

Your practices or mine: software piracy and corruption in international business

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ABSTRACT

This paper reports findings from a qualitative research study that investigated cross-cultural ethical dilemmas experienced by Australian managers operating in international Information Technology (IT) industry markets. Breaching of intellectual property rights or software piracy was reported as one of the most common ethical dilemmas for Australian managers operating in the IT industry. The unauthorised mass production of pirated software and inappropriate use of software by prospective customers emerged as a key concern and major ethical conflict for the study cohort. This paper explores how business managers operating in international markets effectively address the tensions of protecting their intellectual property rights while fostering positive relationships with their market clients.

Keywords: *Software Piracy, Intellectual Property Rights, International Business*

BACKGROUND INFORMATION

Globalisation has seen diverse cultures becoming increasingly entwined and interdependent as business organisations operate in a borderless world (Hofstede 1997). When organisations operate internationally they often discover that other countries differ in what they consider wrong or right (Beauchamp and Bowie 2001). De George (1993) highlights inevitable ethical dilemmas facing managers in cross-cultural settings. These include pressure on individuals to violate personal values, inconsistent cultural norms (when respecting the local culture) and conflicting interests (host versus home country interests and values). All this raises the question of whose ethics should be applied or whether a set of universal ethical norms should and can be developed.

Software Piracy

The World Trade Organisation (2002) regards intellectual property rights as the right of creators to prevent others from using their inventions, designs or other creations, such as films, music, books, computer software and on-line services. The unauthorised copying of computer software, commonly referred to as software piracy results in the IT industry losing billions of dollars annually (Logsdon, Thompson and Reid 1994; Givon, Mahajan and Muller 1995; Marron and Steel 2000; Anti-Piracy 2006). Authors such as Mueller (1998) and Marron and Steel (2000) describe software piracy as ranging from casual copying to systemic piracy. This ranges from purchasing a piece of software and installing it on two machines, to the selling of thousands of copies sometimes before the original even reaches the market.

According to Givon, Mahajan and Muller (1995) and the Software and Information Industry Association (Anti-Piracy 2006) software piracy is one of the dominating factors creating problems for the IT industry. The Software and Information Industry Association estimate that global software piracy cost the industry \$11billion to \$12billion in revenue annually. Globally, it is believed that one in every three new software applications is pirated (Anti-Piracy 2006). Mueller (1998) reports that worldwide there are nearly as many illicit copies of PC applications as there are legitimate ones.

In some countries virtually all software is pirated; for example, China and Indonesia have the highest piracy rates of 95% (Marron and Steel 2000). Australia was reported as having one of the lowest piracy rates of 34% with the USA having the lowest piracy rate at 25% (Anti-Piracy 2006). The Software and Information Industry Association (2000) reports that in the Asia/Pacific region, software piracy cost publishers \$2.8billion.

Swinyard, Rinne and Kau (1990) state that Asian countries are often unfairly portrayed as being the greatest culprits of software piracy. These authors and Weiss, Buono and Vasconcellos (1994) argue that Western intellectual property rights conflict with cultural norms of Asian countries that promote a sharing, rather than protecting climate. Research by Husted (2000) posits that economic wealth, income inequality and individualism/collectivism cultural difference impact on the rate of software piracy. Collectivist cultures tend to place greater emphasis on overall social well-being, whereas individualistic cultures place greater importance on protecting the rights and advancement of the individual.

Weiss, Buono and Vasconcellos (1994) contend that copying and imitation are often cast in public welfare terms. It may be construed that industrialised countries enforcing intellectual property laws essentially inhibit economic development of developing nations (Marron and Steel 2000). Alternatively, developed countries argue that intellectual property rights are essential to promote innovation and growth in the IT industry (Marron and Steel 2000), more jobs in the industry, increased research and development, lower costs and higher standards (Anti-Piracy 2006).

