INTRODUCTION

ISSUES IN LICENSING: AN INTRODUCTION

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It is my pleasure to introduce this symposium on licensing intellectual property and other information assets. The symposium is one in a series of projects sponsored by the Houston Intellectual Property and Information Law Program based on its annual invitational conference held in Santa Fe, New Mexico.[1]

The articles in the symposium speak for themselves. I will not follow the new practice of introducing the symposium by summarizing the articles in it. Instead, my remarks focus on several general themes that pertain to licensing and the law relating to it—themes that surface in various ways throughout this symposium and elsewhere in law and literature.

"LICENSES" ARE UBIQUITOUS

The practice of parties engaging in transactions that are conditional, rather than absolute, in the granted rights or privileges in the informational subject matter has been with us a long time.[2] Indeed, conditional transactions are by far the most common type of transaction in information; in contrast, commercial transactions that entail an absolute transfer of all

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1. Symposium, *Trademark in Transition*, 41 HOUS. L. REV. 707 (2004); Symposium, *Considering Copyright*, 40 HOUS. L. REV. 609 (2003); Symposium, *The Future of Patent Law*, 39 HOUS. L. REV. 567 (2002); Symposium, *E-Commerce and Privacy*, 38 HOUS. L. REV. 717 (2001).

2. *See generally* RAYMOND T. NIMMER & JEFF DODD, MODERN LICENSING LAW (2005).

rights in informational subject matter are the relatively scarce exception.

Various types of conditional transactions are often described or labeled in different ways. Some may be described as a license, as a conditional disclosure, or as a sale or a lease of a copy.[3] The label matters less than the substance. The reality is that in *all* of these cases, the primary feature of the transaction is that one party retains the right in law to control the other party's use of the information in various ways, while the other party receives only limited privileges or rights in the information.[4] These transactions, however labeled, are all properly viewed as "licenses" for purposes of legal and practical analysis.

Two common transactions illustrate this latter point.

The first involves a "first sale" of a copy: a transaction in which the transferee acquires ownership of a *copy* of a book, a CD, or the like in a transaction authorized by the copyright or patent owner. While the transferee becomes the owner of the tangible copy, its right to use the information remains subject to most of the copyright owner's copyright rights.[5] In effect, first sales are a form of license—a contractual transaction giving the transferee conditional or limited, rather than absolute, rights in the informational subject matter. In a first sale, the terms of the conditional rights are initially dictated by statute (in the case of copyright law), but the statutory terms apply only because the parties elected and agreed to follow a particular type of

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3. There is some diversity about what the term "license" means. Some courts, approaching the issue from an intellectual property rights perspective, characterize a "license" as nothing more than a covenant to not sue the licensee for conduct that would otherwise infringe the intellectual property rights of the licensor. *See, e.g.*, Gen. Talking Pictures Corp. v. W. Elec. Co., 304 U.S. 175, 181 (1938) (determining that a patent license was "a mere waiver of the right to sue"); Cohen v. Paramount Pictures Corp., 845 F.2d 851 (9th Cir. 1988) (discussing a copyright license); Spindelfabrik Suessen-Schurr Stahlecker & Grill GmbH v. Schubert & Salzer Maschinenfabrik Aktienesellschaft, 829 F.2d 1075, 1081 (Fed. Cir. 1987). This characterization does not fit many modern licenses, which clearly entail in fact and in law broader commitments about commercial utilization, noninfringement, and workability. *See generally* NIMMER & DODD, *supra* note 2, §§ 1:2–1:3.

4. The Uniform Computer Information Transactions Act (UCITA) defines "license" in the following manner, which incorporates the various approaches to defining this term that have surfaced in case law: "'License' means a contract that authorizes access to, or use, distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy." UNIF. COMPUTER INFO. TRANSACTIONS ACT § 102(a)(41), 7 U.L.A. 208 (2002).

5. *See* 17 U.S.C. § 109 (2000) (detailing the limitations on certain copyrights because of transfer); *see also* § 117 (discussing the same for copies of computer programs).

transaction framework—a sale of a tangible copy—and because they did not contractually modify the consequences of that choice.

