

Krogerus

Legal View on Android Market

Android Keynote - a Platform for Developers and Business

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TODAY'S TOPICS FROM A LAWYER'S PERSPECTIVE:

- I Contracting opportunities and pitfalls**
- II Recent development on patent wars**
- III Outlook on future trends**

**CONTRACTING
OPPORTUNITIES AND
PITFALLS**

*- SO LONG, AND THANKS
FOR ALL THE FISH*

D. ADAMS



CONTRACTING - ANDROID AGREEMENTS

For example:

- Android Market Developer Distribution Agreement
- Android Market Developer Program Policies
- Android Software Development Kit License Agreement
- Corporate Contributor License Agreement
- Contributor License Agreement for Individuals

COMMON ANDROID AGREEMENT NOMINATORS

- **In most cases 'non-negotiable' market entry terms and conditions:**
 - Should you try to negotiate or just hope for the best?
 - If you sign up to the standard agreements – read them first!
 - What's the value of your application/content?
 - Evaluate your bargaining position and where possible strike good/reasonable deals...

CONTRACTING – OPPORTUNITIES AND PITFALLS

- Google is not necessarily after owning your intellectual property rights (copyrights, trademarks, patents etc.) but it receives **extensive licenses**
 - ...*a nonexclusive, worldwide, and royalty-free license to: copy, perform, display, and use the Products for administrative and demonstration purposes in connection with the operation and marketing of the Market and to use the Products to make improvements to the Android platform...*
 - ...*a nonexclusive, and royalty-free license to distribute the Products according to the publishing options selected by you on the Product upload page of the Market...*
 - ...*Google may use consultants and other contractors in connection with the performance of obligations and exercise of rights under this agreement...*
 - ...*a non-exclusive, worldwide, and perpetual license to perform, display, and use the Product on the Device...*

CONTRACTING – OPPORTUNITIES AND PITFALLS

- Android Agreements are **living documents** (Google may change its agreements from time to time)
 - If your negotiation position allows, try to anchor the terms at a certain level
 - If not, pay attention to the agreement changes as notified by Google
 - No real remedies available
 - the right to terminate the agreement usually the sole and exclusive remedy i.e. consider your distribution strategy first!

CONTRACTING – OPPORTUNITIES AND PITFALLS

- **Only distribute your original works or works where you have obtained all the required rights – you carry the risk to indemnify Google and third parties:**

“...To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless Google, its affiliates and their respective directors, officers, employees and agents, and Authorized Carriers from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys fees) arising out of or accruing from (a) your use of the Market in violation of this Agreement, and (b) your Product that infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy...”

- **Litigation in US is expensive!**

“This Agreement...shall be governed by the laws of the State of California without regard to its conflict of laws provisions...”

RECENT DEVELOPMENT ON PATENT WARS

Who's suing who and for what?

- Google no longer without a queen?



RECENT DEVELOPMENT ON PATENT WARS

- All the big players are suing each other for patent infringements
 - aim to increase revenue with their patent portfolio (lots of R&D investments made)
 - defensive actions and claims
- *"a hostile, organized campaign against Android by Microsoft, Oracle, Apple and other companies, waged through bogus patents."*
 - David Drummond, Google SVP and Chief Legal Officer in a blog
- E.g. U.S. DoJ intervened and required Microsoft to sell the patents and demanding that Microsoft, Oracle, Apple, EMC provide licenses to the open-source community

RECENT DEVELOPMENT ON PATENT WARS

- **Where's Google on this?**
 - Patent holders are after deep pockets especially if there's evidence on infringements
 - Google's patent portfolio has traditionally been limited
 - Recent Motorola Mobility acquisition - access to the Motorola patent portfolio
 - Licensing of patents to partners (e.g. HTC and Samsung)
 - Protection against suits by Apple, Nokia and others?

**OUTLOOK ON FUTURE
TRENDS**



OUTLOOK ON FUTURE TRENDS

- ***Innovation is key***
 - new exciting devices and killer apps is not just talk of the 90's
 - new platforms strike through – one needs to run faster than the competition
- ***From patent wars to battle of ecosystems?***
 - Does the industry move from cash cows to a level playing field?
- ***Closing deals is good but knowing one's rights is better!***
 - Also small development studios strike gold every now and again...

THANK YOU



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Expertise:

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