

Resources

What is a Royalty?

The term “royalty” dates back to feudal times, when it denoted payments made by common folk to royals. This meaning was eventually expanded to refer to more general payments, such as payments to composers for the use of music, or payments to landowners for the extraction of oil.

Today, a royalty is defined as a payment made from one party (the licensee) to another (the licensor) for the right to the use of an asset. The asset can be virtually anything — from tangible assets like minerals and oil to intellectual property like songs, brands and patents. Royalties are usually paid as a percentage of revenues, gross or net, yielded from the use of the asset.

Industries

Many industries use royalties as a principal form of payment, but some have developed business models that go well beyond basic licensing contracts. For example, recorded songs are subject to dual copyrights with royalties that often pass through several hands before reaching the artist(s). The following are industries of interest:

- Music (<http://www.royaltyexchange.com/resources/music/>)
- Energy (<http://www.royaltyexchange.com/resources/energy/>)
- Film and Television (<http://www.royaltyexchange.com/resources/film-television/>)
- Franchises (<http://www.royaltyexchange.com/resources/franchise-royalties/>)
- Book Publishing (<http://www.royaltyexchange.com/resources/publishing/>)
- Technology (<http://www.royaltyexchange.com/resources/technology-licensing/>)
- Agriculture (<http://www.royaltyexchange.com/resources/agriculture/>)

Intellectual Property

Intellectual Property is the most commonly licensed type of asset, driving industries from music to software design. To understand licensing and royalty investment more fully, it’s helpful to have a good understanding of what an intellectual property asset is. There are four types of intellectual property rights:

- Copyrights (<http://www.royaltyexchange.com/resources/copyright-royalties/>)
- Patents (<http://www.royaltyexchange.com/resources/patent-royalties/>)
- Trademarks (<http://www.royaltyexchange.com/resources/trademarks/>)
- Trade Secrets (<http://www.royaltyexchange.com/resources/trade-secrets/>)

<http://www.royaltyexchange.com/#buy>

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Music Royalties

Overview

The music industry relies on royalties generated by the licensing of copyrighted songs and recordings as a primary form of payment for musicians. Intellectual property law and licensing systems have gone through significant adjustments over recent years as a result of the rise of digital music, but much of the industry's historic legal framework remains.

To start thinking about music in legal terms, it's important to realize that there are two types of musicians: songwriters and performing artists. These hold two distinct copyrights: songwriters hold the rights to the lyrics and melody of a piece of music, while performing artists hold the rights to a particular recording of a song, which is called a master recording. Songwriters may only seek copyright for a full song, and cannot divide lyrics and melody into separate rights.

Both songwriters and recording artists typically assign their rights to a third party for management, instead of attempting to track a song's use and seek payment independently. Song copyrights are typically assigned to music publishers, while master recording copyrights are typically assigned to a record label.

Song Copyrights

With a song copyright, a publishing agency seeks to collect royalties based on three types of song usage:

- **Public performance** occurs any time that a song is sung or played in public, recorded or live, regardless of medium. Radio, television, restaurant and club play, live performance in concert and internet streaming all qualify as public performance.
- **The mechanical right** is the right to reproduce a song in a physical form. Royalties for mechanical rights must be paid on the revenue of CDs, permanent downloads, records and tapes.
- **Synchronization** refers to a song's use in a soundtrack, or being "synced" with a film, TV show, or advertisement.

Publishing agencies collect performance royalties through performance rights organizations (PROs). The big four PROs in the U.S. are the American Society of Composers, Authors and Publishers (ASCAP (<http://www.ascap.com/>)), Broadcast Music, Inc. (BMI (<http://www.bmi.com/>)), the Society of European Stage Authors and Composers (SESAC (<http://www.sesac.com/>)) and SoundExchange (<http://www.soundexchange.com/>). These societies are run as non-profits providing a service to musicians and publishers, and charge a small percentage of royalties for their services. PROs typically charge licensors a blanket fee for access to their entire catalogues, and distribute money back to publishers according to the frequency of their songs' usage.

