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Head: Ying vs. Yang

by Joseph Marion

Remember the days of proprietary systems? For you not-so-old IT folks I shall explain. Not so long ago only software written for IBM Systems would run on IBM hardware. The manufacturers were very clever. They did this to control and limit the options end users had. Once you made the investment in the application software, it was a costly and painful process to change to someone else's box. Much of the cost of implementing a system went into the application software. And once you made that investment, you were committed to that manufacturer for years to come in order to minimize your costs.

And then came open systems. Finally, it mattered no more whose system your application software was written on. Moving from Sun to HP became easy. Now you could expense the cost of your software over many more years and still change the manufacturer of your hardware. On the surface it looked like the manufacturers lost that control they had gained over the end user.

You Own Nothing

But as I said before, these manufacturers are clever. While on the surface they purport to embrace open systems, they are very quietly doing just the opposite. Now when you order a new system from any major manufacturer, you get to own the hardware, but you only have rights to use the software, not own it.

Today, while you might be able to sell your hardware, these manufacturers do not permit you to sell the software. And guess what? Slowly they have taken the cost of the systems they sell and reallocated where your money goes. Now when you buy a system, you pay relatively little for hardware but a ton for the software. And since you can't resell the software, you have to stay with the manufacturer a lot longer than you might want to in order to recapture your investment. Sound familiar?

Today, all cars come with computer chips that control all the operations of your car. Could you imagine what would happen to the used automobile market if the automobile manufacturers said that when it comes time to sell your car the new user had to relicense the computer chip software, and the cost of that chip would be more than the cost of a new car? Goodbye, used car market.

The Intellectual Property Rights Card

How can the manufacturers get away with such outlandish behavior? Blame it on the lawyers. Either the lawyers for the computer manufacturers are smarter than the lawyers

for the auto manufacturers, or automobile users are smarter than IT managers. The computer manufacturers have learned how to play the intellectual property card.

Intellectual property sounds like motherhood and apple pie. I am sure that most of us would agree that when a company spends its resources on developing something, no one should have the right to bootleg it. Bootlegging a Jimmy Buffet CD or Harry Potter DVD is immoral. Selling a piece of hardware that won't work without the software is another story.

By the way, in Germany the law is that if a system is sold with software, the manufacturer does not have the right to "unbundle it" in the resale market and therefore must allow the resale.

There Is More Than One Way To "Skin" An IT Manager

Just a few months ago, Sun Microsystems came up with a novel way to use the law to its advantage. Many years ago there was a court case in Europe that involved a company selling Levi's jeans in a country in which they had never been sold by Levi. Levi claimed that that was a violation of their copyright rights. Sun successfully sued a company for selling equipment in the UK that was purchased in Israel based on the same law.

What a secondary market dealer does for a living is buy and sell previously owned hardware. He buys from one end user, reconfigures and refurbishes the box, and then resells it to another end user. One of the services they provide is helping an end user get the most for his used system.

Do you see a collision course? Ying vs. yang. Good vs. evil. Truly open systems and markets vs. a closed one. And the spin doctors and lawyers at the manufacturers are hard at work. On one front, the lawyers are suing, not the end users, but the secondary market dealers. They call it "grey market," and they call it "fraud." They call it everything but what it is. An effort to (surprise) "control and limit" your options.

Whatever happened to the concept of the customer coming first? Maybe it really never existed in the minds of the computer manufacturers. There is only one organization in the world that is standing up to these manufacturers, demanding fair and open market, and that is the ASCDI. End users can't stand on the sideline much longer because the truth is that this small organization does not have the resources to stand up to these behemoths.

And after 25 years, the only thing that stands between the customer and a return to days far worse than the days of proprietary systems is the ASCDI.