

Preface

Licenses continue to play a critical role in the global marketplace. Reflecting this, the body of licensing law continues to grow at a rapid pace.

Courts have decided many significant licensing-related cases since we first published this treatise in 2006. Recent decisions have upheld the enforceability of open source software licenses; looked at the antitrust implications of licenses used in standards organizations, and ruled that baseball box score data may be freely used under the First Amendment. Courts continue to wrestle with the implications of, and boundaries between, first sales and licenses. One recent case tested the patent exhaustion doctrine in the context of a complex computer licensing scheme involving parties from around the world. Another examined the copyright first sale doctrine in a software transaction involving re-sale of the software on eBay. A bankruptcy court for the District of Utah grappled with whether a domain name at issue in the dispute was the property of the estate. The Second Circuit examined the sale of a business whose trademark was the individual name of the former owner/seller, and determined whether the former owner could use his name in connection with his new business.

The Third Circuit addressed the term of a license where the fully-paid up license grant covered both patents and trade secrets—and the patents had just expired.

We will continue to report on these cases as well as on regulatory and statutory updates in this and future supplements. The cases illustrate, as we said in the preface to the main edition, that intellectual property law and practice now focuses as much on commercialization and distribution as it does on protection.

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