

Software Licensing and Copyright: Intersections

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Software licensing plays an integral role in a technology's commercialization and management strategy. Understanding the intellectual property (IP) aspects, such as identifying the software's proprietary content and how the law protects it in different consumer markets, is key. Therefore, developing a plan to leverage the IP content for its owner is important. As the software owner navigates their business strategy, focusing on using the law to distinguish and safeguard their business output will likely become prioritized.

Copyright protects original, dramatic, musical, and artistic works. Computer programs and software are recognized under the Copyright Act as literary works. Copyright exists in software that is original, as is evidenced by the expression of the author's skill and judgement in the created work. Although no registration formality is required for copyright to exist in software, once a technology is developed for sale or licensing to consumer markets, it is likely best to register the software (if it satisfies the criteria for copyright registration). Copyright law gives software developers and owners of software the sole right to commercialize or otherwise decide how users can access or interact with their works. The protection prioritizes the software's technological creativity. The safeguard given to copyrighted software in consumer markets is that the owners' skills and judgment used to develop the technology are protected in consumer markets. Within the parameters of the law and depending on the monetization strategy used, software developers can enter into licensing agreements that specify on what basis rights to use the software are being granted. Among other material considerations, these terms include the duration of the grant, geographic limitations (if any), payment terms, whether improvements can be made to the technology, and permitted uses and restrictions on engaging with the technology's IP. These can be country or region-specific, especially if there are differences in copyright and IP laws in the host countries.

A license to use software is different from an assignment of rights in software. When IP rights are assigned (in software or otherwise), the IP ownership is transferred to another. In this context, the original developer no longer owns the technology. In more advanced high-technology deals, it is sometimes possible for the former owner to acquire a proprietary interest in the assigned technology through contractual relations with the new owner. The licensor-licensee relationship is different. No IP ownership is transferred to

the licensee – only a carved-out right to use the software based on terms specified by the licensor or negotiated with the licensee.

Knowledge of copyright law, its protection and limits, and its role in licensing can help safeguard software owners' interests in monetizing their technologies.