



INTELLECTUAL PROPERTY

Software and IP Protection – Key Considerations

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Introduction

In an increasingly technology-oriented society, software has become an invaluable asset for businesses. Companies either develop or simply use software in their day-to-day operations and a familiarity with laws revolving around software and its protection is crucial. Navigating the complex landscape of intellectual property (IP) rights is essential for safeguarding the interests of innovative companies. An understanding of the core types of IP rights - from copyright and patents to trademarks - and how they are used to protect software, empower and aids software developers and companies in shielding their assets effectively.

Copyright protection

Software is primarily protected via copyright law. Namely, under Greek Law No. 2121/1993 computer programs and the preparatory material of their design are considered as literary works and consequently as copyright protected works. Protection is granted to all types of expressions of a computer program. Therefore, the source code as well as the object code of a computer program could be copyright protected. However, the ideas and principles on which the computer program is based are not copyright protected. To be noted, that in any case, a computer program in order to attract copyright protection needs to constitute an original intellectual creation of the author.

In this regard, it should be highlighted, that under Greek law, no formalities exist that need to be met for a work to be considered as copyright protected. The classic copyright dichotomy pertaining the IP law system, namely

the idea versus expression principle applies in the Greek copyright system as well.

Patent protection

Although in principle the Greek legal context on patents appears to exclude computer programs from patent protection (Art. 5(2) of Greek Law No. 1733/1987), there are arguments in favor of the patentability of computer programs, deriving from the wording of the European Patent Convention (EPC) to which Greece is a contracting state, stating that computer programs are not patentable “*as such*”. The interpretation of this phrase (“*as such*”) could leave enough space for claiming the potential patentability of computer programs whose operation leads to “*sufficiently technical results*”.

Software protection via contractual arrangements

A commonly used method by companies to either acquire, develop and/or license software and its related rights to third parties are software related contracts. Contracts, such as the ones outlined below, provide protection by clearly defining for example the terms of use, ownership and confidentiality. However, the challenges are numerous and ever-evolving and as technology advances, so do the cases of IP infringement and unauthorized use and therefore companies should employ relevant strategies to adapt. Below a brief description of certain widely used types of software related contracts are presented:

Software Development Agreement

Software development contracts are primarily distinguished into two main categories, depending on whether the contracting party is an employee (employment agreements) or an independent contractor (service agreements). In both cases, distinct IP clauses relating to the development of the software and the acquisition of the relevant IP rights in and to the software should be included.

Software License Agreement

Another useful tool for companies in the technology sector is a software license agreement, that determines the conditions under which the software will be used. Its aim is to safeguard both parties' intellectual property rights (*i.e.* the licensor's rights and the licensee's rights and frequently with a higher focus on the rights of the owner of the software), but also to hinder unlicensed software distribution, thus protecting the rights of the software owner/developer in each case. Most businesses nowadays tend to conclude such agreements in order to mitigate legal risks, include relevant terms with which users must abide by, while simultaneously aiming to cultivate mutual trust among the respective parties.

Software-as-a-Service Agreement

A Software-as-a-Service Agreement or commonly known as "SaaS Agreement" sets forth the specifications of the software services provided by a software vendor (SaaS provider) to its clients (SaaS customer) and in particular for cloud-based services. In essence, it is used to protect the rights of the provider and to define all conditions that a SaaS customer shall consider, when using such services.

Software Transfer Agreement

A Software Transfer Agreement involves the transfer of ownership of software from one contracting party to another. It determines all

key terms and conditions that both parties shall adhere to. With respect to their roles and responsibilities within said agreement there are specific clauses that set out the software rights that are being transferred in detail among other provisions.

Non-Disclosure Agreement

A non-disclosure agreement (NDA), a type of contract that could secure confidential information in relation to software, among others, is commonly used for example in the preparatory stages between businesses examining to proceed with a specific project relating to software development. NDAs can either be unilateral or mutual. An NDA ensures protection of the proprietary information relating to the software while it can also be used to potentially safeguard any trade secrets.

Final thoughts

As the digital landscape is rapidly expanding, the importance of mastering IP rights and drafting proper software related contracts should not be undermined. By employing robust contractual safeguards, software creators/developers and users not only effectively protect their assets and respective rights but an environment of trust between all parties involved can further be fostered.

Our specialized IP Team can assist you in embracing these tools and strategies with the aim of transforming potential vulnerabilities into strengths, while ensuring that your company's software can be and will be adequately and effectively protected at all times and under any circumstances.

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