

## Seven Big Technology Issues Facing Companies in 2003

Many companies, regardless of their size, will face one or more of the following seven technology issues that we have identified as the ones most likely to arise in 2003. As companies find they can no longer hold back on IS/IT expenditures without loss of productivity and competitive advantage, they are re-entering the technology arena cautiously. The Technology Practice Group at McKenna Long & Aldridge can assist you in strategizing and implementing the best legal solution for these issues.

### In This Issue:

- [Data Privacy and Identity Theft](#)
- [IT Outsourcing](#)
- [Enterprise Wide Licenses](#)
- [Protecting Intellectual Property Assets](#)
- [Dealing with the Troubled Technology Company](#)
- [CyberSecurity](#)
- [Other Interesting Technologies: Open Source and Instant Messaging](#)

## Seven Big Technology Issues Facing Companies in 2003

### ▶ Issue One - Data Privacy and Identity Theft

As the federal government and consumer outcry becomes more and more aggressive on data privacy, one thing has become clear -- business as usual with usual processes and procedures is no longer sufficient. With the advent of the Graham-Leach-Bliley Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Consumer Fraud Protection Act, international privacy laws such as the EU Data Privacy Directive, and increased activism within the Federal Trade Commission (FTC) and the states' attorneys general offices, businesses are compelled to focus on developing, reviewing, and revising privacy policies that adequately protect consumer and client privacy without negatively impacting customer satisfaction and the bottom line.

In this same vein, corporations and consumers are increasingly concerned about identity theft and the systems required to protect the identity of those individuals (whether employees, clients, or others) whose personal information may be housed in their systems. Federal law provides numerous remedies in such cases.

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## ▶ **Issue Two - IT Outsourcing**

More and more companies are outsourcing their technology requirements to other companies. Typically, a company considers outsourcing for a couple of reasons: (1) desire to focus on core competencies of the business, and (2) desire to reign in and more effectively manage IS/IT expenditures. Whatever the reason, outsourcing presents innumerable issues: Is the pricing competitive? Can all those licenses for those mission-critical applications be assigned to the entity that will be providing the outsourced services? Who does the IS/IT employee work for? How should the deal be structured to adequately take into account the reason for the outsourcing in the first place?

Another less comprehensive permutation of outsourcing is the Application Service Provider (ASP). The ASP provides the client company access to its own data and information via the Internet or a dedicated connection while the ASP maintains the client data, as well as the applications and infrastructure. The licensing issues unique to the ASP environment are numerous and include solutions to business interruption in the case of a default by the ASP.

[▶ Back to top](#)

## ▶ **Issue Three - Enterprise Wide Licenses**

The company may need a variety of software applications for a lot of desktops -- and they want them for the entire enterprise, affiliates included. Enter the enterprise license agreement (ELA). Vendors have responded to this need by creating creative licensing structures and pricing plans. The company needs strong warranties, customer service and support guarantees, and the right to add licenses as the company grows organically and through M&A activity. Entering into an ELA may be a good strategy for a business, but it is imperative that a plan be put in place in order for the relationship to be successful.

[▶ Back to top](#)

## ▶ **Issue Four - Protecting Intellectual Property Assets**

Many companies have created numerous intellectual property assets, some of which may not even yet be recognized but many of which need to be protected to preserve competitive advantage. Corporate focus, particularly in a recession, has been directed at activities that generate revenue, not activities that protect assets. An intellectual property audit can identify copyrights, trademarks, patents, trade secrets and engender the development of a strategy to protect and leverage them. Such strategies can help thwart competition and may result in the creation of another revenue stream from the licensing of those assets.

[▶ Back to top](#)

## ▶ **Issue Five - Dealing with the Troubled Technology Company**

When the Dow was over 10,000 and venture capital money seemed to flow quickly to early stage companies, many of them contracted with a managed hosting company to house their servers. As those hosting companies lost their viability, serious issues arose and will continue to arise. In addition, many companies have software products licensed by troubled companies that have become firmly entrenched in their corporate processes and are about to become unsupported because the software company is in trouble. Renegotiation of technology licenses to

keep such businesses running smoothly and seamlessly must be a top priority. But it must be done on a preemptive basis and correctly.

[↗ Back to top](#)

## ▶ Issue Six - CyberSecurity

In the post September 11th world, companies want, need, and may be required by law to protect their computer systems. Companies believe their networks are secure until a hacker hacks down to individuals' Social Security Numbers. Many companies have no plan in place to deal with a security breach after it has occurred. Likewise, companies lack plans to deal with employee-hackers or otherwise disgruntled employees that can wreak havoc on a companies network. IT infrastructure security will definitely get more complex over time, especially if the bases are not well covered already. If you are investing in new IT systems, do you know what will likely be required by President Bush's much anticipated Bioterrorism Security Act?

[↗ Back to top](#)

## ▶ Issue Seven - Other Interesting Technologies: Open Source and Instant Messaging

Many providers are currently encouraging the use of servers pre-loaded with the Linux Operating System. Linux is an open source software application. That means that the software is not proprietary or secret and virtually anyone can get a license to it -- and the derivative works that are made from it. But there are important issues that arise with proprietary software that works in conjunction with Linux. What does that mean for developers and business intellectual property?

Finally, there is the proliferation of Instant Messaging in the workplace. Once taboo in many corporations because of the perception that IM's use hindered, not improved, productivity the top IM providers are seeking to get corporate buy-in by offering highly functional corporate IM systems. Many companies will face the issue of whether IM can add value.

[↗ Back to top](#)

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