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Chapter 4 Notes

Internet-related contract law

SOFTWARE LICENSE

A type of contract between the licensor and licensee that give the licensee the right to use property under the stated guidelines.

* Normally a fee is paid to obtain a license.
* Does not mean you own intellectual rights, but can own a tangible copy and use personal property.

Elements of a breach of a license agreement:

1. Existence of a valid contract
2. Performance or tendered performances by the plaintiff
3. Breach of contract by defendant
4. Resulting damages to the plaintiff

The copyright owner cannot sue for copyright or patent infringement if there is a software license.

GRANTING CLAUSE

The “action section” of a license agreement. Determines what rights are granted and under what conditions.

FIRST SALE DOCTRINE

The patent owner gives up their right to sue for patent infringement. Gives the purchase the right to resell goods. Gives purchaser the right to sell or dispose of their copy. The owner cannot make conditions to goods after the sale.

MASS MARKET LICENSES

These are marketed to consumers with not individual negotiation or customization of the license. Consumer is notified that software is licensed, not sold. You usually have to agree to terms before a download is possible.

ROLLING CONTRACTS

This type of contract allows the licensor the ability to change their agreements at different points in time. This is very common in social media services where privacy policy changes.

Uniform Computer Information Transactions Act (**UCITA**)

A state statute that develops the ground rules for contracting in cyberspace and provide slegal infrastructure for website linking agreements.