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# *M.6* Publication of Research vs. Protection of Sensitive Data

Presented by

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# Traditional Antagonism

- University ideal of free publication
- Corporate need for protection of intellectual property

# Why Must Academic Centers Publish?





# Publication: The High-Minded Answer

- Consistent with the values of academic mission: free scholarly exchange and the expansion of knowledge

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## Publication: The High-Minded Answer (2)

- Vindicates public investment in fundamental research that industry uses by returning value to the public
- Most efficient way to advance science

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## Publication: (More) High-Minded Answer

- Publication and peer review promote intellectual rigor, analytical clarity and new avenues of research
- The responsibilities of authorship promote careful design and intellectual honesty

(continued)



## **Publication: (More) High-Minded Answer (2)**

- Essential to the institutional integrity of academic medical centers as well as industry
- Academic advancement is partly based upon publication in peer-reviewed journals



## Publication: Pragmatic (Bottom Line) Answer

- The IRS requires publication as a condition of tax-exempt status [Internal Revenue Code Sect. 501(c) (3); (Rev. Rul. 76-296)]
- To qualify for tax-exempt status, an organization must operate in the public interest

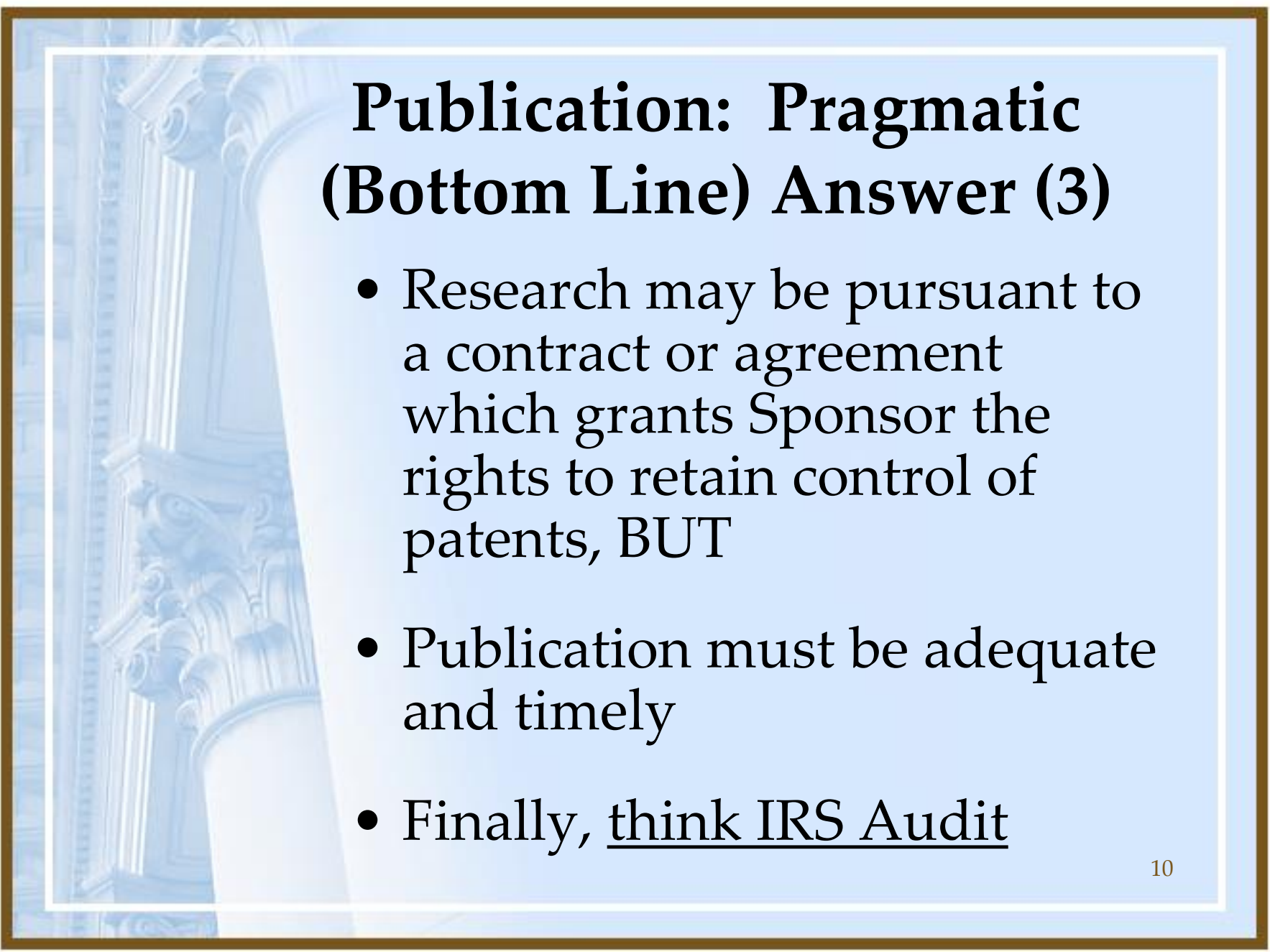
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## Publication: Pragmatic (Bottom Line) Answer (2)

