

Licensing in a nutshell

From Bob the Builder Fun Pasta and Barbie perfume to Manchester United bedclothes, licensing comes in different shapes and sizes, comprising all target groups from the little ones to senior citizens and all possible product categories, be it apparel, cosmetics, toys, stationeries, food, etc. Licensing is a profitable form of marketing; the revenue generated from licensing goods worldwide amounts to approximately 187 billion USD per year.¹

What is licensing?

Licensing is the practice of leasing a legally protected (copyrighted or trademarked) entity – for example, a name, logo, graphic design, slogan, signature, or character, i.e. the “property” – to another party in conjunction with a product, service, or promotion. Let’s take a Bob the Builder puzzle: the UK-based HIT Entertainment Ltd. (the *licensor*), owner of the *property* “Bob the Builder”, grants the German toy and book manufacturer Ravensburger Inc. (the *licensee*) through the licence agency Super RTL (German children’s channel, responsible for Germany, Austria, Switzerland) the right to use the property on a licensing product, in this case a puzzle.

There are 3 kinds of property:

1. A *copyright* is a set of rights that protect the physical expression of an idea. As soon as an idea is given physical form, e.g. a piece of writing, an illustration, a photograph, or music, it is automatically protected by copyright, if it reaches a certain “threshold of originality” – a kind of measure of individuality and singularity required in many countries. Therefore, an ordinary stick-figure, e.g., is very unlikely to have enough originality to be copyrighted.

2. A *trademark* is an intellectual property that provides a distinctive way of representing a good or service that sets it apart from those of other traders: this can be a distinct word, a slogan, letters, a symbol, but also a sound, or colour, etc.

Sesame Street, e.g., is a word and design mark as the logo contains the lettering “Sesame Street”, but is also given artistic form (cf. Feindor-Schmidt, 2009, p. 12). If, however, a trademark lacks a distinctive character, you cannot register it in most countries; hence, common terms and descriptions such as “apple” or “green” could not be registered in connection with a new kind of apple. A trademark can officially be registered in a national, Europe-wide or international trademark register which gives legal protection.

3. The *right of publicity* prevents the unauthorized commercial use of an individual’s name, likeness, or other recognisable aspects of one’s persona. It gives an individual the exclusive right to licence the use of their identity for commercial promotion.

What does a licensing agreement contain?

A licensing agreement involves the precise terms and conditions of a licensing deal, for example the payment. In exchange for the granting of a licence, the licensor is paid a *royalty*, i.e. a certain percentage of the licensee’s income from the licensed products. In most instances, licence agreements also decide on a *guarantee*, i.e. an amount of money paid to the licensor at the conclusion of a contract irrespective of the sales revenue. Upon signing the licence agreement, many licensors require an *advance* from the licensee, which is a proportion of the guarantee. Mostly, the granting of a licence

is limited to a certain *territory* and *time period* defined in the licensing agreement. On top of that, a licence is usually restricted to a certain *type of use* (e.g., the production of Barbie mugs, but not of Barbie plates) and *distribution channels*. You may, for instance, be allowed to sell Barbie mugs in catalogues and department stores but not online. Another important aspect settled in the agreement is whether a licence is conferred *exclusively* or *non-exclusively*. You may, for example, be the only one selling Barbie mugs in a certain territory (exclusively) or you might have to share the right with other licensees selling a similar product (non-exclusively). Eventually, the licence agreement stipulates whether a licensee is allowed to *transfer* the production of the product to a third party or if the licensed product has to be manufactured by him/herself, and whether the licensee is allowed to make *alterations* on a certain property. ■

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NOTES

¹ *Top 125 Global Licensors (2010)*. In: *License! Global*, vol. 13, no. 2, p. 39.

REFERENCES

- Drenth Stouffer, Tere (2005). *Licensing for dummies*. Indianapolis, IN: Wiley Inc./Hungry Minds.
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