

Chapter XXIII

E–Business Process Management and Intellectual Property: Issues and Implications

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ABSTRACT

The emergence of e-business as a viable business model is unquestioned and global in its involvement and impact. Further, the value that intellectual property (IP) in the form of trademarks, copyrights, and patents plays in that medium of doing business impacts businesses, information technology (IT) professionals, academics responsible for IT coursework and programs, and, of course, the legal community. This chapter reviews these IP types with particular emphasis on their relationship and impact on e-business. Relevant legal cases are cited and discussed to provide additional foundation to the e-business community. The chapter also provides appropriate recommendations for e-business in light of these IP issues, and identifies some possible future trends and research issues.

E-BUSINESS PROCESS MANAGEMENT AND INTELLECTUAL PROPERTY: ISSUES AND IMPLICATIONS

The advent of the Information Age has brought about a different way of thinking about how information should be used in both the public and private domain. It has also challenged businesses to take advantage of information technology (IT) in conducting everyday tasks. The introduction of the Internet into the business model, that is, electronic commerce, has not only provided new opportunities and efficiencies for firms, but has also posed threats to them. In particular, firms are confronting numerous issues that today are impacting their intellectual property (IP) assets. All of this is truly a new, virtual frontier. However, computers and the Internet are presenting new and challenging legal questions that may take many years to become well-settled points of law.

One area of the law that has been dramatically affected by computer technology is in the field of IP, for example, trademarks, copyrights, and patents. Referring to intellectual property, Ghosh (2002, pp. 454-455) states that:

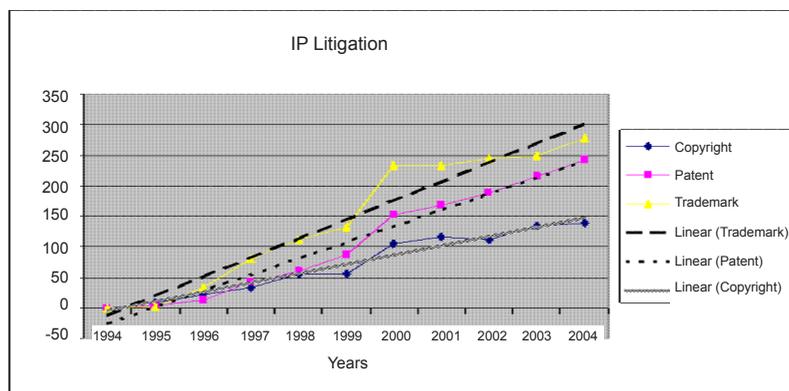
The field is hot, so to speak, and often eclipses other more compelling issues in the media and legal fora. Intellectual property issues are ubiquitous precisely because intellectual property is the final frontier. Market economies expand and thrive by conquest, and our world has expanded as much as it can geographically. Real property, or land-based systems, offer very few prospects for further exploitation. Personal property similarly offers few remaining challenges for entrepreneurial enterprise..... It is not hard to fathom the importance of intellectual property in commodifying the intangible inputs and outputs of an economy based on the selling of services, whether medical, legal, financial, or entertainment.

Caught in the middle of these emerging e-business issues are the IT professionals, for example, Webmasters, who create and/or maintain a company's Web site and e-commerce systems. They may feel that their technological expertise in developing and maintaining Web sites is their only responsibility, that is, any social, political, or legal issues are not their concern. Consequently, Webmasters not only have no noticeable knowledge regarding the applicable IP laws, they also

have a large dose of disdain for them (Kamarck, 1999). They believe that their job is to drive users to a corporate Web site efficiently and effectively, and without any knowledge of, or belief in, IP laws, they can be creative and successful in their abilities to do so. Consequently, firms may have manipulated the technical aspects of Web-site development without regard for the IP rights of others (Kamarck, 1999).

Underscoring the important role played by IT professionals today is the nature and amount of e-business being conducted today. The U.S. Department of Commerce's Economics and Statistics Administration publishes an annual report about the digital economy. Its 2003 report, the latest available, indicates that retail e-business activity has shown a 28% increase over the second quarter of 2002, but that the B2B e-business arena has not shown as much improvement and has fallen short of expectations (Digital Economy, 2003). At the same time, as shown in Figure 1, the rise in e-commerce-related lawsuits from 1995 to 2005, comprising trademark, patent, and copyright litigation, attests to the apparent lack of knowledge of IP law by either firms or Webmasters. As shown, the number of Internet-related lawsuits is increasing dramatically, which should be a cause of concern for organizations and information technology (IT) researchers who are investigating various e-commerce issues today.

Figure 1. E-commerce-related IP lawsuits, 1994-2004



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