Traditionally, the protection of intellectual property has been granted through patents, trademarks and copyrights (Husted 2000). Mueller (1998) and Husted (2000) state that this protection is seen as essential in an industry where the product can be easily and inexpensively duplicated. The World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) endeavours to bring intellectual property rights under common international rule (World Trade Organisation 2002). According to the World Trade Organisation (2002), the TRIPS agreement grants the inventor or creator copyright protection to prevent others making unauthorised copies. Under the TRIPS agreement computer programmes are protected as literary works as per the Berne Convention for the protection of intellectual property rights (World Trade

Organisation 2002). Under the Berne Convention (1979) authors are granted rights to protect literary and artistic works, with the purpose of protecting copyright to encourage and reward creative work. The TRIPS agreement requires that most nations should be in compliance with the minimum standard of protection by the year 2006 (Ostergard 2000).

Software companies first sought to protect software through technical controls, however it soon became apparent that these could eventually be conquered (Logsdon et al. 1994). Subsequently, the industry has relied more on legal action, particularly through trade associations such as the Software Publishers Association (SPA) and combat piracy through various techniques such as, education, lobbying and law enforcement (Anti-Piracy 2006). The Business Software Alliance reports that legal action and education have made the biggest impact in countries reflecting a decline in software piracy (Mearian 2001). For example changes to Canadian piracy law and an education campaign leading to a decline in software piracy in that country (Fruitman 2001).

Logsdon et al. (1994) are less positive however, reporting that legal action has been substantial but limited in terms of remuneration, compared to the billions of dollars lost in software piracy. In support of this view Donaldson (2001) claims that the legal system is quite inept at policing intellectual property, particularly software piracy. Indeed, Donaldson (2001) reports that countries with similar regional and economic alliances, such as the European Union, have varying software piracy rates. If intellectual property rights are to be respected, social norms as well as regulatory controls are important.

RESEARCH METHOD

Findings are reported here from a study that used face-to-face interviews to collect data about critical incidents identified by Australian IT managers as ethical dilemmas. The research method used was the Critical Incident Technique (CIT). The CIT is a process of

collecting observations or anecdotes to aid in finding solutions to various issues, within a specific situation (Flanagan, 1954). This approach allowed data to emerge according to the values of the respondents rather than the values of the researcher. The mostly qualitative data were collected in 2000.

The primary research question asked of respondents centred on their experiences with ethical dilemmas when operating offshore. Respondents were asked:

Can you tell me about a recent incident or experience where you felt there was an ethical dilemma because of cross-cultural differences?

Respondents were encouraged to tell their stories or anecdotes about ethical dilemmas they had confronted. In this study a dilemma is regarded by the research as something unique to the organisations' normal practices and required special consideration. Ronan and Latham (1974) suggest that an incident should have occurred within six to twelve months of the interview to ensure accuracy of recall. For this reason emphasis was placed on documenting incidents identified by the participants as having occurred within twelve months of the data collection interviews.

Sample

Twenty-three (23) senior Australian managers operating internationally in the information technology industries were interviewed for this research. The data was collected from Western Australia, South Australia, Victoria, Canberra, New South Wales and Queensland providing experiences from a broad spectrum of IT organisations. The diverse group of participants provided a rich source of information based on their authentic experiences. Each of the participants provided multiple examples of critical incidents that affected their business operations.

Data Analysis

Analysis of data collected in this research was based on content analysis methods using coding and categorisation processes as described in Holsti (1969). Coding is regarded as a process for systematically transforming and aggregating raw data into units that permit a precise description of the content (Holsti 1969).

Data were transcribed verbatim then coded using categories in an index tree structure developed with the aid of NUD.IST software. NUD.IST is an acronym for Non-numerical, Unstructured, Data in qualitative research supported by Indexing, Searching and Theorising (Qualitative Solutions and Research 1997). NUD.IST software was used to code data and references in categories organised in an index system (a hierarchical system called trees), that facilitated exploration of emerging ideas and themes (Richards and Richards 1993).

The qualitative data were further assessed on the number of responses in each category, namely, those categories that achieved a response rate greater than seventy-five percent (75%) were classified as ‘most’ respondents, between seventy-five percent (75%) and twenty-five percent (25%) were referred to as ‘many’ respondents and less than twenty-five percent (25%) were cited as ‘some’ respondents.

