Getting Rights Right
The importance of using consistent terminology when defining products and granted rights.

By Holly Royer, Director of Client Services
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Product definitions and the grant of rights are the backbone of any licensing agreement. Using consistent terminology is key. Consistency ensures that executives get the information they need to make the best possible high-level business decisions. It also allows staff members to refer to contracts easily and often during the licensing process, even at a moments notice.

But licensors may find they have a tangled web of contradictory terms in their licensing agreements. Company mergers, strategic restructuring and employee turnover all can contribute to the problem. No one purposely creates confusing terminology; product and granted rights definitions just take on a life of their own as license volume grows. Meanwhile, licensees' challenges are compounded because they deal with definitions handed down to them from multiple licensors, each with their own rights definitions.

To streamline the process, using standard naming conventions is a must. Of course, specific definitions vary depending on a company's business. An entertainment licensor may use general terms for some categories (t-shirts sold in North America), while a licensee in the collectible industry may want details about its category (1:18 scale die cast vehicles, made of metal only, sold through hobby stores in the U.S.). Either way, following industry best practices to set up consistent parameters, and then maintaining that consistency throughout the operation will lead to improved contract compliance and royalty reporting.

In some cases, companies are not even aware of how inconsistent their terminology is until they begin to implement an automated financial and royalty tracking system. "It really got us organized, not only in setting up the system but in setting up the process," says Maureen Gottschall, CFO of licensing agency and DSI client Dimensional Branding. "That was an unexpected benefit. We had a process but it forced us to sit down and fine-tune it. It took a long time because it really impacted everything we do. Every decision had a ripple effect."

"We had realized that all our terminology was inconsistent, but had never come up with such clear, understandable, easy-to-follow language until implementing DSI," says Brooke McDonald of Licensing in Motion, an Australian licensing organization. "It was quite challenging and time-consuming entering all the details, but that was mostly due to the fact that all of our licensing programs were running sporadically without central systems and procedures. DSI has allowed us to streamline all programs, better use resources, increase productivity and dramatically improve reporting capabilities."

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Products

Product definitions incorporate many levels. A leveled structure allows flexibility and is useful when it comes to analyzing sales and making business decisions. With a manual system, many executives can only track two levels, if they're lucky. Their process is taxing to the organization and often leaves out important information.

We recommend using a five-level hierarchy, called a Product String that proceeds from general to specific. Each level is defined by a company based on its unique business practices; however, a typical Product String looks like this:

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Product → Category → Subcategory → Article → SKU

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The Product level is as general as possible and is typically tied to the trademark classification numbers. An example would be apparel, TM class 25. Using the TM classifications allows trademark rights to be tracked easily around the world, enabling analysis of which TM classifications have been licensed for a specific intellectual property (IP).

The second level, Category, is slightly more specific, breaking out the Product into its logical segments. For apparel, Category definitions could include t-shirts, sweatshirts, or loungewear.

The third level, Subcategory, refines the product definition further. For an apparel Product String, the Subcategory is commonly used to break out size and gender. For example, in the Category of t-shirts, Subcategories could be men's, women's, infants, or juniors.

The last descriptive level before defining the actual SKU is Article. This level specifies details such as the style, technique or materials. In the apparel example, possible Article definitions could include cut 'n' sew, embroidered, or screen print.

The SKU is the most specific level. Each product has a unique number and description assigned to it, as well as other unique information such as the date approved, the date of first use, or the specific manufacturer. All this information can be assigned, tracked, and reported.

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Here are a few examples of a complete Product String:

Product ⇨	Category⇨	Subcategory⇨	Article⇨	SKU
Toys	Vehicles	Die Cast	1:24 Scale	DC-12345
Apparel	T-shirts	Men's	Embroidered	9821311
Stationery	Back-to-School	Notebook	Spiral	NB123121

Standard Naming Conventions

Using consistent names for Products, Categories, Subcategories, and Articles simplifies contract management, enhances communication, and improves reporting. For example, it enables cross-department analysis on specific product groupings, since the accounting and product development departments both understand the naming rules (and are involved in the process of determining the terminology to be used). No matter which division a report covers, the common data elements remain the same, ensuring that each division is analyzing data the same way. Being consistent puts everyone on the same page.

Although it is important to control standard naming conventions, it is also important to remain flexible. Achieving this balance can be tough. For example, one department may find the boys Subcategory adequate within apparel, while another may need to know if a product falls within boys size 4-10, boys size 8-20 or boys 4-20.

Try to keep the process as simple as possible given the unique needs of your business. Some companies strictly enforce standard naming conventions at all levels, while others are more lenient, enforcing them only on selected levels. For instance, the Product and Category levels may be standardized across the company, while Subcategory and Article are used only by those divisions that need that information. In the latter case, consolidated and management reporting would only include Product and Category detail.

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Not all Product Strings require all levels. For example, the Toy category may need the entire String (Toys, Die Cast, 1:18 Scale, Wood), while others only need one or two levels, in which case the hierarchy ends at whatever level is appropriate and the SKU immediately follows.

Granted Rights

Each contract has a Granted Rights section, which outlines the sales rights (Territory, Sales Channel, Market, and/or Language), in any combination to one or more Product Strings. Granted Rights data can be refined further, such as by exclusivity, IP, or a specified date range. It also may need to incorporate an overriding royalty rate (if different from the contract default rate for certain territories, sales channels, products, etc.).

Consistent Granted Rights definitions are essential in order to monitor contract compliance. They help the licensor easily determine whether SKUs submitted by the licensee comply with the rights granted in a particular contract. When a desired SKU does not fall within the Product String and Granted Rights, it can be flagged as "disapproved." If the appropriate rights are later granted through an amendment, the product development cycle can then continue for this SKU.

The Granted Rights section also is used to validate sales and royalty reporting. Executives can verify whether an SKU has been sold in a granted Territory, Sales Channel, Marke, and/or Language, and cross-reference against the default royalty rates and any override rates that are applicable.

Bringing your Granted Rights and Product String terminology in line and using the terms consistently takes planning, updating, and continual review. But doing so benefits your business by bringing continuity to your licensing processes, assisting in TM monitoring and contract compliance, and generating effective and efficient reports. All of these enhance both financial management and business decision-making.

"Many times terms and processes that are pleasing to the accountant are horrific to those managing the contracts," says Gottschall. "It's hard to balance the needs of both. Each of our contracts still has nuances, but we came up with one standard we all agree upon. It's all about the terminology. We can now track all the points in a contract, even those that aren't necessarily finance-driven."