

16.3: Intellectual Property Rights around the Globe

Learning Objectives

1. Understand what intellectual property (IP) is and why it's important for companies to protect their IP.
2. Be able to describe different types of intellectual property.
3. Know that intellectual property protection varies by country.

Intellectual Property Rights

For companies to gain financial benefits from investing in research and coming up with new inventions, there must be legal protection for those inventions. The system of law related to R&D and innovation is referred to as intellectual property rights. Different countries vary in the extent to which they protect intellectual property and enforce intellectual property regulations. The presence of strong, enforceable, consistent property rights serves to make the world flatter. However, as long as significant differences in property rights exist around the globe, the world will be far from flat with respect to innovation.

Intellectual property (IP) refers to creations of the mind—inventions, literary and artistic works, and symbols, names, and images used in commerce. “What Is Intellectual Property?,” World Intellectual Property Organization, 2003, accessed March 4, 2011, www.wipo.int/freepublications/en/intproperty/450/wipo_pub_450.pdf. The term *property* connotes ownership that's exclusive, but the owners have the right to license or sell their IP. Under intellectual property law, owners are granted certain exclusive rights—**intellectual property rights (IPR)**—to the discoveries, inventions, words, phrases, symbols, and designs they create.

Let's look at the ways companies protect their IP and profit from it. The simplest way for a company to protect its intellectual property is to never reveal it—to create what is called a **trade secret**. This is how Coca-Cola protects the formula for its hugely popular soda. If the secret were discovered or revealed through nefarious intent, then trade secret law would allow punishment of the perpetrator, including criminal prosecution. But if a company somehow developed the same formula on its own, Coca-Cola could do nothing to stop them. Therefore, companies opt for other IP protection—namely, **patents** and **copyrights**.

The most common way to protect an industrial discovery or invention is to patent it. A patent is an inventor's exclusive right granted by the government for an invention, whether a product or a process, that is industrially applicable (i.e., useful) or new (i.e., novel) or exhibits a sufficient “inventive step” (i.e., be nonobvious). To get a patent, the company must reveal the details of the invention. The rationale for revealing the invention details is so that others can build on the invention and thus promote further innovation. By revealing the invention, companies obtain legal protection and the right to exclusive sales of the invention (or the right to license or sell its use to others). The patent gives the patent owner a monopoly on the invention for a specific number of years.

Patents can be granted within a single country or internationally. Christian Hahner, head of Intellectual Property & Technology Management at Daimler, said, “Attaining international patent protection is an expensive undertaking. If we believe it's important for our business to actively defend our patent in court in order to prevent unauthorized copies or imitations, then we have to nationalize the patent, which makes it valid in other countries.” Peter Thomas, “Patents Are the Future of Innovation Management,” *Technicity*, 2010, accessed February 10, 2011, www.daimler-technicity.de/en/christianhahner. A patent prohibits other people from selling the identical product built in the same way as the accepted patent. Patents give the owner the right to defend the invention in court, but they don't automatically mean that the owner will win the court case.

“When I make an innovation public in Germany by initially registering a patent, I'm actually defining the state of the art. It then becomes impossible for anyone else in the world to patent that innovation,” Hahner said. “The publication of the patent also creates conditions that enable the worldwide utilization of innovations with great value to society—like those related to vehicle safety, for example.” Peter Thomas, “Patents Are the Future of Innovation Management.” *Technicity*, 2010, accessed February 10, 2011, www.daimler-technicity.de/en/christianhahner. That is, by disclosing the invention publicly, the inventor gets legal protection from outright copying of the invention, but society also benefits because others learn about the invention and can try to devise a different, original way to achieve the same outcome. Because of this fear of copying, some companies, such as Microsoft, choose not to patent some of their products. For example, Microsoft does not have a patent on its Windows software because doing so would force it to reveal its source code, which Microsoft does not want to do.

Did You Know?