Mechanical royalties are usually collected by the publisher through the Harry Fox Agency (<http://www.harryfox.com/>), which operates similarly to a PRO. Synchronization royalties are usually negotiated directly with the publisher.

One noteworthy technicality to song licensing is that a song can be used without explicit songwriter permission. Once a song has been recorded and distributed, anyone may record and market their own performance of the song, so long as the songwriter/publisher is notified and a statutory royalty rate (<http://www.copyright.gov/carp/m200a.pdf>) is paid. This practice is known as compulsory licensing.

Recording Copyrights

With a master recording copyright, a record label seeks to collect royalties from the use of a specific recording of a song. Master royalties are paid to a label when the label's recording is used in an advertisement, film, television program, streaming service or other medium. Master royalties are typically paid in addition to synchronization or public performance royalties, as royalties paid to the publisher only grant the rights to the use of a song, not a specific recording of a song.

Terrestrial radio stations do not typically pay master royalties, as radio play has traditionally been viewed as free advertisement for a recording. However, radio play may or may not (<http://www.ftc.gov/be/seminardocs/060928liebowitzimpactradioplay.pdf>) have a positive impact on sales, and congress is considering legislating that the royalty be paid (<http://www.usatoday.com/story/money/business/2013/09/17/musicians-radio-royalties/2829099/>). At present recording artists only earn master royalties from radio when their recordings are played in a non-interactive digital arena where the listener is a subscriber (i.e. satellite radio).

Related Articles

Alter and Kendrick Music Copyright Overview (<http://alterandkendrick.com/protecting-your-musical-copyrights/introduction-and-copyright-overview/>)

How Stuff Works: Music Royalties (<http://entertainment.howstuffworks.com/music-royalties.htm>)

How Stuff Works: Music Licensing (<http://entertainment.howstuffworks.com/music-licensing.htm>)

Alan Korn on Music Publishing (http://www.alankorn.com/articles/publishing_1.html)

National Music Publishers Association's Music Publishing 101 (<http://www.nmpa.org/pdf/legalissues/Music101-NMPA-May2009pdf.pdf>)

How ASCAP Distributes Royalties (<http://www.ascap.com/members/payment/royalties.aspx>)

ASCAP's Overview of Music and Money (<http://www.ascap.com/music-career/articles-advice/music-money/>)

Royalty Information from BMI (http://www.bmi.com/creators/royalty/general_information/detail)

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Energy Royalties

Overview

The energy industry collects royalties on the licensing of tangible assets, usually natural resources. For example, the owner of a petroleum well may license a firm to extract, treat and market her petroleum in exchange for a royalty payment. These royalties are typically charged as a percentage of gross revenue resulting from the use of an asset and currently comprise 1.7% of U.S. GDP (<http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS>).

Different industries use different terms to refer to natural resource royalties: in economic terms, they're referred to as a "resource rent"; in the mineral, natural gas and oil industries they're known as "mineral leases"; in the forestry industry they're known as "stumpage".

Government and Resources

Governments often own many natural resources, and the terms of government licenses and royalties are typically regulated. In the United States, the federal government owns about 28% of all land, and resource royalties on that land are managed by the Department of Interior (DOI (<http://www.doi.gov/index.cfm>)). Royalties are paid to the federal government and a portion is then distributed to states. In fiscal year 2012 the U.S. government collected over \$12 billion in mineral royalties, distributing \$2.1 billion to state governments.

Most countries consider nonrenewable resources like oil, coal and minerals to be a public good and do not allow them to be privately owned. However, United States citizens have the right to fee simple (<http://legal-dictionary.thefreedictionary.com/fee+simple>) land ownership, meaning that they may own both the surface of their property and everything above and below it, including all natural resources. The extraction of nonrenewable resources from land may be subject to taxation (called a severance tax (<http://www.investopedia.com/terms/s/severance-tax.asp>)) at the state and local level, but not at the federal level.

