


TURKEY IN HORIZON 2020
 ALTUN/HORIZ/TR2012/0740.14-2/SER/005



 This project is co-financed by the European Union and the Republic of Turkey
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"Intellectual Property & Horizon 2020:
 How to deal with your intellectual Assets"
IPR in Software & IT
 Odysseas Spyroglou
 IPR, Legal & Financial Issues Expert
 Kocaeli, 06/04/2017





Some facts on IPR in ICT

- **ICT-patents > 38% of Total**
 (under Patent Cooperation Treaty)
- **Patent Thickets problem**
- **Digital Tech makes derivatives much easier**
- **IP Bundles (consider all tools)**
- **What about databases and data?**
- **What about design, functionality, UI/UX?**

Patent Wars




PRODUCTS INVOLVED IN THE TRIAL:
 iPhone 3G
 iPhone 3GS
 iPhone 4
 iPad 2, 3G
 iPod Touch

Photos: El Tiempo/Zuma Press (Galaxy S); Apple (iPhone 4)
 The Wall Street Journal
 Source: WSJ research

Samsung Says...
 "...THE IPHONE 4 INFRINGES THREE PATENTS."
PATENT '516
 Manages the phone's resources and battery by prioritizing data
PATENT '943
 Provides a way to package and transmit data more efficiently
PATENT '460
 Taking and emailing pictures using a scroll action
PATENT '953
 Switching between pictures in a gallery and the camera
PATENT '353
 Enlarging documents by tapping the screen

Apple Says...
 "...THE GALAXY S INFRINGES THREE PATENTS."
PATENTS '067, '977
 Ornamental design of the iPhone
PATENT '305
 Rounded square icons on interface
PATENT '915
 Distinguishes between single-touch and multi-touch gestures
PATENT '351
 "Bounce-back" feature when scrolling beyond the edge of a page

Captivate
 Continuum
 David Charge
 Epic 4G
 Exhibit 4G
 Feichide
 Galaxy Ace
 Galaxy Ace
 Galaxy S 4G
 Galaxy S II (AT&T)
 Galaxy S II (Sprint)
 Galaxy S II (T-Mobile)
 Galaxy S II (Epic 4G)
 Galaxy S II (Sprint)
 Galaxy S Showcase
 Galaxy Tab
 Galaxy Tab 30.1 (WiFi)
 Galaxy Tab 30.1 (4G LTE)
 Gen
 Indulge
 Infuse 4G
 Intercept
 Mastromarco
 Nexus S 4G
 Rhapsody
 Transform
 Vibrant

Amazon's 1-click patent

- Issued in 1999
- Never granted in Europe
- 2000 Licensed to Apple
- Considered one of biggest "game-changers" in e-commerce
- Expires in 2017
- Increased conversion rate (increased sales)
- Benefit to Amazon > \$40m / annually operating income (unofficial estimation)

User bypasses the cart.

Buy new: \$308.34

Qty: 1

Add to Cart

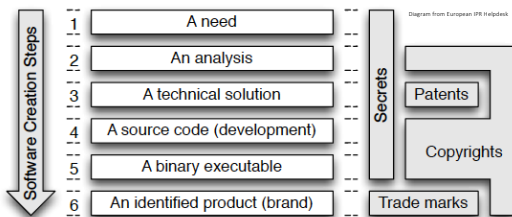
or 1-Click Checkout

Buy now with 1-Click®

Order within 18hr 25min to get it:
Friday, July 1
(Free Standard Shipping)

So what can we protect?

SW development is a process



- How can we protect our code? **Copyright**
- Does it protect the functionality of the program? **No.**
- **Functionality of computer program cannot be protected by copyright.**