A second type of transaction that increasingly involves characteristics of a license occurs when a person communicates personal information about herself to another party, especially when the other party is a corporation or other commercial entity.[6] Except in certain confidential relationships, U.S. law traditionally treated this as an absolute transfer in the sense that the transferee could do anything it chose with the information it received.[7] But modern "data protection" and "security" laws are beginning to place restrictions on the transferee's use of the information.[8] These restrictions often involve obligations of notice before certain uses occur, duties of nondisclosure to third parties without consent, and maintenance of data security with respect to at least some personally identifiable information. In effect, these laws create a statutory license in circumstances where once an unconditional transaction existed. Absolute rights are converted into conditional rights.

Each of these transactions is a license in its substantive effect. The only difference between these and transactions that are expressly described as licenses lies in the fact that the terms of the contract (rather than a statute) specifically tailor the privileges or rights granted and retained. The contract terms may grant greater or lesser rights than would occur in the absence of those terms. But all of these transactions deal with rights and privileges in the information and succeed, or fail, in commerce based on whether a relevant market exists for the licensed subject matter.

"RIGHTS RESTRICTORS" AND THE MARKET FOR INFORMATION

Against this background, one cannot plausibly argue that law does not permit licensing transactions in modern commerce. They are not only permitted, they are widely and pervasively used. The practice serves important and desired functions—

6. *See generally* 2 RAYMOND T. NIMMER, THE LAW OF COMPUTER TECHNOLOGY §§ 16:1–16:79 (3d ed. Supp. 2005).

7. *See* Dwyer v. Am. Express Co., 652 N.E.2d 1351, 1354–55 (Ill. App. Ct. 1995) (stating that because transferor had not disclosed financial information about a particular cardholder, its renting of names and addresses to advertisers was not an "unreasonable intrusion into the seclusion of another"); *see also* State v. Simmons, 955 S.W.2d 752, 761 (Mo. 1997) (holding that defendant "relinquished any right of privacy he had in the photographs or negatives themselves by giving them to the developer").

8. *See* 1 RAYMOND T. NIMMER & HOLLY K. TOWLE, THE LAW OF ELECTRONIC COMMERCIAL TRANSACTIONS § 12:17 (2004 & Supp. 2005).

desired by both licensors and licensees—in the market for information assets.

To the extent that issues exist about such transactions, the issues must focus on what types of conditions can be agreed to, in what way, and in what context, not on the type of transaction itself. Some apparently argue that the range for enforceable conditions should be narrow and limited to the express conditions in the first-sale rules of copyright law, with no other limits permitted.[9] Many others, myself included, disagree and conclude instead that all agreed restrictions or conditions on use are presumptively enforceable except as cabined in by antitrust, unconscionability, and other limiting contract law doctrines. This far better supports modern information markets and acknowledges the ability of individuals and markets to more effectively tailor transactions to fit actual needs than can legislative or regulatory groups.

In practice, questions about the efficacy of licensing are ordinarily addressed by courts and parties in the same way as issues about any other choice of transactional framework and contract terms. Yet, the desire of some to limit commercialization of information assets means that licensing law *contract* issues are sometimes caught up in a broader debate about the proper role and shape of informational *property law*.

On the *property rights* issue, fundamental disagreement exists in modern politics.[10] One approach to defining modern property rights law is associated with *rights enhancement.* It argues that informational property rights should be adjusted and expanded to reflect changes in how information is collected, collated, and transferred in digital systems, because, at least as to the incentives and ability to exercise rights in copyrighted works, these digital systems threaten to greatly diminish the

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9. *See, e.g.*, Julie E. Cohen, *Copyright and the Jurisprudence of Self-Help*, 13 BERKELEY TECH. L.J. 1089, 1142–43 (1998) (declining to advocate "electronic rights management provisions" proposed under Article 2B of the Uniform Commercial Code); Mark A. Lemley, *Beyond Preemption: The Law and Policy of Intellectual Property Licensing*, 87 CAL. L. REV. 111, 114–15 (1999) (predicting that because "Article 2B creates a fundamental conflict between the goals of . . . intellectual property law and the contract law that will govern intellectual property licenses," the resulting litigation "will be about the transformation of copyright law from a creator's rights statute to a consumer protection statute."); Jessica Litman, *The Tales that Article 2B Tells*, 13 BERKELEY TECH. L.J. 931, 941 (1998) (insisting that Article 2B is not neutral, as the drafters wrote, and instead magically provides prospective licensors the ability to own "information rights" that belong to others).

