Chain-of-Title and consents?

Performance: Relevance of Documentation and Specification?

Legal Compliance: Defining principles and implementing policies for use

Insurance: Scope

AI System Side (Part V)

IP ownership and rights:

- **No specific IPR available:** Contractual terms to ensure IP protection in licensing arrangement, i.e. designating certain components as trade secrets/confidential information → limitation of usage rights

- **AI model:** Typically held by Provider (Yutani), restrictions on use, territorial restrictions, field of use restrictions etc.

- **Training/Production Data**: (see later)

- **Output:** (see later)

- **AI Evolutions**: Depending on source of evolution – contractual owner to be determined

AI System Side (Part VI)

IP infringement/Indemnification:

- **Traditional Setup:** Exceptions re modifications, combinations and unauthorized use

- **AI licensing:** Constant modification of AI solution and combination with training and production data → traditional setup not useful

- **Middle ground**:

    o Depending on provider of training data and production data

    o Identifying risk sources – input/production or combination?

    o Indemnity limited to original AI solution

AI System Side (Part VII)

Warranties:

- Typically linked to specification and documentation, however, for AI which is constantly evolving difficult to establish

- Over time, AI solution will likely "drift away" from the original AI model, and hence original warranty setup may no longer work / be adequate

Performance warranty:

- Specific warranty re accuracy, certain results, operability etc.

- Better to link warranty to certain outcomes parties intend to achieve

AI System Side (Part VIII)

Compliance:

- Conduct of a DD re the AI system recommended to identify regulatory hurdles/risks → allocation of regulatory responsibilities

- Allocation of responsibility re third party consents for personal data, privacy and data security issues

Insurance:

- Often used model is cybersecurity insurance covering e.g. data leakage, model stealing (model extraction) etc.

- But: bodily harm, trademark infringements, damage to physical property generally not covered → tailored insurance coverage recommended

Input side (Part I)
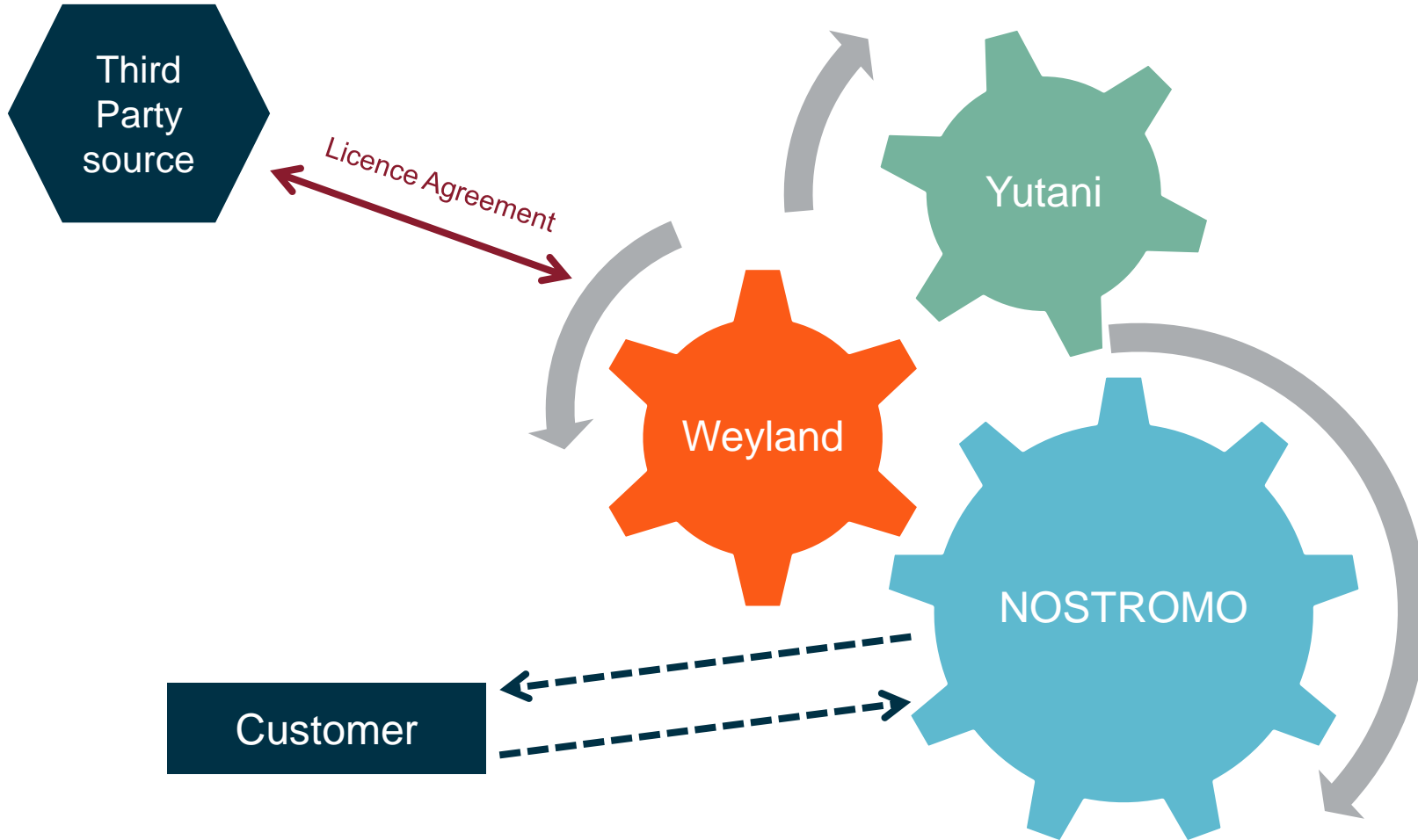
Input Data – types of data

