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HOW YOU DEFINE IP DETERMINES HOW YOU MANAGE IT

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CENTER FOR
INTELLECTUAL
PROPERTY

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CIP has been running executive education for both business/R&D and IP professionals in one form or another for about 20 years. We typically teach IP strategy to business people and business strategy to IP people to bring these two groups into better alignment. We'll leave it to you to guess which one is easier. For the most part, business people typically are reluctant to participate in programs with the name IP in the title, though the ones that do are often the most satisfied. When we start to discuss IP strategy, both groups provide a typical set of responses when asked the question: What is intellectual property?

The answers typically fall into three categories, though there is often some crossover. See if you can spot the themes from the three different definitions below:

1. Creations of the mind, such as inventions, designs, artistic works, etc.
2. A category of property over intangible creations, such as patents, trademarks, copyrights, and design protection.
3. Intangible assets that produce business value when properly managed.

The first definition is what we call the "intangible resource perspective", as the focus is on the underlying intangible or intellectual creation. The second definition is what we call the "rights-based perspective", as the focus is on the specific legal IP rights. The third definition is what we call the "value-based perspective", as the focus is on the value that the intangible assets (i.e. both resources and rights) can generate for the business.

While these definitions are not mutually exclusive, they are definitely different, with rather large implications on how they are understood and organized in a company. For example, while many people define IP as "creations of the mind", there are no IP departments that have this scope in their companies that we know of. Furthermore, the work of inventing, designing, generating artistic works, developing a brand, coding software, and other similar activities typically occurs outside of the IP department. We could also start to question whether "creations of the mind," as broad as it seems, would actually cover the key digital assets of a firm (e.g. data and AI), so it is likely both too broad and too narrow for today's companies. The key realization from the Intangible Resource Perspective is that much of what is understood to be IP is created throughout the entire organization (i.e. almost everyone in the company is working with IP).

The Rights-Based Perspective is the most traditional and is narrowly focused on the legal rights. This doesn't mean that IP professionals with this perspective aren't aware that rights are associated with the underlying intangible resources; however, this perspective is likely to limit the focus of IP to the key legal operations of obtaining intellectual property rights (IPRs). While the Intangible Resource Perspective talks about IP as technology, the Rights-Based Perspective talks about IP as patents. These two perspectives, while not wrong, would likely lead to IP organizations with very different scopes. The key focus of the Rights-Based Perspective is protection, that is, intangible resources need to be protected by IP rights to protect the results of in-house creations.

This brings us to the Value-Based Perspective, which is the most overlooked in defining IP, but we argue, it is the most critical, as the creation of intangible resources and IP rights are costs that only

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becomes investments when they are linked to business value. Costs are meant to be cut, not investments. Without the Value-Based Perspective, IP departments will likely be organized around right-based metrics instead of the KPIs of the company's business. Since IP is ultimately a means to a business end, the key realization of the Value-Based Perspective is that IP must be measured in terms of business value, not only IP operations.

This is why we argue for a pragmatic, value-based definition of IP that combines a clear understanding of the value creation that the intangible resource in question brings to the business with the optimal control mechanism (e.g. IP rights) required to ensure that the highest value for the company can be captured. This pragmatic definitional model of IP, shown below, allows for the inclusion of evolving intangible resources and control mechanisms as businesses transform, while not losing sight of the focus on business value as the North Star. It also creates a holistic foundation from which to design an effective IP management organization whose main role is to create and capture value for the business.

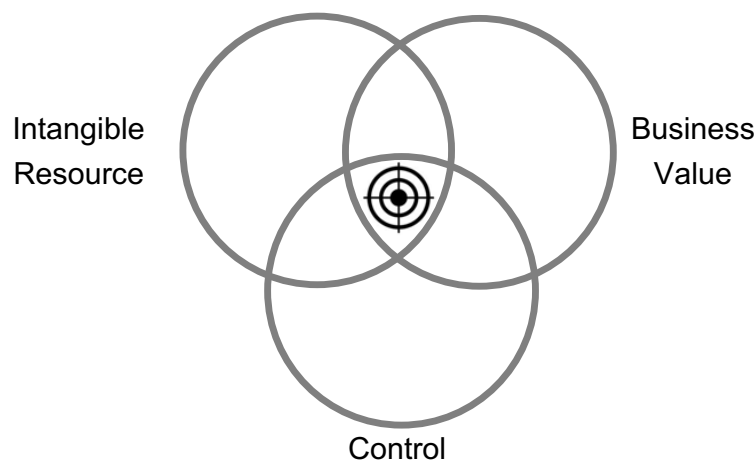


Figure 1. Pragmatic, holistic definitional model of intellectual property