

# LES-Arab Countries Newsletter

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## Marking the Arab Intellectual Property Day

### The Arab Federation for the Protection of Intellectual Property Rights Honors Abu-Ghazaleh



The Arab Federation for the Protection of Intellectual Property Rights (AFPIPR) on December 7th, 2009 bestowed upon Mr. Talal Abu-Ghazaleh, chairman of the Licensing Executives Society (LES-AC) and chairman and CEO of Talal Abu-Ghazaleh Organization (TAG-Org), an honorary award for his role as a pioneer of intellectual property.

The award was granted to Talal Abu-Ghazaleh, as a pioneer and advocate in the field of Intellectual Property (IP) protection at both regional and international levels. The award was received during a ceremony held under the patronage of the Head of the Jordanian Judicial Council, H.E. Ratib Alwazani.

Mr. Abu-Ghazaleh is considered one of the most distinguished personalities in the Intellectual Property domain; and his organization is prominent and reputable in the Arab region and around the world.

The award ceremony was during the AFPIPR's celebration to mark the Arab Intellectual Property Day, which took place on December 7. It also included the honoring of the former Egyptian Minister, H.E. Dr. Ahmad Juweili, general secretary of the Council of Arab Economic Unity.

It is worth mentioning that the Arab IP Day celebration was the first such anniversary to be organized in Amman, upon the recommendations of the Arab Economic Union Council, and in recognition of the prominent Jordanian role in the IP field and IP protection for all right-holders.

The former minister of finance, H.E. Sami Qamwah, head of the AFPIPR Council of Trustees, Jordanian branch, affirmed that the celebration of this day in Amman is a reassurance of Jordan's pioneering role and contribution in the protection of Intellectual Property, which takes a considerable space in the Jordanian legal culture, and as an honor for the important role of the Jordanian economy and Jordanian citizens in this field.

The Arab Federation for the Protection of Intellectual Property Rights (AFPIPR) was established in 2005 within the framework of the Arab focused unions to safeguard and protect Arab creativity and innovations.

# National News

## LES-AC and BME Global Sign MoU to Organize the "Licensing Opportunities Forum"



The Forum will concentrate on three primary purposes: education, networking and business opportunities.

The Licensing Executives Society – Arab Countries (LES-AC) and BME Global signed a memorandum of understanding on 21 October, 2009 to co-organize an annual "Licensing Opportunities Forum".

The first Forum will be held on 11-12 May, 2010 in Manama - Bahrain with a view to address three primary purposes: education, networking and business opportunities.

This timely initiative will provide a platform to exchange ideas and solutions between senior delegations from across the world as well as excellent networking through social functions.

The two-day event will start with a broad introduction to key issues facing the Arab countries in their attempt to diversify their economies and achieve sustainable development through technology transfer. Proceedings would take the form of formal presentations and networking receptions, structured to encourage questions from the floor in an open debate.

The Forum will feature select national and international speakers recognized in their fields, who will provide their perspectives and enrich the content of the Forum.

This focal event, will offer business people and entrepreneurs an eminent opportunity to interact, communicate and lead the way for prosperous business opportunities.

## LES-AC and Dubai Chamber Conduct a Training Course Entitled: "Establishing, Protecting and Licensing a Brand"



Licensing Executives Society-Arab Countries and Dubai Chamber of Commerce and Industry have organized a training course entitled "Establishing, Protecting and Licensing a Brand" to on October 25-26, 2009 in Dubai, UAE.

The course focused on training participants on ways to protect a trademark against violations, theft and misuse, especially in the era of thriving e-commerce. The course discussed the best ways to select, establish, register and restructure a new brand, and ways to develop brand policies and methods of brand licensing.

Ms. Jihad Kazem, Director of Legal Services at Dubai Chamber, stated the course provided a solid platform for the participants to improve their capabilities to protect the brand, and thus safeguard trademarks that distinguish their businesses in a highly competitive business environment taking place in the business sector in Dubai.