- Identify the relevant data - internal due diligence project

- What types of data are involved?

o   Yutani data – training data used in the creation of underlying AI model

o   Weyland data - database generated from client assignments

o   3rd Party - mapping data that Weyland uses under licence

o   3rd Party – ancillary data that Weyland's customers input into Nostromo
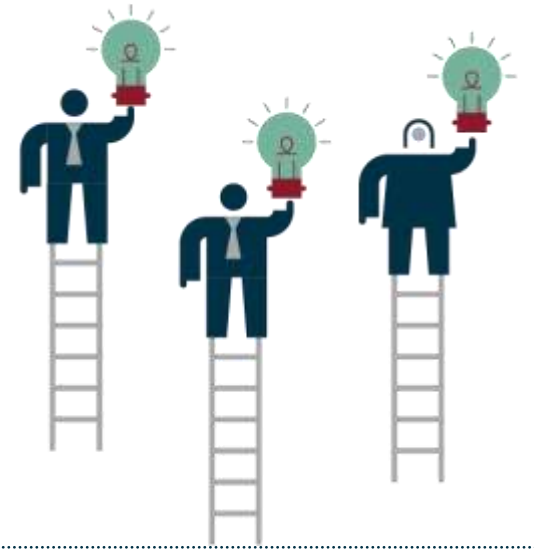
Input Data – understand existing contracts

- Weylands' own database - internal due diligence project

- Identify customer contracts under which the data was created

- Analyse the provisions

o what do they say about data?

o any express provisions about this type of data?

o expressly permit or prohibit desired use?

o restrict use to specifically for delivering services to that customer?

o contradictory clauses?

- Risk-based analysis
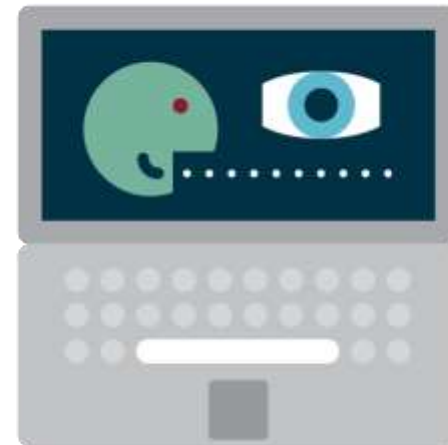
Input Data – contract terms looking forward

- Weylands' own data – use going forward

- Ensure that Weyland's future contracts maximise freedom to use data

o Weyland's templates/playbooks

o express provisions

o internal use for optimisation, development, testing, security etc.

