

Need an App? Crowdfsource!

A Few Things to Consider Prior to Running a Contest to Develop an App

Mobile applications (apps) are a growing phenomenon, and many organizations are investing heavily into developing apps for various markets, including Android and the Apple App Store. The various divisions of the U.S. federal government are no exception. They are using “crowdsourcing” to tap into the vast developer talent in the United States and gathering ideas to solve various problems from developing a “simple system or approach that can be employed with or as a FAST rope” by the U.S. Air Force to having “anyone with a passion for photography...capture an image of workplace safety and health and share it with OSHA” in celebration of OSHA’s (Occupational Safety and Health Administration’s) 40th anniversary.¹

The Department of Health and Human Services and other various divisions with a stake in health care are also tapping into the talent by running mobile app developer contests. There are various issues you must consider prior to running a contest at your organization.

WHAT IS CROWDSOURCING?

In the past several issues of the *Journal of Health Care Compliance*, I have written about the growth of the mobile market in health care. In the September-October issue, for example, I wrote about the U.S. Food and Drug Administration’s (FDA’s) framework for regulating mobile apps, and in the November-December issue I wrote about some of the issues decision makers should consider when evaluating whether mobile technologies are right for their organizations.

The use of mobile devices is growing, and consumers are increasingly using mobile devices for health care. A 2010 Pew Research study found that out of the 85 per-



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cent of adults that use a cell phone, 17 percent have used it to look up health-related information, and 9 percent have health-related apps on their phones.²

Many organizations have recognized this growth but do not have the internal resources to fill the market need. Rather than hiring employees, they are turning to crowdsourcing. In general, crowdsourcing is using the vast knowledge of the crowd to work on a problem. This model of crowdsourcing has been used with everything from the UC Berkeley's SETI@home project to open source development to iStockphoto.³

TAKING ADVANTAGE OF CROWDSOURCING

The federal government is facilitating the use of crowdsourcing through the www.challenge.gov Web site, which it uses to promote the various technology development opportunities and prizes offered by numerous agencies and divisions.⁴ The U.S. Air Force, for example, is seeking ideas to develop "a simple system or approach that can be employed with or as a FAST rope." OSHA is celebrating its 40th anniversary by involving the workforce and seeking "anyone with a passion for photography... [to] capture an image of workplace safety and health and share it with OSHA."

Similarly, the Office of the National Coordinator (ONC) is turning to crowdsourcing in an effort to find information technology solutions for the numerous health care problems that plague the health care system. As of this writing, out of the 43 health-related challenges listed on the [Challenge.gov](http://www.challenge.gov) Web site, six of them are from the ONC, with prize totals ranging from \$15,000 to \$100,000.⁵ On September 30, 2011, for example, the ONC and various other stakeholders announced the *Million Hearts Challenge*, which is "a multidisciplinary call to innovators and developers to create an application that activates and empowers patients to take charge of their cardiovascular disease."⁶ Entrants must have at least two participants, and the first prize winner receives \$50,000.⁷

These contests appear to have been successful for the government. For example, the Apps Against Abuse Challenge received more than 30 submissions.⁸ Considering the amount of effort required to generate and implement an idea that meets the specifications and develop a program that operates as desired together with the geographical limits for entrants,⁹ 30 is a very good number.

CONSIDERATIONS FOR YOUR ORGANIZATION

To capitalize on the large development pool, many organizations are running their own contests. Legal issues must be carefully considered prior to running these contests because many countries regulate contests.

As a preliminary matter, organizations must determine any geographical limits for their entrants. For example, are submissions from residents of Russia or Canada acceptable? Legal counsel should be consulted for each jurisdiction from which submissions will be accepted to ensure that organizations are properly complying with any and all the requirements in a specific country. Consulting legal counsel is particularly important in this sphere because participants and winners are submitting intellectual property (IP), which may be very valuable to the organization. Because the purpose of these contests is to own the submitted IP, it is necessary that all legal requirements are met for a particular jurisdiction to avoid any future challenge to IP ownership.

In the United States, contests must be structured carefully to avoid being classified as lotteries, which are generally illegal in the United States unless operated by a state entity. Lotteries are promotions that include a prize, chance, and consideration. The types of submissions discussed in this article are classified as contests because the prize is awarded on the basis of skill. In operating contests, organizations must take care to avoid introducing the element of chance.

