Intellectual Property Risks of Doing Business Globally
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Many people probably would be alarmed to learn that US businesses are losing hundreds of billions of dollars and hundreds of thousands of jobs every year for reasons unrelated to the economy. The globalization of business, advancements in technology and the rapid development of emerging economies are positive opportunities for corporate growth and prosperity. However, they have also opened the door for crimes against the most important asset of many companies, its intellectual property (IP).

Intellectual property is a class of asset that consists of creations of the mind or ideas for which property rights are recognized. Examples include inventions, works of art and literature, and symbols, names, images or anything else that can uniquely identify an organization. These assets are the key to growth and innovation and are constantly under siege by criminals, competitors, and even foreign nations.

Theft of an organization’s intellectual property can impact its bottom line, reputation and competitive advantage, with potentially vast implications for employees, customers, investors, business partners to shareholders. To remain competitive in the global economy organizations need to assess their intellectual property exposures, identify threats and develop strategies for protecting their valuable assets.

Types of Intellectual Property and Their Protections

IP is frequently sought by others looking to gain a competitive edge, and a company needs to take into consideration how to protect itself from threats. Legal protections in combination with sound risk management strategies should be established. Some common types of intellectual property that are protected by law include copyrights, patents, trademarks, and trade secrets.

Copyrights

Intellectual property law provides copyright protection for original works of authorship and expression such as architecture, computer software, literature, movies, and music. The US Copyrights Office registers copyrights and cooperates with other nations around the world to honor the copyrights of each other’s citizens. For works created on or after January 1, 1978, copyrights usually run for the author’s life plus 70 years. Copyright exists from the moment a work is created, but in most cases a copyright must be registered in order to be enforceable in the courts.

Patents

For many organizations the ability to create innovative products is the key to growth and profitability. Innovation provides a competitive advantage, drives market share and allows an organization to stay a step ahead of its peers. To protect product innovation patents can be issued by the United States Patent and Trademark Office. A patent gives inventors the grant of property which is “the right to exclude others
from making, using, offering for sale, or selling” the invention. Patents provide protection in the issuing country and are for a limited period of time: US patents filed after June 8, 1995 last for a period of 20 years from the date the application was filed. Patent laws around the world have become increasingly harmonized, due in part to the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights.

**Trademarks**

Any symbol, name, word, sound, or color that distinguishes goods or services sold is considered intellectual property. A trademark is the most common device used to protect this type of business asset. In the US the safest form of trademark protection is through the US Patent and Trademark Office. Once registered, trademarks can be renewed forever with no expiration as long as trademark is being used in commerce.

If a business conducts operations globally trademark protection can be limited. This is because established trademarks in one country are not automatically transferrable to another. For this reason, The United States joined the Madrid Protocol in 2003, an international system for managing trademarks that will help to provide protection in more than sixty five countries.

**Trade Secrets**

A trade secret is proprietary information of economic value that is used in a company’s business. Examples of trade secrets include formulas, processes, techniques, patterns, devices etc. There is no formalized federal government protection for trade secrets. State laws vary by state and circumstance, though the Uniform Trade Secrets Act, a model law drafted by the National Conference of Commissioners on Uniform State Laws to better define trade secret rights and remedies, has been adopted by 46 states, the District of Columbia and the U.S. Virgin Islands. The most effective form of trade secret protection is through corporate oversight and information security policies.

**Intellectual Property Threats**

Threats to business intellectual property are more complex and expansive than in any other time in history. Threats range from unethical competitors illegally obtaining information, to countries nationalizing intellectual property by exercising their power of eminent domain, to employees stealing and selling these valuable assets, to large-scale counterfeiting by organized crime rings. Increased business exposure in emerging economies and advancements in technology have also contributed the growth and complexity of intellectual property threats. Counterfeiting and piracy are two threats that have flourished in today’s business environment and have become the most costly to business and world trade.

**Counterfeiting**

Counterfeiting is the intent to defraud by passing off a fake item as an original. From purchasing what seems to be name brand sunglasses on a street corner in New York City to buying a cheap knock off version of a named brand auto part over the Internet, counterfeit products are increasing at an alarming rate. The Federal Bureau
of investigation (FBI) estimates that anywhere from 5-7 percent of world trade consists of illegal counterfeit goods. In the United States counterfeiting is estimated to cost business approximately $250 billion in lost revenue and 750,000 jobs. The auto industry alone could add approximately 250,000 jobs if counterfeiting was eliminated entirely.1, 2

In addition to the lost jobs and revenue, counterfeit products can be dangerous to consumers. Counterfeit products are for obvious reasons not regulated by federal agencies such as the Food and Drug Administration (FDA) and can create public safety and health risks. For example, the World Health Organization (WHO) estimates that 10 percent of all pharmaceuticals sold throughout the world are counterfeit. Without proper oversight and regulation there is no safeguard for consumers with regards to the actual ingredients and side affects of the pharmaceuticals they are consuming. Similar concerns apply for other counterfeit products including automotive parts, electrical equipment and computer software.

Piracy
Piracy or theft of intellectual property is a growing concern. Industries such as motion pictures, music, software and books have been hit especially hard with losses exceeding $50 billion a year.3

The emergence of new technologies such as file sharing programs is the primary culprit for the growth in pirated material. These types of programs have enabled consumers to illegally share copyrighted or trademarked products easily and anonymously while in the comfort of their own homes with very little threat of recourse. The ease at which information can be transferred and the lack of potential punishment has also contributed to a decrease moral perception and attitude by many consumers. The combination has devastated businesses and threatened the way in which entire industries produce and distribute products.

Intellectual Property Protection
Copyrights, patents and trademarks are the first line of legal defense in helping protect an organizations intellectual property. They should be registered with the proper government agencies both in the United States and abroad and then be recorded with United States Customs and Border Protection. Companies should be vigilant in identifying illegal use of their intellectual property and aggressive in enforcing their rights.

For copyrighted products distributed digitally, companies should consider digital rights management (DRM) technologies. DRM includes an array of access control technologies that inhibit uses of digital content that is not desired or intended by the content provider. DRM is most commonly used to protect software and audio and video recordings.

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In addition to legal protections and DRM, a corporate culture should be established with processes and procedures for identifying threats and keeping intellectual property out of the wrong hands. Some examples include:

- restricting classified information to a limited number of people,
- setting up secure connections to corporate networks,
- password protecting cell phones and laptops,
- requiring legal confidentiality agreements for employees and contractors who have access to intellectual property, and
- creating a security culture within the organization that emphasizes the importance of intellectual property.

Companies also should carefully vet business partners, especially those in emerging economies where counterfeiting and piracy are rampant. China, for example, is an important trading partner and a key source of low-cost manufacturing capacity, but China also has a poor record for IP enforcement. According to the Office of the US Trade Representative, 79 percent of the IPR-infringing product seizures at the US border were of Chinese origin in 2009.4

Conclusion

For many organizations, intellectual property is the most valuable asset. Like anything else that is considered of value, protecting it should be of the utmost concern for organizations looking to maintain their competitive edge. The fluidity of global commerce and technology makes it imperative for organizations to stay abreast of the ever changing intellectual property threats and protections. The combination of government protections, sound risk management strategies, and corporate oversight is a great start in providing piece of mind that these valuable assets will continue to be sources of growth and profitability.

4 2010 Special 301 Report on Copyright Protection and Enforcement, Office of the US Trade Representative