"Dubai was the perfect place to discuss the topic of brands because it is an advanced city containing a variety of international trademarks, and witnessing the emergence of leading local brands." Ms. Kazem added.

Participants in the training course included businessmen who wished to understand the elements and techniques for building a strong brand, in addition to lawyers and legal professionals and executives from manufacturing companies.

The two-day training course provided full explanation on the definition of a brand and identification of the name elements and distinction between trademarks and trade names. The course reviewed the method of establishing a strong brand, and how to use it to increase the power of influence and understand consumer perception of the brand business.

The training course covered the sequence of how to build a brand from its selection, registration, use and maintenance through to how the standard and value of a brand can be maintained.

The trainer also reviewed the risks that may face brands on the global web and how to ensure their protection, particularly as the ownership of trademarks requires all time vigilance to ensure the protection of trademark against infringement, deception, violation and other external factors that may lead to the loss of value of the brand. He also noted that the owners of successful brands develop internal-use policies to control the quality of goods and services bearing such brands, monitor licensees and keep their brands updated.

The participants have learned the methods of assessing a brand because a successful brand yields significant financial gains for the owner either by increasing revenues or by cutting costs. The course discussed the issue of identifying the best ways to identify risks that may be associated with a used commercial brand.

## LES-AC and Queen Rania Center for Entrepreneurship Sign Cooperation Agreement



The Agreement aims at promoting creativity among students in schools and universities and raising awareness and knowledge of Intellectual Property Rights through specialized training courses.

The Licensing Executives Society - Arab Countries (LES-AC) and Queen Rania Center for Entrepreneurship (QRCE) signed on November 3, 2009 a cooperation agreement to organize and hold specialized training and educational courses in the field of Intellectual Property Rights (IPRs).

According to the agreement, both parties will cooperate in holding a series of specialized training courses to promote creativity in Jordan. The objective of these courses, which will target the age group of 12 to 25 years, is to promote innovation and investment in IPRs, and raise awareness and knowledge of Intellectual Property Rights among members of this segment.

The agreement was signed by Ms. Renad Al-Noubani, manager of LES-AC, and Eng. Mohamed Al-Khawaja, executive director of QRCE who stressed the importance of investing in new generations as a strategic development alternative in order to build a creative generation aware of its responsibilities towards its society. He added that LES-AC is a strategic partner of the center and LES-AC is the first Arab specialized regional network in the field of licensing and technology transfer.

From her part, Ms. Al-Noubani praised the center's efforts and its programs aiming at enhancing the development of knowledge economy in the region, notably the technology investment program which seeks to raise the level of awareness on intellectual property management.

## Society's Upcoming Events for 2010

### LICENSING OPPORTUNITIES FORUM 2010

#### *"Technology Transfer through Licensing; the Real Opportunity for Allocating Your Business Partner"*

The Licensing Executives Society – Arab Countries in cooperation with BME Global organize the first annual event entitled "Licensing Opportunities Forum 2010". The event will be held 11-12 May, 2010 in Bahrain.

#### Forum's objectives:

- Education: Offering different sessions to share information on best practices, trends and the latest licensing resources.
- Networking: Provide networking opportunities nationally and internationally to accelerate technology transfer and economic development in the Arab countries in accordance with their national needs.
- Business Opportunities: Encourage and Facilitate business cooperation with national and international organizations to invest and commercialize intellectual property/technology.

#### Target Audience:

The Forum is tailored to meet the needs of:

- Corporates and entrepreneurs looking for a partner in/ outside the Arab countries
- Commercial agents
- Licensing professionals
- Legal consultants
- Business people
- Venture capital investors
- Inventors
- Government representatives

\* For more info about participation, call for papers, or sponsorship opportunities, please contact: [les@lesarab.org](mailto:les@lesarab.org), phone: +962-6-5100900 ext: 1367 or visit our website: [www.lesarab.org](http://www.lesarab.org).