A car might have one hundred patents associated with it in various parts and components. In contrast, in the pharmaceutical industry, one patent may be all that's needed to cover one product: a patented drug is the product in itself. What's more, much of the innovation in new cars today resides in software. For example, the Chevrolet Volt has more software than a state-of-the-art fighter aircraft. Almost 40 percent of the car's value comes from software, computer controls, and sensors. Jason Paur, "Chevy Volt: King of (Software) Cars," *Wired*, November 5, 2010, accessed February 27, 2011, <http://www.wired.com/autopia/2010/11/chevy-volt-king-of-software-cars>.

A **trademark** is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark uniquely identifies the source of the product. Companies trademark brand names and then advertise to build familiarity with that name. Steve Steinhilber, *Strategic Alliances* (Cambridge, MA: Harvard Business School Press, 2008), 98. Consumers come to trust the name and look for other products by that maker.

For a brief review of the main types of intellectual property rights, see Table 13.1, which is reprinted with permission from *Exchanging Value—Negotiating Technology Licensing Agreements—A Training Manual*, which was published jointly by the World Intellectual Property Organization (WIPO) and the International Trade Centre (ITC) (www.wipo.int/sme/en/documents/pdf/technology_licensing.pdf).

Table 13.1 Intellectual Property Types

Patents	A patent is an exclusive right granted for an invention, whether a product or a process, which must be industrially applicable (useful), be new (novel) and exhibit a sufficient "inventive step" (be nonobvious). A patent provides protection for the invention to the owner of the patent. The protection is granted for a limited period, generally twenty years from the filing date.
Trademarks	A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.
Trade Secrets	Broadly speaking, any confidential business information which provides an enterprise with a competitive edge can qualify as a trade secret. A trade secret may relate to technical matters, such as the composition or design of a product, a method of manufacture or the know-how necessary to perform a particular operation. Common items that are protected as trade secrets include manufacturing processes, market research results, consumer profiles, lists of suppliers and clients, price lists, financial information, business plans, business strategies, advertising strategies, marketing plans, sales plans and methods, distribution methods, designs, drawings, architectural plans, blueprints and maps, etc.
Copyright and Related Rights	Copyright is the body of laws which grants authors, artists and other creators protection for their literary and artistic creations, which are generally referred to as "works." A closely associated field of rights related to copyright is "related rights", which provides rights similar or identical to those of copyright, although sometimes more limited and of shorter duration.

Licensing IP Rights

The word *license*, according to the World Intellectual Property Organization (WIPO), means permission granted by the owner of the intellectual property to another to use it according to agreed terms and conditions, for a defined purpose, in a defined territory,

and for an agreed period of time. Geoffrey Loades, “Exchanging Value: Negotiating Technology Licensing Agreements,” World Intellectual Property Organization, 2005, 14. In **licensing** IP rights, the IP owner gives permission to use the IP but retains ownership of the IP.

Some companies obtain patents mainly to license or sell them to others, thus making money from their inventions without having to manufacture or service anything themselves. In turn, other companies actively seek patents that they can purchase because they want to speed up their own R&D efforts. For example, even Daimler, which registered 2,000 patents in 2009, pays 2,600 outside inventors to use their innovations in Daimler products. Peter Thomas, “Patents Are the Future of Innovation Management,” *Technicity*, 2010, accessed February 10, 2011, www.daimler-technicity.de/en/christianhahner. Filing patents is relatively inexpensive; even entrepreneurs can afford the filing fee. But defending a patent can be expensive. Given how overworked the patent examiners are, they often err on the side of granting a patent, which means that there are often overlapping patents. “We wind up in these fights over patents where we can’t tell what they mean, and the courts can’t tell what they mean, and even the patentees can’t tell you what they mean,” said David Kappos, a lawyer who managed IBM’s patent portfolio. Jeff Howe, *Crowdsourcing* (New York: Three Rivers Press, 2008), 65.