Related Articles

The Tax Foundation on Federal Mineral Royalty Disbursements (<http://taxfoundation.org/article/federal-mineral-royalty-disbursements-states-and-effects-sequestration>)

Geology.com on Mineral Rights (<http://geology.com/articles/mineral-rights.shtml>)

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Film and Television Royalties

Overview

Films and television shows, just like songs, are creative works that are protected by copyright. As such, the owners of film copyrights are entitled to royalties when their products are used.

In film and television, the copyright owners are typically the producers. The directors, performers, writers and other key creatives involved in the work's production usually sign contracts relinquishing copyrights and stipulating royalty terms. Hollywood has a long history of power struggles between creatives, resulting in the varying royalty rates seen in their contracts. Performers (actors and actresses) typically command the highest rates, collecting approximately \$639 million (http://www.wga.org/uploadedFiles/who_we_are/annual_reports/annualreport13.pdf) in royalties in 2012.

Residuals

Royalties, in film and television, go by the name 'residuals' and are paid when a film or program is rebroadcast. Creatives are typically paid a large upfront fee for a film's theatrical release or a television show's first airing and are then paid residuals for any subsequent airing, including DVD release, broadcast TV syndication and new media use such as Netflix streaming.

The valuation of residuals takes into account the amount of time spent on the production, the type of production and the market in which the production appears (e.g. TV, DVD, new media).

Guilds

Most creatives are members of unions, called guilds, which sets the terms of their members' contracts, including residual rates. Major guilds include Writers Guild of America (WGA East (<https://www.wgaeast.org/>) and WGA West (<http://www.wga.org/>)), Screen Actors Guild / the American Federation of Television and Radio Artists (SAG-AFTRA (<http://www.sagaftra.org/home>)), Directors Guild of America (DGA (<http://www.dga.org/>)), Producers Guild of America (PGA (<http://www.producersguild.org/>)), Motion Picture Editors Guild (MPEG (<https://www.editorsguild.com/index.cfm>)) and International Alliance of Theatrical Stage Employees (IATSE (<http://www.iatse-intl.org/>)).

The guilds routinely lobby for higher residuals and have staged strikes during particularly contentious Hollywood power struggles to ensure that residuals continue to be paid.

Related Articles

SAG-AFTRA's Residuals FAQ (<http://www.sagaftra.org/content/residuals-faq>)

Who Owns a Film Copyright? (http://kb-law.info/wt_dev/kbc.php?article=139&land=US&lang=EN&mode=1)

WGA's Residuals Survival Guide (http://www.wga.org/uploadedFiles/writers_resources/residuals/residualssurvival05.pdf)

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Franchise Royalties

Overview

A franchise is a form of trademark licensing (<http://www.royaltyexchange.com/resources/trademarks/>) in which the licensor provides the licensee with know-how, supplies, pooled advertising and other benefits in addition to use of the mark. In this agreement, the licensor usually takes on a more supervisory role and audits the licensee to ensure compliance with terms and quality standards. A franchise agreement usually involves monthly fees and percentages of sales, and might not specifically assign a royalty to the trademark license.

Definition

A franchise can be defined as an agreement on the following terms:

- The trademark element: the right to use a trademark to market a good or service
- The fee element: the payment of a royalty or fee
- The supervisory element: significant assistance or control of the licensor’s business

If one of the above three terms doesn’t apply, the agreement is considered to be a trademark agreement and not a franchise.

Related Articles

About.com on Franchise Royalties (<http://franchises.about.com/od/franchisebasics/a/fran-royalties.htm>)

How Stuff Works: Franchising (<http://money.howstuffworks.com/franchising3.htm>)

Average Franchise Royalty Fees, by Industry (<http://www.franchise.org/files/Avg.%20Royalty;%20Royalty%20Fee%20Requirement.pdf>)

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Publishing Royalties

Overview

Authors seek copyright protection for their writing and, traditionally, license the full copyright to a publisher for publication, marketing and distribution. However, modern book publishing deals and their royalty payouts vary widely.

The book publishing industry is best understood as a set of industries running in parallel. There are many types of book publishers (<http://publishing.about.com/od/BookAuthorBasics/a/Book-Publishers-Different-Types-Of-Book-Publishers.htm>), each with unique markets — textbook publishers, Christian publishers and professional publishers have well-carved niches. These publishers have different business models, service offerings and royalty payouts.

