

### **iGATE (Murthy):**

- In march 2014 iGATE filed a lawsuit against Phaneesh Murthy (former president and CEO) and tried to seek compensation for Murthy's behavior for the damages he caused the company due to his behavior.
- He was forced to resign for allegations of sexual harassment, in return Murthy filed a lawsuit back at iGATE accusing it for breach of agreement and defamation.
- Termination "for cause" is the dismissal of an employee for a satisfactory reason.
- Murthy implemented a outcome based billing rather than hours worked on the product/service based billing which was a good hit in the market and attracted many price-sensitive customers.
- This model and his other contributions were very profitable for iGATE as it transform it to a global software service provider.
- He was thus appointed as the president and CEO of iGATE global.
- Acquisition of Patni computer systems(a 3 times bigger company than iGATE) was one of the best moves in Murthy's career at iGATE and it brought a lot of success for the company as well as for Murthy himself as he received a lot of financial compensation, bonuses, pay-increases, incentives as well as additional health insurance provision which would pay long-term health insurance premiums for his spouse and dependents, if he was to end his employment at iGATE, irrespective of the reason for his termination.

### **Downfall:**

- iGATE terminated Murthy's employment as president and CEO on charges of not informing the higher authorities of his relationship with another employee at iGATE which later Murthy himself
- confirmed to be Ms.Araceli Roiz. The company's shares fell dramatically around 13 percent touching an 18-month low of \$14.25
- Murthy responded in a teleconference with journalists in India stating that it was a case of extortion as i had already informed chairman Wadhvani and clearly denied the claims of sexual harassment. He said it is not the first time i am facing this type of situation back in 2002 was the first claim of sexual harassment on me and it was a way to extract money for an ostensible(meaning: looks to be true but isn't necessarily true) reason.
- In December 2013, seven months after being fired, Murthy filed a lawsuit with a California court, accusing iGATE of breach of agreements (employment agreement, stock option agreement, and an agreement of good faith and fair dealing), making false promises, withholding wages, and defaming Murthy by justifying the company's actions.
- Murthy's employment agreement required him to "indemnify the company for any loss suffered as a consequence of a breach" of iGATE's policies and regulations.
- Thus, in March 2014, iGATE filed a countersuit against Murthy, seeking compensation for damages that resulted from Murthy's actions and irresponsible behaviour. The company also claimed legal fees and other costs.
- iGATE incurred to resolve Roiz's claims against Murthy and the company. The indemnification clause had been allegedly added to Murthy's employment agreement due to his history of sexual harassment.

## **Enlighten:**

- Manion was close to landing Global Media, Incorporated (GMI) as a client. GMI was a Fortune 50 company, with leading media properties all over the world. Manion explained the situation:
- As a new venture, with little money, trying to establish not just our company but the space itself, it is tempting to do anything to get a deal done. But, I can't set the precedent of giving away the store. There are terms in our licensing contract we need to fight for. . . . Establishing that precedent will save us a lot of fights down the road. By the same token, I don't want to lose this deal.
- Quinn, a partner and intellectual property specialist with the law firm Larkin Hoffman in Minneapolis, offered his view:

At the end of the day, you have to figure out what you need to have and fight for it. Your success is a matter not just of your legal strategy but also of the fundamental value proposition of your business . . . how critical is the product or service you are selling and how badly does the customer want it . . . . That leverage can buy you a lot.

### Ⓟ **The Problem:**

The problem that Manion had seen, and that web marketers, managers, and consultants had struggled with for years, involved tracking consumer behavior on a website.

Everyone wants to know where their customers come from, how much time they spend on which parts of the site, and what they buy. But keeping track of all that data can be a nightmare. The earliest solutions were built around "weblogs," a detailed map of all the activity in the browser . . . but tracking and analyzing that data was terribly cumbersome.

### Ⓟ **Enlighten's Solution**

Manion decided to invest virtually all of his time and attention on the new venture, and handed over the day-to-day operation of Stratigent to that company's management team in early 2010. Then, in September of that year, Manion and a small team moved to Silicon Valley

We bootstrapped our way into building the product, and I didn't want to announce what we were doing and attract a lot of attention. . . . I figured we should just get the product finished, get customers, and build a real company.

