
by H. Ward Classen


Price: $139.95, pp. 790

Reviewed by Micah-Shalom Kesselman

Journal of High Technology Law

Suffolk University Law School

“Too often the parties draft important provisions, such as the license grant, in broad flowing terms without considering the implications of doing so.”¹

H. Ward Classen’s A Practical Guide to Software Licensing for Licensees and Licensors (“the Guide”) is, as its title implies, a thorough look at the process of negotiating and maintaining a software license from the perspective of both licensees and licensors. The book covers everything from preparing a Request For Information (“RFI”) and Request For Proposals (“RFP”)² to customer and vendor claims and defenses,³ and more. This review primarily focuses on the first two chapters, though the chapters on Free and Open Source Software, how to represent global entities, and best practices will be touched upon. While the scope of this review is limited to a handful of sections, the chapters not covered are of an essentially identical quality and merit as those that are reviewed—only because of space and scheduling limitations is this review limited in scope. The Guide is a tome of knowledge and very well merits a place on the

¹ H. WARD CLASSEN, A PRACTICAL GUIDE TO SOFTWARE LICENSING FOR LICENSEES AND LICENSORS 513 (ABA Business Law Section, 5th ed. 2013).
² Id. at 4-15.
³ Id. at 479-94.
bookshelves of anyone involved in the software industry, be they an attorney, businessman or software developer.

The Guide certainly does not lack for its authorship. Mr. Classen, a graduate of Trinity College, received his JD from Catholic University of America in D.C. and his Masters of Business Administration from the Wharton School of the University of Pennsylvania. He has served as the Chair of the Business Law Section of the Maryland Bar Association and is currently Deputy General Counsel of Computer Sciences Corporation. Serving on various business, professional, and civic boards, Mr. Classen is also regularly and widely published in journals and lectures, both abroad and domestically, on issues of technology licensing, law department management, and managing inside/outside counsel relationships. He has previously authored both Classen’s Commercial Forms and Classen’s Merger and Acquisition Forms.

A Practical Guide to Software Licensing is both a textbook and a manual. As such, it is an incredibly dense manuscript, packing enough content into each chapter to comprise an entire study unit of a class on software licenses. Running at a length of 22 chapters spread across its nearly 800 pages, the Guide could easily be the primary textbook of a yearlong course.

The introductory chapter is precisely that—an introduction. It offers the traditional caveats of any treatise on a significant area of law. It frames the chapters that follow as a thorough, but certainly not exhaustive, overview of the law and issues surrounding software licenses. Finally, it hints at some of the emerging trends later explored in the book.

Immediately in the second chapter, the Guide dives right into the substantive material. Briefly discussing the “traditional negotiation process,” Mr. Classen points out both the benefits

---

4 ISBN: 978-0-92957-664-0
5 ISBN: 978-0-92957-681-7. Supra note 3 at 789; see also PRACTISING LAW INSTITUTE, FACULTY AUTHOR PROFILE OF H. WARD CLASSEN, http://www.pli.edu/Content/Faculty/H_Ward_Classen/ /N-4oZ1z12sto?ID=PE707708 (last visited 10/24/2013)
and the risks, and which parties they apply to. This is where we see a major theme develop that is elaborated upon and revisited time and again throughout the treatise—the concept of leverage, and who has it, licensee or licensor, during each phase of the software licensing relationship.

While this likely will not surprise any law student who has taken a first year contracts class—much less a practicing attorney—it very well may be surprising and valuable insight for those readers based primarily on the business side of such negotiations.

The text quickly shifts focus to the current trend in software license negotiations—the competitive negotiation process. This part of the chapter includes a total of 10 subsections, within which there are further subsections, spelling out in minute detail the process through which a customer submits requests for information, decides on some preliminary parameters of the software solution they require, submits requests for proposals, negotiates with vendors and enters into a licensee-licensor relationship. This is presented both intelligibly and concisely. Terms are quickly defined and fall into the parlance of the treatise organically and intuitively.