Publishers often pay different royalty rates for different products, including hardcover, softcover, e-books, audio books, large print books and more. Contracts often also establish separate rates for ancillary rights such as film, foreign sale and derivative work rights. Because books vary greatly in marketability — genre, author profile and target demographic are all factors taken into consideration — their royalty rates also vary.

Adding to this diversity is an array of options available to those who wish to self-publish. Self-publishing services (<http://publishing.about.com/od/SelfPublishingAndVanityPresses/a/Self-Publishing-Services-An-Overview.htm>) allow authors to publish exclusively on one platform, such as Kindle, or to invest in marketing and promotion for something closer to a traditional publishing experience. Royalty rates for these services can be as low as 10% or as high as 100%.

Retail v. Net Basis

Traditional publishing houses sell bulk quantities of books to distributors and booksellers at a steep discount, affording a profit to booksellers. When valuating a royalty, it's important to note whether the royalty is paid on the retail price or the net income to the publisher. The retail price is the much higher of the two.

Related Articles

About.com on Book Publishing (<http://publishing.about.com/od/BookAuthorBasics/u/Book-Readers-And-Book-Writers-Gravitate-To-Genres.htm>)

How Publishing Royalties are Calculated (<http://www.booksandtales.com/pod/aroyalties.php>)

Publishers Weekly on Publishing Royalties (<http://www.publishersweekly.com/pw/by-topic/digital/retailing/article/50505-rights-and-royalties-a-game-of-granularity.html>)

Writers Services on Advances and Royalties (<http://www.writersservices.com/resources/advances-royalties-inside-publishing>)

Publishing Contract Terms and Royalties (<http://www.fonerbooks.com/contract.htm>)

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Technology Licensing Royalties

Overview

Businesses often prize their patent (<http://www.royaltyexchange.com/resources/patents/>) portfolios, and for good reason. Patents grant exclusivity and a strong competitive advantage. There's even a set of businesses — commonly known as patent trolls — that exists solely to acquire patents and sue patent infringers. This importance to business has made technology licensing the most economically important type of royalty agreement.

Technology is typically licensed for an upfront fee and a royalty, the rates of which vary. The technology licensing market, or the total yearly value of U.S. technology license payments, grew from \$33 billion in 1994 to \$68 billion in 2002 (<http://books.google.com/books?id=0V-m1fgudt8C&pg=PT31&lpq=PT31&dq=IRS+royalty+income+active+companies+data&source=bl&ots=XM26YNmCHC&sig=Dx-GVfk6WBmhBrOUfbRWai35xgc&hl=en&sa=X&ei=oR03UsecJfez4AO38oDYCw&ved=0CEcQ6AEwAw#v=onepage&q=IRS%20royalty%20income%20active%20>) is likely over \$100 billion today. This increase has to do with the historical trend of American businesses moving away from manufacturing and towards value added industries such as technology research. The technology licensing market is not only increasing in value, but is efficient (http://brandfinance.com/images/upload/ip_valuation_royalty_rates.pdf), meaning that royalty rates on technology licenses have been shown to be properly valued.

Not Just Patents

Most organizations and individuals engaged in research don't rely solely on patents to protect their discoveries, but use a mixture of the four types of intellectual property rights to cover their technology. For example, a pharmaceutical company developing a new drug may seek:

- Patent protection for the drug;
- Patent protection for the process of creating the drug;
- Trademark (<http://www.royaltyexchange.com/resources/trademarks/>) protection for the drug's name; and
- Trade secret (<http://www.royaltyexchange.com/resources/trade-secrets/>) protection for market research and know-how related to the drug's manufacture.

Technology Transfer

The process of identifying a new technology, securing intellectual property protection and pursuing licensing agreements is called technology transfer. Most universities and government programs involved in research have a technology transfer office dedicated to protecting and licensing technology developments. Proponents of technology transfer claim that the licensing process leads to benefits like the production of jobs, increased marketability of new technology and attraction of corporate research support.

