

Anatomy of a Traditional License Grant

By Brian Kirkpatrick

The traditional license grant is used to clearly define the rights conveyed for payment of a software license. A typical license grant may contain a string of adjectives to explain the type of license granted. In the alternative, it may be a very simple license grant followed by a list of restrictions. There are differing opinions about how a license grant should be drafted, but that may be because there are so many different license models. Sellers of software licenses may tend to solely work with their own license model (i.e. how the licensed is structured for their own product(s)). Purchasers of software tend to encounter a wide variation of software models from many different suppliers. How the license are granted seem to be less important than understanding the grant – however it is constructed. Although minds will differ as to how well this grant is drafted, this is a typical traditional license grant:

“Seller grants Purchaser a non-exclusive, irrevocable, royalty-free, fully paid-up, license to use the software within the territory.”

The license can be dissected to determine the type of license granted.

- a. Exclusive vs. Non-Exclusive – Most licenses will convey a non-exclusive license. This is important for the seller because it does not want to restrict itself from licensing the software to multiple parties. It would be only in special circumstances where a publisher would convey an exclusive license.
- b. Revocable vs. Irrevocable – Most licenses will grant an revocable license even if it is paid-up because the publisher will want to retain the right to terminate a license if the licensee breaches certain license restrictions.
- c. Royalty-free – Most software licenses are described as royalty-free because its use will not require that a royalty be paid in addition to the payment for the license.
- d. Fully paid-up usually describes a one-time payment for a perpetual license where the term is indefinite. The phrase fully paid-up should not exist in a term license.
- e. Territory – Usually there is a reference to where the license may be used. The term “Within the territory” is often used where there is a more robust definition of the territory. Otherwise, a simple description such as “worldwide” may be used instead to permit the user to use the software anywhere on earth (subject to government restrictions).

When reviewing or negotiating a software license agreement, it can be helpful to dissect and review each part of the grant. It can also be helpful to employ the assistance of legal counsel to ensure that all of the license components are understood.



About the author Brian Kirkpatrick:

Brian practices exclusively in intellectual property and technology law. He has drafted and negotiated hundreds of software contracts with a wide breadth of complexity including large-scale master services agreements (MSA's), software as a service (SaaS) agreements, and End-User License Agreements (EULA's). Before entering the legal profession, Brian was a licensed securities representative and Vice President level middle-market commercial banker.

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