10. *See* Raymond T. Nimmer, *First Amendment Speech and the Digital Millennium Copyright Act: A Proper Marriage*, *in* COPYRIGHT AND FREE SPEECH: COMPARATIVE AND INTERNATIONAL ANALYSES 359 (Jonathan Griffiths & Uma Suthersanen eds., 2005).

position of the rights owner. From out of this perspective derives a variety of modern laws, including the Digital Millennium Copyright Act (DMCA),[11] as discussed in the article by Professor Wagner.[12] The DMCA seeks, in relevant part, to establish protections in law for technological measures used to control access to or use of a work. The goal is to reduce risks of piracy and misuse that are otherwise created by digital technology. The rights enhancement approach generally has dominated the law and policy during the past several decades, which may have been the most vibrant period of innovation and creation of new knowledge in world history.

The converse approach receives support from zealous advocates, but has had less impact on modern law and policy because it hearkens back to an era of distrust and antagonism toward rights in information and their commercialization. That older restrictive view, many believe, stifled rather than supported innovation during the 1950s and 1960s.[13] Today, the restrictive approach is associated with the idea of *rights restriction*.[14] A "rights restrictor" argues that innovation is threatened by any expansion of rights in information, whether expansion comes via copyright, patent, trademark, or any other law. Indeed, the rights-restrictor argument posits that a better policy is to allow technology and courts to reduce the scope and influence of proprietary rights in favor of an expansive concept of public use and public domain. To this end, adherents to this view resist the creation of *any* new rights and argue that existing defenses, such as "fair use," are broadly operative and nonwaivable. This approach provided the conceptual underpinning for the argument that widely used peer-to-peer online systems that encouraged unauthorized "trading" of copies of copyrighted works were permissible as fair use and a

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11. Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified as amended in scattered sections of 17 U.S.C.).

12. R. Polk Wagner, *Reconsidering the DMCA*, 42 HOUS. L. REV 1107 (2005).

13. *See, e.g.*, NIMMER, *supra* note 6, § 7:12 (noting the squelching effect of the close scrutiny of licensing in the 1960s and 1970s); *see also DOJ Antitrust Guidelines for Licensing of Intellectual Property*, 49 Pat. Trademark & Copyright J. (BNA) 714, 716–17 (Apr. 13, 1995), *available at* http://www.usdoj.gov/atr/public/guidelines/0558.pdf (addressing the concern that certain licensing arrangements could adversely affect competition); Nimmer, *supra* note 10, at 359–60.

14. *See* Paul M. Schwartz & William Michael Treanor, Eldred *and* Lochner*: Copyright Term Extension and Intellectual Property as Constitutional Property*, 112 YALE L.J. 2331, 2332–33 (2003) (emphasizing the unanimity within academia in support of restricting intellectual property rights); James V. Delong, *Defending Intellectual Property*, *in* COPY FIGHTS: THE FUTURE OF INTELLECTUAL PROPERTY IN THE INFORMATION AGE 17, 19 (Adam Thierer & Clyde Wayne Crews Jr. eds., 2002).

technology with substantial noninfringing uses, a view that was rejected by the Supreme Court in the *Grokster* case.[15] This approach also provided the underpinning for the argument that Congress exceeded its powers by extending the copyright term, a view rejected by the Supreme Court in the *Eldred* case.[16] It also provides the underpinning for the current argument that Google has a protected "fair use" right to make and commercially use copies of any and all copyrighted works in its Print Project, a premise also likely to be rejected by courts.[17]

How does contractual licensing fit within this debate? The better view is that contractual licenses should not be part of this property-rights debate because contracts (licenses) reflect an entirely different legal and policy basis than do property rights. This insight was stated by Judge Easterbrook in an early case on the issue, and is expanded upon in his article in this symposium.[18] The premise has been adopted by virtually every appellate court that has addressed it during the past two decades—contracts are not property rights, but are creations of exchanges made in a marketplace, and they should be enforced independent of issues about the proper scope of property rights.[19]

But as a *political* matter, a rights restrictive argument cannot accept the difference between contracts and property rights. Instead, this approach most often rejects the idea that contracts have an independent basis. The restrictive argument rejects that independence because acknowledging it and allowing it to retain sway in law would undermine the basic goal of a restrictive approach: to narrow and diminish the operative rights of a rights owner, from whatever source those rights might emanate. Consistent with this political goal, one encounters statements that licenses cannot extend the scope of control of the

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15. MGM Studios, Inc. v. Grokster, Ltd., 125 S. Ct. 2764, 2780–82 (2005) (holding that summary judgment was in error because there was substantial evidence, though indirect in nature, on all elements of the claim for inducing infringement).