Related Articles

About Technology Transfer (http://www.autm.net/Tech_Transfer.htm)

IPHandbook: Technology and Product Licensing (<http://www.iphandbook.org/handbook/ch11/summary/>)

IPHandbook: Valuating Early Stage Technologies (<http://www.iphandbook.org/handbook/ch09/p03/>)

WIPO Guide to Successful Technology Licensing (http://www.wipo.int/export/sites/www/freepublications/en/licensing/903/wipo_pub_903.pdf)

USPTO General Patent Information (http://www.uspto.gov/patents/resources/general_info_concerning_patents.pdf)

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Agriculture Royalties

Overview

Technology licensing (<http://www.royaltyexchange.com/resources/technology-licensing/>) in the form of patents (<http://www.royaltyexchange.com/resources/patents/>), trademarks (<http://www.royaltyexchange.com/resources/trademarks/>) and trade secrets (<http://www.royaltyexchange.com/resources/trade-secrets/>) is as important a source of revenue for the agriculture industry as for any, but agriculture has unique access to an additional type of intellectual property in the ability to own varieties of plants. Two types of protection are available for developers of plants: the plant patent and the Plant Variety Protection Act (PVPA) Certificate of Protection.

Plant Patents

Plant varieties that have been developed asexually (e.g. grafting or genetic methods) qualify for a plant patent, granted by the USPTO (<http://www.uspto.gov/>). These plants must satisfy the general requirements of patentability and are given the same protection as all patented technology. Since asexually reproduced plants are clones, the patent is only valid for one genome.

PVPA Certificates

Plant varieties that have been developed sexually (through traditional breeding) or are tubers (<http://www.merriam-webster.com/dictionary/tuber>) qualify for PVPA protection. A Certificate of Protection is granted by the Plant Variety Protection Office of the USDA and provides rights similar to those a patent provides, excluding all but the certificate holder from selling, advertising for sale, importing, exporting, breeding or using the protected variety. Licensees of PVPA-protected seed can save seed for replanting, but cannot share the seed with others without permission of the certificate holder.

Developers with PVPA protected plants have two options for protection: they may sell both certified and uncertified seed, prosecuting violators independently, or; they may sell certified seed only, making uncertified use of their seed illegal at the federal and state levels as well as subject to civil suit from the certificate holder. Most certificate holders choose the latter option. PVPA certificates are valid for 20 years after being granted.

Plant Variety Licensing

Both plant patent and PVPA protection rights may be licensed to growers who wish to use protected plants. Payments can be in the form of up-front fees, royalties or a combination of the two. Plant variety licenses have many details due to the specificity of the right granted — to one genome only. It is important to note whether the license is exclusive or non-exclusive and whether it covers all plants made as hybrids with or mutants of the protected variety.

As in all technology licensing (<http://www.royaltyexchange.com/resources/technology-licensing/>), plant variety rights are often licensed in conjunction with other forms of intellectual property. A common example of a bundled right is the trademark on the variety's name.

Related Articles

The Plant Variety Protection Act (<http://www.ext.colostate.edu/pubs/crops/00301.html>)

Primer on Plant Variety Protection (<http://ag.montana.edu/msga/text/General%20Information/Plant%20Variety%20Protection.pdf>)

USPTO Introduction to Plant Patents (<http://www.uspto.gov/web/offices/pac/plant/>)

IP Handbook: Licensing Agreements in Agricultural Biotechnology (<http://www.iphandbook.org/handbook/ch11/p02/>)

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Copyright Royalties

Overview

Copyrights are a form of intellectual property granted by the U.S. Copyright office that covers creative products including songs, books, films and more. Copyright protection is available for both published and unpublished works and is valid for 70 years after the protected work’s author’s death.

The U.S. Copyright Office provides a concise introductory guide (<http://www.copyright.gov/circs/circ01.pdf>) to copyrights and copyright law.