### Fundamentals of Intellectual Asset Management and Licensing Course

The Licensing Executives Society – Arab Countries in cooperation with Asharqia Chamber, is organizing a training course entitled "Fundamentals of Intellectual Asset Management and Licensing" part of the "Arab Certified IP Licensing Practitioner" program from the period 20-24 February, 2010 in Al-Khobar – KSA.

The intensive 32-hour training course will provide participants with basic concepts and skills necessary for successful Intellectual Asset Management and Licensing. This course consists of four major topics:

1. The Basics of Intellectual Property and Licensing
2. Business Framework of IP and Licensing
3. The Deal: Valuation and Negotiation
4. Living with the Deal

After completing this Course, participants will be able to:

- Use the fundamental language of Intellectual Property and Licensing
- Identify basic legal issues
- Understand how to develop an Intellectual Asset Management process
- Participate in analyzing and assessing the portfolio of Intellectual Assets
- Understand how technologies are valued
- Recognize and use successful strategies for negotiating and closing a deal
- Understand the business factors that contribute to successful agreement management

For more details and enrollment please visit:

[http://www.lesarab.org/news.aspx?news\\_id=406&group\\_key=training\\_courses&lang=en](http://www.lesarab.org/news.aspx?news_id=406&group_key=training_courses&lang=en)

## Intellectual Asset Management and Strategies

### A Business Framework Training Course in Dubai

The Licensing Executives Society – Arab Countries in cooperation with Dubai Chamber, is organizing a training course entitled “Intellectual Asset Management and Strategies: A Business Framework”. The course will be held during the period 21-22 March, 2010 in Sheraton Creek Hotel, Dubai – UAE.

This intensive training course will provide participants with detailed information on the concept of intellectual asset management, licensing, business framework and how to manage licensing portfolios.

After completing this Course, participants will be able to:

- Recognize high-level business processes for intellectual asset management (IAM).
- Relate licensing to corporate strategy
- Guide and manage components of process work to
  - Create deal opportunities
  - Establish sustainable deal flow
  - Manage IP cost-effectively over time
- Position licensing activities strategically within the organization

For more details and enrollment please visit:

[http://lesarab.org/news.aspx?news\\_id=407&group\\_key=training\\_courses&lang=en](http://lesarab.org/news.aspx?news_id=407&group_key=training_courses&lang=en)

## LES-AC: Partner for Technology Transfer Today (T3) Forum, in Ras Al-Khaimah



Embark is organizing an annual forum entitled Technology Transfer Today (T3) Forum with the participation of three other partners: the Association of University Technology Managers (AUTM), the Licensing Executive Society - Arab Countries (LES-AC), the Gulf Venture Capital Association (GVCA) and the Arabian Knowledge Economy Association.

The two day event, that will be held in Ras Al-Khaimah, UAE 18-20 Oct, 2010, aims to connect University Technology Transfer Offices to Investors, Capital and Key Industry Representatives. Technology Transfer Today (T3) will be an annual event and an exclusive marketplace for thought leadership, cutting edge technology transfer and deal flow.

### Target Audience

1. Investors and Capital companies
2. International financial institutions
3. interested parties and experts in technology transfer related industries
4. universities

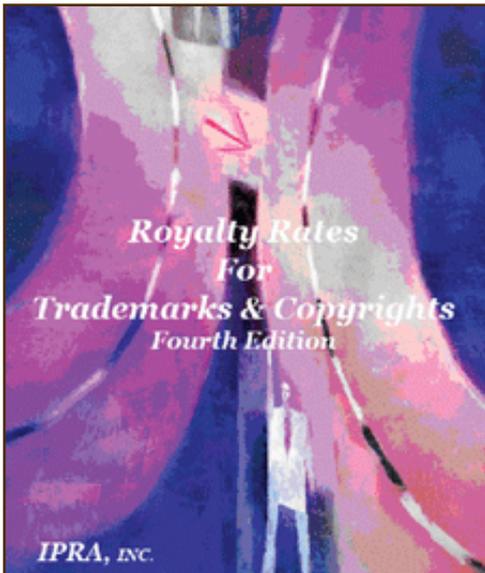
### For LES-AC Members:

- 15 % Discount Off Registration Fees.
- Use Discount Code T315D when registering on-line.
- Enter “LES-Arab Countries” as the referring organization to receive the discount.