16. Eldred v. Ashcroft, 537 U.S. 186, 213–14 (2003).

17. For a discussion of the Google project from a copyright law perspective, see Google Lawsuit Begins; Fair Use, http://www.ipinfoblog.com/archives/intellectual-property-33-google-lawsuit-begins-fair-use.html (Oct. 3, 2005).

18. *See* ProCD, Inc. v. Zeidenberg, 86 F.3d 1447, 1454 (7th Cir. 1996) (holding that contracts limit uses to the parties' negotiated terms only and do not create "exclusive rights"; whereas property rights, such as a copyright, are "right[s] against the world"); Frank Easterbrook, *Contract and Copyright*, 42 HOUS. L. REV. 953, 953 (2005) (explaining that "what copyright and other IP law does is create property rights in information, after which normal rules of contract and property law determine who uses that information").

19. *See, e.g.*, Davidson & Assocs. v. Jung, 422 F.3d 630, 639 (8th Cir. 2005) (holding that appellants' contractual license waived fair use); Bowers v. Baystate Techs., Inc., 320 F.3d 1317, 1323 (Fed. Cir. 2003) (holding that a shrinkwrap license precludes reverse engineering).

copyright owner beyond that set out in property law—a premise that assumes that the stated rights (and limits) in copyright are absolutes.[20] Ultimately, of course, the same person will argue that those dominant rights should be narrowed and diminished.

Similarly, one sees arguments that licenses that restrict alleged fair use privileges are precluded by federal law because fair use is a *right* that cannot be waived, and further, that fair use is a "right" that gives broad control to someone other than the property owner. But, as the Eighth Circuit observed, fair use privileges can be contractually waived.[21] Indeed, the Supreme Court has held that the far more important rights of free speech and avoiding self-incrimination can be contractually waived.[22] The argument that property rights law restricts or should restrict the scope of contract not only turns the relationship between property and contract on its head for a political purpose, it lacks any coherent justification in modern law or practice.

LICENSING, MARKETS, AND STANDARD FORMS

Although licenses have been widely used in the commercial marketplace for generations, express licenses became widespread in mass markets only within the past quarter century. Today, however, they are common throughout the mass market. They occur in software transactions, cable television contracts, contracts for cell phone use, online access contracts, computer game transactions, video rentals, and in numerous other settings.

The fact that widespread express licensing in the mass market began only during the past quarter century does not indicate that prior to this time information was commercially given away in nonconditional transactions or that unconditional transactions were the norm. Instead, prior to that time, conditional transactions premised on property rights concepts

20. *See* Mallinckrodt, Inc. v. Medipart, Inc., 976 F.2d 700, 701 (Fed. Cir. 1992) (rejecting the view that patent law could exclude enforcement under contract law); *see also* NIMMER & DODD, *supra* note 2, § 14:17; *cf.* Indep. Ink, Inc. v. Ill. Tool Works, Inc., 396 F.3d 1342, 1350–52 (Fed. Cir. 2005), *cert. granted*, 125 S. Ct. 2937 (2005) (finding, as precedent requires, that tying is based on an extension of an IP right, while recognizing that modern commentary rejects this view).

21. *See Davidson & Assocs.*, 422 F.3d at 639 (affirming that acceptance of license agreement waived fair use privileges).

22. *See* Cohen v. Cowles Media Co., 501 U.S. 663, 670 (1991) (holding that a breach of contract action was appropriate where plaintiff entered into a confidentiality agreement, which defendant newspaper broke by identifying him in its stories); Boykin v. Alabama, 395 U.S. 238, 243 (1969) (stating that a voluntary and knowing plea of guilty waives the privilege against compulsory self-incrimination, among other constitutionally protected rights).

associated with particular types of simple transactions (e.g., first sale of a copy, broadcast of signals, in-theater viewing of motion pictures) sufficed to service a far less robust and complex market. As complexity, demand, and opportunity mounted, the older structures were far less adequate to meet them.