Rights Granted

An U.S. copyright grants six specific rights. As stated by the U.S. Copyright Office, those rights are:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

A copyright holder may license her copyrighted material, or license specific rights individually. For example, in the music industry, songwriters often license to record labels the right to “reproduce [a] work in copies or phonorecords.” In the music industry, this right is known as the mechanical right.

Related Articles

U.S. Copyright Office Introduction to Copyrights (<http://www.copyright.gov/circs/circ01.pdf>)

Lott & Fischer Copyright Resources (<http://lottfischer.com/general.php?category=Resources&headline=Copyrights+Resources>)

Copyright Clearance Center Education Portal (<http://www.copyright.com/content/cc3/en/toolbar/education/get-the-facts.html>)

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Patents

Overview

A patent grant ensures the inventor the right to exclude others from manufacturing, using, selling, advertising for sale or importing her invention; these rights may be licensed, exclusively or non-exclusively, for a royalty. U.S. patents apply to the U.S. and U.S. territories and are valid for 20 years beginning at the date on which the patent application was filed.

The U.S. Patent and Trademark Office provides a concise introductory guide (http://www.uspto.gov/patents/resources/general_info_concerning_patents.pdf) to patents and patent law.

Types of Patents

There are three types of patents:

1. **Utility patents** are the most common type of patent, and are granted to inventors or discoverers of processes, machines, articles of manufacture (http://www.trwiplaw.com/index_files/article-of-manufacture.htm), or compositions of matter (<http://legal-dictionary.thefreedictionary.com/Composition+of+matter>);
2. **Design patents** are granted to inventors of new, original, and ornamental designs for articles of manufacture; and
3. **Plant patents** are granted to inventors or discoverers of new varieties of plants.

Related Articles

USPTO General Patent Information (http://www.uspto.gov/patents/resources/general_info_concerning_patents.pdf)

Design Patent v. Utility Patent (<http://www.patent-ideas.com/Design-Utility-Patents/Design-Patent-vs-Utility-Patent.aspx>)

Lott & Fischer Patent Resources (<http://lottfischer.com/general.php?category=Resources&headline=Patents+Resources>)

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Trade Secrets

Overview

Trade secrets can take the form of any process, device, business plan or set of information which derives independent economic value from its secrecy and is subject to reasonable efforts to maintain its secrecy. As such, trade secrets represent a form of intellectual property right that can be used as an alternative to a patent (<http://www.royaltyexchange.com/resources/patents/>) or to cover unpatentable technologies and business know-how.

Often considered to be less important than patents, trade secrets actually cover 90% of new technology and are included in over 80% of technology transfer (<http://www.royaltyexchange.com/resources/technology-licensing/>) agreements.

Trade Secret Licensing

Trade secrets are often preferred to patents by businesses, as there is no application process, no public disclosure of information, no strict novelty stipulation and no subject matter limitation. In addition to these benefits, trade secrets may be licensed indefinitely. Even in the case that a trade secret is disclosed and becomes public information, trade secret licensees must continue to pay royalties as specified in their licensing contracts.

Trade secrets may be licensed by themselves or in conjunction with related patents in a hybrid license. When a patent associated with a hybrid license expires, royalty payments for associated trade secrets stop as well, unless otherwise specified in the license contract.

Trade secrets are different from the other types of intellectual property in that two or more individuals or entities may be entitled to trade secret rights for the same technology. This is possible so long as each party discovered or created the technology independently and each keeps it secret.

When assessing the value of a trade secret, it is useful to assess: the value of the information to the owner’s business and to competitors’ businesses; the strength of the owner’s secrecy protections; the extent to which the information is known outside the owner’s business; and the ease with which others could properly acquire or duplicate the information.

Related Articles

IPHandbook: Trade Secrets and Trade Secret Licensing (<http://www.iphandbook.org/handbook/ch11/p05/>)

Trade Secrets Homepage: Trade Secrets Defined (<http://tradesecretshomepage.com/tradesec.html>)

Trade Secrets Homepage: Trade Secret Licensing (<http://tradesecretshomepage.com/license.html>)

Chilling Effects: Trade Secret FAQ (<http://www.chillingeffects.org/tradesecret/faq.cgi>)

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