A 500ft View on Protecting & Licensing Software

An overview with some detail on various forms of software protection, positives and negatives of each, with a discussion on turning your ideas into dollars

Brian Wall
Interim Director
Office of Technology Transfer @ OSU

Presentation Summary

- **Basic Protection** – Lab books/note
- **Confidentiality Agreements** - Use, Key Clauses, Why you need them
- **Software Patents** - Costs, Timelines, Positives/Negatives
- **Copyrights** – Rights, Terms, Advantages/Disadvantages
- **Turning Your Ideas Into Dollars** – Direct Licensing & Open Source Models
The Basic Protection

Get your ideas down as detailed as possible. Sign and date each page, then grab two buddies and have them sign and date each page as witnesses.

Confidentiality Agreements

Protect your ideas before publishing occurs

Publishing can mean: papers, abstracts, dissertations, online publications, discussions with anyone you do not have a confidentiality agreement with and... YES, even discussions between friends can be considered disclosure.
Confidentiality Agreements

The Good;
- Protects your ideas
- Creates a legal record of your discussions

The Bad;
- Some companies take them seriously, some don’t

The Ugly;
- Some companies have a reputation for idea theft and have enough money and attorneys to back up their legal standing….DO YOU?

Key Concepts / Clauses
- One-way or two?
- Narrow description of confidential information each party will disclose
- Define how the receiving party is to handle the information
- Include a clause that requires oral disclosure to be written and sent within a specific timeframe
- Define what is not considered confidential
- Effective date & agreement timeline

http://oregonstate.edu/research/technology/forms/2-waycda.doc
Confidentiality Agreements

**Limit your Risk**

- Don’t discuss your important ideas with companies who have a reputation for idea theft
- Make certain the person signing has signature authority for a company
- Scanned or faxed signatures are OK; it’s best to have an original
- Don’t forget to back up anything orally discussed, within a specific timeframe, in writing clearly labeling it as confidential

Software Patents

**What are Software Patents?**

A Software Patent is a patent, which grants property rights by a government through that government’s patent office. The patent grant excludes others from making, using, or selling the invention in that country usually for a period of 17 years from the issuance or 20 years from the earliest filing date.
Software Patents

What they are not

A patent cannot be obtained on a mere idea or suggestion

An Algorithm is only considered patentable if it performs some function or is utilized in making something work

Software Patents

The Software Patent Fight

Many people would like to stop the patenting of mathematical methods, intellectual methods, business methods, computer programs, presentation of information, etc.

Their claim: the above consists of abstract ideas, not scientific, concrete, technical inventions; the result is such that instead of patenting a specific mousetrap, you patent any "means of trapping mammals" (or, for an actual example, any means of trapping data in an emulated environment)

Cont’
Software Patents

The Software Patent Fight, Cont’

The US has ruled that these types of Patents are allowable - Europe is still in a fight

The main concern is the broadness of which a software patent can be issued – thereby potentially slowing the progress of new ideas as large companies create and/or license the majority of these patents


Software Patents

Negatives

In light of the previous and current fights occurring; they are heavily scrutinized by patent offices, which results in these applications:

- Being Costly ($20k - $40k to issuance)
- Taking a long time to issue (4-5+ years) – software may be obsolete

Positives

- Ability to block competitors for a length of time
- By the time it issues, you might be in a controlling situation (software developed over that time might now require your license to continue)
What Is Copyright?

- The fixed expression of literary, graphic, audiovisual, or other ideas including:
  - Music, Sculpture, Choreography, Computer software, Videogames, Blueprints, Architectural drawings, Virtual Worlds

Fixed Expression

A work is considered fixed when it is stored on some medium in which it can be perceived, reproduced, or otherwise communicated.
What Rights Are Granted With Copyright?

- Make a copy (reproduce)
- Create a new work based on the original
- Distribute your work
- Public performance
- Public display
- Transmit the work in a digital format

Terms of Copyright

- Your lifetime + plus 70 years for works created after January 1, 1978

- Joint authorship: lifetime + plus 95

- Corporate authorship: 120 years
What is not Covered by Copyright

- Works that have not been fixed in a tangible form of expression
- Works that entirely consist of common property
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- The underlying idea or concept behind the fixed expression - (CSI, E.R, Cheers, etc.)

Disadvantages:

- Does not protect useful, novel, non-obvious discoveries as patents do – only protects original works of authorship as fixed in a tangible means of expression
- The interpretation of copyright laws for software are in the “grey zone” and the protection offered is viewed by many as relatively weak
Advantages:

- Automatically created upon fixation of an original work in a tangible form
- Notification is easy, and since 1989 has not been legally required when U.S. Joined the Berne Convention of 1886
- Registration is fairly easy - a few forms to fill out
- Inexpensive

http://www.copyright.gov/

Trademarks

- A trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.
- A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product.
Turning Your Ideas Into Dollars

- Direct Licensing
- Open Source Models

**Direct Licensing**
- Legal means to transfer intellectual property from one party to another
- Field of Use (FOU)
- Exclusive vs. Non-Exclusive
- Fees (license, issuance, reimbursement, timeframe); Royalties; Equity
- Sublicensing
Turning Your Ideas Into Dollars

Open Source Models

- Services & Support
- Selling Features & Functionality
- Dual License

http://java.sys-con.com/read/452357.htm

Services and Support

Provide services, support, and training as a value-add when end users download an open source project. This can include patches, updates, troubleshooting, training and support documentation, and phone support. Customers may pay a one-time fee or annually for an ongoing contract.
**Selling Features & Functionality**

Although an open source project may be available free of charge, the developer may choose to sell a "pro" version, with added features and functionality only available for purchase.

**Dual License**

Licenses for open source software can be troublesome, and can even prevent developers from releasing software that incorporates the open source code. By offering a commercial license of the open source project, open source providers help developers sidestep this issue - for a fee.
Internet Resources

Software Patents
http://en.wikipedia.org/wiki/Software_patent

U.S. Trademark Office
http://www.uspto.gov/main/trademarks.htm

U.S. Copyright Office
http://www.copyright.gov/circes/

Licensing Basics

Open Source
http://www.gnu.org
http://www.opensource.org/licenses/

Crash Course in Copyright

Thank You

Contact

Brian Wall
Phone: 541-737-9058
Email: brian.wall@oregonstate.edu

http://oregonstate.edu/research/technology/index.htm