
Posted on Sun, Jan. 02, 2005

Opponents of practice cite risks, ethical issues

By Karl Schoenberger
Mercury News

If William Shakespeare had written "Henry VI" under today's economic circumstances, he might have penned that famous line as: "The first thing we do, let's offshore all the lawyers."

That version of the drama is appealing to Ajit Gupta, chief executive of Speedera Networks, who complains about the thousands of dollars an hour he spends on fancy U.S. patent lawyers when his network infrastructure company gets into legal sword fights. He's entertaining the idea of looking to India, where Santa Clara-based Speedera has a subsidiary, for a cheaper alternative.

"I'm willing to try anything that can reduce my costs," Gupta said. "We're a global company that focuses on the bottom line. We have to be competitive, even if it means taking some risks."

Offshoring legal work is the latest play in the rapidly changing and increasingly global theater of business, where all kinds of white-collar jobs -- from software engineering to tax-preparation services -- are being sent abroad. It's still not clear how big legal offshoring will be, and skeptical audiences question the ethics involved in sending legal casework and privileged client information overseas.

But Gupta's Speedera is not alone among technology companies taking the cue on legal offshoring. Cisco Systems arranged with a U.S. law firm to have technical writing done by engineers in India for some of its patent applications. Microsoft had patent research done in India. General Electric has experimented with a legal team in India to draft contracts and other legal documents.

In Palo Alto, the Mumbai-based law firm Nishith Desai Associates recently raised the curtain on IP Pro, an offshoring service supplementing its core business of advising U.S. clients on India's legal system. IP Pro already has three or four "big name" clients who are "trying us out," said the firm's Vijay Sambamurthy. Its staff of eight paralegals in India drafts U.S. patent claims, which are checked for quality by a domestic law firm.

"The potential is huge," Sambamurthy said. "You can cut your costs by at least 40 percent."

Some of the biggest Silicon Valley companies are waiting in the wings.

"It's not consistent with our past practices, but we certainly would be open to evaluating it going forward," said Intel spokesman Chuck Mulloy. Intel's overseas subsidiaries have relationships with foreign law firms, he said, but its legal department in Santa Clara hasn't farmed out work to offshore contractors yet.

"The devil is in the details. It all depends on what kind of legal work we're talking about. Some of it wouldn't make sense."

Online records

Steven Lundberg, a Minneapolis lawyer specializing in intellectual-property issues, said his firm first turned to India when it couldn't find enough qualified local talent to proofread patent applications.

"Since all our records are online, it was easy to send them over there," Lundberg said. "The quality has been great, and the prices are great." He expanded the offshore work to searches of public-records data, but drew the line at confidential client information.

The dialogue on legal offshoring is a sensitive one that many companies want to avoid because of a backdrop of cutbacks and job-security worries among employees. So it's hard to assess how many companies are offshoring

legal work.

But a growing number of U.S.-based companies are selling the services of skilled Indian professionals, who perform such basic tasks as patent research and document preparation. In-house corporate legal departments and large patent law firms are their star customers, they say.

Abhay "Rocky" Dhir, a Dallas lawyer and entrepreneur, thinks there are very few jobs his three lawyers in Bangalore can't perform.

For a bargain hourly rate as low as \$60 (compared with \$350 at the low end of the typical U.S. scale), Dhir's Atlas Legal Research can study legal precedents in state law to craft arguments in a trial brief. It's possible because U.S. case law is available online, and India's English-educated lawyers work in a common-law legal system similar to ours.

Dhir said the Indian lawyers he has recruited and trained are fully qualified to compose legal briefs, which he carefully screens and edits to maintain quality. He thinks they offer advantages other than their low cost.

"Because they weren't trained in this jurisdiction, they have a fresh perspective," said Dhir, 28, whose company has about 50 clients and grossed \$160,000 last year. "They approach the law in a very innovative way and see solutions even I don't see."

Research, not advice

Leon Steinberg, who runs the legal offshoring firm Intellevate in Minneapolis, said his Indian lawyers in New Delhi and Bangalore provide research for law firms and in-house corporate lawyers, but they stay clear of legal opinions.

"We will not produce the final work product, and we don't give legal advice or draw conclusions," said Steinberg, who added that many of his clients were tech companies in Silicon Valley. "What we do is provide U.S. lawyers with information so they can use their own training and legal experience to make legal conclusions."

The ethical questions depend on the type of work offshored, said Matthew Powers, head of patent litigation in the Redwood Shores office of Weil, Gotshal & Manges.

"My view is that legal services are no different than any other services -- there are some that can be commoditized, like data collection and low-level legal research," he said. "But there are some that can never be outsourced, especially when it comes to exercising legal judgment."

But having legal work done in India involves risks for the American lawyer, no matter what the level of service may be, said Mark Tuft, a legal-malpractice defense lawyer with the San Francisco firm Cooper, White & Cooper.

"There are a lot of risks and ethical issues that have to be managed," Tuft said. "The domestic lawyer has the duty of supervising any work done overseas. You have to ask what this does for client confidentiality and other lawyer responsibilities. Is it the client or the lawyer who benefits from the lower costs involved? Who's responsible if you're sued for legal malpractice when the work is done offshore?"

The benefits apparently outweigh the risks for the legal offshoring companies, which include Lawwave.com, Quislex and Office Tiger, all based in New York, and Lexadigm Solutions of Grandville, Mich. But the firms have fewer than a dozen lawyers on each of their payrolls in Chennai, Bangalore and suburban Delhi.

"We're just at the starting line with this," said Tuft. "We don't know how far it is going to go. But I think law firms are going into this very slowly and very cautiously."

Contact Karl Schoenberger at kschoenberger@mercurynews.com or (415) 477-2500.

<http://www.mercurynews.com>