



APPS & LAW

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Apps and law

Creating an app always starts with an idea. During the development process from idea to app, many topics need to be addressed, including legal issues. And although legal issues might not always come to mind from the start, we recommend that you do consider them from the very beginning.

On the one hand, an app must comply with applicable laws and regulations, including those regarding privacy. However, on the other hand an app can also be used to create exclusive rights that can prevent others from copying it.

Where more than one party is involved in the development of the app, it is highly advisable to clearly define the rights of the parties involved in writing.

We explain below the various laws and legal issues you may be confronted with during the development or the use of an app.

Copyright

Copyright plays a role in several aspects of an app. Take for example the icon, the interface and the software of the app. These are copyright protected on condition that they are 'original' i.e. not copied from another app and have an 'individual character' i.e. contain elements created specifically by the author.

To obtain copyright, registration is not required. The term of copyright protection runs up to 70 years after the death of the creator(s).

Different parties may be holders of copyright to all or any part of the app. If, for example, an employee's job description includes app development, his employer will be considered as the author of the app.

If you have developed the app or the app has been developed to your specification and under your guidance and supervision as a client, you will be considered as the author.

An app can also be developed by a team, whereby each team member has his own role. In this case, all parties involved in the creative process may own the copyright. Furthermore, the entity that publishes the app as if it were its own and without mentioning the name of a natural person will be considered as the copyright holder.

Design right

The icon and the interface (the design) of the app can be protected by design rights. In order to qualify for a design right,

the design of the app should be 'new' enough and have a character of its own. The app must not be identical or very similar to an existing app. Its design must also generate a 'different overall impression' from the apps that are already on the market.

To establish a design right the app design must be registered. This can be done through the relevant bodies in the countries where you want to obtain the design rights. For the Benelux and Europe, the design must be registered within 12 months after the app is made publicly available. The term of protection for a design registration is 5 years and may be extended 4 times by a period of 5 years to a maximum of 25 years.

There is also a European unregistered design right. For this design right a registration is not required. A European unregistered design right protects your app from any identical copy for a period of three years after the app was made available to the public.

To determine who is the designer of an app design special provisions apply to app designs that are registered in the Benelux. As the designer is the copyright holder of the design, these provisions mainly have consequences for copyright protection. For example, an employer is considered as the designer of an app design when an employee has designed the app during the exercise of his function. Furthermore, when the app is designed because of a specific order, the person who placed the order is considered as the designer.

Trademark right

The first thing a user sees is the icon and the name of the app. These distinguish the app from other apps. To protect the icon and the name, you can register both as a trademark.

A trademark can be a word or a logo, or a combination thereof, and must meet a number of requirements. One of the requirements is that the icon or name must

be distinctive and not descriptive for the app: descriptive words or characters cannot be registered as a trademark.

For example, the trademark 'game app' for an app that provides you with a game to play, is not permissible because it is descriptive of the type of app.

To obtain a trademark right, a registration is required through the relevant bodies in those countries where you want to obtain the trademark right. The term of protection for a trademark is 10 years after the trademark registration is obtained and can be renewed indefinitely.

Before considering a trademark registration, it is recommended to double check if any registered trademarks resemble your chosen name or icon and to consider whether your trademark will qualify for registration.

Patent right

A patent is a way to protect an invention. In general, a patent can only be obtained if the invention is 'new', involves an inventive item and can be applied in the industrial field. In short the item must be so innovative that it is not obvious to the 'expert'. Under certain conditions it is possible to apply for a patent for app software if such software constitutes a technical improvement to a physical product (e.g. smartphone or tablet).

A patent must be applied for through the relevant bodies in the countries in which you want to obtain the patent. Before filing the patent application, the app must not have been made publicly available. Therefore, secrecy of the invention before the patent registration is necessary. The term of protection for a patent is a maximum of 20 years.

Database right

The content of the app can be a database. According to the Dutch Database Act,

a database is a collection of works, data or other unrelated elements that is arranged systematically or methodically. An example of a database is Marktplaats.nl.

Database rights can protect database contents. Database protection does not require registration, but it does require a substantial investment to have been made. Obtaining, controlling or presenting the content must have taken a qualitative or quantitative substantial investment from the producer.

If such substantial investments have been made, the database right provides protection from copying the content and the acquisition and the provision of the content or part of the content of the database with an own front-end (search screen).

Accordingly, as the producer of a database you can take action against any third party that incorporates a certain part of the content or all of the content in another app

(or website), or against any third party that offers an app (or website), which makes it possible to search the database of the producer and shows search results in its own front-end. The term of protection for a database is 15 years and can be renewed if the database is changed substantially.

Trade name right

A trade name right arises if you run a business or part of a business under a certain name. Registration of a trade name is not required. A trade name right exists automatically where a business is run under a trade name.

Existing trade names may play a role in the name that is chosen for an app. In general, it is recommended that the name chosen for the app does not closely resemble an existing trade name, as this could cause confusion. For example, if the name of your app closely resembles the trade name of a company that develops apps.

Trade secrets

A trade secret is business information or valuable know-how that you do not want to become known to everyone. An example of this is a certain algorithm from which the app obtains its functionality.

A trade secret can be protected if the information is “secret”, the information has “commercial value” and “reasonable measures” have been taken to keep that information secret. To protect a trade secret, you must make agreements about the confidentiality of that information with the people who have access to it. These agreements are usually recorded in a non-disclosure agreement.

Privacy and electronic communication

When developing an app you will also need to consider the privacy of its users. The General Data Protection Regulation (“GDPR”) has been in force since 25 May 2018, but privacy is also regulated in

other specific legislation and regulations, such as the specific rules for electronic communication. Depending on the type of app and its functionality, personal data of users will be processed, or data may be stored on users' devices, such as a pc, laptop, smartphone or tablet and the associated privacy laws and regulations apply.

When installing an app or using the functionalities of an app, the user can allow access to personal data, such as private contacts, photos or location. Therefore, it is important to consider in advance the desired functionalities of the app and the necessary personal data of potential users. Users must be informed clearly about the personal data they must provide or to which they must give access, as well as about the data that will be stored on the users' devices by means of cookies. Furthermore, without a user's consent it is unlawful to share his personal data with any third party.

Unlawful act

When a new app is being developed, the direct imitation of an app belonging to another party might be unlawful. This might be the case when the app is almost identical to the appearance (icon or interface) of an existing app, which results in confusion.

Agreements

More than one party may be involved in the development of an app. For instance, one party may come up with the idea, the other takes care of the graphics, and a third writes the program. Clear agreements regarding the ultimate ownership of the app are therefore essential. Such agreements could, for example, be included in an employment contract or in an assignment contract.

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