TITLE: "PROTECTING INTELLECTUAL PROPERTY"

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Since 1971: *"Software for the finest computer - the Mind"*

"Lawsuits primarily benefit the attorneys and nobody else."
- Bryce's Law

INTRODUCTION

The protection of intellectual property should be a significant concern to all Information Technology organizations. Without protection, commercial hardware/software vendors would quickly evaporate as others would inevitably steal their designs and programs. Corporate developers would also suffer if their ideas, inventions, and programs were misappropriated thereby causing them to lose their competitive advantage. In fact, our corporate landscape and standard of living would be radically different if we had no such protection. Fortunately, the framers of the U.S. Constitution were wise enough to implement legislation safeguarding the authorship and ownership of literature, art, and inventions, thus causing the United States to flourish in the arts and sciences. But the advent of the computer caused us to reconsider how we safeguard such property. For example, the concept of a computer program has been a bit nebulous to some people; should the source code be protected by copyright? What about the object code (executable)? Attorneys have been debating this subject over the last thirty years and there is still general confusion in the field.

In 1974, MBA embarked on our own lawsuit to protect the "PRIDE" methodology. This was a lengthy legal battle which took the courts into unchartered waters. At the time, "PRIDE" was nothing more than a methodology implemented with printed manuals and forms (no software support at the time). To safeguard our product, our lawyers drafted a standard nondisclosure agreement which all prospective buyers would sign prior to our sales presentation. Further, our contracts included similar verbiage instructing the customer to safeguard the physical embodiment of the product and not to divulge it to unauthorized third parties.

We were contacted by Arthur Young & Company in 1974 to conduct a "PRIDE" sales presentation for one of their consulting clients in Milwaukee, Wisconsin; the Harley Davidson Motorcycle Company (then a division of AMF). The attendees signed the nondisclosure agreement and the presentation was conducted as usual. Following the presentation, MBA was informed that Harley wouldn't be purchasing our product, and that Arthur Young would be developing a similar methodology for Harley instead. This made MBA suspicious, particularly since one of Young's consultants was a former "PRIDE" user. Consequently, MBA initiated a lawsuit over misappropriation of trade secrets.

This turned into a long and ugly legal battle which lasted eight years. Basically, the lawyers for the opposition contended that since the "PRIDE" materials had copyright notation printed on them, they were in the public domain. In contrast, it was our contention that "PRIDE" was a trade secret, In the end, we won the lawsuit and "PRIDE" was proven to be a trade secret in a court of law. This litigation established many precedents and is often referenced in similar cases; for additional information, see:

Chicago-Kent College of Law
http://www.kentlaw.edu/perritt/honorsseminar/honorssemts2.htm

Library Law
http://www.librarylaw.com/ip-kirschner3.html

Many years have gone by since the verdict was passed. In 1989, Arthur Young & Company merged with Ernst and Ernst (now called Ernst & Young), the principals of the case have moved on and we no longer bear any ill-will towards the company. Further, "PRIDE" was placed on the Internet in 2004 (with copyright notation).

As a result of the lawsuit, MBA learned a lot about the protection of intellectual property. I may not be an attorney, but you may look upon this as a convenient primer to protect yourself.

COPYRIGHTS

Copyright is primarily concerned with the authorized reproduction of such things as text, graphics, music, and audio/video recordings. As such, it protects publishers, authors, artists, and designers from unauthorized republication or redistribution of their work. Not too long ago, in order for a copyright to be enforceable, it had to be

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registered with the copyright office. However, the laws were somewhat loosened in 1976 whereby copyright protection is now effective from the moment the work is first created in fixed form. Although the use of copyright notation is no longer mandatory, it is highly beneficial to include it whenever possible to indicate your work is protected by copyright. Notation typically appears as:

Copyright © 2002 ABC Company

Since computer program source code is written as text, it is a wise idea to add such notation in the source code. But understand this, copyright only protects the work from unauthorized reproduction, it does not protect the author's ideas (which is how the lawyers of Arthur Young argued against us). Although the exact source code cannot be reused, it does not protect the logic of the program. To illustrate, suppose a new employee brings with him some source code from his last place of employment. Copyright protection would prohibit him from reusing the source code, but it wouldn't stop him from using the ideas contained in the program. Unfortunately, most programmers do not like to reinvent the wheel and, as such, frequently reuse source code over and over again. From this perspective, probably every company with an I.T. department is guilty of some form of copyright infringement.