For more information about the T3 Forum and registration, please follow the following link: [http://www.embarkteam.com/pages/technology\\_transfer\\_today/48.php](http://www.embarkteam.com/pages/technology_transfer_today/48.php)

# International News

## Royalty Rates for Trademarks & Copyrights Book -4th Edition, Released



**R**oyalty Rates for Trademarks & Copyrights identifies the licensor, licensee, property licensed, and all financial terms including royalty rates.

The newly released fourth edition book of Royalty Rates for Trademarks & Copyrights contains more pricing information than any other publication. Based on nearly two decades of research, this must-have reference reports royalty rates and transaction values for trademarks and copyrights for the period 1990 through 2009.

They identify the property licensed — the royalty rates — the licensor — the licensee. You also get details on outright sales, infringement damage awards, and settlements.

**You can use this unique collection of real-deal data to help you:**

- Negotiate better licensing deals
- Value trademarks and copyrights
- Develop and support infringement damages theories

Source: 2Market Information, Inc. publisher of Tech Transfer eNews and IP Marketing eNews weekly e-zines. info@technologytransfertactics.com.

## AUTM and Six Universities Embrace Global Sccess Initiative



**T**he Association of University Technology Managers (AUTM) and a consortium of six major U.S. research universities have endorsed a global health initiative designed to speed access to affordable medicines in the developing world.

The group has signed onto a plan that will insist licensees to university-created therapies, such as pharma companies, agree to help make those therapies more widely available in developing countries. By inking the “Statement of Principles and Strategies for the Equitable Dissemination of Medical Technologies,” Harvard, Yale, Brown, Boston, and Oregon Health & Science Universities and the University of Pennsylvania, together with AUTM, committed to “implementing technology transfer strategies that promote the availability of health-related technologies in developing countries for essential medical care.”

The initiative takes a major step beyond “Nine Points to Consider in Licensing University Technology,” a 2007 statement endorsed by nearly six dozen research and academic institutions, and includes a Global Health Toolkit created by AUTM members.

The toolkit allows TTOs to share information on structuring licenses that promote innovation and product development while encouraging access to essential medicines. The toolkit includes sample clauses taken from signed license agreements that include global access language acceptable to the licensees. AUTM plans to update the toolkit as TTOs gain experience and provide feedback on it, according to Arundeeep S. Pradhan, associate vice president,

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## Nikon Acquires Harvard STORM Technology



Harvard University has signed a licensing agreement with Nikon Corporation covering the use of Stochastic Optical Reconstruction Microscopy (STORM) technology developed in the lab of Xiaowei Zhuang, PhD, a Howard Hughes Medical Institute investigator. Under terms of the agreement, Nikon will manufacture STORM-enabled microscopy systems and market them with the N-STORM name. Optical microscopy is one of the most widely used imaging methods in biomedical research.

However, the spatial resolution of optical microscopy — classically limited by the diffraction of light to several hundred nanometers — is substantially larger than typical molecular length scales in cells, leaving many biological investigations beyond the reach of light microscopy.

The STORM technology overcomes these limitations, allowing life science researchers to observe tissues and cells more clearly. STORM uses photo-switchable fluorescent probes to temporally separate the otherwise spatially overlapping images of individual molecules, allowing the construction of two- and three-dimensional, multicolor fluorescence images of molecular complexes, cells, and tissues. The STORM fluorescence microscopy allows molecular interactions in cells and cell-cell interactions in tissues to be imaged at the nanometer scale. The N-STORM Super Resolution microscope system will be available for delivery in May 2010.

Source: Nanowerk (<http://www.nanowerk.com/news/newsid=13846.php>)

technology transfer and business development, at Oregon Health & Science University and president of AUTM.