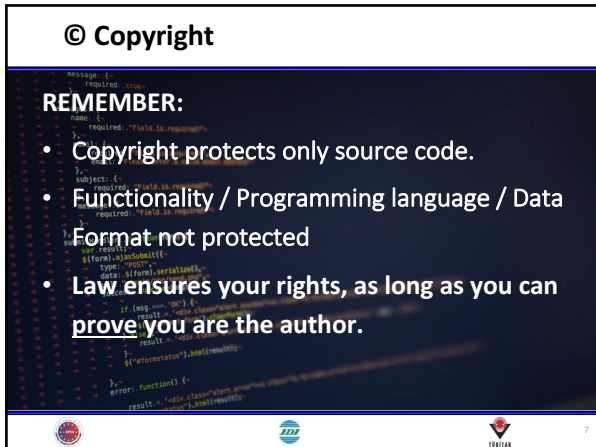
Your IPR Toolkit for SW

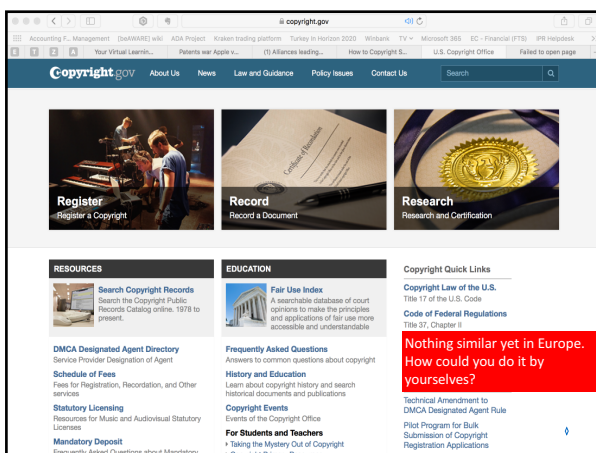
Tools	What	Registration
Copyright	All Creative : Code, user guides, icons, graphical elements	AUTOMATIC
Patent	Functionality, new inventive technical effects	YES* (US, Debatable in EU)
Trademark	Logo, name (Visual & Textual)	YES (EUIPO)
Industrial Design	Graphic User Interface (GUI) under requirements	RECOMMENDED
Database Rights	Output of process	NO
Contractual Agreements	Secrets, Confidential Info	NO

© Copyright

REMEMBER:

- Copyright protects only source code.
- Functionality / Programming language / Data Format not protected
- Law ensures your rights, as long as you can **prove you are the author.**








The screenshot shows the Copyright.gov website with a navigation bar and several content sections. The main navigation bar includes links for 'About Us', 'News', 'Law and Guidance', 'Policy Issues', and 'Contact Us'. Below this, there are three large featured images with labels: 'Register' (Register a Copyright), 'Record' (Record a Document), and 'Research' (Research and Certification). The 'RESOURCES' section includes links to 'Search Copyright Records', 'DMCA Designated Agent Directory', 'Schedule of Fees', 'Statutory Licensing', and 'Mandatory Deposit'. The 'EDUCATION' section includes 'Fair Use Index', 'Frequently Asked Questions', 'History and Education', 'Copyright Events', and 'For Students and Teachers'. A red banner on the right side of the page reads: 'Nothing similar yet in Europe. How could you do it by yourselves?'. The 'Copyright Quick Links' section includes links to 'Copyright Law of the U.S.', 'Title 17 of the U.S. Code', 'Code of Federal Regulations', 'Title 37, Chapter II', 'Technical Amendment to DMCA Designated Agent Rule', 'Pilot Program for Bulk Submission of Copyright Registration Applications', and 'Registration Applications'.

But, can you submit a patent? Yes, but.

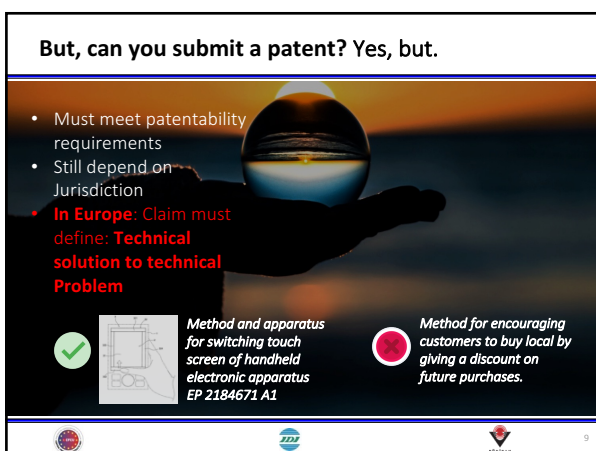
- Must meet patentability requirements
- Still depend on Jurisdiction
- **In Europe:** Claim must define: **Technical solution to technical Problem**

Method and apparatus for switching touch screen of handheld electronic apparatus
EP 2184671 A1



Method for encouraging customers to buy local by giving a discount on future purchases.



