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## INTRODUCTION

### A. Digital Media Contracts

This is not a legal textbook. It is designed as a handbook to the law and business of digital media. It has grown out of two books we wrote in the 1990s<sup>1</sup> in which we had aimed to do the same thing. Fifteen years ago the technical and commercial landscape was, of course, very different. PCs still weren't on every office desk—let alone in every home, wireless meant a radio and television was analogue. Multimedia, to use the buzz-word of the day, was promising more than it was delivering. The CD-Rom and CD-I were failing to capture the public's imagination, video games consoles were still for children and the information superhighway was a political idea not reality.

For lawyers too there were more questions than answers. The law has always had to, probably will always have to, play catch-up with technology and the greater the technological changes involved the greater the time lag. There is also a key distinction between the theory, and the practicalities, of the law. Although the former obviously influences the latter, guidance on the latter cannot fully develop until there are sufficient real-world experiences in which the law can be applied. All in all, therefore, there was often talk rather than action and that was reflected in those earlier books. Our focus was 'what if?' rather than 'what is currently the case?'

This book is different because we have taken the contracts and documentation of digital media as our focus. Following well over a decade of digital media businesses trying to develop appropriate documentation to fit their activities it is now possible to draw upon a set of real world agreements rather than legal theory. We must stress at the outset, however, that these are not precedents in the traditional mould, and in most cases not even industry standards. They are sample agreements, illustrations of how a document dealing with a particular aspect of digital media might look—designed to give a general guide to what the readers can expect to find coming across their desks or screens.

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<sup>1</sup> *Multimedia: Rights, Contracts and Licensing* (FT Law & Tax, 1996); *Digital Media: Rights, Contracts and Licensing* (with Nicholas Higham) (Sweet & Maxwell, 1998).

As such we aim to go beyond traditional precedents by assisting readers intending to draft their own documents but also those looking for hands-on guidance when reviewing standard form documents received from other parties. Many readers will of course be doing both at different times in different cases with different types of digital media. We therefore hope to reflect that commercial reality with this collection of sample agreements in a realistic 'look and feel' which cover that wide range of circumstances. Some may well help as a template for drafting, whereas some may be an aid for reviewing—and some may just stimulate ideas and debate.

As a result we believe we are showing the reader what to expect rather than what is necessarily ideal. There are usually many ways to approach any given drafting task and specific choices have to be made about style, format and approach: short form or long form? Aggressive and one-sided provisions or a fairer and more mutual stance? By the nature of this book we must leave it to our readers to make some judgments of their own in each case. We do, however, provide our own suggestions where we can in the relevant commentary added in the introduction to each chapter and within the body of each agreement. Whilst, hopefully, always reflecting the real world, the agreements have also been simplified and clarified where necessary to aid this process.

We have also tried very hard to be practical not legalistic. There are no tables of cases, statutes or regulations. This is certainly a specialist publication for those with some specialist interest in the topic: for fellow lawyers, business affairs executives and contract managers whether in private practice or in industry. Yet we hope that it is user-friendly enough for anyone who might need to consider or deal with digital media contracts to find something of use here. We also believe this style will help to limit the degree of built-in obsolescence, given our subject, that any endeavour of this kind must carry.

We also hope that such an approach means that although this book is written by English lawyers with an unavoidable UK bias—with each agreement an English law document—this book will still have value to readers outside the UK. Certainly many of these forms of document are international in style in any case and we have tried to give some pointers to show how other jurisdictions may approach things—whether with similarities or differences—throughout. We must stress again, however, that these cannot be anything other than very limited illustrations only *and are not, nor intended to be, a replacement for proper local law advice.*

## B. Format

Part I of this book provides a short introduction: first, to the markets and technology of digital media and, then, to the law. Neither is intended to be comprehensive, but

they should help to provide some necessary background to aid understanding of the agreements and the world in which they operate. In our previous books we had attempted an ambitious overview of the law applicable to this sector. What was challenging then is now—given the extensive work of courts and law makers in the interim—in our view almost impossible, even on a strictly national basis. Therefore, instead of presenting an analysis of every potential topic of interest from patents and design rights to tax and competition/anti-trust law readers are directed to other specialist sources (in some cases we have added text into the commentary but this is in no sense comprehensive, eg see reference to anti-corruption legislation, p. 159). We focus solely on some high-level themes that have consistently featured—and not just between ourselves—in legal discussion and debate over digital media.

The main element of the book, Part II, is split into two sections:

- A. Acquisition and Development: which will essentially deal with ‘rights-in’ issues; the process of pulling together content and services to develop a digital media product or service; and
- B. Licensing and Distribution: which will focus on ‘rights-out’ and the external facing exploitation process.

By definition, Part A will seem more generic and potentially multi-purpose than Part B but both should still help provide a genuine ‘feel’ for real-world documents. On the whole, the documents and the commentary are tailored toward the interests of a digital media producer and publisher rather than the counter-parties covered in these documents. That does not mean, however, that the contracts are always favourable to them, we have tried to reflect likely reality rather than simply present pro-producer/publisher terms, and in some cases there is no clear split between the two.

Each section is made up of ten chapters, each chapter presenting a different agreement or legal document. Each begins with an introduction—using checklists and box-outs to help provide practical input—before setting out the document in full with clause-by-clause comments to explain legal and commercial context.