The effort to hasten the development and dissemination of technologies and medications to ease the global health crisis began last spring when Harvard and Yale hosted a gathering of TTOs from a dozen U.S. research institutions. The daylong meeting and months of follow-up conference calls provided the framework for the document. The student group Universities Allied for Essential Medicines (UAEM) also pushed for the effort. The consensus statement describes a number of strategies to facilitate generic production or below-market pricing and commits the universities to, among other things:

- make “vigorous efforts to develop creative and effective licensing strategies that help to promote global access to health related technologies;”
- ensure that IP “should not become a barrier to essential health-related technologies needed by patients in developing countries;”
- exert control over patent rights in such a way as to foster the availability of life-saving products in the developing world; and
- support the development of health-related technologies aimed at diseases that disproportionately burden individuals in the developing world — tuberculosis, AIDS, water-borne disease, tropical- and other region-specific ailments and parasitic infections — without regard for economic gain.

Officials at AUTM and the six schools wanted to craft guidelines that encourage drug access for poor nations without dissuading companies from working with university scientists, according to Maryanne Fenerjian, Harvard’s director of technology transfer policy. Participating schools will use strategies such as decreasing royalty rates to persuade companies to charge less or allow low-cost generic production of new drugs for poor patients, she says. Harvard has already used techniques cited in the toolkit to help promote access to medicines. When the university licensed a tuberculosis vaccine technology in 2007 to Hong Kong-based Morningside Group, the company agreed to sell the vaccine at affordable prices in developing countries.

“It’s important that our intellectual property doesn’t serve as a barrier — and in some cases should be used as leverage — to help ensure that drugs, vaccines, and other technologies reach the developing world,” Fenerjian says. “But there is no single solution. Every technology is different and every licensee’s capabilities and sensitivities are different.”

The six universities expect other private and public universities to adopt the principles once they are broadly disseminated. “A number of institutions have been willing to be tough and creative on these issues,” Fenerjian says. “Until now, we haven’t had a statement that says this is what we see as our goal — this is what we see as our new norm.” Universities can endorse the statement of principles at

<http://www.autm.net/endorse>.

Sources: Yale University Office of Public Affairs (<http://opa.yale.edu/news/article.aspx?id=7067>) and Bloomberg.com

# Articles

## Franchising vs. Licensing a Business (Franchise vs. License) and Business Opportunity Expansion Options

Kevin B. Murphy, B.S, M.B.A., J.D.



**The starting point in the franchising vs. licensing a business analysis is to consider the legal aspects, then the business aspects. In considering the legal aspects, begin with the following premise that applies to both options. If you put someone into business (or allow them to use your business name/mark) this transaction will normally be a regulated activity, subject to substantial penalties for noncompliance.**

This guiding principle, coupled with the business aspects of selling a franchise vs. a license (discussed below) will answer most franchise vs. license questions.

### BACKGROUND OF FRANCHISE & BUSINESS OPPORTUNITY LAWS

Why does regulation exist? The government, due to documented past abuses where tens of thousands of individuals lost all of their net worth by investing in nonexistent or worthless business endeavors, has devised two principal consumer protection mechanisms:

1. franchise disclosure-registration laws; and
2. business opportunity laws.

The thrust of these laws is to require sellers to give potential buyers enough pre-sale information so informed investment decisions can be made before money changes hands, long-term contracts are signed and sizeable financial commitments are undertaken. Under federal regulations, a Franchise Disclosure Document (FDD) covering twenty-three individual chapters and a hundred or more pages in length must be prepared and given to every potential buyer at least 14 calendar days before any contract is signed or money paid.

It doesn't matter what terms are used by the parties in contracts or other documents to describe their relationship. For example, the contract may call the relationship a license, a distributorship, a joint venture, independent contractors, etc., or the parties may form a limited partnership or a corporation. This is entirely irrelevant in the eyes of governmental regulators, in particular the Enforcement Division of Federal Trade Commission (FTC). Their focus is not on semantics, but on whether a small number of defining elements are present or not. Today the industry is subject to a complex web of regulations that differ from the Federal level to the state level and differ widely from state to state.

