

Intellectual Asset Management: From Information to Intellectual Property to Profit

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Introduction

Intellectual asset management provides a systematic approach for turning ideas and information into intellectual property and profit. While intellectual asset management (IAM) is not new, it has matured in recent years to become a proven methodology for significant increases in top line revenue. As a result, it has become a strategic imperative for most leading organizations.

Competitive intelligence (CI) professionals are uniquely positioned and skilled to provide key insights and analysis to the IAM process. With the CI perspective, IAM can be more effective in extracting value from and optimizing the company's intellectual assets. CI professional's participation and leadership in IAM will therefore enhance both the value of IAM and the value of the CI professional to his or her company.

This article provides the CI professional with a framework for efficiently approaching and demystifying IAM. Recognizing that successful IAM requires an interdisciplinary team, the article concludes with suggestions for building or refining an IAM team for your company.

Why be aggressive about IAM?

Leading companies in almost every industry have seen their top line benefit from IAM. Texas Instruments, Du Pont, Dow Chemical, Hewlett-Packard, Xerox, Eastman Chemical, Rockwell, IBM, Merck and Cadbury Schweppes, among others, have achieved significant profit increases from their IAM program. Billions of dollars in revenues have been generated from intellectual assets that are identified, managed and licensed through corporate IAM programs.

IAM is much more than a process for patenting and licensing inventions. Successful IAM takes into account all intellectual assets. These assets include valuable information and trade secrets as well as patentable inventions. For most companies, patents are just the tip of the iceberg. The bulk of intellectual assets are proprietary information, ideas and trade secrets.

Each step of an IAM process informs and directs the other, leading to greater efficiency with existing efforts. IAM provides a productive synchronicity between intelligence gathering, information protection, patent analysis and intellectual

property licensing. As a result, a company with an IAM process attains efficiencies in many business processes.

While the carrot of increased top line revenues, significant profit growth, and business process efficiencies is important, the stick of potential loss is particularly compelling in today's challenging business environment. There is a high risk of loss of intellectual assets and competitive advantage if an IAM strategy is not in place. IAM is a total business management approach that manages intellectual assets throughout the whole enterprise or organization for maximum value extraction (Kahn, 1998). Without it, valuable assets and profit opportunities fall through the cracks, or, more likely, get snatched up by competitive organizations who have instituted an effective IAM program.

What is the IAM business management approach?

An effective IAM business management approach consists of the following four components:

- 1) Identifying and extracting intellectual assets to determine the information and intellectual property that the company can exploit to increase revenues.
- 2) Protecting intellectual assets to ensure the company retains its proprietary rights to these assets as appropriate.
- 3) Optimizing the value of the assets to the organization.
- 4) Creating intellectual assets that are most likely to increase the company's profits.

IAM Business Management Approach

Why are CI professionals particularly suited to contributing to this process?

CI professionals play an essential role in each of the four components of an IAM strategy:

- 1) Identification of intellectual assets is often predicated on the answer to the question: What information would you want from your competitors? This is a question most adeptly answered by CI professionals.
- 2) Protection of intellectual assets, sometimes referred to as counter-intelligence, involves answering the question: How would you protect your company against a competitor like you? Again, CI professionals are best positioned to answer this question.
- 3) Optimization of intellectual assets requires significant analysis of the company's business landscape and opportunities for licensing and selling

- its intellectual assets. CI professionals are experts at the kind of analysis required.
- 4) Creation of intellectual assets that are likely to add to the company's bottom line is aligned with the company's core mission, not a distraction. CI professionals are best suited to formulating the burning questions that drive their company and providing the perspective to ensure the company stays on course.

Identification and extraction of intellectual assets.

Identifying and extracting intellectual assets is the process of determining the obvious and non-obvious assets that a company owns. Often as a company goes through a systematic process of inventorying its known assets, it finds many surprises. For example, a company might start an inventory by listing its patents and patentable discoveries. It then becomes clear that some of the company's most valuable intellectual assets are in the form of processes or know-how that are not patentable.

