

## **Committee on Development and Intellectual Property (CDIP)**

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### **SUMMARY OF THE STUDY ON INTELLECTUAL PROPERTY AND MOBILE APPLICATIONS**

*prepared by the Secretariat*

1. The Annex to this document contains a Summary of the Study on Intellectual Property and Mobile Applications undertaken in the context of the project on Enhancing the Use of IP in the Software Sector in African Countries proposed by the Republic of Kenya (CDIP/22/8). The Study has been prepared by Mr. Noam Shemtov, Deputy Head of the Centre for Commercial Law Studies, at Queen Mary, University of London. The full study and the peer review are available at: [https://www.wipo.int/ip-development/en/agenda/work\\_undertaken.html](https://www.wipo.int/ip-development/en/agenda/work_undertaken.html).

2. *The CDIP is invited to take note of the information contained in the Annex to the present document.*

[Annex follows]

## Intellectual Property and Mobile Applications

This publication addresses a sector within the creative industries that has seen exponential growth in the last decade or so: the mobile application sector.

It canvasses the intellectual property ecosystem within which this sector operates, as well as some key non – IP legal considerations, while demonstrating how such legal rules may be taken into contemplation when running a business in the mobile app sector. The publication concludes with the provision of a road map that seeks to identify the major legal challenges that faces mobile application businesses.

This publication addresses the issues below, providing explanations and advice as follows: Part I commences by providing an overview of the mobile app sector. It continues by offering a concise description of relevant aspects of the key intellectual property rights for the mobile app industry: copyright, patents, utility models, trade dress and trademarks, industrial designs, and trade secrets.

Part II discusses in some details the protectability of the underlying code and internal architecture that stand at the heart of mobile applications, and touches upon key legal and business issues in that regard. In doing so, this Part examines the various modalities for software development, and in particular models that are more prevalent in developing mobile apps. It then turns to discuss the scope and nature of protectability of software's internal organs under different IP regimes. It addresses one of the key issues in this context; that of interoperability and the significance of it to the mobile app developer. This Part concludes with unpacking key legal complexities in this context, in relation to a technical environment that is growing in popularity and is envisaged to continue to do so; namely, cloud computing.

Part III examines what essentially might be the most significant element in building up the popularity and therefore commercial success of a mobile app: its user interface. It provides an illuminating and clear analysis of the significance of user interfaces to the overall success of mobile application and the manner in which the various arms of intellectual property law may be used, in a tapestry-like fashion, in order to protect the different layers of mobile applications' user interfaces.

Part IV addresses mobile applications' functionalities, which is one of the more elusive aspects of software-based products or services as far as intellectual property rights are concerned. Ultimately, a unique and innovative functionality could be the distinguishing factor that sets a certain mobile app apart from the rest of the sector and renders it popular if not a market leader. However, protecting such functionality under intellectual property laws is fraught with difficulties, while the scope of any such protection is often far from certain. This Part analyses such difficulties and identifies some workarounds where these are available, while at the same time providing some valuable advice in this context to businesses in the mobile app sector.

Part V is the only segment in this Publication that is not IP-focused. Though intellectual property may be the greatest legal concern when dealing with mobile applications, there are many other legal considerations, which must be accounted for when developing mobile apps. This Part concerns such legal considerations. In relation to mobile applications' business and legal environment, it examines pertinent issues such as End User Licence Agreements, Data Protections aspects, privacy, consumer protection and advertising rules. In addition, this Publication briefly delves into contractual arrangements in the context of app developers' agreements, by examining some common clauses in this respect. This

examination is being conducted while providing some valuable advice to app developers in relation to such development agreements.

Finally, Part VI engages in describing the global challenges to the mobile application industry, while providing informed estimations as to the manner in which such challenges may be met within the legal regime.

Overall, the Publication provides a valuable tool that can assist businesses in the mobile app sector, in particular micro, small or medium sized companies, in navigating the complex legal ecosystem of intellectual property rights, as well as other legal considerations, in order to continue and grow in this highly competitive market.

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