Organizations also must draft rules, typically dubbed “Official Rules,” for their contests. These Official Rules detail all of the entry requirements to participate in the contest. At a minimum, the Official Rules must include the following:

- **Eligibility Criteria.** The eligibility criteria must specify the pool of individuals that are eligible to make submissions, including, for example, entrant’s age, residency status, geographic location, and so forth. Age is particularly important in this context because contracts signed by those under the age of majority are not enforceable. Therefore, those under the age of majority cannot properly assign their IP rights. In certain U.S. states and Canadian provinces, the age of majority is 19.
- **Sponsor.** The Official Rules must clearly state the name of the organization that is sponsoring the contest as well as the organization that is operating the contest if different from the sponsor.
- **Contest Dates.** The Official Rules must clearly state the start and end date of the contest, including the time zone. These dates should be the same for all entrants, regardless of their method of entry. The Official Rules also should make clear it is the sponsor’s system clock that is the official method of time-keeping for the contest.
- **How to Enter.** The Official Rules must clearly outline the methods of entry. If the organization is giving away prizes to winners that are chosen randomly and consideration is present, then organizations must offer a free method of entry, which is to be clearly identified in the Official Rules.
- **Prizes and Odds of Winning.** The Official Rules must clearly state the prizes and the odds of winning each of the prizes. The prizes should be described in detail. Thus, for example, if the prize is a trip, the description must include the location of the trip, the length of the stay, and so forth. The description also must

state the total value of each of the prize packages. Additionally, if the contest is open to residents of Florida, New York, Rhode Island, or Quebec, Canada, then the organization must meet certain registration and bonding requirements based on the total value of the prize package. For example, if the total value of the prize package is more than \$500, then prior to the start of the contest, organizations must file an application to register the contest with the Rhode Island Office of the Secretary of State.¹⁰ Similarly, if the total prize package is more than \$2,000 and the contest is open to residents of Quebec, Canada, then Canadian counsel must be consulted regarding the payment of a “duty” or fee with the registration application, translating the Official Rules into French, and meeting certain other requirements set forth by the Régie des alcools.¹¹

- **Selection of Winners.** The Official Rules also must state the date on which winners will be selected, the method used to select winners, such as any judging criteria to be used, and who will be making these selections. For example, is the sponsor making the selections, or is the sponsor selecting experts in the field? The Official Rules also should make clear that the sponsor’s winner selections are final and may not be challenged. Certain states, such as New York, require that the winner lists be filed with the state and that contest records be retained for a specific number of days. New York and Rhode Island both require that materials be retained for six months after the completion of the contest.¹² The Official Rules must provide details about how individuals may obtain a list of winners.

Other than the requirements listed above, organizations should include a section detailing representations and warranties, indemnifications, and any necessary releases. Where the organizations are running a contest involving the submission of IP, the Official Rules should make clear that

entrants are not winners until the sponsor verifies the eligibility criteria and the entrant meets all of the requirements of becoming a winner such as, for example, signing an IP assignment and contest release.

CONCLUSION

Contests are an economical way for organizations to rally developers and garner support for their products. But, organizations must be careful to ensure that all legal requirements are properly followed to avoid lawsuits, negative publicity, and the loss of IP rights for potentially blockbuster developments.

Endnotes:

1. *See generally* U.S. General Services Administration, Challenge, challenge.gov (last visited Nov. 11, 2011) (this Web site provides a list of all of the ongoing challenges sponsored by the U.S. government).
2. PEW RESEARCH CENTER, MOBILE HEALTH 2010 (OCT. 2010), available at www.pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Health_2010.pdf.
3. *See generally* Jeff Howe, *The Rise of Crowdsourcing*, WIRED.COM, June 2006, www.wired.com/wired/archive/14.06/crowds.html.
4. *Id.*
5. Not all challenges are related to designing mobile apps. The popHealth Tool Development Challenge, for example, "tasks developers with creating applications that leverage the popHealth open source framework, existing functionality, standards, and sample datasets to improve patient care and provide greater insight into patient populations." *See* U.S. General Services Administration, Challenge, challenge.gov/ONC/246-pophealth-tool-development-challenge (last visited Nov. 11, 2011).
6. HHS, Announcement of Requirements and Registration for "Million Hearts Challenge," 76 FR 60841 (2011), available on www.federalregister.gov/articles/2011/09/30/2011-25296/announcement-of-requirements-and-registration-for-million-hearts-challenge#p-4.
7. *Id.*
8. *See generally* Rich Daly, Apps Against Abuse Winners Named, ModernHealthcare.com, Nov. 2, 2011, www.modernhealthcare.com/article/20111102/NEWS/311029956; Press Release, U.S. Dept. of Health & Human Services, Apps Against Abuse Challenge Winners (Nov. 1, 2011), www.hhs.gov/open/initiatives/challenges/againstabuse.html.
9. *See* HHS, Apps Against Abuse Official Rules, appsagainstabuse.challenge.gov/rules (last visited Nov. 11, 2011).
10. *See* State of Rhode Island and Providence Plantations Office of the Secretary of State, Games of Chance, sos.ri.gov/documents/business/misc/GamesofChance.pdf (Dec. 2005).
11. *See* Quebec - Régie des alcools des courses et des jeux, Publicity Contests and Drawings: Forms and Guides, www.racj.gouv.qc.ca/index.php?id=117&L=1 (last visited Nov. 11, 2011).
12. For further details on the Rhode Island requirements, *see id.* For New York requirements, *see* New York Department of State, Games of Chance, www.dos.ny.gov/corps/gamesofchance.html (last visited Nov. 11, 2011).

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