Firms or individuals that say calling it a "license" dispenses with legal regulations are delusional and wrong for at least three reasons:

1. common sense - if it was really that easy, everyone would have done it that way;
2. if the relationship is not regulated under franchise law, business opportunity laws (discussed below) will apply, and complying with these will be a lot more expensive than going the franchise route; and
3. any analysis must include federal as well as applicable state laws.

This all reminds me of some financial planners who still advise clients filing U.S. income tax returns is not required under their interpretation of the U.S. Constitution. It just doesn't work that way. Actually it only works until the IRS catches up. The "licensing avoids franchise regulation" spin (which, not surprisingly, is not accepted in the legal community) also only works until the company gets caught. The logic (not) goes something like this: licensing arises under contract law, not franchise law and therefore franchise law doesn't apply. Sounds just like the "you don't have to file a tax return because tax laws don't apply" argument.

Here's a real life example. A "licensing attorney" prepared a dealer license agreement and ignored the FTC Franchise Rule disclosure requirements. The dealers became disgruntled and hired a litigation attorney who sued the company, not surprisingly, for selling illegal, disguised franchises. It cost the company \$750,000 to go to trial in federal court to answer the question "Is this contract a franchise?" It's always a very expensive question to answer. Trying an end run around the franchise disclosure laws by calling it a "license" may be a cheaper way to go initially. But it's not a question of if you will be caught, the only question is when. Be prepared to spend mind-boggling amounts down the road when the disguised franchise is challenged for what it really is.

In a 2008 case, *Otto Dental Supply, Inc. v. Kerr Corp.*, 2008 WL 410630 (E.D. Ark. 2/13/08) another disguised franchise vs. a license was at issue. The licensor claimed it sold just a license, not a franchise and the franchise laws didn't apply. It made a motion for summary judgment to have the case thrown out of court. The federal Eastern District Court ruled against the licensor and ordered the case onward. It said whether or not the license was really a franchise was up to a jury to decide. Juries apply common sense to the simple defining elements of a franchise. They are not swayed by semantic arguments like "licensing arises under contract law, not franchise law and therefore franchise law doesn't apply." Another expensive franchise vs. license learning lesson.

This is not to say licensing a business isn't a viable option in foreign (out of U.S.) transactions where U.S. laws don't apply - but these are a very small minority. Most transactions and contracts cover U.S. activities and residents, so the franchise vs. license question is an easy one to answer. Even inside the U.S. there are some cases where calling the relationship a "license" makes sense. Years ago, a company selling education franchises to university professionals called their contract a license. To comply with applicable laws, a full franchise disclosure document was prepared and registered. For strictly marketing reasons, the "franchise agreement" was called a license agreement within the franchise disclosure document.

The list of required defining elements is quite short, and although certain franchise exemptions and exclusions are available, the franchise statutory framework was designed to pigeonhole these relationships into either a franchise or business opportunity box. Normal license agreements contain certain "control" provisions (right to audit, require reports, mandate suppliers, etc.) and the presence of ANY control or assistance provision (operations manual, training, site or other assistance) is enough to satisfy these elements of the Rule. In fact, the title of the FTC Rule says it all: "Disclosure Requirements & Prohibitions Concerning Franchising and Business Opportunity Ventures." So, the focus must be on which box is better to use, not on how to avoid using either box.

## **THE FRANCHISE BOX - REGULATION BY THE FEDS**

Let's consider the franchise box. Under FTC regulations that became effective in 1979 a thick document (now called a Franchise Disclosure Document) must be prepared and given to prospective buyers for a minimum of 14 calendar days before any money is paid or contracts are signed. This document now contains 23 items or chapters of information, as well as current financial statements and a copy of the actual contracts used.