- Under IRS regulation, scientific research is for public benefit if conducted for the purpose of obtaining scientific information which is *published in a treatise, thesis, trade publication or other form available to the interested public* [Reg 1.501(c)(3)-(d)(5)(ii)]

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## Publication: Pragmatic (Bottom Line) Answer (3)

- Research may be pursuant to a contract or agreement which grants Sponsor the rights to retain control of patents, BUT
- Publication must be adequate and timely
- Finally, think IRS Audit

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# Publication Issues

- What is a publication?
  - Scientific or scholarly publications
  - Conference presentations and Poster sessions
  - Abstracts
  - Internet publications

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## Publication Issues (2)

- What type of publication is permitted?
  - Refereed academic publication
  - Scientific presentation
  - Disclosure for health or safety reasons
  - Summary reporting

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## Publication Issues (3)

- When may one publish?
- Who can see the data?
- What review and comment is allowed for the Sponsor?



# Ownership of Data: An Overview

- Patents
- Trade secrets
- Etc.

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# IP/Data Rights and Publication Rights Conflict

- A publication of an invention negates the possibility of obtaining a patent on the invention
  - In the U.S. and Canada, one year after the date of publication


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## IP/Data Rights and Publication Rights Conflict (2)

- In almost all other countries, immediately upon publication (principal exception: Japan, six months after publication)
- Disclosure (e.g., on a publicly available website) is usually the equivalent of publication in a journal
- An oral disclosure at, e.g., an open conference, is usually the equivalent of publication in a journal





# The Brave New World of Academic Entrepreneur, Corporate “Freeware” and the “Sensitive but Unclassified” Data

- As Universities discover the profit in research results, are corporations moving toward a new paradigm? As the Web allows more access to data, has 9/11 closed the door to collaborative research?

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# Issues Arising From Sensitive Data

- If every dictator, gossip columnist and high-school anarchist can get to the data, is anyone safe?



# Science and Security in the Post-9/11 Environment– Federal Grants and Contracts

- Definitions and Regulations Involved in the Classified-Sensitive Information-Unclassified Debate
  - <http://www.aau.edu/research/Info.pdf>
- Department of State International Traffic in Arms Regulations (ITAR)  
<http://www.pmdtc.org/reference.htm#ITAR>

(continued)

# Science and Security in the Post-9/11 Environment—Federal Grants and Contracts (2)

- MIT/COGR List of Troublesome Clauses in Research Awards  
<http://web.mit.edu/faculty/reports/publicinterest.pdf>  
along with background memo <http://web.mit.edu/osp>
- AAU/COGR Comments on Export Control  
<http://www.cogr.edu/files/CurrentComments.cfm>
- AAAS briefing paper  
<http://www.aaas.org/spp/post911/grants/>
- CRS report  
<http://www.fas.org/sgp/crs/RL31845.pdf>

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# Additional Issues Arising From Sensitive Data

