

Legal Issues related to the Commercial Exploitation of Apps¹

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Abstract: Mobile applications (Apps) are a billion-dollar industry with myriad uses in everyday life. To ensure the successful commercialization of apps, one must study the peculiarities of the Apps market. Contract law issues and copyright law issues related to mobile apps are at the epicenter of this problematic. In the first part of the paper, the various actors engaged in the distribution of applications are identified and the role of the app stores as online platforms - marketplaces are analyzed. The End-user (consumer) is the reference point of the legal approach to interpret the relations created and classify the contract typology. In addition, the operational and technical functionalities of an app store, the terms and conditions, its organizational structure, the types of applications ‘sold’ or ‘licensed’ and payment methods applied, are several of the factors which are weighed upon, in an attempt to define the legal provisions applied on a national level. In the second part of the paper focuses on copyright law issues arising from the fact that application fall under the definition of software. As a matter of fact, the evolution of traditional copyright concepts such as the ‘exhaustion of rights’ and ‘first sale’ doctrine, in the context of App Markets, are analyzed. The analysis conducted indicates that for the time being, the legal realm and application of traditional rules in the app environment, do not contribute to legal certainty. ‘Ad hoc’ cases which would constitute ‘res judicata’ are rare. Rather, the solution must be sought on a case by case basis, and by careful consideration of multiple factors, including organizational and technical characteristics of the app stores.

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