Software licensing:
navigating a sea of options

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Why Software Is Eating The World ?

Marc Andreesen (WSJ, Aug. 20., 2011)

- « More and more major businesses and industries are being run on software and delivered as online services—from movies to agriculture to national defense. […]. Today, the world's largest bookseller, Amazon, is a software company— […] »

The Era of « Softwarization»

ITU_blog_

- « <u>We cannot underestimate the impact that 'softwarization'</u> is having on today's information and communication technology (ICT) industry, or what will it mean for the industry of the 5G era » (P. Ashwood-Smith, Softwarization, 5G and the new dynamics of the ICT industry, Dec. 17, 2015)

Consequence of softwarization

- Growing softwarization

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- Growing importance of the legal protection of software & software licensing

Software licensing 101

1. Nature of the rights granted under a software contract

2. Global software transactions *vs* local rules

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1. Rights granted under a software contract ?

- *Assignment* of copyright or only *license* of use of the software ? Sale or license ? (*//* buying *or* renting a car)

- **Example**: Transfer of « all right, title and interest » to « all of [its] computer programs and software » (Chugrue v. Continental Airlines, Inc., 977 F. Supp. 280, 284–85 (S.D.N.Y. 1997))

« […] a transfer of "all right, title and interest" to computer programs and software can only mean the transfer of the copyrights as well as the actual computer program or disks » (Bernstein v Glavin, 725 N.E.2d 455, at 460 (Ind. Ct. App. 2000))

- N.B.: make a distinction between the sale of the physical object (i.e. DVD) and the transfer of the intangible right (i.e. copyright)

2. Global software transactions *vs* local rules

- Global software licensing transactions (B2B & B2C)   *vs*
- Local rules

(local contract, IP laws, consumer laws, competition laws, etc.)   N.B.: open source licensing standards

$\Rightarrow$ Avoid *legal* fragmentation

for global software transactions

Create global software licensing rules

- Technological interoperability (standards)

  => *Legal* interoperability / standarization

- FRAND patent licensing terms (Fair, Reasonable and Non-Discriminatory) for Standard Essential Patents (SEPs)

  => Global FRAND software licensing terms

Create global software licensing dispute resolution mechanisms

- Global Alternative Dispute Resolution (ADR) Mechanisms for software licensing disputes

- Uniform Domain Name Dispute Resolution Policy (UDRP) for domain name disputes

=> « Uniform Software Dispute Resolution Policy » (?)

Software Licensing: a Sea of Options…

…but still a few rocks to avoid …

Thank you for your @ttention

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