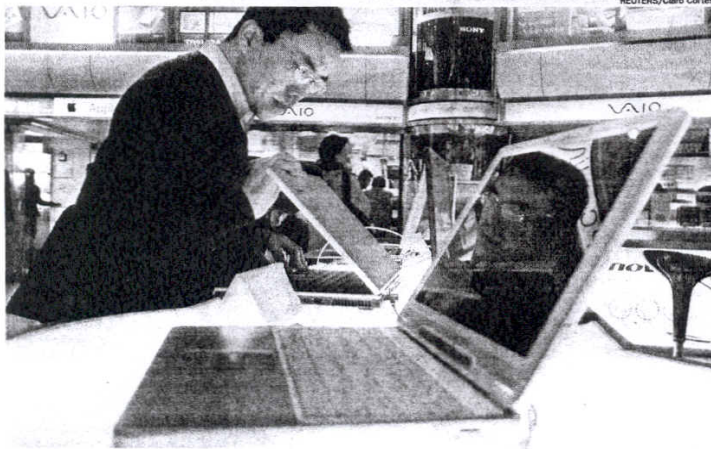
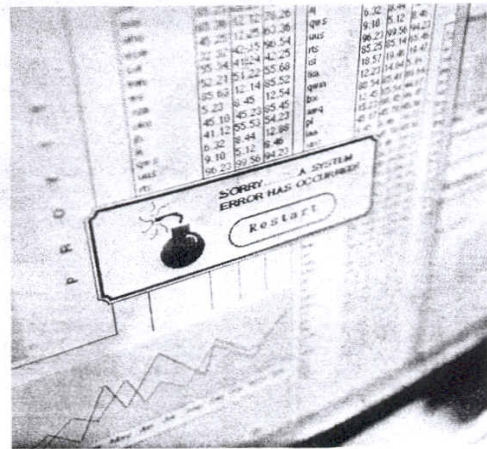


SPECIAL ADVERTISING SECTION

PROTECTING INTELLECTUAL PROPERTY



REUTERS/Clara Cortes



The risks of using unlicensed software are being highlighted in an attempt to combat rising piracy rates.

Combating a variety of intellectual property concerns

By Peggy Anne Salz

THE WORLD'S supply of knowledge has never been larger thanks to the spread of the Internet and tools that empower people everywhere to participate in the creation, communication and distribution of ideas and products. However, the same advances that have resulted in a global marketplace for innovation now make it more vulnerable to intellectual property violations.

Shady dealers, organized groups and even clever consumers have the know-how and the networks to burn and sell digital music, duplicate and distribute computer software and compromise copyrighted content. Others, who don't steal the products outright, simply collect intellectual property rights on a global scale with the intention of turning them into cash.

Combating counterfeit software is perhaps the most problematic. The influx of new PC users in emerging markets — mostly consumers and small businesses — and the increased availability of unauthorized copies, particularly over the Internet and peer-to-peer networks, puts upward pressure on piracy rates.

The Business Software Alliance (BSA), a Washington-based organization representing the world's commercial software industry, estimates 35% of all software used world-wide is counterfeit or otherwise illegal.

What's more, a May 2006 study of software piracy covering 97 countries — jointly published by the BSA and IDC, a global provider of market intelligence headquartered in Framingham, Massachusetts — shows piracy rates are higher in high-growth markets such as Eastern Europe, Latin America and Asia-Pacific. Half the countries tracked in the study had a piracy rate of 64% or higher. The global rate only appears lower because it is still weighted by large developed countries and regions such as the U.S., Japan and Western Europe.

The BSA, which has anti-piracy programs in place in more than 80 countries, reports some success. Piracy has dropped by a few percentage points in China, which last year mandated that PC manufacturers supplying China ship only PCs with legitimately licensed operating systems.

"We're doing slightly better in important countries such as China, but slightly better means piracy rates have dropped from the nineties to the high eighties," says Emery Simon, BSA counsel. "It's not declining in a way we find rewarding or meaningful."

A balancing act

Combating software piracy is a balancing act because every person who should be punished for using counterfeit software is also a potential customer who should be convinced of the need to pay for it. The wiser approach is therefore one that educates users about the negative consequences of piracy — such as the risk of becoming infected by computer viruses — and "entices people to become valuable customers," Mr. Simon says.

With this in mind, Microsoft has launched the Genuine Software Initiative, an effort that focuses the company's activities and investments on educating customers and resellers, improving anti-counterfeiting technologies and supporting law-enforcement agencies in taking action against software counterfeiters.

Microsoft is not just raising awareness of the problem, it is using support — or more accurately the lack of it — to convince customers of the benefits of installing genuine, legal and fully licensed software on their PCs.

