

CLIENT NOTE

SOFTWARE AND CODE PROTECTION UNDER ARMENIAN LAW



Computer and Software programs are valuable for individuals, as well as startups and companies. When you treat your programs as intellectual property, you have more control over them and have more freedom to decide who uses them and how they become public property. Otherwise, people can use it without permission, and you may lose the opportunity to get paid from the consumption of the program you created. Finally, you may even lose the right to use your programs.

You can protect your rights on a code by several means.

Remember the series “The Billion Dollar Code” based on the true events of the dispute over the ownership of algorithms of Google Earth? The company ART+COM alleged Google Earth was based on their project called Terra Vision, which was strikingly similar. Although the company’s patent was declared invalid, the case was one of the pioneers in the field of the protection of computer codes and software. Read our latest client note with regard to software IPR.



INTELLECTUAL PROPERTY

What is intellectual property (IP)?

IP is the exclusive right of a person to objectively express the results of intellectual activity and means of individualization of an entity, products, works performed, or services rendered (brand name, trademark, service mark, etc.). Basically, IP protects copyright ownership by the creator of the products that fall under the scope of its protection.

Does the scope of IP protect computer programs?

In 1995 the TRIPS agreement¹ (“Agreement”), to which Armenia is a party, confirmed that copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

The Agreement expressly provides that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). This provision confirms that computer programs must be protected under copyright and that those provisions of the Berne Convention that apply to literary works shall be applied also to them. It confirms further, that the form in which a program is, whether in source or object code, does not affect the protection. The obligation to protect computer programs as literary works means e.g. that only those limitations that are applicable to literary works may be applied to computer programs. It also confirms that the general term of protection of 50 years applies to computer programs.

Databases are also eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations. Databases must be protected regardless of whether they are in a machine-readable or another form. Furthermore, such protection shall not extend to the data or material itself, and it shall be without prejudice to any copyright subsisting in the data or material itself.

According to the Agreement, authors shall have in respect of at least computer programs the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. This obligation does not apply to rentals where the program itself is not the essential object of the rental.

Within the meaning of Armenian law, computer programs mean programs expressed in any form, including preparatory design materials for their creation.

A copyright grants you specific rights in terms of your software. When you hold the copyright to software code, you can:

- **Make copies** of your code,
- **Make changes** to your code
- **Sell or give away** the code,

¹ The Agreement on Trade-Related Aspects of Intellectual Property Rights is an international legal agreement between all the member nations of the World Trade Organization.

- **Make a "derivative work"**, which is a second software that uses a lot of the original code,
- **Post the code** somewhere, or otherwise display it.

There is no need to apply for protection of the code as an IP as the right to the intellectual property is *automatic upon the creation of the code*. Nevertheless, for safety and evidentiary significance you can get a certificate of ownership of the copyright in Armenia.

PATENT

According to Armenian law "On Patents" inventions related to computer algorithms and software are subject to protection if they correspond to certain characteristics, such as:

1. It is a technical solution that applies to the product (that is the device, the material) or the function (to the process of performing actions on the object (functional solution)),
2. It is new, has an inventive level, and
3. It is industrially applicable.

To protect a process, like the function of software, you need a patent. A patent will protect things like:

- Systems
- Functions
- Solutions to computer problems

A short-term patent for an invention is valid for 10 years, which is calculated from the date of filing the application. A patent registered in Armenia is only valid there. If you need a patent in other countries, you have to apply for each of those separately. You can also apply for international registration.

TRADE SECRET

Both businesses and individuals have problems protecting their IP. Businesses with valuable IP, such as software have to watch out for possible theft from employees.

You have to take "reasonable measures" to keep the software or the code a secret:

- Keep the software/code away from the public.
- Have employees sign non-disclosure agreements. Having employees sign Non-disclosure Agreements is one way to protect company IP. You can read more on NDAs here: <https://tk.partners/publication/confidentiality-agreements-and-attorney-client-privileges-under-armenian-law>
- Have employees sign non-compete agreements.
- As soon as an employee quits or is fired, take away all their file and data access.



- Keep IP data stored in compartments, and only give access to employees who need it.

WHAT ABOUT THE SOFTWARE/CODE CREATED BY THE DEVELOPER? DO THEY GET THE COPYRIGHT?

The proprietary rights to products of IP created during the fulfillment of work obligations or the employer's instructions are considered to be owned by the employer unless otherwise provided by the contract concluded between the employee (author) and the employer. This means that as the personal non-property/moral rights to the objects of IP are inalienable and non-transferable, those rights (such as the right of authorship) are owned by the developer, nonetheless, the proprietary rights (such as the right of distribution, lending right, etc.) shall be exercised by the employer

CONTRACTS AND LICENSE

Theft that happens from outside the business occurs, too. Therefore, in the licensing or other agreements which otherwise authorize the use of the codes an indication that the code is owned by the company, as well as restrictions on its use, regarding future products of the company created on the basis of these codes can be provided.

HOW CAN WE HELP?

Our firm has vast experience in providing sophisticated legal advice in relation to software IP rights. Thus, do not hesitate to contact us for any legal assistance.

NOTE: This material is for general information only and is not intended to provide legal advice

Mary Hambardzumyan
Junior Associate
mhambardzumyan@tk.partners

