Contract Basics for Creatives
Disclaimers

• The choice of a lawyer is an important decision and should not be based solely upon advertisements.

• This presentation is provided for informational purposes only and is not intended, nor should it be taken as, legal advice. This presentation does not create an attorney-client relationship.
Outline

Anatomy of a Contract
- Legal Elements
- Typical Layout
- Force Majeure

Statute of Frauds

Intellectual Property
- Copyrights
- Trademarks
- Patents

Licensing
- Key Terms
- Rights

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Anatomy of a Contract

Legal Elements

• Offer, Consideration, Acceptance, Mutuality
• Memorialization of the risks and rewards borne by each party

• Core Terms
  • Products/Services – what is being exchanged
  • Price – for how much
  • Manner of Delivery - how are the good or services to be delivered
  • Damages or Liquidated Damages

• Common Boilerplate
  • Choice of law
  • Integration
  • Dispute resolution
  • Time is of the essence
  • Force Majeure / Impossibility / Impracticability
Anatomy of a Contract
Typical Layout

TITLE
Introduction
Recitals
Core Terms
Boilerplate
Signature Block

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Anatomy of a Contract
Force Majeure/Impossibility/Impracticability

• Force Majeure
  • Example: No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by hurricanes, earthquakes, epidemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, acts of war, terrorism, acts of governments such as expropriation, condemnation, embargo, changes in laws, and shelter-in-place or similar orders, or other causes beyond the performing party’s reasonable control.

• Impossibility/Impracticability – not necessarily a clause, but may be a defense to performance
Statute of Frauds
When do you need a written contract?

• RSMO 432.010
  • Marriage
  • Land
  • Longer than 1 year
  • Guarantees for another’s debts
  • Executor for the debts of the estate

• RSMO 400.2-201
  • Sale of goods over $500

• Unless work has already begun and there is evidence of an agreement
Intellectual Property – Copyright

Artistic Categories

• Literary, musical, and dramatic works
• Pantomimes and choreographic works
• Pictorial, graphic, and sculptural works
• Sounds recordings
• Motion pictures and other A/V works
• Computer programs
• Compilations of works and derivative works
• Architectural works
Intellectual Property – Copyright

Core Rights

• 17 USC 106
  • (1) to reproduce the copyrighted work in copies or phonorecords;
  • (2) to prepare derivative works based upon the copyrighted work;
  • (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
  • (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
  • (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
  • (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.
Intellectual Property – Copyright
Attachment

• Copyright attaches upon fixation

• Rights are maximized by registering with US Copyright Office
Intellectual Property – Trademark/Service Marks

• Trademark – used for goods

• Service Mark – used for services

• Used to prevent confusion in the marketplace

• Cannot be purely descriptive
Intellectual Property – Trademark/Service Marks

• Duty to defend
  • If you know of infringement, you have a duty to defend your mark

• Tools
  • Cease and Desist Letters
  • Lawsuits for damages – if registered
Intellectual Property – Trademark/Service Marks

• Protection attaches upon use in trade or business

• Protection is maximized through registration with the US Patent and Trademark Office
Intellectual Property - Patents

• New
  • Substantially different from all public knowledge
  • Can combine two ideas
• Useful
  • Must serve some type of purpose
• Nonobvious
  • Not easily perceived by someone with expertise in the field
• Registered through the United States Patent and Trademark Office
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Intellectual Property – Licensing
Licensor Considerations

• What rights do you have?
• What rights are you giving up completely?
• What rights are you “renting” to the other party?
• What protections do you want?
Intellectual Property – Licensing
Licensee Considerations

• What rights are you getting outright?

• What rights are you ”renting”?

• Indemnification for infringement
Questions?
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