Traditionally, for example, a publisher that distributed books solely in print form through retail stores could employ tailored agreements with authors and with upstream redistributors, but then rely solely on first sale conditions in the eventual transfer to retail purchasers. Use rights in such contexts are handled by general first sale doctrine in a way that worked well for paper products; First Amendment limits on a book publisher's liability for inaccurate information excluded most such risk.[23] But can that same publisher continue to rely on the one-size-fits-all statutory structure when its market expects e-books with tailored search capabilities, online availability for downloading, interactive features in which the story changes as the reader responds, machine-loadable copies, one-reading options for a lesser price, and other formats, along with the traditional option of a sale of a printed copy? No. This diversification presumptively requires tailored transactions—tailored through license agreements and technology.

Digital systems are well suited to support diversification through standard contract terms or through technological devices in the digital product. Companies involved in digital information and related services have used that capability. But this puts them squarely within the cross-hairs of another jurisprudential debate. This is a debate about the enforceability of standard form contracts, or indeed, any contract terms used in settings where one party sets out terms that the other must either accept or forego the transaction. Some portions of this debate are discussed by Professor Gillette in this symposium.[24]

The response of law and law academics to standard form contracts has long been characterized by two elements. The first recognizes that standard forms are widely used throughout commerce, both in mass markets where consumer purchasers dominate, and in transactions between or among commercial entities that have relatively coequal bargaining power. This means simply that use of standard forms provides value to all parties involved. Law should acknowledge and support that

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23. *See, e.g.*, Winter v. G.P. Putnam's Sons, 938 F.2d 1033, 1037 (9th Cir. 1991) (concluding that a publisher has no duty of care to ensure accuracy).

24. Clayton P. Gillette, *Pre-Approved Contracts for Internet Commerce*, 42 HOUS. L. REV. 975 (2005).

practice. On the other hand, the second facet of reaction to standard forms argues that these are not true contracts and that they entail a great risk of overreaching, especially to the detriment of consumer buyers of goods. This theme would lead one to severely limit, if not exclude, enforceability of standard forms in many market contexts.

The romantic view of contract is that all terms are individually discussed and negotiated among equals, resulting in a full agreement to a carefully bargained deal. This view is sometimes taken to indicate that transactions that do not meet its presumed conditions are in some manner less than contractual in nature. But that romantic image was never the predominant case in contracting. Bargaining power is typically unbalanced in one direction or another, and negotiation is routinely minimized by reliance on standard terms and forms.

Modern law clearly recognizes the enforceability of such standardized agreements.[25] Indeed, contract law could not reject this widespread practice and still claim to be law grounded in transactions and market choices. Rejecting form contracts would place contract law into an explicitly regulatory posture, without justification in market or practical considerations.

Ultimately, just like with the property-rights arguments, while many of the arguments hostile to enforceability of standard form license agreements are couched in terms of contract "theory," there is a political element to debates about standard form enforceability that reflects a deep disagreement about the efficacy of markets. One view holds that, subject to overarching monitoring of truly abusive terms, contractual choices define markets and should be enforced, even if one party's choice is merely to accept or reject terms proposed by the other. The competing view rejects the efficacy of markets in this regard and calls for regulatory steps, by agencies, statutes, or courts, to limit the scope of standard form use to "dictate" terms.[26]

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25. *See, e.g.*, *Davidson & Assocs.*, 422 F.3d at 639 (affirming that a standard form shrinkwrap license waives fair use); Ariz. Cartridge Remanufacturers Ass'n v. Lexmark Int'l, Inc., 421 F.3d 981, 987–88 (9th Cir. 2005) (validating contractual terms which limited the use of print cartridges); Bowers v. Baystate Techs., Inc., 320 F.3d 1317, 1323 (Fed. Cir. 2003) (enforcing a standard form shrinkwrap license to prevent reverse engineering); ProCD, Inc. v. Zeidenberg, 86 F.3d 1447, 1455 (7th Cir. 1996) (holding that the contract in question limits the use of a database to consumer purposes only); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 211 (1981); Jeff C. Dodd, *Time and Assent in the Formation of Information Contracts: The Mischief of Applying Article 2 to Information Contracts*, 36 HOUS. L. REV. 195, 220 (1999) (discussing Article 2 of the UCC and its effect on standard form contracts).

