

NewsBreak: Valeo IP to shut down September 2
By George H. Pike

On June 29, 2005, Valeo IP (www.valeoip.com), an online copyright licensing service, announced on its Website and to its employees that it is shutting down its operations effective September 2, 2005. The move comes after a volatile spring which saw the company engaged in a bitter lawsuit with former partner DataDepth (www.datadepth.com) and the abrupt departure of its President.

Valeo IP is one of a growing number of companies engaged in licensing digital content. Like industry leader the Copyright Clearance Center (www.copyright.com), these companies serve both digital information publishers and users by permitting fast and easy copyright permissions and use licensing, and payment of royalties to copyright holders. Valeo's content partners include AP and Reuters wire services, Ziff Davis Media, and Healthnostics.

Valeo IP utilizes a number of methods for managing licensed access, including the use of digital tags that content owners attach to their digital documents. Content users click on these hyperlinked tags and are directed to licensing and royalty options managed by Valeo IP. In May of 2002, Valeo IP entered into a contract with DataDepth Corporation to license DataDepth's proprietary licensing software and copyright tags. Valeo IP paid royalties to DataDepth for the use of the software and digital tags, and DataDepth in turn assisted in marketing the software and Valeo IP's services to publishers.

Unfortunately, the relationship deteriorated as both companies sought to develop newer generation licensing software and copyright tags. DataDepth argued that its new software was not covered by the original agreement and sought a new agreement with Valeo IP. In turn, DataDepth charged that Valeo's new software was based on DataDepth's copyrighted and proprietary property. Ultimately DataDepth terminated the software licensing agreement and Valeo IP filed a lawsuit for breach of contract.

On May 5, 2005, a federal judge in Seattle denied Valeo IP's request for a preliminary injunction, which would have prevented DataDepth from terminating the software licensing agreement. A preliminary injunction is an action that a court can take prior to a trial if necessary to maintain the status quo and prevent irreparable harm to one of the parties. Valeo IP argued that confusion and alleged misrepresentations about the licensing agreement and the respective companies' new technologies was causing it irreparable harm and costing it customers.

The court held that the evidence showing that DataDepth breached the contract was inconclusive, and suggested that both parties had breached the contract to some degree. While Valeo IP may yet prove its breach of contract allegations at a trial, there was not yet enough proof to warrant a preliminary injunction. The Court also questioned whether Valeo IP was actually suffering irreparable harm as a result of the dispute, finding that only one customer had been lost, and waiting several months to request the preliminary injunction. Press releases from both DataDepth and Valeo IP claimed victory in the

courts. However, it must be noted that less than three weeks later, Valeo IP president Corey Johnson left the company, and just over six weeks later Valeo IP announced its upcoming shutdown.

The departure of Valeo IP leaves a gap in the growing, but confusing business of licensing digital content. Both the growth and the confusion come from the increasing awareness of the need to manage copyrights and use of digital content, with uncertainty as to how copyright law applies to digital content.

Content accessed through a proprietary database are usually covered by well-defined and enforceable copyright statements and licensing agreements. However, vast quantities of content are provided “for free” over the Internet, including newspaper and magazine articles, wire service reports, photographs, and other copyrighted content. Additional information is made available for professional, commercial users through Internet portals on a password-protected, per use basis.

It is not necessarily an unreasonable conclusion to make that there is no copyright implication for using this information, at least the act of passing copies on to others through e-mail or Intranet, without the need for additional permission or royalties. After all, I’ve paid for the information—or obtained it free—can’t I do with it what I want?

However, the fact that content is available on the Internet does not change its status as being protected by copyright. The fair use doctrine, often cited as the basis for using copyright content, allows only a very limited right to use content for selected non-commercial purposes. Fair use has also been weakened by the increased ability to manage permissions and royalties through services such as Valeo IP and the Copyright Clearance Center. One factor in determining whether a use is fair is the impact on the market for the work. As a market now exists for the payment of royalties for using copyrighted material at the click of a button, it is more difficult to argue that a proposed fair use won’t impact the royalty market for the work.

As Valeo IP shuts down, questions remain as to how the copyright management needs of its clients will be addressed, and who will take its place in the digital content licensing marketplace. Several messages left with Valeo IP regarding the first question have yet to be returned.

As to the second question, the Copyright Clearance Center already has a digital content licensing structure in place. Several bloggers have suggested that a company like Microsoft or Google might fill in the gap. Although Google is enmeshed in its library digitization project, their pre-eminent position as a content search engine could provide support for such an initiative. Nevertheless, as of September 2, Valeo IP will not be a factor in the content licensing marketplace.

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