EUIPO
EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE

APP DEVELOPMENT
Entrepreneur and Digital Tech

Pieter and Judith are app developers and they have invented a new way of transferring data directly between mobile phones in a peer-to-peer (P2P) manner (not including the traditional Bluetooth or NFC technologies of smart cards or readers). They are using this for a sharing social data and content app, but a bank has approached them as they have identified that the process can be easily used for micro-transfers and payments. The technology involves a combination of data, software and hardware on the phone, and a web-server for authentication and verifying account funds.

The bank wants access to the source code, to audit the security, and also to have the web-server on its own systems, for security reasons.

Pieter and Judith are concerned that that the bank may access the special new method they have devised for sharing information P2P between phones, and actually could easily within 6–10 months redevelop the code to have their own version.
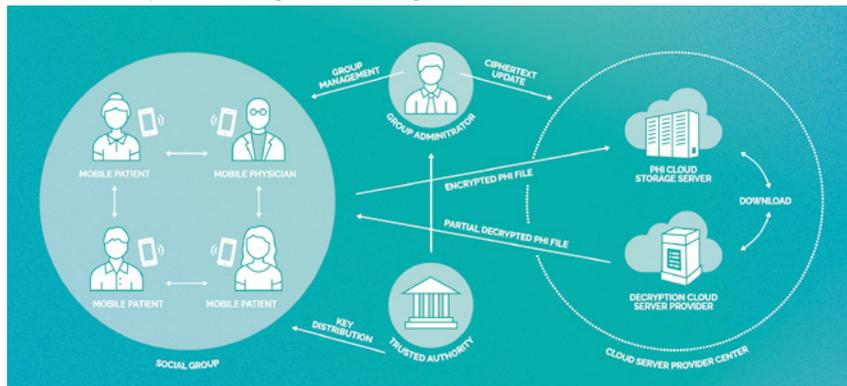
QUESTIONS

Q1: **What form of protection did or should the creator choose and why?**

Peter and Judith can protect the app and the new method of transferring data.

Firstly, Peter and Judith can protect the app that they have developed for sharing social data using new P2P technology through **copyright.** The source code of the app is considered a work of authorship under international[1] and national legislation, so it is protected by copyright.

Secondly, the creators may be able to protect the new method they have developed for transferring data directly between mobile phones in a P2P manner through **patents,** because this method may be considered an "invention": basically, a new technical solution to a technical problem.

Q2: **How does this intellectual property (IP) protection work?**

Copyright protection for the app is used to protect against copying, modifying, distributing or "communicating to third parties" the software code behind the app. The protection arises automatically when the software is fixed in a tangible medium (i.e. written on a computer) – there is no filing or registration required, though evidence of creation is useful and countries do have voluntary copyright registries. Copyright protects original works such as the software code of the app and gives the creator of the work certain exclusive economic rights: to reproduce it, to modify or transform it,

1   Wipo Copyright Treaty 1996 – EU Software Directive

and to distribute or communicate it. The author also has the moral right to be recognised as its creator. The duration of copyright is – generally speaking – the life of the author plus 70 years, but this depends on the case and the law of the specific country in question.

Furthermore, the new P2P method of transferring data directly between mobile phones may be patented as an "invention" if it fulfils the following three conditions: i) novelty, ii) inventive step and iii) industrial applicability. However, it may have the obstacle of being considered "software as such" (computer code) and may be excluded from patentability – this is sometimes a difficult question to resolve. In order to obtain patent protection, the creators must file a patent application in a patent office (European or national) of the territory where they want protection. Once granted, patent law gives the inventor an exclusive right to exclude others from making, using, selling, and importing the protected invention or products resulting from the invention for a limited period of years (20 years, from application) in the country for which protection has been granted, in exchange for publishing how the invention works (an "enabling public disclosure" of the invention).

Note that copyright protection and patent protection may be possible on the same technology because both rights have different subject matter protection: copyright protects the written code, patents (if available) protect the methods that the code implements.

Q3: **How do you think intellectual property rights (IPR) law would help the creator to innovate and protect against abuse (false/ unfair competition)?**

IPR law helps creators to innovate by recognising and rewarding them for their commercially-successful inventions and creations,

prohibiting third parties from copying or using their creation without authorisation. IPR law therefore protects creators against abuse by providing specific legal actions against "copiers" and competitors who violate their IP rights. By giving exclusive rights to those who invest and create something new, they can license the invention or work for economic return, sharing it with society, and forcing competitors to innovate by looking for new solutions over something already on the market. Furthermore, when a new technology enters the market, society benefits and it enables further technological research and development.