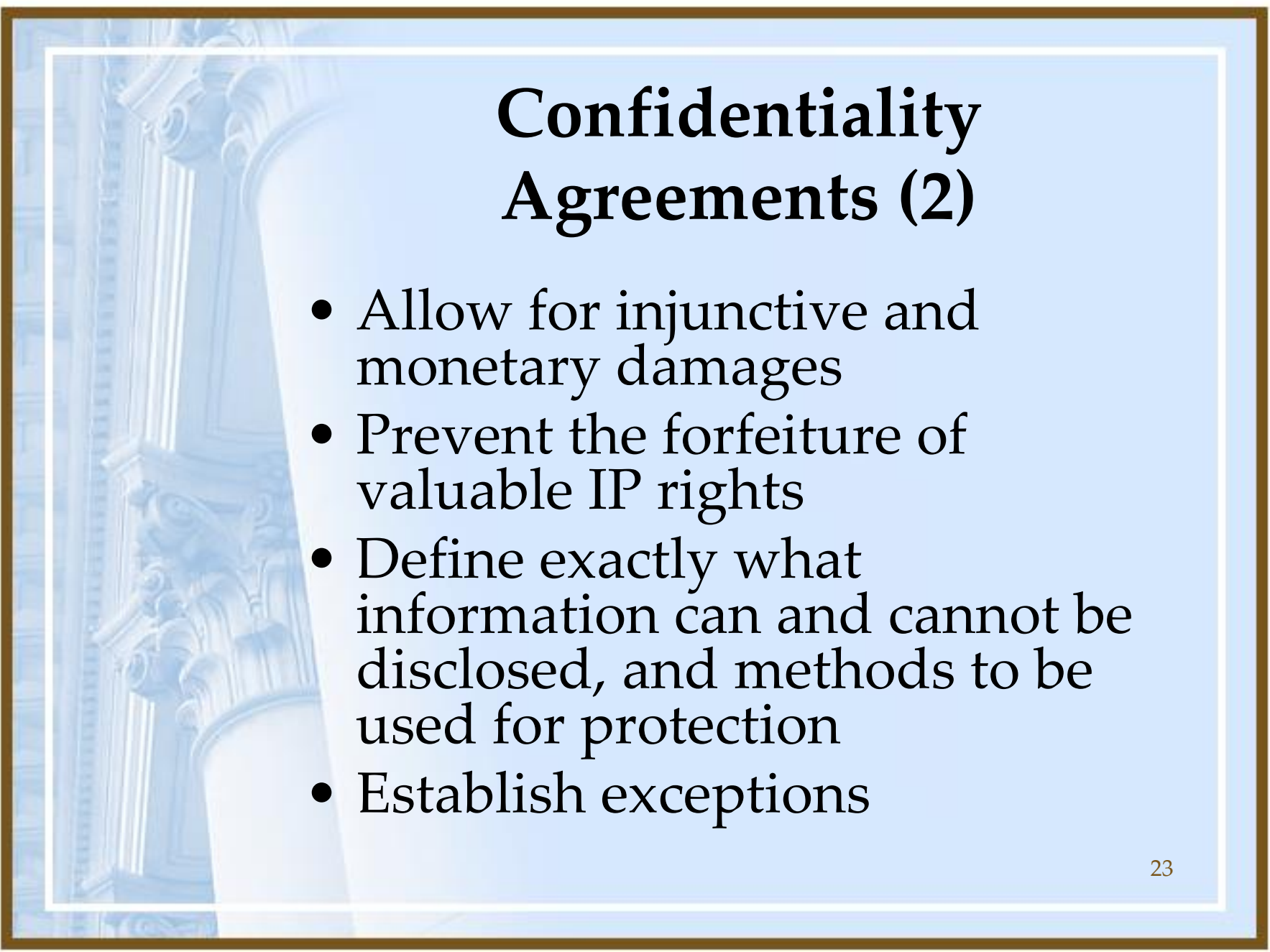
*Is the open publication model reasonable, responsible or even realistic?*

- If everyone has access, is an idea still worth anything as property?

# Confidentiality Agreements

- Confidentiality agreements, sometimes called secrecy or nondisclosure agreements, are contracts
- Secret process or a new product, precursor to a comprehensive agreement
- CDAs protect sensitive technical or commercial information from disclosure to others

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# Confidentiality Agreements (2)

- Allow for injunctive and monetary damages
- Prevent the forfeiture of valuable IP rights
- Define exactly what information can and cannot be disclosed, and methods to be used for protection
- Establish exceptions

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## More Issues Arising From Sensitive Data

- If any grade-school computer jockey can become a data-miner, can anything be kept secret for long?



