**STRATEGIC AMBIGUITY: THE CASE OF IP LICENSES**

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The interface of intellectual property (IP) licenses and contract theory has been under-studied in many respects. This paper aims to fill in the gap by focusing on the phenomenon of deliberate ambiguity in IP licenses.

Contractual ambiguity is intuitively perceived as undesirable. Yet, scholarship in the field of contract law has long recognized some possible virtues of ambiguity in contract formation. In particular, literature emphasizes that ambiguity decreases *ex-ante* transaction costs associated with negotiating provisions governing non-verifiable contingencies. In addition, reciprocity and mutual trust, particularly in relational contracts, can yield mechanisms of cooperation and self-enforcement that may render explicit drafting unnecessary. However, the normative consequences of deliberate ambiguity – in particular, the question whether such ambiguity should be punished or discouraged by doctrines of contract validity and interpretation – are still largely debated.

This paper argues that IP licenses negotiated between sophisticated parties may be paradigmatic cases for desirable *ex-ante* ambiguity, due to a series of typical characteristics. These include the relational nature of IP licenses which often necessitate continued cooperation between the parties, the duration of such agreements, the complicated structure of IP markets, as well as the nature of intellectual property which often adds inherent complexity and uncertainty to these transactions. The paper demonstrates the use of ambiguity in IP licenses through various examples concerning software licenses, agreements for licensing content, and technology distribution agreements. Along the way, it identifies additional advantages of *ex-ante* ambiguity, which have not been fully explored in literature.

We then continue to delineate the specific circumstances in which deliberate ambiguity may be the preferable choice for IP licenses, from the perspective of the contracting parties as well as from a broader social perspective. Our proposal is based on a core-periphery distinction: when, from an *ex-ante* perspective, the relevant provision is closer to the core of the transaction, ambiguity is generally unwarranted. On the other hand, if the provision is closer to the periphery of the license, namely – deals with future events that from an *ex-ante* perspective seem uncertain or insignificant – deliberate ambiguity is often advantageous.

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Lastly, we turn to explore the possible normative implications of this analysis for the interpretation and enforcement of IP licenses. We also inquire whether our analysis can reflect back on contract theory in a more general manner, which exceeds the case of intellectual property.