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Intellectual Property Lines

Clients shell out big bucks for AV systems, but does that give them the right to use and alter the system's software codes however they see fit?

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By Thom Mullins, CTS

Intellectual property rights: a simple phrase that throws reasonable people into a feeding frenzy from which even a great white shark couldn't escape. This phrase and what it represents lies at the core of the professional AV industry. It's been a hot topic within the consulting community, among integrators, and with owners for some time.

Why is it so important, and why does it engender such strong reactions? First some level-setting.

According to the World Intellectual Property Organization, "intellectual property refers broadly to the creations of the human mind. Intellectual property rights protect the interests of the creators by giving them rights over their creations ... [thereby promoting] creativity and the dissemination and applications of its results, and to encourage fair trade, which would contribute to economic and social development." Economists estimate that two-thirds of the value of large businesses in the U.S. can be traced to intangible assets, says a July 2007 report "Economic Effects of Intellectual Property."



Thom Mullins

In other words, this is an issue that lies at the heart of our ability to make money and create growth in our industry. It's an issue that should be settled if we want our industry to grow. And it's all been exacerbated by the dumb little box that speaks in 1s and 0s and does only what it's told. That digital box lies at the heart, or close to it, of a good many professional audio, video presentation, and control systems, and the fact that such a black-and-white device occupies the center of such an opaque cloud has to be one of the great ironies of our age. But I digress.

Blurred Boundaries

Manufacturers write software code to control these boxes, which in turn control the flow and processing of audio, video, and control signals moving through them—the intellectual property. This is the framework we drape with the cloth of our creative efforts. Manufacturers allow us to do so—or

give us the right to do so—often without requiring that we pay them for that right. There are very few restrictions placed on our ability to obtain software code and use it to create whatever we may need to. The primary restriction is that you can only use a specific piece of software to control a specific piece of equipment and those devices associated with it.

In effect, the manufacturer has created a hammer and lets us go build something without even asking that we give a portion of what we construct back to the manufacturer.

And this is where it starts to get messy.

Let's talk about the software interface for a control system, for example. You have a certain set of tools available—a central controller, a control interface, some cable, manuals, and software. Armed with these tools and an understanding of how the end-user wants a system to operate, you create a program that tells the central controller what to do.

Along the way you discover or create some unique and slick way of telling the system how to do its work—and you would like to keep it so you can use it again. In a way, your creation becomes your signature. Your ability to re-use such tools could mean more work and more money.

But let's look at this from the other end. The client has just paid you to create a means of controlling their system, maybe multiple systems. Your control software, or application code, is something they feel they have the right to use when and where they see fit—or to modify as they will. After all, the client bought the system and the software is a part of the system (an integral part but just a part). They really like what you've done, and they plan to re-use this application code in other installations, as many times as they wish. They might not even tell you about it.

Programmers and contractors have, in order to protect themselves, resorted to retaining both the control program and the application code. This, they feel, provides them with the ultimate protection. The end-user will have to come back to them for any changes or updates in the application code.

Unfortunately this approach creates resentment from the owner. What happens if the system fails, or if changes need to be made to the system, and the person or company that wrote the application code is no longer around? Maybe the projectors have all been upgraded. Without the application code, the owner's hands are tied.

This continues to be a topic of heated debate across our industry, much of it driven by contractors and independent programmers on the one hand and owners and end-users on the other. Again, the issue comes down to who owns the code and controls the rights to it.

For the most part, manufacturers have stood on the sidelines. In a few instances, manufacturers have saved an unreadable file on the DSP unit, preventing an end-user or owner from modifying the code as needed. Unfortunately that approach does not help the owner or the end-user.

Licensing Agreements

A practical middle ground is beginning to appear, however. Howard Nunes, president and CEO of Boston-based programming firm PepperDash, says, "Very few entities actually need ownership. What they need is possession and the right to use, and that calls for a license, not ownership."

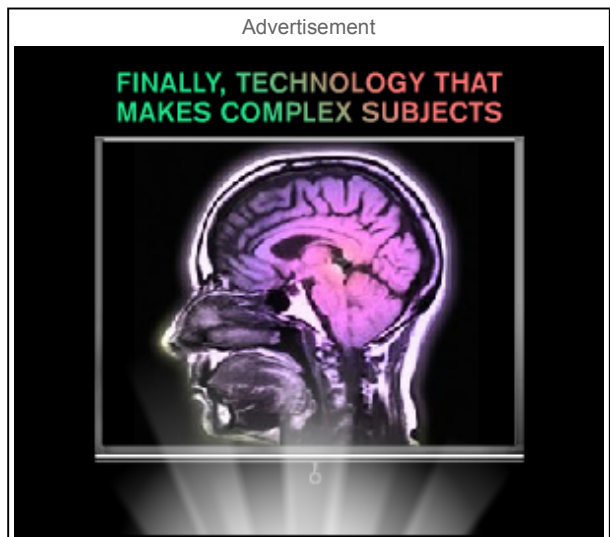
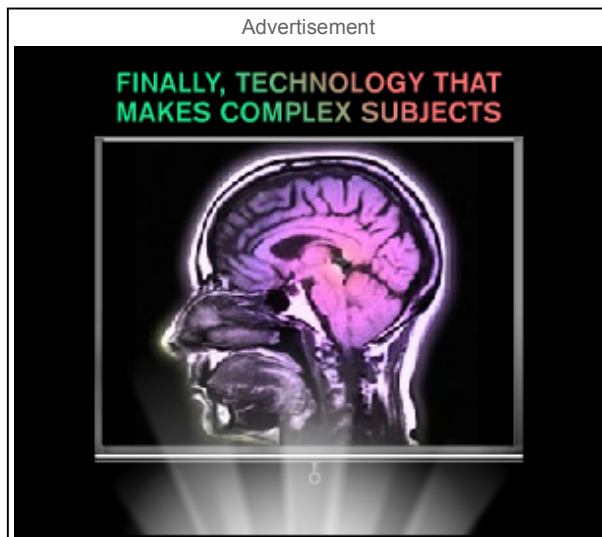
With that in mind, let's look at a solution from Atlanta-based Waveguide Consulting, which also provides programming services. The owner receives the full code (GUI, program, DSP, etc.) for perpetual use in a particular facility, including in any expansion of that facility. The programmer

retains intellectual property rights, including the right to re-use anything it created. The owner is not allowed to use the code in any other facilities or to sell it to others without prior written approval. If the owner breaks this agreement by modifying the code, warranty of the software is immediately voided.

The basis of this approach is found in a software licensing agreement that InfoComm's Systems Integration Leadership Council created. Scott Walker, president and CEO of Waveguide Consulting, says the company's approach has never been in doubt. The basic goal is to always serve the needs of the client and to protect the intellectual effort you as a contractor or consultant have put into the project. Both parties win. A good contractor will maintain a relationship with the client; a bad one won't.

This approach applies across the board, regardless of who provides programming services or what kind of programming services they provide—control systems, audio DSP, or video processing. So when resolving IP issues, remember, the world of the generous gets larger and larger; the world of the stingy gets smaller and smaller. Let's make the world larger, not smaller.

Thom Mullins is a senior consultant with BRC Acoustics & Technology Consulting in Seattle.



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