TRADE SECRETS

A trade secret is much different than a copyright. Basically, it represents some unique formula, design or idea. Perhaps the best known example of a trade secret is the Coca-Cola syrup formula which is strictly protected in a vault. There are essentially two elements for establishing a trade secret; first, that it is a "unique" idea or formula, that it has distinguishable characteristics or properties to differentiate it from others, and; second, that you can demonstrate you are taking effective safeguards to protect it from unauthorized use (hence, making it a "secret"). In the lawsuit over "PRIDE", we were able to successfully demonstrate that "PRIDE" was unique and that we had taken adequate steps to safeguard unauthorized use (our nondisclosure agreement).

PATENTS

A patent is similar to a trade secret in that the inventor has a unique idea or device he wishes to prevent others from producing. To implement a patent, the idea or device must be registered with the U.S. Patent and Trademark Office.

A registration process is required which includes a fee. For an invention to be patented, it must be proven to be unique, useful, and not of an obvious nature. If a patent is granted, the inventor is protected from others producing a similar invention for a limited period of time (20 years). The patent is renewable at the end of this period.

The computer field makes active use of patents to establish unique inventions and protect them from others For example, IBM typically registers the most patents each year, both hardware and software.

TRADE MARKS/SERVICE MARKS

A trademark is an arbitrary word, name, symbol, or device used to distinguish a particular product. A service mark is similar except it is used to distinguish a particular service. For example, "PRIDE" is the registered trademark of M&JB Investment Company.

Like a patent, the trade/service mark has to be registered with the U.S. Patent and Trademark Office. And, Yes, a registration fee is required. Notation normally accompanies the trademark to indicate it is registered - ®. Use of such notation should be encouraged so that others know your product or service is a trademark.

A trade/service mark means no other company can use it to offer a competing product or service unless authorized by the company holding its title. As such, it is closely related to the integrity of the title company. If a competitor uses it, the public will assume they are somehow aligned with your business and, as customers of your competitor, are entitled to the same level of service or quality your business offers. If the competitor fails in this regards, it is a reflection of both your product/service and your company which could damage your business.

CONCLUSION

When MBA was founded, we were very lucky to get good, sound legal advice for protecting our intellectual property. Because of this, I encourage anyone concerned in this regard to seek such advice from a qualified attorney.

Another way to assist in the protection of your intellectual property is to enact some form of employee agreement, whereby the employee agrees not to misappropriate your products (such as designs and software), or use other intellectual property without expressed authorization. This puts your employees on notice.

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Devices such as copyrights, trade secrets, patents, trade/service marks are very helpful for preventing the unauthorized use or distribution of your products. However, if someone really wants to pirate your products, they will. When you catch someone in the act though, try to give them a way out. I always recommend that you try to avoid litigation whenever possible. I find such lawsuits primarily benefit the attorneys and nobody else. But if your livelihood is genuinely threatened, as ours was, then you have no alternative but to use the full force of the law.

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About the Author

Tim Bryce is the Managing Director of M. Bryce & Associates (MBA) of Palm Harbor, Florida and has 30 years of experience in the field of Information Resource Management (IRM). He is available for training and consulting on an international basis.

"PRIDE" Special Subject Bulletins can be found at:

http://www.phmainstreet.com/mba/mbass.htm

They are also available through the "PRIDE Methodologies for IRM Discussion Group" at:

http://groups.yahoo.com/group/mbapride/

You are welcome to join this group if you are so inclined.

The "Management Visions" Internet audio broadcast is available at:

http://www.phmainstreet.com/mba/mv.htm

Also, be sure to read Tim's Blog at:

http://blogs.ittoolbox.com/pm/irm/

"PRIDE" is the registered trademark of M. Bryce & Associates (MBA) and can be found on the Internet at:

http://www.phmainstreet.com/mba/pride/