"The approach has been effective in helping customers understand there is a real value to having the real thing," says Laurent Signoret, Microsoft Western Europe anti-piracy lead in Paris. "With it users have access to service, support and upgrades; without it they essentially have an inferior product."

Since launching the Windows Genuine Advantage program in July

2005 (one of many efforts supported by Microsoft), 512 million users world-wide have validated their copy of Windows through WGA.

Software piracy has negative consequences that go beyond just the retail value of the software. Losses can cripple local software industries and lead to a significant loss of tax revenues and jobs. A recent examination by the BSA and IDC into the economic benefits of tackling piracy concluded that decreasing piracy by 10 percentage points each year until 2010 would contribute 2.4 million new jobs and \$400 billion in economic growth to the global economy.

Another problem confronting business is the increasing uncertainty around intellectual-property rights and the excessive cumulative license fees for the use of intellectual property, an issue that threatens to

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slow, or even prevent, the adoption of new technologies world-wide.

"A tidal wave of patent applications — many of which exceed the expertise of the offices that grant them — and a steep rise in patent-infringement litigation have combined to create an especially high-risk environment for technology companies," says Joe Nordgaard, managing director of Spectral Advantage, a consulting firm specializing in wireless strategies and patent issues based in Fair Haven, New Jersey.

"Companies live under the constant threat that what they produce will be challenged by a patent-holding behemoth that has effectively stockpiled patents for the purpose of making money either directly from the royalties or indirectly through damage awards," Mr. Nordgaard explains. Indeed, patent-case dam-

ages tripled last year as companies turned to the courts to settle disputes they failed to resolve in the marketplace.

To avoid this consequence, he says, many companies have either purposely not pursued innovation or have adopted a policy of "whistling past the graveyard," where they "remain wilfully ignorant of any infringement" and hope for the best.

But such companies are bound to be "caught in the trap of inadvertent infringement" by opportunistic patent-holding individuals and firms — popularly referred to as patent trolls or sharks, says Markus Reitzig, assistant professor of strategic management at London Business School. Together with his colleagues, Joachim Henkel, a professor at the Munich University of Technology, and Christopher Heath, a member of the European Patent Office board of appeals, Prof. Reitzig has extensively researched the dangerous dynamics of the troll phenomenon.

"Different from classic licensors, patent trolls intend to take their victims by surprise to facilitate their attempts to force manufacturers into unexpected licensing fees," Prof. Reitzig explains. "Today's patent sharks or trolls seem to place their bets on [their victims'] monitoring deficiency."

Overlooking a patent is an easy mistake to make, particularly in view of the dozens — even hundreds — of patents associated with the components and concepts that make up complex products such as computers and wireless devices.

Against this backdrop, R&D intensive firms should "revisit their budget allocations for technology monitoring and patent alternatives to their core inventions," Prof. Reitzig says. "Concerted lobbying efforts to change patent indemnification laws may be promising, especially since sharks potentially reduce manufacturers' incentives to innovate."

To stem "the pervasive and disturbing expansion of opportunistic litigation that has the negative effect of slowing down innovation and new product rollouts" the BSA

has spearheaded efforts in the U.S. to create a more level playing field, Mr. Simon of the BSA explains. The organization is working with the legislative process to develop rules "whereby damages could be assigned to the actual value of the invention and mitigate the threat of somebody trying to calculate damages based on the value of the whole product."

Trademark laws

There is also a need for stricter trademark laws and legislation that will deter copycat companies from piggy-backing the business reputation of other companies that enjoy the confidence and trust of their customers.

A dispute that highlights this problem involves Canada's Research In Motion (RIM) — maker of the popular BlackBerry wireless email device — and China Unicom, China's state-run telecommunications company.

On the heels of RIM's announcement that it would introduce its iconic BlackBerry device into the Chinese market by mid-2006, China Unicom countered with a plan to launch RedBerry, an attempt to capitalize on BlackBerry's global fame with a similar service. RIM declined to comment on the matter and it's not clear what actions, if any, the company plans to take.

However, there's no such ambiguity about RIM's view of Samsung, which sells a smartphone called BlackJack. In December, RIM filed a suit against Samsung, claiming the company is diminishing RIM's brand power, causing confusion, and "misleading the public into falsely believing Samsung's goods and services are connected with RIM's business." RIM has asked a judge to issue an injunction ordering Samsung to stop selling the line of phones.

The case may not be an easy one to call, but it takes the discussion of intellectual property to a new level, says Spectral Advantage's Mr. Nordgaard. "Brands that lead in their markets may have a new fight on their hands as companies rise up to steal not only their intellectual property, but cash in on their name recognition."