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To protect your source code, treat it like

intellectual property

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Published: July 12th, 2011 - Scott Bell, Aly Dossa and Timothy M. Smith

There has been, and will continue to be, significant innovation in the software industry. If innovators wish to exercise any amount of control over their creations, they must utilize the tools of protection granted by law.

By protecting their innovations, creators will have the right to choose how their ideas are distributed to the general public. Without such protection, innovators will be giving up their right to decide whether their code is dedicated to the public, made “open source,” licensed, or kept secret. Moreover, in certain circumstances, without using tools of legal protection, a creator could be prevented from using an idea that they themselves created.

Innovations in software can be secured under various categories of intellectual property. Here, we discuss trade secrets, copyrights and patents. Each type of protection has a different scope and duration, and determining which protection to rely on depends on the specific needs of the individual or company.

Copyright

A copyright protects a particular tangible expression of an idea. In the context of software, a copyright could protect source code, object code and user interfaces. A copyright is obtained automatically at the time the expression is created, such as when the source code is written, when the user interface is created, or when the program is compiled.



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However, if you want to enforce a copyright against someone making an unauthorized copy (for example), you must obtain a certificate of registration of a copyrightable work from the United States Copyright Office. Further, if the copyright application is filed before the copyrightable work is published, or within certain limited time periods thereafter, the copyright holder may have additional remedies in court, such as the ability to seek statutory damages and recover attorney's fees. The

duration of a copyright may vary, but it will in no case last less than 70 years from creation. An application for copyright may be completed online for as little as US\$35, and currently takes approximately four months to process.

Copyright protection may be sought for all source code regardless of whether the source code is maintained as a trade secret, released only as object code, or “open-sourced.” Specifically, the copyright application process allows the copyright owners to designate various portions of the source code as a trade secret. Detailed information about filing copyright registrations for source code may be may found [here](#).

Copyright is beneficial for the software industry because it provides a fast, inexpensive mechanism for securing intellectual property rights while still allowing the copyright owners to maintain portions of their source code as trade secrets (discussed later on). Further, the ability of a copyright holder to obtain statutory damages and attorney’s fees can substantially reduce the cost of enforcement, allowing individuals and companies of all sizes to enforce their copyrights without breaking the bank.

Patents

In contrast to a copyright that protects the expression of the idea, a patent protects the idea itself. Specifically, an innovator may protect inventions in software, such as the algorithms performed by the software or the architecture of the software.

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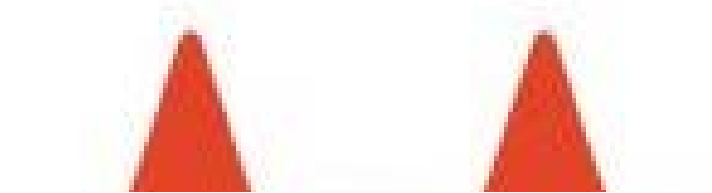
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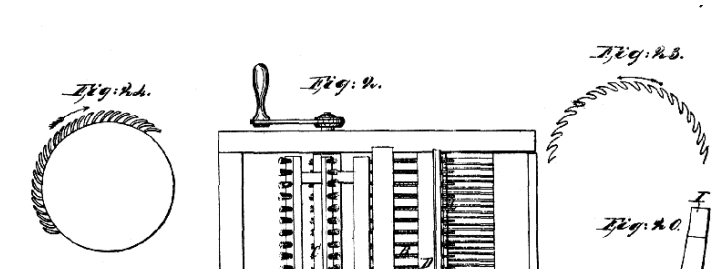
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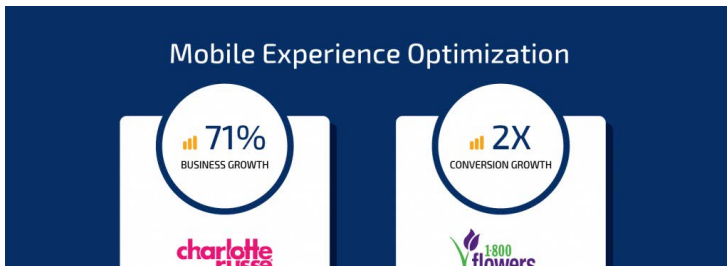
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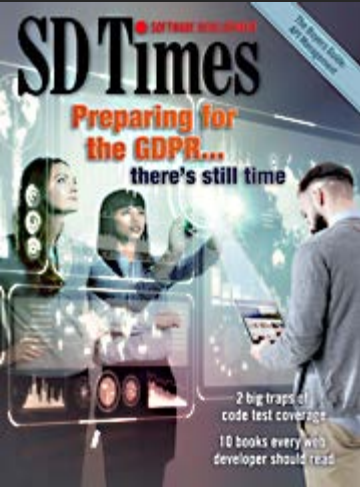
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