As mentioned, this document is designed to give prospective buyers enough pre-sale information about the company, its financial condition, the proposed contract, investment requirements, trademark rights, exclusive territories, etc., so informed decisions can be made before long-term contracts are signed. For companies that attempt to disregard federal law, the FTC Act authorizes the Commission to recover civil penalties of up to \$10,000 for each violation of its Rule, plus injunctive relief, consumer redress (obtaining complete refunds, canceling contracts), etc. Because each sale can involve multiple violations of various regulatory provisions, these fines can be substantial and far outweigh the cost of doing it right the first time.

Selling a disguised franchise (an illegal franchise) as a "license" can be the most expensive mistake a company ever makes. One need only consult the franchise registration filings of various states to see the significant number of companies that fall into this trap. They started out selling "licenses," operating under misguided advice, in a vain attempt to save money. Then, they either get sued for selling an unregistered or illegal franchise. Or they finally get competent legal advice that what they've really sold are disguised franchises, even though they were called a "license." The governmental agencies require them to offer full rescission rights (cancel the license, refund all money that's changed hands) to all persons they've sold "licenses" to. Defenses that "we didn't sell a franchise - we just sold a license" are unavailing. In the end, they pay a lot more to have it done the way it should have from the very beginning. Not a pretty picture.

## **STATE REGULATION OF FRANCHISING**

Because regulation of franchising is at the federal and state level, the effect of state regulation must also be considered. The FTC Rule sets minimum standards and applies in all states, unless a particular state sets higher standards, and then that state's law applies. In 1971, eight years before the FTC Rule went into effect, the State of California was the first to enact a franchise disclosure-registration law where a franchise registration process is required before franchises can be offered (i.e. advertised) or sold. The California Franchise Investment Law was in response to a wave of consumer franchise complaints.

Other states soon followed California's lead, leading to a situation where franchise companies had to follow different rules in each franchise registration state.

To alleviate these difficulties and achieve a uniform format, a group of Securities Commissioners from various states adopted a Uniform Franchise Regulation, effective in 1977, known as the Uniform Franchise Offering Circular (UFOC) format. All states requiring franchise registration followed the UFOC format, a thick document also containing 23 chapters of information. None of these states accepted what was then known as the FTC's Basic Disclosure Document. To ease the obvious predicament created by UFOC vs. FTC format, the FTC allowed companies to use the UFOC format as an alternate to its Basic Disclosure Document. In 2007, the FTC adopted its own version of the UFOC format, known as the Franchise Disclosure Document or FDD. The FDD format is the required format in all states beginning July 1, 2008.

## **FRANCHISE BOX SUMMARY**

Bottom line on the franchise box: By preparing a single franchise disclosure document (at a cost of about \$30,000), a company satisfies

the federal requirement and is positioned to offer and sell franchises throughout the United States. Although certain state-specific information and disclosures may be required in the minority of states having a franchise registration-review process, this can normally be accomplished in a couple of extra hours per state.

### **THE BUSINESS OPPORTUNITY BOX**

Now, let's consider the business opportunity box. At the state level, there are approximately 24 states that regulate and register business opportunities. Unlike the franchise box, there is no such thing as a uniform business opportunity disclosure format. Business opportunity rules and registration requirements differ in each business opportunity state. Many of these states also have a "cooling off" period, usually a couple days after the sale where buyers can change their mind for any reason and receive a full refund.

For a company that's going the business opportunity route two different documents may need to be prepared and provided: the FTC's Basic Disclosure Document (if the business opportunity fits the FTC's definition of a business opportunity) and a state's more abbreviated business opportunity disclosure document. Also, different timelines may need to be observed: the FTC's 14 calendar days before, and a business opportunity state's cooling off period after.

Bottom line on the business opportunity box - if you're an attorney with a business opportunity or "licensing" client, get ready for hundreds of billable hours, you've just landed a big one. But, if you're the business paying the legal bills, it's going to be a lot less money to go the franchise route. Prepare a single, Franchise Disclosure Document, register in a state or two as expansion efforts begin, and you're essentially done.

