AN OVERVIEW OF SOFTWARE LICENSING, SOFTWARE AS A PRODUCT AND SOFTWARE AS A SERVICE

Software is the “soul” of a computer

Software is the “soul” of a computer which enables it perform specific tasks. It can be contrasted with the hardware – the “body” – which includes the physical components of the computer system. It is a great combination between artistry and engineering and it encompasses all the collections of data or computer instructions that tell the computer how to work. Accordingly, the development of modern computing technology has been tied to the development of software, and humanity has become increasingly reliant on software to be used in different forms, either as products or services.

Generally we can say that there are three forms of software, namely;

- **System software:** which refers to a platform comprised of Operating System programs and services, including settings and preferences, file libraries and functions used for system applications. It also includes device drivers that run basic computer hardware and peripherals. Examples include the macOS and Windows.

- **Programming software:** which essentially refers to a set of instructions, or a set of modules or procedures, that allow for a certain type of computer operation. A programming software helps the programmer in developing other software and is also referred to as a programming tool or software development tool.

- **Application software:** which is designed to perform a group of coordinated functions, tasks or activities for the benefit of the user. It is essentially a program or group of programs designed for end users. Examples include database programs, web browsers, word processor, media player, photo editor etc..

Given the ubiquity of the use of software, and noting that usually, software represents the creative output of developers/programmers, the ownership of the proprietary rights/interest of the software and the rules protecting such rights have become increasingly important issues for many technology-led businesses. In reality, many developers of software do not typically transfer or sell all their rights in the software, and will merely grant a software license to another for the use the software, as opposed to selling their rights in the software.

This article is divided and will be published in a four-part series. In this first part, we give an overview of software licensing and the categories of software; in Parts B and C, we take a dive into the licensing regime for software and examine different types of licensing arrangements; and in the final part, we explore the ownership and registrability of software under intellectual property law in different jurisdictions.
WHAT IS SOFTWARE LICENSING?

Software licensing is an arrangement between the developer of a software and the end user who purchases or downloads the software for use. A software license governs the use or redistribution of software and is created to protect the copyright of the owner of such software; and among other things, it restricts the ways in which the end user can use it. A software license grants the licensee or end user, permission to use one or more copies of the software in ways that would otherwise amount to copyright infringement of the software owner’s exclusive rights under copyright law.

Software Licensing is usually facilitated by a Software License Agreement which provides legally binding provisions for the use and distribution of software. The license also defines the responsibilities of the parties entering into the license agreement and may impose restrictions on how the software can be used. Failure to adhere to the terms of the software license agreement often engender civil actions related to licensed intellectual property (IP) and copyrighted material.

Software can either be purchased as a product or as a service. For some, software as a product and as a service are seen as one as the same, while others experience some level of difficulty in drawing a distinction between the two concepts. Thus, it is important to understand the precise nature and use of software, both as a Product and as a Service.

1. Definition from searchcio.target.com. Available at http://searchcio.techtarget.com/definition/software-license Last accessed on 02.09.18
2. It is important to note however that an individual may be liable for criminal action under the extant law of the relevant jurisdiction.
SOFTWARE AS A PRODUCT (SaaP)

Software as a Product is a product software which is created to be sold to users who pay for the license which allows them to use it. SaaP solutions are an expensive one-time purchase, with no monthly usage fees but extensive maintenance and update costs. Upgrades are usually not strictly necessary (the software works offline, independently) and they typically do not require internet access to be operated. Examples include Microsoft Office 2011, anti-virus packages which are distributed as a file package using a CD-Rom or other physical media which are downloaded over the internet. SaaP requires a client to purchase a license for a software solution that will be hosted on the client’s computer. The one-time fee is more expensive compared to the monthly fees that a Software as a Service (SaaS) software would have, but there are no further payments to be made except for the initial purchase price. It is important to note however that upgrading the product in the future or installing an add-on for it might incur additional costs.

SOFTWARE AS A SERVICE (SaaS)

Software as a Service essentially implies that instead of purchasing a software as a product, you are purchasing the right to use the software (i.e. a service), and a hosting and infrastructure service, along with the rights to use the software³. SaaS providers maintain the hardware, perform upgrades, backup data and otherwise perform all other services and activities required to keep a software running. SaaS is a software distribution model in which a third-party provider hosts applications and makes them available to customers over the Internet.

SaaS solutions deliver applications over the internet—typically via the Cloud—and charge a regular fee for its use. A SaaS solution is in essence a web-based software that is hosted exclusively by the provider, as opposed to being downloaded upon purchase and subsequently hosted by the client (this distinguishes it from a SaaP). The provider in turn furnishes the client with access to the application in accordance with agreed-upon security, availability, and performance standards.

SaaS is usually provided when a company creates a software product and hosts that product on multiple servers. The company will be responsible for managing the hardware and software and realizing the cost of that management. Customers subscribe to the service while the company makes both major and minor updates to the software, and these customers automatically get those updates as part of their subscription. Examples of SaaS solutions are Prezi and Facebook online.

The biggest advantage with SaaS products lies in the option to get a flexible monthly subscription for the product, as opposed to buying a one-off highly priced SaaP software. SaaP software is usually more customizable than SaaS as one basically owns the software and runs it on a machine.

SaaS is perhaps the more common of the two categories of software and the consensus is that with SaaS, the possibilities are endless. Airbnb, Snapchat, Uber, etc. are all SaaS products that have transformed the way people live, and the way business is conducted.

³ See The Economics of Software as a Service (SaaS) vs. Software as a Product by Scott Sehlhorst. Available at https://www.maintenancecare.com/documents/SaaS%20vs%20Software.pdf
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