A holistic approach to software protection

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A Holistic Approach:
Combining different types of IP to maximize protection of software

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Software has almost infinite possibilities

- Software represents instructions to cause a computer to do a task.
- Software can cover the entire spectrum of machine functions.
- Some Software simply takes what a human previously did with pen and paper and replicates it, faster, better and in a more accessible way, on a computer.
- Other software might implement a new process in a technical way, such as directing a 3-D printer's creation of an object.

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Why a Holistic Approach?

- No one method of protecting code is completely effective to prevent misuse by others. A strategic combination of IP protection will result in the most effective protection at the lowest cost:
    - Copyright protects the expression of the code, but not its functionality or the processes it performs or the ideas it implements – it is a broad but thin protection.
    - Patents are typically narrow improvements over past inventions, past publications, and past patents, which are generally limited to an operable technical solution to a technical problem.
    - Trade Secret law **can protect anything kept secret that provides a competitive advantage to those who do not know it**, and manifests upon inception of an idea.

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Patents Are Insufficient to Protect Software

- Patents start with an invention or inventions that are described in a way that an ordinary person of skill in the art can replicate the invention.
- The entire point of a patent is to trade off a finite period of exclusivity in exchange for teaching the technology to the public.
- The application process typically will result in the invention becoming public before patent protection is awarded, and cannot be "taken back" if only partial protection is awarded or protection is later revoked:
    - Patents on software are vulnerable to attack on issues of validity and scope.
    - Many held to claim unpatentable subject matter.
    - Many held to be limited to only the embodiment in the specification or lacking sufficient support in the specification for the claims to be valid.
    - Long, expensive process to obtain this protection with no guarantee of results – and no protection before issuance.
    - Key elements of the code will likely become public in the patenting process, and may not get full protection.

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Title search: A Holistic Approach to Software Protection

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