There are also other factors to consider in the franchise vs. business opportunity analysis, including liability issues (definitely a greater risk in the franchise arena) but these are beyond the scope of this article, which is not intended to offer legal advice. Companies should consult with competent, informed legal counsel about the specifics of their particular situation before making any decision.

### **THE BUSINESS ASPECTS OF FRANCHISING VS. LICENSING A BUSINESS**

The business aspects of the franchise vs. license and business opportunity options are relatively straightforward. It all boils down to image from a marketing standpoint. From a credibility standpoint, does your company want to stand toe to toe with the likes of McDonalds, Radio Shack, H & R Block and other franchised household names? These are the mental images formed in the mind when an average consumer hears the word franchise, along with familiar, highly advertised slogans like "being in business for yourself, but not by yourself," "complete training," "support where and when you need it," etc.

This, coupled with the complete package of training, start up and ongoing support services offered by franchise companies, makes a franchise a more attractive commodity in the eyes of the prospective buyer and an easier sale. The same applies to firms that sold "licenses" then switched to selling "franchises." These companies report they attracted considerable interest and far more inquiries when offering "franchises" compared to when they offered "licenses." So, even from a business standpoint, the franchising vs. licensing a business question is easy to answer. In addition, and as discussed above, a "license" is almost always a franchise in disguise, a ticking bomb creating significant legal issues if the FTC Rule (and corresponding state franchise registration laws) are not followed.

### **THE BUSINESS ASPECTS OF FRANCHISING VS. BUSINESS OPPORTUNITIES**

Business opportunity ventures, when compared to franchises, suffer from definite image problems that translate into difficult marketing issues. If you ever need proof of this, just attend any business opportunity show or expo. You'll see a host of fly-by-night opportunities such as worm breeding in backyards, exotic plants raised in glass bowls, condom vending machines (not a bad idea these days) and the like all promoted by fast-talking, high pressure salespersons. Does your company really want to be associated with these companies and the reputation they project? Poor image, coupled with the fact that business opportunity ventures typically provide little training and no ongoing support, make them a much more difficult sale to prospective buyers. In a business opportunity, the buyer is just thrown a ball, and it's entirely up to them how to run with it.

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**About the author:** Kevin B. Murphy, B.S., M.B.A., J.D.

Mr. Murphy, a San Francisco franchise attorney is an internationally-known franchise expert, author, and instructor - known in the industry as Mr. Franchise. For over two decades he has specialized exclusively in the franchise industry and owned a very successful franchise in the home improvement field. He has written over 30 publications, including four books on franchising and one book on trade secrets. He instructs franchise company personnel in best franchise practices and teaches franchise, licensing and intellectual property courses to attorneys. Mr. Franchise is a franchise attorney and Director of Operations for Franchise Foundations, a San Francisco-based professional law corporation.

# Announcements

## Membership Fees for 2010

We urge our members who have not yet settled their 2009 annual membership fees to do so before the end of January 2010, to enable us continue our activities and enhance our role in helping to create licensing and technology transfer professionals. We also urge all members to settle 2010 membership fees before the end of February 2010.

Our gratitude is extended to members who have already paid their annual fees.

## Participation in LES-AC Newsletter

LES-AC would like to encourage your valuable participation by giving you the opportunity to post your articles in the LES-AC newsletter. Interested parties are requested to send their articles in advance to the following e-mail address: [les@lesarab.org](mailto:les@lesarab.org)

Licensing Executives Society – Arab Countries



جمعية خبراء التراخيص - الدول العربية

## Contact Details:

The Licensing Executives Society – Arab Countries (LES-AC)

P.O.Box: 921100, Amman 11192 Jordan

Telephone: +962 6 5100 900

Fax: +962 6 5100 901

Email: [les@lesarab.org](mailto:les@lesarab.org)

Website: [www.lesarab.org](http://www.lesarab.org)