Patentability Filter: Technical Character (EPO)

- 3 Expert examiners
- Search Report + Patentability Requirements
- **Are there technical features that solve a technical problem?**
 - E.g. smart grids, security, data compression, secure payments
- **Non-technical features cannot contribute to inventive step**
- Mere interaction with tech elements not enough
- **Business/Model Innovation + Technical solution**



What about Trademarks?

- You can **protect the name, logo or slogan/tagline of your software**
- Stand out, differentiate from other products
- Can be owned, sold and licensed
- OS licenses don't license trademarks
- Be careful when you use other trademarks:
 - *e.g. if you want to use a third party trademark in your product (e.g. Android) you have to follow company's guidelines.*



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THE 5 CATEGORIES OF TRADEMARKS

A GUIDE TO CHOOSING THE RIGHT TRADEMARK



Trademarks are divided into five different categories, which are ranked by distinctiveness.

Sinnlos	Fanciful trademarks Fanciful trademarks are made-up words which are invented to be used as a trademark name.	Kodak	EXXON	Polaroid
	Arbitrary trademarks Arbitrary trademarks are words that have a real, common meaning but they are completely unrelated to the product or service.	Apple	Dove	Shell
	Suggestive trademarks Suggestive trademarks are named after a characteristic of the product or service.	JAGUAR	Microsoft	NETFLIX
	Descriptive trademarks Descriptive trademarks are a description of the product or service.	SHARP	BRITISH AIRWAYS	BEST BUY
	Generic trademarks Generic trademarks cannot be protected as they are simply a generic description of the product or service.	BAND-AID	ASPIRIN	THERMOS
Wise				


TrademarkHub


@trademarkhub · www.thetrademarkhub.com

FreemanHarris


@freemanharrisuk · www.freemanharris.co.uk



Can I file it? YES, you can. 

File a European Union trade mark using the Five-step application 




Our Fast Track option for registering your trade mark



- Create and submit your application in 10 minutes.
- We will guide you step by step through the application procedure.
- You can save your application at any time during the process.
- Get your application published in half the time or less compared with regular applications. Find out more about Fast Track.




Choose your language:

<https://euipo.europa.eu/ohimportal/en/apply-now>

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To sum it up

- Abstract ideas **not** protected
- Copyright protects **concrete** elements not **functionality**
- Patents protect **functional** aspects but:
 - Technical solution new, inventive, over prior art
- Patents can be prevented by defensive publication
- Trademark can protect your "brand"

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What is a SW licence?

- A permit to do something that is not legal otherwise (Driving license / Software license)
- Describes copyright and patent holders promise to use their IP
- Open Source Initiative approves OS licenses
<http://www.opensource.org/licenses/>

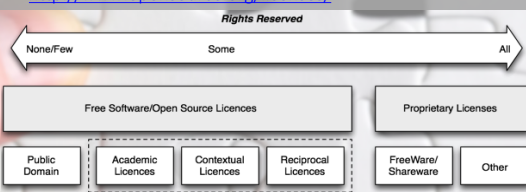





Diagram from European OSF initiative



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What does Free (in SW) mean?

- Free to run the program for any purpose
- Free to **study and change** the code to adapt it to your own needs
- Free to redistribute **unmodified** copies with no restriction
- Free to distribute **modified** versions (Derivatives)

Free vs. Open Source Software

Almost, but not exactly the same.

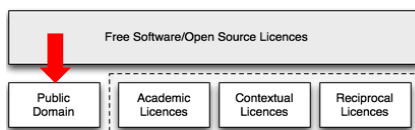
Open Source	Free Source
A developed methodology	A social movement
Focus on economic/business argument	Moral, ethical argument
Good for business	Good for your social values
 https://opensource.org	 http://www.fsf.org
OSI approved: Apache, BSD, MIT, Mozilla, CDDL, GNU, EPL	GNU LICENSES "GNU's Not Unix." "GNU" is pronounced g'noo

Public Domain



- This work has been **identified** as being **free of known restrictions under copyright law**, including all related and neighboring rights.
- You can copy, modify, distribute and perform the work, even for **commercial purposes**, all **without asking permission**. See **Other Information** below.