Spotlight on International Strategy and Entrepreneurship

CH2M Hill is a \$6 billion environmental services company that partnered with ADA Technologies, to develop patents for an inexpensive and effective way to control mercury emissions from coal-fired power plants. Neither company, however, makes products, so they contributed their IP to a new product-based start-up funded by outside investors. CH2M Hill and the start-up will then jointly market the new mercury-control technology. Henry W. Chesbrough and Andrew R. Garman, “Use Open Innovation to Cope in a Downturn,” *Harvard Business Review*, 2009, hbr.harvardbusiness.org/2009/06/web-exclusive-use-open-innovation-to-cope-in-a-downturn/ar/pr.

IP Protection Varies by Country

The US government’s Office of the United States Trade Representative (USTR) monitors intellectual property rights around the world and fights IP theft because IP theft impacts the 18 million Americans whose livelihood depends on IP protection. United States Trade Representative, “USTR Releases 2010 Special 301 Report on Intellectual Property Rights,” press release, April 2010, accessed February 27, 2011, www.ustr.gov/about-us/press-office/press-releases/2010/april/ustr-releases-2010-special-301-report-intellectual-p. The USTR evaluates countries and rates them according to how those countries enforce IP rights. The Special 301 Report is an annual review of the global state of IPR protection and enforcement issued by the USTR. The worst offenders are put on a “Priority Watch List.” The countries on the 2010 Priority Watch list are China, Russia, Algeria, Argentina, Canada, Chile, India, Indonesia, Pakistan, Thailand, and Venezuela. China, which has been on the Watch List before, continues to be on the list not only because of IP theft and counterfeiting but also because of government practices that severely restrict the market for foreign goods while giving favored treatment to “indigenous innovation.” United States Trade Representative, “USTR Releases 2010 Special 301 Report on Intellectual Property Rights,” press release, April 2010, accessed February 27, 2011, www.ustr.gov/about-us/press-office/press-releases/2010/april/ustr-releases-2010-special-301-report-intellectual-p. Countries can get off the Watch List by taking measures to reduce IP theft. The Czech Republic, Hungary, and Poland were all removed from the Watch List because they took significant steps to clamp down on piracy and counterfeiting.

WIPO

The **World Intellectual Property Organization (WIPO)** is a specialized agency of the United Nations that works to harmonize the intellectual property laws of countries around the world. Although the roots of the WIPO go back to 1883, WIPO became an agency of the United Nations in 1974, with a mandate to administer intellectual property matters recognized by the member states of the UN. In 1996, WIPO expanded its role and further demonstrated the importance of intellectual property rights in the management of globalized trade by entering into a cooperation agreement with the World Trade Organization (WTO). Today, WIPO seeks to

- harmonize national intellectual property legislation and procedures,
- provide services for international applications for industrial property rights,
- exchange intellectual property information,
- provide legal and technical assistance to developing and other countries,
- facilitate the resolution of private intellectual property disputes, and

- marshal information technology as a tool for storing, accessing, and using valuable intellectual property information. “WIPO Treaties—General Information,” World Intellectual Property Organization, accessed November 22, 2010, www.wipo.int/treaties/en/general.

KEY TAKEAWAYS

- Intellectual property (IP) refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, and images used in commerce.
- Under IP law, owners are granted certain exclusive rights (intellectual property rights) to a variety of intangible assets.
- Through IP protection, owners are given the opportunity to license or sell their innovations to others, which can be an important way of creating value with these assets.
- The World Intellectual Property Organization (WIPO) is the global nongovernmental organization tasked with coordinating and marshaling efforts to harmonize intellectual property rights among countries and regions.

EXERCISES

(AACSB: Reflective Thinking, Analytical Skills)

1. What are IPRs, and why are they important?
2. What are the four main types of IP?
3. How does licensing relate to IPR?
4. Would you do business in a country with poor IP protection? Why or why not?
5. What advantages does a company gain by filing a patent? Why might a company decide not to file a patent on an intellectual asset?

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