FINDINGS

Software piracy emerged as a main dilemma for the information technology industry. Dealing with companies involved in the mass production of unauthorised software copies was cited as a major ethical conflict. Another software piracy issue was associated with the level of information requested by prospective customers, such as additional information to bypass security barriers or modify source codes. Respondents often had to make difficult decisions about releasing

information during the tendering process and risk exposing critical intellectual property or lose the opportunity to bid for a project.

Many of the respondents in the Australian IT industry were concerned with the dilemma of protecting their products and intellectual property. From one respondent came the following comment:

I guess the more important one is people downloading your intellectual property off the Internet, bypassing the security mechanisms and obviously using your product.

The main focus of respondents in this study was protection of software and software piracy issues. Most respondents highlighted the difficulty caused by illegal mass production of their software. For example the following incident was typical of the concern expressed by many respondents:

Our biggest fear is that we would sell systems to them and they might buy one or two and then simply copy them and produce them after that. There are 100,000 copies of that software being sold on footpaths from Singapore to Hong Kong.

Respondents also cited incidents where companies wanted to access software without paying the necessary remuneration. This dilemma related to frequent requests from overseas buyers seeking specific information about particular software programs. Much of the concern expressed by IT respondents centred on the high level of information requested that was beyond that required during the normal tendering process. For example the following statement was typical of many respondents' concerns:

We work for several years, supplied information and we are often asked for details of the system which were well above and beyond what you would

require if you were simply considering buying and using it they were more in line with engineering questions required to build one..

Responses to Software Piracy

The moral imperialist perspective argues that people should apply their own cultural ethical values when operating anywhere around the world (Gopalkrishnan 2001). Therefore an ethical imperialist approach is taken when managers, confronted with an international ethical dilemma, apply home country standards (De George 2000). The findings in this research supported an imperialist approach to dealing with ethical dilemmas where respondents were refuse to do business and be selective of countries in which business was conducted where cultural values and laws differed. This was the main approach to dealing with ethical dilemma in terms of frequency of a response, positing that an ethically imperialist stance was the most prevalent action taken by IT respondents when confronted with software piracy.

Some respondents refused to do business rather than risk their software products being copied. For example the following comment represents many similar stories where respondents found they were unable to continue operating in a particular environment:

Well we just bloody scrambled and chalked it up to experience and soldiered on. So I really say if you are going in there, I say to everybody beware.

The following statement was representative of the types of actions taken by some respondents who chose not to participate in business in certain countries or cultural practices:

There are certain countries we don't do business in. We don't do business in China and we probably won't do business in China for a long time the way it is going.

For many respondents developing nations were viewed as being ethically challenging in terms of software piracy. The following statement was indicative of the responses made:

So for us it is significantly affected our corporate directions in that we don't like dealing with third world countries where you don't like and don't understand and don't agree with the business practices. So we tend to stay away from them.

Universalism refers to normative ethical standards or universal guidelines that transcend national boundaries and cultural differences (Wicks 1990; Donaldson 1993). Therefore, a universalist approach is taken when global standards or agreed rules were applied (De George 2000). The findings in this research suggest that some respondents took this approach when dealing with ethical dilemmas. Intervention from trade association or legal recourse provided a forum for redress for some IT managers.

However, not all respondents viewed intervention from a trade association or legal action as being particularly successful. Respondents found that trade associations only had limited powers of persuasion especially in those countries where ethical dilemmas seemed to be the most prevalent.

The following examples were typical of the experiences of respondents trying to use the legal system to counter software piracy:

Especially complicated system you don't have a hope in hell in prosecuting a patent case even within countries let alone internationally.

and

International patent law seems to be fairly useless in fact it is worse than useless because to get a patent you have to disclose what is in the inner workings of the system to get them patented and what you have effectively done there is you have published them.

Some respondents discussed relationship building as an effective general approach to responding to ethical dilemmas in international markets. The relationship approach was associated with trust, honesty, respect and integrity. This approach deviated from the traditional approaches of imperialism, relativism and universalism presented in the literature as avenue for addressing cross-cultural ethical dilemmas (De George 2000). Relationship building emerged as a less robust category in terms of the number of respondents in this study taking this approach. However, it emerged as an important deviation of how respondents respond to unethical demands and practices generally. Respondents discussed the importance of building trust and developing long-term relationships with their international counterparts over a period of time.

