

IPR LICENSING IPR AND CONTRACTS

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Why Licensing is important

- Licensing revenues outstrip patent growth
- The MIT story
- More intellect less material
- The business case for IP
- Rapid obsolescence or loss possibilities
- Marketing as crucial as innovation
- IP cycle accelerated by the Net

Hidden Licensing

- Licensing and cross-licensing; back to barter [Nightingale story]
- Licensing and outsourcing
- Licensing and alliances, teaming
- Licensing and the extended organization
- Licensing and M & A
- Licensing and franchising

Focus on Licensing Fundamentals

- Defining licensing – circular reasoning
- Who is the Licensor?
- Who gets the license?
- What is being licensed?
- For what purpose?
- Upto?
- The Gary Kildall story

Licensing and Trademarks

- Trade marks, domain name conflicts
- Trademarks and metatags
- Trademarks and territoriality issues
- Trademarks and language and cultural connotations
- The disappearance of choices and the opening up of new ones [the NameLab story] The innerwear story; RR

Licensing and Copyright

- Contracting issues in general
- Open Source and copyleft
- Linking and deep linking
- Caching
- Freeware, shareware and other models
- The emergence of the consumer as a seller
- Click wrap issues
- Tasini in NY and the earlier Dutch case
- Which is the world's biggest copying machine?

Licensing and Patents

- What the Net has done to patent policy
- Business model patents and licensing initiatives
- IP exchanges in Japan and elsewhere
- The Bountyquest story

Licensing and Trade secrets

- Trade secrets as the residual IP catch-all for know how and know why
- Security risks and the Net
- Digital risks
- Electronic espionage, Echelon, Dow and other surveillance cases

Special challenges of Net based Licensing- 1

- Is he an adult?
- How do I control the Licensee?
- Net velocity
- Authenticity, integrity and non repudiation
- Location issues and distance selling regulations
- Automated licensing

More challenges; also opportunities

- Jurisdiction and the offer/acceptance rules
- The stock depletion doctrine
- More networking = more complex contracts
- Data protection issues
- Multimedia issues
- The ITES opportunities – work follows the sun; the death of distance

new trends.....

- Litigating as a first step towards licensing
- Greater concerns over anti-trust issues in licensing

WHY IT LICENSING AFFECTS EVERYONE

- Software is everywhere [in microchips in ovens, cars, cell phones, stereos, lathes, cat-scans;also in R &D – example, combinatorial chemistry & mass screening]
- Everyone is either a licensor or licensee[Indians are net buyers]
- Value of products linked closely to IP/tech content[chip v/s auto, glass fiber v/s copper]
- Business model patents will affect all businesses

Information quirks which affect licensing

- Technology features can overwhelm Information benefits [But $I > T$]
- Information value and the time factor [throughput, speed, timeliness of reports and process outputs]
- Information value can be negative; like toxic waste [info can be enemy of knowledge]
- Information value linked to knowledge of others [exclusivity benefits]
- Information value unlinked to cost [totally negotiable]

Digital challenges to I T licensing

- Velocity [copying digital material takes micro-seconds, therefore copyright protection]
- Authenticity [digital material can be reworked, merged, doctored, re-purposed]
- No “original” [every copy is perfect, no deterioration while making multiple copies]

90% of corporate IP is in digital form

CA's should know the business of licensing

- What falls into the cracks? Usually in the “technology” related schedules![the benefits of multi-threading and MDP]
- Skimping on time and effort **before** a contract is risking trouble **after** it
- Management, technical, marketing, financial and legal wish lists vital[proactive]
- A backward facing lawyer?

And business managers must appreciate contracts; usual ploys

- No need for contracts; we sign and put them away and don't see them later
- Nothing has gone wrong so far!
- Let us sort out problems as we go ahead!
- We know the client. He needs us!
- The other side has more to lose!
- Lawyers are an obstacle to business!

Getting the contract advantage

- Do your due diligence on client, needs, decision making, options
- BATNA and other options
- Get your draft in first
- Avoid one sided drafts and retaliation
- Train in negotiation skills [NLP, the value of silence, listening v/s speaking. Asking for reasons, details, alternatives.....]