o allow wide use if no breach of confidentiality – aggregation/anonymisation

o internal use v. external use/commercial use

- 3rd party data use contracts

Output side and licensing of output to 3rd parties (Part I)
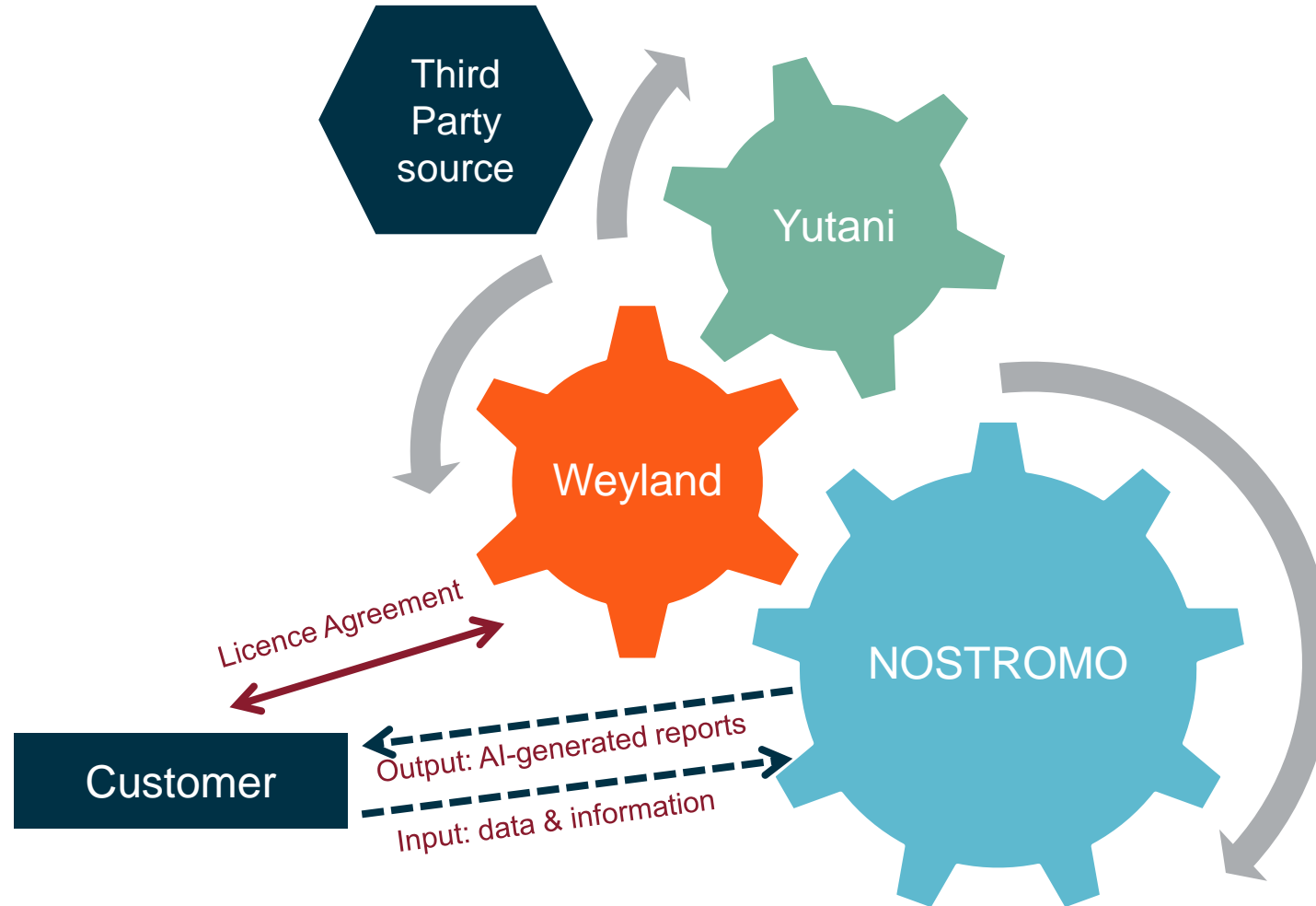
Output side and licensing of output to 3rd parties (Part II)

Risks	How to address in licence agreement?
Third Party IP Claims	**Customer:** • Warranties ensuring Vendor has the necessary rights and/or licences to provide the technology and report, including a warranty of non-infringement. • Indemnification from Vendor for IP infringement. **Vendor**: • Difficulty in identifying potential threats and ensuring freedom from IP infringement. Difficult to determine whether Vendor or customer caused the event giving rise to liability (input data, training data, combination?). • Vendor will want to ensure that its indemnities are limited to third-party claims for which it is responsible. It may not be reasonable to provide indemnities for things that are outside of its control or are in the control of the customer.

Output side and licensing of output to 3rd parties (Part III)

Risks	How to address in licence agreement?
AI model does not perform properly; generated report is not accurate	**Customer:** • Warranties and covenants that the AI model meets specified performance obligations, including accuracy and operability. • If incorporating AI into mission-critical functions like automating production lines, representations and warranties should address the potential business impact of total system failure and extended downtime. **Vendor:** • May wish to precisely define and limit expected performance, allocating certain risks to the customer (e.g. regarding the model's suitability for customer's business). • Should limit liability to the broadest extent possible under the applicable law. Note: Liability caps are difficult under German law if used in general terms and conditions!

Output side and licensing of output to 3rd parties (Part IV)

Risks	How to address in licence agreement?
Security issues, cybersecurity vulnerabilities	Customers may request representations and warranties ensuring robust cybersecurity policies and procedures.
Consent from individuals required	Data protection laws globally require obtaining user consent before processing or using their data. Vendor should ensure that customers have secured the necessary consents from individuals to provide personal data to the vendor and confirm that the customer is not restricted from using the data beyond the purposes for which consent was granted.
Physical equipment with embedded AI	When purchasing AI-enabled physical equipment, customers will want to ensure the contract includes representations and warranties covering injuries, damages, and potential fatalities caused by the use of these machines and devices.

Key Take Aways

AI System Licensing	Input Licensing	Output Licensing
• Understand particularities of AI licensing and make sure that these special features are sufficiently addressed • Individual AI components give certain guidance regarding the structuring of licensing terms	• Understand the data implications of existing contracts • Refresh data provisions of templates/playbooks for future contracts	• Output licensing requires tailor made warranty and indemnity arrangements (e.g. third-party claims, infringements, performance etc.) • Consent management to be established re data protection law compliance

Any questions?

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