Respondents viewed the development of mutual trust between people from different cultural backgrounds as essential to establishing a successful relationship. Indeed trust and relationship building were deemed as pivotal to avoiding ethical conflicts. For example the following statements capture the views expressed by respondents:

It is a matter of trust you seem to have to build up with them. You just have to win their respect over a long period of time and trust.

As a response, relationship building focused more on a long-term strategy rather than an immediate action towards an ethical dilemma and was discussed in terms of ethical issues generally rather than specifically to preventing software piracy.

To facilitate long-term relationships and trust building, some organisations in the IT industry sought to employ overseas national from relevant countries. This resulted to developing relationships and also assisted in understanding the local norms and cultural differences. The

following comment was representative of the importance placed on building trust by employing overseas nationals:

It has taken quite a long time to build up trust. It is a matter of trust you seem to have to build up with them ... we thought hiring a Chinese person was the only way we could really deal or set up relationships with China, you can't just go in there cold, there is just no way.

Building trust and establishing long-term relationships with overseas operators was regarded by some managers as a successful approach by respondents when considering cross-cultural ethical dilemmas.

Critical Incident Response Chart

Actions Taken	Number of Respondents
Refusal <i>Will not violate personal or company values</i>	12
Universal Values <i>Seeking restitution through international law or IP regulations</i>	5
Relationship Building <i>Building mutual trust and relationship</i>	5

DISCUSSION

Australian IT managers interviewed for this study expressed their concern with selling software to overseas organisations that might subsequently make multiple illegal copies for the retail market. Some managers also reported incidents where thousands of unauthorised copies of their software products were sold at a reduced price. Australian IT companies were confronted with the dilemma of risking selling their software to overseas organisations, creating the potential for

software piracy or ceasing to trade their intellectual property with some countries and lose potential business opportunities.

The other dilemma associated with software piracy was the level of information sought by prospective overseas customers. Australian IT managers were faced with the problem of requests for extensive and comprehensive software information to be provided during the tendering process. Respondents reported incidents where there was pressure to reveal specific information about software development. These dilemmas left them continually mindful of incidents of unauthorised copying, and having to be vigilant about protecting their intellectual property rights.

Australian managers in the IT industry reported that software piracy was an issue that impacted on their business investment and the future development of software. Such findings are also supported by the Software and Information Industry Association (Anti-Piracy 2006) and Donaldson (2001) who contend that for IT organisations, the incentive to develop new and better software diminishes when there are violations in relation to software piracy. However, Weiss et al. (1994) argue that Western intellectual property rights conflict with cultural norms that promote a sharing, rather than protecting climate. Collectivist cultures tend to place a greater importance on social well-being rather than individual benefits (Husted 2000). In this study it was found that a key dilemma for Australian managers is their operations in a culture focussed on protecting individual property rights, while at the same time seeking to undertake business transactions in cultures where the absence of sharing is morally reprehensible.

Australian IT managers interviewed in this study specifically identified operators in Asian countries to be creating significant problems in relation to software piracy. However, some argue that Asian countries are often unfairly portrayed as being the greatest culprits of software piracy (Swinyard et al. 1990; Weiss et al. 1994). These writers contend that for Asian countries, Western

intellectual property rights conflict with their cultural norms that promote sharing rather than protecting. Indeed, Hendry's (1999) concludes that what is considered morally wrong in one culture may be deemed ethically correct in another.

Australian managers from the IT industry took two main courses of action when responding to cross-cultural ethical dilemmas in their international business operations. The first was to refuse conducting business with the company/client and the second was intervention from a trade association or legal action. These actions concur with the existing ethics literature relating to the imperialism and universalism approaches (De George 1993; Donaldson 1996). Although the literature also considers relativism when dealing with cross-cultural ethical dilemmas, this was not identified as appropriate in this study to address software piracy issues.

The imperialist approach of being selective and refusing to undertake business in some countries was the most prominent action taken by Australia managers dealing with ethical dilemmas associated with software piracy. The implications of the imperialist approach resulted in respondents sacrificing overseas business opportunities. However, there was a tendency for this to occur in organisations where ceasing to operate overseas was not detrimental to their financial viability.

