

Protecting intellectual property in the global markets

For companies preparing to enter international markets, protecting their intellectual property rights is a global undertaking as well.

"The first thing companies have to realize is that IP protections are country-to-country," said Alan Smith, a principal in the Boston office of law firm Fish & Richardson PC. "Companies may think if their IP is protected in the U.S., then they're all set. But they have to file for patents, trademarks and domain names in each country."

Infringement of IP rights can do serious damage to businesses. The International Chamber of Commerce estimates that businesses lose a total of \$600 billion a year at the hands of counterfeiters who produce and sell knock-off goods. As a result, the ICC maintains, there are huge costs to the global economy in terms of jobs, consumer safety, tax revenue, law enforcement and technology transfer. In the software industry alone, global piracy of personal computer software caused \$40 billion in losses last year, according to a survey released last month by the Business Software Alliance.

Fish & Richardson works with law firms in other countries to file for copyright, patent and trademark protections for its clients. The laws vary from country to country, as do the opportunities for recourse if a violation occurs. To protect themselves, businesses operating in global markets are increasingly using multinational litigation to target IP infringement, Smith said. One client has filed lawsuits against another company in five different countries for alleged patent infringement. The idea is to target multiple locations where the alleged violations are occurring.



Grigsby: "Trusted partners make the difference."

In some countries where IP laws are evolving, partnering with a local company can help in the pursuit of infringement claims, said Fran Grigsby, managing principal and founder of Next Level International, a Concord-based consulting firm that works with companies to enter new markets.

"In countries like India and China, enforcement often depends on the partners you choose," said Grigsby. "Having a trusted partner makes a big difference."

For sensitive information, such as customer or supplier data or proprietary business processes not covered by IP law, there are some contractual tools that companies can use to protect themselves, Grigsby said.

Nondisclosure agreements and severance contracts can help foster an environment that places a premium on respect for IP rights. Inspection of offices or manufacturing sites, including their security and access procedures, is crucial in vetting offshore partners, Grigsby said.

Software firms hiring offshore developers should take steps to prevent proprietary information, such as customer or trading partner data, from being distributed to the contractors.

"There are ways to manage software development to decouple sensitive information from the software," said Bob Kramick, executive vice president of business development and corporate marketing for DarwinSuzsoft, an IT services firm that is based in Wakefield and has 800 employees in China. "There's much information that shouldn't be moved from Boston to Newton, never mind Boston to China."

For companies increasing their presence in China, forging ties with local government ministries can be an important tool in protecting against IP infringement, said Kramich.

While China has had a reputation as a country with little regard for IP laws, several sources say that's changing. As the economy has expanded rapidly, the government has made an effort to crack down on piracy and expand IP protections.

"The Chinese government is aggressively looking to build a market for the knowledge industry," Kramich said. "And they are enforcing IP."