26. *See* Alexander M. Meiklejohn, *Castles in the Air: Blanket Assent and the Revision of Article 2*, 51 WASH. & LEE L. REV. 599, 603–09 (1994) (emphasizing the importance of assent

Many opponents of their enforceability take a result-oriented position that favors "buyers" or similar transferees on the apparent assumption that sellers and licensors always dominate.[27] This view holds that the transferee should be entitled to receive a transfer including specific terms, regardless of the terms sought by the other party. These preferential terms vary depending on the context, but they typically include implied warranties, first sale rights, reverse engineering rights, and other similarly diverse elements. The argument then is that regardless of the judgment of the marketplace as to acceptability of other terms (e.g., a single use license versus a first sale), providers of information (or other) products should not be able to exclude the preferential terms in distributions in the mass market. That is, the terms cannot be effectively offered in the mass market even to those who might desire them.

One illustration of this approach is discussed in the article by Professor Oakley in this symposium,[28] which describes the work of an advocacy group consisting of companies and individuals who view themselves primarily as licensees of digital information. Their approach is to define some terms that should not be included in a license. The ultimate goal is to exclude specified terms from the market because they are regarded as nondesirable. This regulatory approach contrasts to an early work created by a different group of licensees that suggests a range of appropriate or acceptable treatments of various contractual issues, assuming that the goal was to guide the market and any actual negotiations that might occur.[29]

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in business contracting while criticizing section 2-207 of the UCC because it operates to enforce terms not agreed to); Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1173, 1176 (1983) (arguing that contracts of adhesion should be considered presumptively unenforceable by the courts).

27. *See* Raymond T. Nimmer, *Through the Looking Glass: What Courts and UCITA Say About the Scope of Contract Law in the Information Age*, 38 DUQ. L. REV. 255, 256 (2000) (discussing the image of a "consumer buyer" and its effect on the overall design of contract law and the response to standard forms). *See generally* Roger C. Bern, *"Terms Later" Contracting: Bad Economics, Bad Morals, and a Bad Idea for a Uniform Law, Judge Easterbrook Notwithstanding*, 12 J.L. & POL'Y 641 (2004) (arguing that modern trends in jurisprudence are increasing the power of sellers and licensors that was already tipped in their favor through information asymmetry, hold-up, and opportunistic behavior).

28. Robert L. Oakley, *Fairness in Electronic Contracting: Minimum Standards for Non-Negotiated Contracts*, 42 HOUS. L. REV. 1041, 1048 (2005) (suggesting that "some substantive clauses . . . as a policy matter, might be over-reaching and problematic in the context of non-negotiated agreements").

29. *See* Open User Recommended Solutions, Software Licensing Business Practice Guidelines (Mar. 1996) (on file with the author).

The project described by Professor Oakley attacks the issue directly, rather than indirectly, acknowledging the purpose of the enterprise. This properly leaves it to the observer and the politician to decide whether any proposed regulations are appropriate.

Another illustration of the fact that the arguments against standard form enforcement are often result-oriented, rather than theory-based, can be seen in the treatment of modern "open source" and "free software" movements, discussed in part in the article by Professor Gomulkiewicz.[30] This approach to software development and distribution has attracted a group of strong advocates and relatively significant use in practice. It relies on standard form documents to place restrictions on transferees and to grant them rights, just as with so-called proprietary license practices. Yet, while some have questioned whether these forms are intended to be contractual in nature, there has been little attention to whether they should be enforced as a matter of policy, largely because the goals of the movement are seen by some as desirable in substance.

CONCLUSION AND INTRODUCTION

I will stop here. These are, of course, very broad issues and engage in macro debates at the broadest level. They cannot be brought to closure in this brief introduction or in this symposium itself. Yet, we hope that both will contribute to the ongoing discussion of the fundamental policy issues presented by property rights and contractual issues in an economy that has undergone, and continues to undergo, significant change.

Welcome to the symposium.

30. Robert W. Gomulkiewicz, *General Public License 3.0: Hacking the Free Software Movement's Constitution*, 42 HOUS. L. REV. 1015, 1017–18 (2005) (exploring substantive changes that "the FSF [Free Software Foundation] is considering for GPL [General Public License] 3.0 and . . . approaches that the drafters could take").