<https://creativecommons.org/publicdomain/mark/1.0/>



Academic Licenses (or Permissive)

- Origins at universities
- Allow users to use SW the way they want
- Permission to relicense the software
- Derivative works can be closed source software (commercial)

• **Examples:**

- BSD: <https://opensource.org/licenses/BSD-3-Clause>
- MIT: <https://opensource.org/licenses/mit>

Reciprocal or copyleft (or Strong Protective)

- Derivative must be distributed under same license as original
- Secure a common investment

• **Examples:**

- GPL v3: <https://www.gnu.org/licenses/gpl-3.0.en.html>
- EUPL v1.1: https://joinup.ec.europa.eu/community/eupl/og_page/eupl
- RPL 1.5: <https://opensource.org/licenses/RPL-1.5>

- For more: <https://www.copyleft.org>



Copyleft

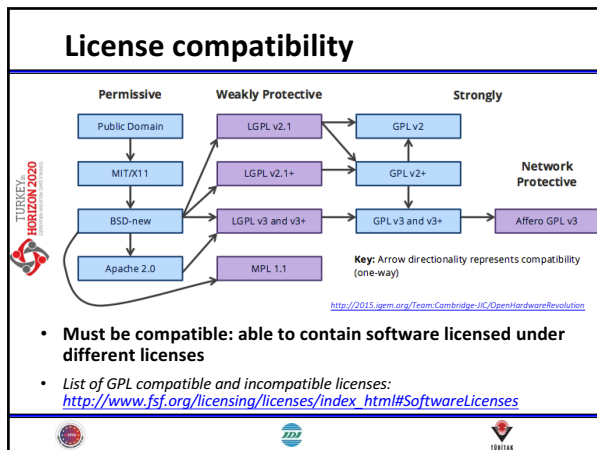
Contextual licenses (or Weak Protective)

- Contextual technical trigger
- Not restricted by the original license
- Compatible with multiple licensing schemes

• **Main Example:**

- <https://www.gnu.org/licenses/lgpl-3.0.en.html>





Proprietary Licenses

Licensing Product Licensing Licensing Programs Existing Customer Learn More How to Buy Support

Microsoft Products and Services Agreement

The Microsoft Products and Services Agreement (MPSA) is a transactional licensing agreement for commercial, government, and academic organizations with 250 or more users/devices. MPSA works best for organizations that want to license Microsoft on-premises software, cloud services, or both as needed —with no organization-wide commitment under a single, non-expiring agreement. Software Assurance is optional.

Frequently asked questions

Overview

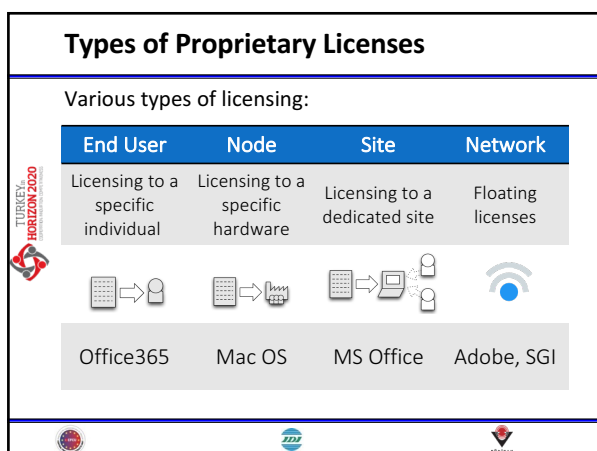
— What is the Microsoft Products and Services Agreement?

The Microsoft Products and Services Agreement (MPSA) consolidates purchasing of Microsoft cloud services and Software Assurance. Suited for organizations with 250 or more users, MPSA provides a Purchasing Account.

