Other IP rights

As indicated elsewhere on this hub, the main IP rights associated with software are copyright and patents. However, there are number of other IP rights which may subsist in software. We discuss these briefly below.

Design rights

Design right law is a relatively complex area of IP law owing to there being two possible regimes which may apply in the UK (namely UK and Community wide rights) and the fact that these are further split into both unregistered design rights (UDRs) and registered design rights (RDRs). Although for the purpose of software, UK UDRs are not relevant since these are only valid for 3D shapes.

Whilst the general requirements for UK RDRs, Community RDRs and Community UDRs are the same in that the design must be novel and have individual character, the duration and territorial scope vary. Registered design rights are preferable over unregistered design rights as they give you a monopoly right for longer (25 years) and you do not have to prove copying.

In terms of what design rights may protect when it comes to software, relevant elements include the images which are produced by a computer program such as computer icons, screen displays, and webpage designs. This does therefore mean that there is some overlap with copyright since many of these elements can be protected by copyright however where this happens the rights may coexist.

Trade Marks

Whilst trade mark law does not protect software as such, we discuss it here for the sake of completeness as often the brands or logos used in relation to the sale of software may be protected as registered trade marks or under the law of passing off.

Where a company is using their own brand or trade mark in relation to an item of software, in the UK, a company has two main registration options – either register it as a UK trade mark (UKTM) or as a EU trade mark (EUTM). The former provides protection solely in relation to the UK, whereas a EUTM can provide protection across member states in the EU. Which one is chosen is invariably dictated by cost (a UKTM is often cheaper to obtain than a EUTM), and, where the business hopes to sell or licence the software (i.e. will the businesses operation be confined mainly to the UK or Europe-wide?).

For example Microsoft Corporation has registered WINDOWS as a UK and EU trade mark in relation to computer software (EUTM number 79861 and UK registration number 1512097).

Aside from certain basic criteria that must be met, a trade mark must be distinctive and not descriptive (it cannot describe what the business does by alluding to customers the nature or quality of the goods/services). Whilst there is other criteria that must also be met, such as not being a protected emblem or identical to an earlier registered mark which is still valid, these are the key ones.

A UKTM shall be registered for a period of ten years from the date of registration and can be renewed for further periods of ten years. In theory a UKTM can therefore last forever (assuming renewals are paid for).

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