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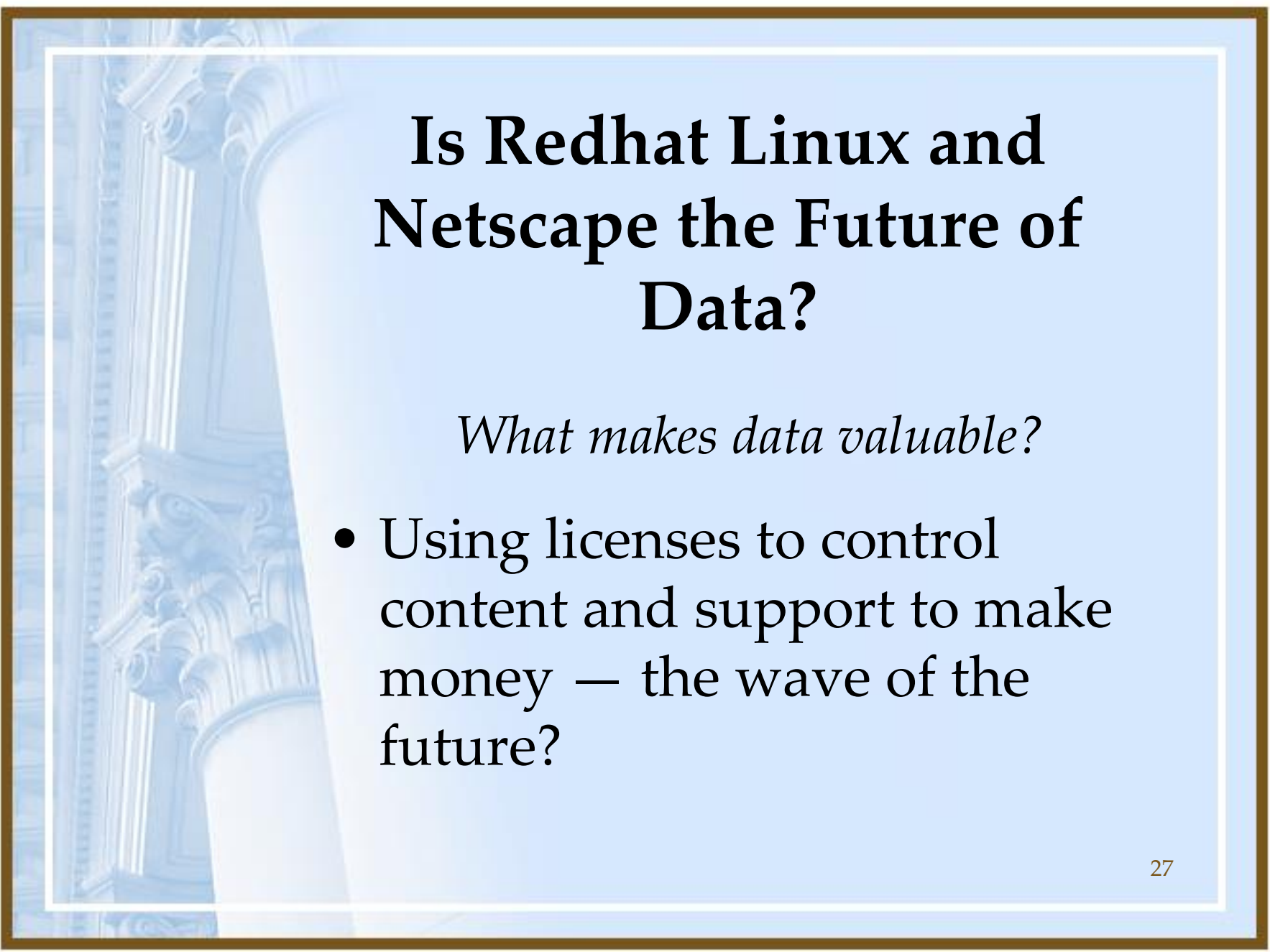
## Means of Transferring Ownership

- Licenses, assignments, non-disclosure and other agreements
- Common terms and conditions
- Enforcement?

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# Special Types of Data

- Personal data
- Government data
- Databases
- Genetic and other biological data

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# Is Redhat Linux and Netscape the Future of Data?

*What makes data valuable?*

- Using licenses to control content and support to make money — the wave of the future?

# New Stuff

- <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB183/press.htm>
- <http://www.utsystem.edu/ogc/INTELLECTUALPROPERTY/contract/confid.htm> -- NON-DISCLOSURE AGREEMENT (University Disclosing)
- <http://edocket.access.gpo.gov/2006/pdf/E6-7778.pdf> -- Clarification of Deemed Export-Related Regulatory Requirements
- <http://cryptome.quintessenz.org/mirror/bis053106.htm> -- **Withdrawal of advance notice of proposed rulemaking. Deemed exports**