<https://www.microsoft.com/en-us/licensing>

Proprietary Licenses

FreeWare/Shareware Other



Use the tools: Document & Track

- Source Control
 - <https://git-scm.com>
 - <https://github.com>
- Dependency tracking, license compliance and attribution notices on autopilot
 - <http://fossa.io>
- Choose a license
 - <https://choosealicense.com>

Choose an open source license

Which of the following best describes your situation?

I want it simple and permissive.

The MIT License is a permissive license that is short and to the point. It lets people do anything they want with your code as long as they provide attribution back to you and don't hold you liable.

jQuery, .NET Core, and Rails use the MIT License.

I'm concerned about patents.

The Apache License 2.0 is a permissive license similar to the MIT License, but also provides an express grant of patent rights from contributors to users.

Android, Apache, and Swift use the Apache License 2.0.

I care about sharing improvements.

The GNU GPLv3 is a copyleft license that requires anyone who distributes your code or a derivative work to make the source available under the same terms, and also provides an express grant of patent rights from contributors to users.

Bash, GIMP, and Privacy Badger use the GNU GPLv3.

What if none of these work for me?

What about your data?

- Horizon 2020 requires **Data Management Plan (DMP)**
- DMP describes data management life cycle for all data sets collected, processed or generated by the research project.
- Needs description in the proposal

Which Data?

- How you manage research data generated / collected during the project?
 - What types of data ?
 - What standards ?
 - How will data be exploited / shared / made accessible for verification and re-use?
 - If data cannot be made available, why?
 - How will this data be curated and preserved?
- Appropriate CA to manage ownership / access to knowledge (IPR, data etc.).



What about your Databases?

- EC Directive on legal protection of Databases (D 96/9/EC)
 - Adopted in February 1996
 - New exclusive "sui generis" right for database
 - 15 years
 - Protect investment of time, money and effort *irrespective of whether the database is in itself innovative ("non-original" databases).*
 - Harmonised copyright law applicable to structure and arrangement of contents ("original" databases).
 - Both analogue and digital databases.



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What is Open Access?

Practice of **providing on-line access to scientific information** that is free of charge to the end-user.

H2020:

- Outline **strategy** for knowledge management and protection.
- Include measures to provide open access (free on-line access, such as the '**green**' or '**gold**' model) to peer-reviewed scientific publications.



Open Access Publishing

GOLD: article immediately provided in open access mode by scientific publisher.

- Associated costs by organisation to which the researcher is affiliated, or to the funding agency supporting the research.

GREEN: Self-archiving. Article archived in online repository before, after or alongside its publication.

- Access often delayed ('embargo period').
- Some scientific publishers may wish to charge for access during an exclusivity period.

BOTTOMLINE: You have to think about it beforehand!



Many tools to consider

<https://creativecommons.org>

Legally share your knowledge and creativity to build a more equitable, accessible, and innovative world.

<https://opendatacommons.org>

Provides legal solutions for open data.

Run by <https://okfn.org>



Creative Commons Licenses
Some Rights Reserved

These licenses allow for a more flexible management of the exclusive rights offered by copyright protection, giving the creators the ability to choose the kinds of protections and freedoms that will govern the use of their work.

Key License Terms:

- Attribution (BY)**: Others can copy, distribute, display, perform, and remix your work if they credit your name as requested by you.
- No Derivative Works (ND)**: Others can copy, distribute, display, or perform verbatim copies of your work.
- Share Alike (SA)**: Others can distribute your work under a license identical to the one you have chosen for your work.
- Non-Commercial (NC)**: Others can copy, distribute, display, perform, or remix your work but for non-commercial purposes only.

Combine these terms to create CC licenses

Most accommodative license: CC BY

Most restrictive license: CC BY-NC-SA



Beyond licensing

- A full strategy for IP and innovation
- A business model
- An Exploitation plan
- Technology Transfer/Dissemination



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Sources and more reading

- The Open Source Definition: <http://www.opensource.org/docs/definition.php>
- Free Software Definition: <http://www.fsf.org/licensing/essays/freesw.html>
- Debian Free Software Guide: http://www.debian.org/social_contract#guidelines
- Categories of Free and NonFree Software: <http://www.fsf.org/licensing/essays/categories.html>
- OSI approved OS licenses: www.opensource.org/licenses
- GPL FAQ: <http://www.gnu.org/licenses/gplfaq.html>



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