Despite moving to Silicon Valley, we decided to not raise VC funding; in my view, we don't need the money yet. But for now, capital is not the limiting factor

Enlighten's product lived in the "cloud." The company had contracts with the largest providers of server capacity in the world with numerous clusters of servers running globally. This was a critical piece of the application, because every client site reached out to Enlighten's hosted server to know what tags to serve to each visitor to the client's site

### Ⓟ **Challenge**

One of the biggest obstacles Enlighten had to overcome was the fact that we needed to convince very large enterprises to rely on us as a mission-critical platform in their infrastructure. In particular, it was much more difficult for our first few customers to place that level of trust in us, and some of this was reflected in the terms that we had to agree to . . . source code escrow, transition plans, restrictions on when we could terminate contracts on our clients, etc.

### Ⓟ **Pricing**

Enlighten priced its services based on the number of websites or client domains and the amount of traffic on those domains. A typical early deal was approximately \$200,000 in annual licensing fees and a \$25,000 setup and installation charge

### Ⓟ **Developing a Template Contract**

Working with our law firm in Chicago, we had developed a template for our basic software license.

These early negotiations with clients focused mainly on the business terms and for the most part did not include legal counsel on either side. There were some terms that we stood completely fast on . . . especially ones related to our intellectual property. . . . We weren't going to share that with anyone

I was also reluctant to provide any levels of indemnification that could put us out of business. I was also wary of terms that could put us in the position of having to give a client money back, since we intended to leverage this capital to accelerate our growth

#### Ⓟ **The big deal**

Then, we did a very big deal with one of the largest apparel companies in the world. For the first time, we weren't working off of our contract, but it was a contract the client provided. It was a mess, because it was the kind of contract they would usually use with a consultant, but we were providing a piece of licensed software. Their model was that everything we did was a piece of work for hire, and they owned the IP

#### Ⓟ **Software license model**

In the old days, there was a pretty clear licensed software model. A license is a revocable, nontransferable, nonexclusive right to use. It made sense for Microsoft to license Word or Oracle to license its database software because the license does not confer ownership, and therefore, it allows the licensor to impose a much more restrictive set of terms on the client. In an outright sale, ownership confers with it the right to do whatever you please with what you have purchased. Software licensors restrict the ability of the licensee with respect to the purpose to which the product is put, for example, the ability to copy or sell services based on the software to others. Intuit may be glad to license a copy of QuickBooks to you, but may not want you preparing thousands of different companies' financial reports on it . . . and they can put that kind of a restriction in a license

#### Ⓟ **Enlighten's software:**

Now, with the guts of the software sitting in the cloud, it is a bit different. The customer doesn't even get a copy of the software. . . . They get a right to access the software that is sitting in the cloud

Quinn's relationship with Manion:

I am always clear with him that I am simply looking at just what he asks me to and need to disclaim any judgment on any of the rest of the document, indeed, on any follow-on impact my suggested changes may have on any other sections of the agreement

#### Ⓟ **GMI:**

Manion had provided GMI with Enlighten's standard licensing agreement, the agreement he'd refined based on the first several deals, and an agreement Quinn had blessed after getting involved with the company. After a few weeks, Manion had received a redline version, with GMI's requested changes to the agreement. While he dearly wanted to land GMI, there were certain changes he was wary of making.

#### Ⓟ **Quinn offered his thoughts:**

GMI is going the typical route here, using outside counsel. For a company of their size, a \$200,000 deal isn't big enough to pull the general counsel and his staff away from core legal issues. So, their outside attorney is probably working within a fairly fixed set of parameters his client has given him . . . "we never compromise on X, Y, and Z, and see how much you can get us on A, B, and C." The problem is, we don't yet know which issues are which . . . so, we need to push a little on all sides to see where the box really is. And, the hope is that the issues they will compromise on are the ones we need some movement on. We'll see

#### Ⓟ **Manion reflected on his agenda for the call:**

All of the customer's data—as well as the output generated by the tags—goes to the company or its analytics vendors. We keep nothing.

We've come a long way and I do believe this is a big idea with tremendous upside. But, we have to make progress one deal at a time, and this is a big one. Quinn and I have to come up with a workable approach. I know that the attorneys always feel like they need to stake out aggressive positions so we have somewhere to

compromise to, but I do want to be sure we don't scare them away with any positions we take. On the other hand, there are some things we just can't live with in this deal, let alone allow them to become part of agreements with other clients.

Sections that were either changed or added / deleted from Enright's license <sup>Date:</sup> ~~inner~~ agreement:

Added:

- 1) Manner of providing services
- 2) Multiple Failures
- 3) Interoperability
- 4) Confidentiality
- 5) Data and Data Security
- 6) Backup and Disaster Recovery
- 7) Non-Infringement Representation and Warranty
- 8) Termination by Customer
- 9) Transition Services
- 10) Non-Solicitation

Deleted:

- 1) Comments
- 2) Filing Limitation