Fear the crowd – pitfalls of crowdsourcing for innovators

Kristen McCallion and **Sara O'Coin** of Fish & Richardson discuss the innovative global collaboration practice that raises many IP concerns

Considered "the biggest paradigm shift in innovation since the Industrial Revolution"[1], crowdsourcing can be described simply as the act of outsourcing a task or project via the internet to a large group of people. Crowdsourcing is among the newest innovations to arise out of the incredible surge in global collaboration and communication enabled by the internet which is fostered by our social media-obsessed culture.

Crowdsourcing enables companies to take advantage of the notion that "a crowd can be smarter than any one of its members, even when they're not actually working together[2]". By allowing consumers to decide what they want and to create what they want, crowdsourcing turns the traditional business model on its head[3].

From giant corporations to revolutionary start-ups, many companies employ and benefit from crowdsourcing. For example, Starbucks launched an online forum, 'My Starbucks Idea', where individuals submit and vote on suggestions about virtually anything from new coffee to more favorable lighting in Starbucks cafes[4]. Starbucks has implemented many of the top-rated ideas in their business model[5].

Amazon, another corporate giant, operates Amazon Mechanical Turk, a website where account holders can post tasks known as HITs (Human Intelligence Tasks), to be completed by others for compensation.[6]

Another example of successful crowdsourcing is CrowdSpring, home to a community of over 120,000 'creatives'[7]. CrowdSpring allows people to post requests for design projects, name the price they want to pay, and pick from a vast number of proposed design solutions submitted from around the world[8].

And then there is Threadless, which is one of the best examples of crowdsourced retail in the world. Threadless oversees a community of individuals who submit and rate original artwork designs on threadless.com[9]. The highest rated designs are chosen by Threadless for display on apparel, housewares, bags, accessories, iPhone cases, and much more, which Threadless then sells to members of its Threadless community and to the public at large. A reigning success, Threadless currently has over two million followers on Twitter.

All of these companies use a crowdsourcing model in slightly different ways.

While the benefits of crowdsourcing are many, this business model presents challenging legal issues. Typically, no written contracts, such as non-disclosure agreements, work for hire agreements or employment agreements, are entered into in a crowdsourcing arrangement. Normally, when a task is completed, the 'requesters' have the final say over whether they will accept the submission. If the submission is not accepted, the 'worker' will not be paid despite his/her efforts. As a result, critics of the outsourcing model claim that it leads to unfair exploitation and labor practices[10]. In the intellectual property context, a prevalent issue arises over the ownership of the outsourced work product.

Virtually any system that provides a platform for user-generated content creates copyright ownership issues. A business model that relies on its community to create work product should, at the very least, set forth terms concerning the ownership of such work product in its Terms of Use. Ownership by any person other than the actual creator of the work should not be presumed. An assignment of the submission to the person or entity accepting it should be obtained. However, more often than not, it is simply not practical to have each and every worker sign an agreement that is particularly tailored to them. Consequently, when a large community has taken on an outsourced tasked, proper ownership measures are sometimes cast aside.

Click-through agreements (also known as click-wrap agreements) are the dominant method used to set forth the rights and obligations, including intellectual property rights, between the requestors and workers. In the US, electronic agreements such as these have the same force and effect as written agreements. By clicking 'I Agree' participants signal that they have read and agree to all of the terms and conditions presented.

In sum, certain issues inherent in crowdsourcing, such as ownership of the work created, terms of payment, and certain confidentiality concerns, are best controlled by click-through agreements that set forth clear terms concerning what the parties expect to receive through their crowdsourcing arrangement. At a minimum, such agreements should always include terms that provide for the ownership of intellectual property rights that subsist in the work created.

Footnotes
1. See Wendy Kaufman, Crowdsourcing Turns Business On Its Head, (NPR radio broadcast 20 August, 2008), available at http:// www.npr.org/templates/story/story.php?storyId=93495217
2. http://www.thesocialpath.com/2009/05/10-examples-of-crowdsourcing.html
3. See id
4. See http://www.starbucks.com/coffeehouse/learn-more/my-starbucks-idea
5. See http://www.businessweek.com/innovate/content/jun2009/id20090615_946326.htm; see also http://mystarbucksidea.force.com/
6. See https://www.mturk.com/
7. See http://www.crowdspring.com/
8. id
9. See http://www.threadless.com/
10. See eg, Kaufmann, N; Schulze, T; Viet, D (2011). More than fun and money. Worker Motivation in Crowdsourcing – A Study on Mechanical Turk. Proceedings of the Seventeenth Americas Conference on Information Systems

Authors

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