The second chapter excels at presenting the negotiation process from the perspective of not only the customer but also the vendor. This is a common thread throughout the entirety of the treatise and, put simply, one of its crowning achievements. A successful and useful guide could have been crafted that examined the process from only a single side of the relationship, but Mr. Classen included the full spectrum of relevant perspectives and the Guide is sufficient for it to the point that it is effective and thorough without need of supplemental materials.

The Guide makes it a point to discuss issues that, though only occasionally broached in the legal community, are strong emerging influences in the market. Particularly, halfway through the book, Mr. Classen explores the relatively recent trend of Free and Open Source
Software ("FOSS") in Chapter 9. Unsurprisingly, this section does not display a licensor/licensee dichotomy as often as the other sections but examines, however briefly, intriguing legal issues such as the application of copyleft licenses to the parent companies of subsidiaries making use of FOSS licenses. He also weighs the market and production benefits of FOSS versus the risks its usage entails. Perhaps one of the most useful parts of the book, the end of this chapter is devoted to minimizing the risk of accidentally signing onto FOSS licenses, how to perform open source audits, and other good practices.

The closing paragraph of Chapter 9 is noteworthy. It recommends a series of non-legal resources for lawyers interested in software licensing. The target audience of the Guide is certainly law students and legal practitioners so it is refreshing to see the text attempt to broaden the likely readers’ ken. This encourages legal practitioners to understand the operational context of the laws about which they happen to be knowledgeable. Not only does law not function in a vacuum, its entire purpose is to bind entities together into relationships; to understand the practical context of the law is to understand the contours of the entities being bound.

The chapters on representing global entities and best practices merit special mention. It is rare enough that legal textbooks give any comparative or global context; it is still common for the UN Convention on the International Sale of Goods to be entirely left out, or only briefly mentioned, in first-year contracts classes. While the Guide certainly will not impart an expertise in software licenses in particular foreign jurisdictions, it does give a concise and surprisingly thorough survey of the law of jurisdictions beyond the U.S. borders. Common issues in India, China, Canada, and more are considered. Given the increasingly transnational character of

---

6 Id. at 307-20.
7 Id. at 421-42, 511-22.
software development and services, such discussion is not only merited but perhaps necessary for any comprehensive examination of licensing surrounding software sales.

Finally, the chapter on best practices alone is worth keeping on a law office bookshelf. It is concise, thorough, and well organized. There is little more to be demanded of a best practices guide. Furthermore, it is relevant to more than just legal counsel. Organizational advice, discussion of the danger of scope creep, and more are included in the chapter. In conjunction with the myriad supplementary forms and documents, the best practices guide will be referred back to time and again by anyone who owns a copy of this book.

That is all not to say there are not aspects of the Guide that could be improved. What makes it strong as a practitioner’s reference also proves to be its greatest flaw in a scholastic setting. It is, simply put, a very dry read. The substantive content is certainly pertinent and comprehensive; however, it is not a very engaging text. Even as a student who is specifically interested in software licensing, this book could become a very tiring read. This only means, though, that this is a text that is best suited for people already engaged in this area of law or industry or students who are interested in this specific practice area. That is to say, it is primarily a specialist’s book. This is not really a flaw, but it is certainly something a potential purchaser needs to consider.

I would wholeheartedly recommend this book to the appropriate person. As a textbook for a course on software licenses, it is probably sufficient even alone. A professor might supplement it with handouts of specific relevant cases, but the Guide could certainly carry an entire course by itself. To someone who often finds themselves engaged in this type of transactional work, I imagine it would prove a useful reference and it is organized such that very little time would be wasted searching for whatever information is needed from it. Finally, to
those who are in the business of buying or selling software, custom or not, I would also certainly recommend this book as it should be very much comprehensible to those outside the legal industry and they will find it incredibly informative as it considers many issues that are relatively obscure to those trained in the law—much more so for those in unrelated industries. Outside of these classes of individuals, there is probably not much reason to pick up the book; however, if you are not a software licensee, licensor or a person who regularly interacts with such people, it would be a bit of a surprise for you to be considering *A Practical Guide to Software Licensing for Licensees and Licensors*. 