

Comprehensive Question Six

By

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Intellectual property is one of the most important factors in developing a competitive advantage within the computer industry (Sathyanarayan, 2003). Intellectual property is defined as a variety of resources within an organization, including copyrights, trademarks, programs, source code, and even development processes. Compare and contrast the effect that global outsourcing is having on the intellectual property and competitive advantage in the current market. Contrast the methods used by the various organizations within the Information Systems arena as they apply in the United States, and globally. Evaluate the challenges, opportunities and or obstacles these organizations face?

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Executive Summary

The growing use of geographically dispersed employment, outsourcing and relocation of internal resources has created some rather unique challenges for corporations and the security of their intellectual property. Internal security risks, which have been one of the prime sources of corporate espionage and loss of information security, now takes on a different dimension in the form of international employment sources of various backgrounds, loyalties and motivations. Is there an effect on how corporations are handling information security with regard to their intellectual property? Are there current measures taken, or should there be, to thwart the possible loss of information security, copyrighted or trademarked property, before the "genie is out of the bottle", or is it too late.

Introduction

The global community of corporations sharing information via internet, intranet and extranet activity brings forth a new dimension in information security. Early use of global communications was limited to academic institutions, government and higher level staff of major corporations. With the growing use of international employee pools to provide customer support, technical help desk functions, account services from a wide variety of industries there is seepage of information that could be mishandled or gathered for purposes beyond the intention of the parent company. This fact, compounded by the outright piracy of information systems, software, media and music, has grown into a multi-billion dollar problem that could develop into a greater problem than the early version of Napster.

Call centers today are not only more often located on foreign shores, to the parent company, but staffed by personnel that may or may not have allegiance to the United States Based parent company, or the United States in general. Laws exist in such a wide panorama of versions, that it baffles the mind to master one nations property laws, let alone, the variety that exists to cover the information security, property rights of the myriad of nations that are affected by such cross cultural corporations.

Companies that decide, due to labor costs, to locate their activities offshore take the risks associated with the combination of outsourcing, or establishing local subsidiaries of the parent corporations. In the case of outsourcing, is there really any control over the information

appearing on a users screen? The credit card, purchasing habits, and transactional records are intellectual properties that provide the astute data analyst with at the least a marketing profile of a specific demographic, and at the extreme specific information about a particular user. The use of credit cards or ATM cards has become more pervasive than cash transactions in the United States, so that the information contained in a credit card call center becomes the purchasing habits of the person holding the card account, if not the person themselves. The basis for this form of intellectual property, in an internally controlled organization has forced companies to secure their data warehouses with pin codes, biometric scanning, and in the case of the US Military, Computer Access Cards. The additional security measures taken internally do not prevent the theft of information, but allow a "footprint" of your activity to account for data access and modification.

The case of intellectual property associated with shipping high-end applications to non-US controlled nations brings to question the additional risk of National Security. The nation that is allied with us today can turn to an apathetic supporter, or worse yet, an adversary tomorrow. Corporations are free to establish global entities, support centers and various outsourced or contracted services, but at what cost to the overall security of their information. What value does that information play in the daily operations? What future value will this information have on corporate activities? This form of intellectual property, that of accumulated market intelligence, and subject matter expertise is yet to be defined, analyzed or assessed based upon the future impact of offshore knowledge being lost to a company at an unspecified point in time.

The basis to the entire scenario is that the answer will remain unknown until some major loss of intellectual property, corporate data mines, and or market advantage is leveraged via an outsourced agency, nation, or combination. Companies would be wise to be conservative and cautious with regards to where, and how information is collected, presented to users and with what type of footprint or tracking system to account for any misused data activities. Doing otherwise, for the purpose of short term labor costs, would not only be irresponsible to the corporation, but to the national security interests of the United States. The same security issues can apply to overseas firms, allowing data access to US employees as well. Simply, globalization presents unique security issues, regardless of outsourcing, relocating assets, or allowing access through internet, intranet or extranet activities.

Literature Review

Current practices in intellectual copyright protection have origins dating to the 1970 Patent Cooperation Treaty (PCT), signed by 123 member nations of the World Intellectual Property Organization's (WIPO). In a recent amendment, dated January 2004

At its 32 annual session beginning September 22, 2003, the Assembly of the World Intellectual Property Organization's (WIPO) International Patent Cooperation Union reduced the international filing fees necessary to apply simultaneously for patent protection in the 123 member countries under the Patent Cooperation Treaty (PCT). The new filing fee of 1,400 Swiss francs (approximately \$1,050), accompanied by a handling fee of 200 Swiss francs (approximately \$150), is effective in January 2004:

The 1970 PCT allows patent owners in member countries to seek patent protection simultaneously in other member countries by filing an "international" patent application that streamlines the search, examination, and publication process. If an applicant designates that he or she would like his or her international application to have effect in a particular country, this application then enjoys the same status as if it were filed in that country's national patent office. After filing, a PCT application is subjected to an international search for published documents that might affect the patentability of the invention claimed in the application, resulting in a potentially more reliable assessment of patent eligibility.

Prior to the recent amendments, WIPO charged a basic fee of 650 Swiss francs (approximately \$480) for filing the initial PCT application, then levied an additional charge for each country designated. Under the revised filing system, an applicant pays a flat fee to have his or her application take effect in all member countries automatically. A reduced filing rate was established for applicants from developing countries.

The recent amendments also granted specific fee reductions to PCT applications filed electronically. Applicants, who use the PCTEASY procedure, involving a paper filing and electronic diskette, are eligible for reduction of 100 Swiss francs (approximately \$75). An application filed electronically in non-character coded format is eligible for a 200 Swiss franc (approximately \$150) reduction, and an application filed with the description, claims, and abstract coded in extensible markup language (XML) is eligible for a 300 (approximately \$225) Swiss franc reduction. The recent amendments mark the fifth consecutive year that WIPO has made reductions in filing fees (Chua et al, 2004).

The impact of the recent amendment allowing a single flat fee, rather than a fee based upon a "per nation" basis demonstrates the cooperation globally by the member nations of the WIPO in enforcing the rights of the owners. It would be an error to assume that the laws do not exist to enforce the rights of companies, and the protection of their property in a global market. The contrary is true, but the question remains whether there is an impact on the loss of property, corporate information, and down right piracy in a market that moves information, jobs and a data mine around the globe depending on the costs of labor.

Creativity around the globe is bound to coincidentally or purposefully be copied, and in a recent example between Google, the search engine, and several French firms the following conflict occurred.

Internet search engine Google ran into legal trouble in October 2003 when a French lower court ruled that the online company had infringed the trademarks of two businesses. Those businesses, French travel agencies Luteciel and Viaticum, sued Google's French operation in December 2002, claiming that the Web site illegally allowed its advertisers to tie the text of their ads to trademarked search terms.

At issue in the suit was Google's use of its "AdWords" program, which allows advertisers to place ads on Google's Web site based on specific search terms that users enter. The travel agencies claimed ownership in the French phrases "bourse des vols" and "bourse des voyages"

which translate to "travel market" and "airflight market," and filed suit after Google refused to proscribe the use of the phrases through AdWords.

The agencies sought to stop Google from allowing their competitors to include the disputed phrases as terms that would generate ads on the site for the competitors. The court agreed, ordering Google to pay a fine of 70,000 euros (\$81,400). Google, based in Mountain View, CA, is expected to appeal the decision. (Chua, 2004)