

Technology



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Phil Thompson

A blueprint for secure IP

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Protecting intellectual property (IP) is imperative for any business. Providing a unique business model will encourage revenue, and keeping selected information from ambitious soon to be ex-employees should help. Add a recession to the mix, complete with unscrupulous tactics, legal grey areas and an increase in redundancies, and the brewing threats might just boil over. **Rob**

Stringer reports

The founders of file-swapping website The Pirate Bay hit headlines recently as they went on trial for copyright infringement. They claimed they never laid their hands on the bullion – a bounty of bit torrent files, including illegal copies – insisting that they were merely providing an index or search engine. (Interestingly, it transpired that the judge belonged to several IP and copyright protection groups – the same organisations that representatives of the entertainment industry had sat on. As a result, the case may be sent to re-trial.) Such trials can twist or turn, simply because it can be hard to define the constituents of intellectual property, and when it is being abused.

“I think in organisations it’s very common that individuals will underestimate the value of IP”, remarks Mike Paquette, chief strategy officer of intrusion prevention system provider, Top Layer. “Plans to a missile, schematics to a



Ilya Kazi, Mathys & Squire

circuit board are obvious IP, but most will underestimate what they have.

“We think of it historically as designs and recipes. Today many organisations find that

they have less tangible items – customer lists, prospect lists, not traditionally thought of but also essential to organisations”, says Paquette.

A recent McAfee study of 1000 senior IT decision makers worldwide, *Unsecured Economies: Protecting Vital Information*, indicates that respondents reported losing intellectual property worth an average of £3.1m (US\$4.6m) per firm due to security breaches in 2008. The total loss of intellectual property among respondents during these 12 months excluding losses due to piracy came to £378m (US\$559m). According to respondents, it costs an average of almost £406 000 (US\$600 000) per firm to respond to each security breach concerning the loss of vital information such as intellectual property.

The problem with patents

Patents can act as one form of defence for some IP. A patent will give protection to

an invention for 20 years; however it does not necessarily stop a source developing on that patent.

As Phil Thompson, partner and founding member of White & Black Legal LLP warns, the danger from the security breach perspective is that if you were to submit a patent application, a data leak resulting in the theft of confidential information "would render any patent application invalid".

There are alternatives to patenting, says Thompson, such as that which can be found in the protection of the coveted Coca Cola recipe. Rather than divulge protected information, the soft drink manufacturer ensures that only a limited number of people know the formula. In the world of web design, people often insert deliberate errors in a code so they can see if another designer has copied and pasted the code onto their website.

Whatever tricks are available, ultimately, it's about training, says Thompson. "Clients need to consider who in their organisation needs to view their confidential information. A good case in point is a customer list –



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Phil Thompson



Only a limited number of people know the coveted coca cola recipe.

frequently in organisations there's no protection in customer lists." Thompson advises that organisations should consider "whether all staff need to see the customer list, and do they need to see *all* of the customer list? All these checks and balances in place will help."

Keeping pace

The issues surrounding intellectual property have followed other forms of information in the accelerated evolution from paper, to networks, to the world wide web. "Because the world itself is going online, IP is itself interpreted online", says Thompson.

It's important, then, that legislation is able to keep pace.

As partner and specialist in software patents at Mathys & Squire, Ilya Kazi is well positioned to observe IP's place on the online world, and the dangers involved – including the ease of publishing.

"Simplistically people are more careless with emails than say writing a letter. They are not always sent through the right checks or channels."

He observes the threat of "a designer bragging about a great project" can constitute a breach of confidence.

"It might not be a problem over a pint of beer in a pub, but might be a problem if there's a traceable record", he says, adding that "I can confidently predict that within five years there will be a patent case of something being written on Facebook which is brought into a disclosure which was damaging.

"The point is what you're doing is real. What you're doing is affected by real laws", and because the internet is international, that includes "laws in every country whose laws you've never read or studied or taken advice on", says Kazi.

Style over substance

Even simple protection such as patenting can bring global disparities, according to Kazi. "If you file a business application in the US, then file the same one in the EU, you can run against the buffers. If there's not enough detail [in the US patent], and you want to file [the same application] in the EU, you can be snookered."



Duncan Pithouse, DLA Piper

Kazi advises that organisations in the US seek EU specialists "otherwise it's not easy to enforce your patent in the UK".

He adds that the UK has one of the "harshes standards at the moment" in computer software.

"The prime minister has said that 'digital Britain' must be at the heart of the economic recovery. If this is to be the case, it is a serious problem that the UK intellectual property office (IPO) is out of step with the US and the rest of Europe in applying an unduly harsh approach to patenting innovation in the software field", states Kazi.

"It has even been explicitly criticised by the UK's own Court of Appeal. The issue adds costs and uncertainty to businesses seeking investment and protection in the UK. If the prime minister wants to make this happen, he can and should move to make the UK IPO return to helping rather hindering innovators in this area."

Daniel Smith, managing director of travel operator Tours4 Ltd has had first-hand experience of the obstacles presented by IP protection.

"For Tours4, our main IP is in our branding. We have several divisions including Tours 4 Sport, Tours 4 Schools and Tours 4 Students, but unfortunately we can't trademark these as they are descriptive names. We have previously tried to trademark the phrase Tours4 but had our application turned down by the IP registrar.