While the imperialist approach was the most prominent action taken by Australia managers, its application in dealing with cross-cultural ethical dilemmas attracts much criticism in the literature. For example, managers are admonished for applying their home-country ethical values when confronted with ethical dilemmas and are considered disrespectful of other cultures (De George 1993; Donaldson 1996; Donaldson and Dunfee 1999). These writers contend that one should not assume one's own ethical values are the only morally correct or permissible ways of conducting business internationally. Donaldson (1996) further argues that the imperialist

approach is flawed and that managers must respect local traditions and cultural context when deciding what is ethically right or wrong.

This research found that managers were not taking an imperialistic approach in terms of a moral position, but were employing business survival reality. It could be argued that software piracy is not legally acceptable in any country according to TRIPS international rule which grants copyright protection to prevent unauthorised copying (World Trade Organisation 2002).

Some managers participating in this research reported relying on intervention from an independent body. This can be regarded as a universalist approach to resolving their ethical dilemma of software piracy. In taking this action managers sought to involve industry arbitrators or international laws to overcome their cross-cultural ethical conflicts. A universalist approach (Wicks 1990; Frederick 1991) is where global standards or agreed rules are applied, relying on universal codes of conduct or standards transcending national boundaries and cultural differences. Examples include agreements developed by institutions such as Transparency International, the CAUX Round Table, the United Nations and the OECD (Skelly 1995; Payne, Raiborn and Ashvik 1997; Dyer 1998; Williams 2000; Eigen 2001; Hodess, Banfield and Wolfe 2001; Ferrell, Fraedrich and Ferrell 2002). In this research the universalist perspective included industry arbitrators or legal action incorporating international laws and the Australian government's commitment to global agreements and conventions.

Intervention through the legal system was one of the actions taken by respondents in resolving their cross-cultural ethical dilemmas, particularly in seeking redress or restitution under international law. However, managers who pursued restitution through the international legal system reported that this was mostly unsatisfactory. Managers found that a successful ruling did not necessarily result in restitution or compensation. For example, an overseas company ordered

to pay restitution would simply close down their operations making any claim impossible to recover. Further, managers commented that legal action was an expensive, difficult, and high-risk option.

Relationship building was the other strategy used by some Australian managers in averting ethical dilemmas generally in their international business operations. This was an approach taken by managers who place importance on establishing mutual trust and building relationships with their overseas counterparts. The relationship building approach incorporated building trust with overseas counterparts and employing overseas nationals to assist in establishing relationships.

Respondents reported establishing relationships and partnerships that had spanned time-frames of up to twenty years. This is in agreement with the importance placed on personal relationships reported in Asian cultures. For example, Paik and Tung (1999) write that the Chinese people value building relationships and that at the beginning of negotiations it is important to develop and nurture relationships. Li and Labig (2001) write that there are several explanations regarding the importance of relationship building in some cultures. Firstly, high-context cultures such as Asian cultures are characterised by the need for contextual information and deeper understanding of situations. Low-context cultures, such as Australia, rely more on explicit and direct communications. Thus, managers from high-context cultures need to “build trusting relationships” in order to understand and facilitate acceptable agreements (Li and Labig 2001:348). Other aspects of relationship building in Asian cultures include the Confucius philosophy, which advocates friendship and reciprocity, as well as the Asian perspective of time, which is longer in duration than in Western cultures (Li and Labig 2001).

Managers also reported employing overseas nationals who work as expatriates in Australia, as part of their commitment to the importance of relationship building. For example, a Chinese

national with experience working both in China and Australia may be contracted to assist in establishing relationships within that country. Respondents reported that such overseas nationals contribute to identifying appropriate contacts with key overseas officials or organisational members, contributing an important element to understanding cultural differences and local customs in their countries. For managers in the IT industry employing overseas nationals, contribute to the establishment of trust and long-term relationships, particularly in Asian countries.

CONCLUSION

The issue of software piracy was highlighted as one of the major problems confronting the IT industry in their international operations. The mass production of unauthorised software copies was cited as a major ethical conflict. Refusing to operate in certain countries and seeking independent intervention through the legal system emerged as ways for tackling this ethical dilemma.

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