

Intellectual Property and Globalization Quiz

- 1.) *There is a current discussion on immigration reform. Several high tech firms are pushing for opening up our borders to everyone with a high tech degree (phd or lower). There are arguments about the benefits to having this influx of technical people. Others argue loss of jobs for Americans. Do you think immigration reform is needed? How would current proposals affect the high tech industry? What are the risks and benefits?*

Currently, discussion on immigration reform seems targeting towards the idea of giving green cards to aliens who have earned a masters or doctorate degree in a STEM field. Last year, a bill was proposed to Congress that would do exactly this, and the bill will likely be brought up again for discussion soon. H.R. 5893, the so called "Startup Act 2.0," is a proposed bill that would reform immigration law by granting permanent resident status to up to 50,000 students as long as they are "actively engaged in a STEM field."

A link to this proposed bill (H.R. 5893) can be found here: <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.05893:/>

Although the bill doesn't have any major actions yet, 23 congressmen are cosponsoring this legislation. So why do they believe immigration reform is needed? The idea is to promote job creation in the United States by allowing the formation and growth of new companies. The bill states the following as one of its findings, "Between 1980 and 2005, companies less than 5 years old accounted for nearly all net job creation in the United States." These congressmen argue that the U.S. should be attracting these entrepreneurs to our country not shipping them away. One of the things that keep these entrepreneurs from staying here is the difficulties in obtaining a visa.

To us, the argument seems clear. There are entrepreneurs who are getting an American education, but leaving to create startups in other countries simply because they could not get a visa. The idea of giving visas to entrepreneurs seems fine, but how will this affect the high tech industry?

People are worried about immigrants taking jobs from Americans, but we don't feel this is the right mindset for the high tech industry. Of course we don't like the idea of putting the jobs of American's in jeopardy; however, this doesn't seem to be the case. Tech companies here in the States have a global impact, so shouldn't they have access to the most talented employees both here and abroad?

2.) *What do we mean by open source? What are the different forms of open source and how is it defined/regulated? What role will open source initiatives play in the industry in the next decade? What is their impact on the industry? There are very vocal proponents for open source; in that it is morally the only course of action. Others argue that it is not a good economic model. Is open source the correct answer?*

We follow the Open Source Definition (OSD) given by the Open Source Initiative (OSI), the main points of which are (1) free redistribution and (2) providing source code. The full OSD can be found at <http://opensource.org/osd>. Within the bounds of the OSD there's a fair variety of different licenses. Some are copy-left and require that any derived works be released under the same license; others are permissive and place little restriction on derived works.

There have been predictions for years that open source will completely take over the industry with numerous dates given by which it should have happened. Clearly these predictions haven't come true, but open source is an established and growing part of the industry.

We see no reason why proprietary software should be considered immoral. Neither are we opposed to open source. There are any number of excellent open source projects and there's a lot to be said for having large development communities. There are also plenty of successful businesses which operate in the open source world; one way to make money is by offering paid support. So proprietary software is not immoral and it's possible to make money in the open source market. All in all, there is no "correct" choice. Open source and proprietary software are both part of the industry and both are good.

3.) *Are current IP/patent laws sufficient for the software industry? Why/why not? Should changes be made to patent law? Should we have a new arena of software patents with different IP law? How can one affect changes in IP law? Can this be done globally? Can it be done without negative impact to the U.S.?*

When viewing the current state of patent law the U.S., it is hard to say that it is sufficient for the software industry. According to PwC's 2012 Patent Litigation Study, there were over 4,000 patent lawsuits in the U.S. While this is including non-software patents, software patents are litigated approximately 9 times as often as any other type of patent. Not only can these cases cost millions of dollars in court, even if the case is won, but settling can still exceed \$500,000.

Of course, this does not mean that the currently established system needs to be replaced with an entirely new system. Currently, the U.S. Patent Trademark Office (USPTO) is seeking input with a public roundtable hosted in Silicon Valley and New York City on February 12 and 27, respectively. Some of the solutions being proposed at these roundtables are focused around two large problems with software patents: vagueness in patent claims and the length of a patent.

While software patents can be inherently abstract, one real issue with patents is that patents are often awarded for being vague. By being vague, a patent's scope, determined by the inventor, can cover many areas that clearly were not originally intended. Peter Menell, an Expert Advisor at USPTO, recommends the following changes to make software patents less vague:

- Separate claim restrictions
- Define ambiguous terms, and include a glossary of specialized terms
- Distinguish between limitative and illustrative embodiments
- Identifying means-plus-function elements
- Record interviews
- Make the form electronic

Another proposed solution involves fighting patent trolls through patent fees. This is not to say that patent trolls are bad; rather, they are a necessary part of patents in order for smaller investors to defend their claims. That being said, according to a study by Brian J. Love, an Assistant Professor of Law at Santa Clara University, patent trolls file 70% of all patent suits in the last 3 years of the patent term. His proposed solution involves shortening the lifespan of a patent by 3 years and adding increasingly larger maintenance fees to patent, a system similar to ones used in the U.K. and Canada.

While these changes can help U.S. patent law, this cannot be implemented globally. Stopping other countries from infringing on patents is simply not feasible. That being said, a revision of the patent law in the U.S. would definitely be a benefit to the country.