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SUMMARY OF THE INTELLECTUAL PROPERTY TOOLBOX FOR MOBILE APPLICATIONS DEVELOPERS

prepared by the Secretariat

1.   The Annex to this document contains a summary of an Intellectual Property Toolbox for Mobile Applications Developers, undertaken in the context of the Project on Enhancing the Use of Intellectual Property for Mobile Apps in the Software Sector (document CDIP/22/8).

2.   The Toolbox has been prepared by Dr. Anke Moerland, Associate Professor of Intellectual Property Law at Maastricht University, and Prof. Noam Shemtov, Deputy Head of the Centre for Commercial Law Studies at Queen Mary University of London.

> 3.   *The CDIP is invited to take note of the information contained in the Annex to the present document.*

[Annex follows]

Intellectual Property Toolbox for Mobile Applications Developers[1] – Executive Summary

The Intellectual Property Toolbox for Mobile Applications Developers addresses a sector within the creative industries that has seen an exponential growth in the last decade — the mobile application sector. The Toolbox is designed to offer practical guidance to app developers and app developer associations, companies developing mobile applications, research hubs and other stakeholders.

The purpose of the Toolbox is to present various tools on how to protect all or part of the intellectual property (IP) in a mobile app. It explains the reasons why protection may be considered and which tools exist to achieve such a protection. The Toolbox provides the context and hands-on knowledge on their functionality and discusses their advantages and risks. Following a user-oriented approach, it presents examples and templates of tools from different markets that can be used by app developers. For each tool, the Toolbox sets out relevant advantages and disadvantages and concludes with key points.

The Toolbox intends to give app developers a sound understanding of the basic IP tools available at the various stages of development of a mobile app, before they seek legal advice on the specificities of each tool in the relevant markets. The tools are presented according to the stages of development of a mobile app, that is: 1) development of the application; 2) protection of the application; 3) commercialization tools; and 4) tools to address infringement situations.

The Toolbox is structured according to the lifecycle of a mobile application, from using content for the app, developing the app, disseminating the app and enforcing the IP in the app. A developer can choose the relevant stage for information about the tools that are available under certain circumstances.

Section 2 "Mobile applications: an IP perspective" serves as a background. Readers of the Toolbox without prior knowledge of IP can find an introduction to the various parts of a mobile application that are relevant for different IP tools.

Section 3 provides details on tools that can be useful when building mobile applications. Mobile application developers may want to use prior creative works that may be protected by IP. This section establishes the most common ways of determining whether prior works are protected by a form of IP and which uses by the application developer require authorization. Where authorization is required, the Toolbox provides explanation, examples and templates for different licensing tools, such as open-source software, commercial copyright licenses, creative commons licenses, trademark licenses and important elements of terms of use of application programming interfaces. While there will not be much room for negotiations for certain licenses, mobile application developers are well-advised to determine, together with a licensing professional, to which territory the license should apply, whether an exclusive or

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[1] The full Intellectual Property Toolbox for Mobile Applications Developers is available at:
www.wipo.int/export/sites/www/ip-development/en/agenda/pdf/wipo_ip_toolbox_mobile_apps.pdf

non-exclusive license can be obtained, what the costs will be, as well as which uses will be covered.

Section 4 focusses on several IP tools that can protect different parts of mobile applications. These tools concern copyright, patents, trademarks and unfair competition, design rights and trade secrets. For each area of IP, its purpose, the conditions under which protection arises and the scope of protection is explained. The Toolbox then discusses the tools that can be used for each area, such as registration, prior art and prior rights searches, application procedures and required information, avoiding non-use in case of trademarks, copyright notices, record-keeping in the development of graphical user interfaces, non-disclosure agreements and others. The key points and guidelines offered for each tool highlight their applicability in different situations and the main considerations that will help to guide the decision-making process when considering such tools. The decision in which market to seek protection and through which procedure depends on an assessment of key markets, the availability of the mobile application on these markets and possibilities of enforcing one's rights there.

Section 5 elaborates on the stage of dissemination and discusses tools that can be used to distribute mobile applications. In particular, where mobile application developers want to make their applications available to application platforms or consumers, they can use tools such as distribution agreements or different forms of licenses. The licensing tools discussed in this section include IP licenses, end user license agreements, open-source and creative commons licenses. While open-source and creative commons licenses make software and creative content available on a royalty-free basis, it is important to purposefully determine the terms and conditions that will be attached to the use by third parties. For each type of a license, the territorial and material scope, costs, its exclusivity and timing of the license need to be determined, among others. Advice from a licensing professional is recommended.

In Section 6, the Toolbox sets out different tools that can be used to enforce IP rights on the mobile application, as well as possible breaches of licensing agreements. Where third parties copy parts of the mobile application without the right holder's consent, or where licensees do not adhere to the contractual terms set out in licenses, app developers can use several tools to enforce their rights. Seeking legal advice is recommended regarding most enforcement steps. The Toolbox expands on the notice-and-take down procedures of the major mobile application platforms, cease-and-desist letters followed by negotiations, administrative and judicial actions, dispute-resolution procedures and clauses. Collecting evidence and information about the alleged infringer are important factors for choosing the right tool. Determining the jurisdiction in which disputes should be brought needs to consider the enforceability of a judgment, especially in cross-border disputes.

Section 7 provides a list of relevant resources and hyperlinks. These references can be used by mobile application developers to find more information on the tools discussed, as well as the examples and temples referred to in the Toolbox.

<div align="center">[End of Annex and of document]</div>