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Software as a company asset and the means
of protection

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INNOVATING IS NOT ENOUGH



**STRATEGIES FOR PROTECTION AS IP ASSET MUST
BE IMPLEMENTED**

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WHY ?

MAIN REASON:

- I. Maintain a competitive edge within the market

OTHER REASONS:

- I. Create value and monetise
 - II. Obtain credit and financial services
 - III. Patent box = fiscal benefits
 - IV. Application for competition announcements
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SOFTWARE: MEANS OF PROTECTION

- I. Copyright
 - II. Patent
 - III. Trade secret
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1) COPYRIGHT

Protects software as a literary work

Italian legislation does not specify any element

- Sequence of instructions
 - Source code
 - Object code
 - Preparatory design material
 - No - Ideas and principles which underlie a computer program
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European Directive on the legal protection of the computer programs, Directive 2009/24/EC

Protects «*the expression in any form of a computer program*»
and the «*preparatory design material*» (art. 1)



Court of Justice of the European Union case law

- **C-393/09**, Bezpečnostní softwarová asociace – Svaz softwarové ochrany v Ministerstvo kultury

Protection «*from the moment when its reproduction would engender the reproduction of the computer program itself, thus enabling the computer to perform its task*» (par.38)

-No graphic interface

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□ C-406/10, SAS Institute Inc. v World Programming Ltd

No infringement of copyright if «*the lawful acquirer of the licence did not have access to the source code of the computer program to which that licence relates, but merely studied, observed and tested that program in order to reproduce its functionality in a second program*» (par.61)

- No functionality of the program
 - programming language
 - format of data files
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WORKS LINKED TO SOFTWARE (but other than software):

- Instruction and maintenance books
 - Software output (for instance, the final report processed by a software following the input of specific data)
 - Other works made up of software: for instance, videogames
 - Databases as a structure
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- Graphic parts of the program (copyright protection as graphic works only if there is originality and creativity)
 - Algorithms (copyright protection minority thesis, only if they generate hypertexts or enable content's extraction when processed in a database)
 - Flowchart (copyright protection as works of drawing or science, only if it consists of a sequence of signs chosen and organised to represent the flowchart itself – no if merely descriptive of the functioning)
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Italian case law

A new-co means to develop a software:

- Original source code
- Algorithm created by a person, bound to company A by an ongoing “exclusive” licence contract which prevents him from «*communicating*» the algorithm to third parties without authorization
- Interfaces developed by former employees of company A
- Graphic tools and database connection systems are similar to those used by company A

Is the commercialisation of the new-co software illegal?

2) PATENT

art. 45 c.p.i. – art. 52 c.b.e.

No patents for computer software «as such»
(that is to say: as instructions needed to enable the pc perform a specific task)

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SOFTWARE PATENTABILITY



INDUSTRIAL PROCESS

3) TRADE SECRET

- (i) not known or readily accessible to experts in the area;
 - (ii) must have an economic value which is its secrecy;
 - (iii) must be involved in measures adequate to keep it secret
 - Technical measures
 - Contractual measures
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HOW ?

- I. Opt for the best protection according to the final aim
 - II. Identify assets and prior art
 - III. Implement the measures
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THANK YOU FOR YOUR ATTENTION!

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