Examples that should be included in an inventory of intellectual assets are product formulas, manufacturing processes, new product plans, packaging specifications, product compositions, research direction, test methods, alliance relationships, business plans, strategic direction, vendor terms, competitive analysis, customer lists, marketing plans, sales projections, budgets, financial projections, pricing analysis, and employee lists.

Intellectual assets also come from widening the aperture of the lens used to see intellectual assets. For example, by looking to contractors and consultants who develop intellectual assets for the company, the company is likely to discover assets it owns that had not been considered.

In the process that links identifying intellectual assets to extracting them for profit, a company will often see opportunities to create new intellectual assets. A company can cultivate creativity, as discussed below, to create assets which can be identified and extracted for profit to the organization.

Protection of intellectual assets.

Turning information into intellectual property and then into profits requires a solid information protection strategy. Only by protecting information can it become intellectual property. Trade secrets, a primary form of intellectual property that is the basis of profits, can be established only if the owner takes reasonable measures to protect and keep the information secret. Patents, the other primary form of intellectual property that are the basis of generating profits, can only be obtained if the underlying invention or innovation is protected as a trade secret. The very nature of trade secrets and patents, which require a company to take

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active steps to protect them to establish rights, give them value and therefore profit potential.

Information protection is a balancing act, as demonstrated by these truths:

- 1) The most effective way to secure your company's information is to close down the company.
- 2) The most effective way to destroy your company is to freely reveal all of its information.

Unlike the straightforward process for filing a patent application, protecting information requires everyone with access to it to address the competitive tension between a company's need to share and its need to protect information. Information protection is therefore a process of striking the right balance between these two interests. Unlike the patent application process which can be administered by a few people in an organization, effective information protection requires active participation of all those with access to the company's information.

To protect information, each individual with access to it must use informed good judgment to balance the following interests:

- 1) Share information to: sell products, obtain good press coverage, interest potential investors, keep employees informed of the company's direction, collaborate with contractors and business partners.
- 2) Protect information to: maintain market differentiation, establish legal rights to intellectual property, prevent competitors from usurping benefit, protecting reputation, and avoiding liability for misappropriating the confidential information entrusted to the company by customers and business partners.

Striking this balance is particularly important in an environment where there are so many outsiders with an interest in the company's information. In today's competitive market, information is understood to provide insight, intelligence and competitive advantage. As a result, the marketplace is rife with competitors, customers, contractors, investors, business partners, former employees, industry and financial analysts, press journalists, vendors and even foreign countries seeking to learn as much as possible about the secrets of your company's success. Whether the outsider's interest is legitimate or malicious, the risk of loss is the same. It only takes one loose lip to sink the ship.

A marketing consultant in telecommunications needs information about the company's marketing strategy to do his work. The marketing consultant also has an interest in getting more clients in the telecommunications industry. The information about your company's marketing strategy and plans, as well as the problems addressed by the consultant and how they were solved, is all valuable information for promoting the consultant to his prospective customers. The

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competitive tension resides in determining exactly what to share with the consultant so that he can be most productive to your company without also being a big vulnerability.

The traditional model for protecting confidential information focuses on obligating, educating, providing reference material and holding accountable all employees. Components of the traditional information protection model include employee proprietary rights agreements, information protection policies and procedures, education and training, ongoing reminders, an electronic and physical security infrastructure, information protection reviews and audits, and termination procedures.

Under this model, the obligated, informed and accountable employee ensures that before any trade secret is disclosed to a non-employee, such as a contractor, customer, or business partner, the non-employee is required to sign a non-disclosure agreement.

There are significant problems with the traditional model. It does not take into account the dependencies we have on non-employees in today's business environment. In the previous example, we noted that the telecommunications marketing consultant needs the company's marketing strategy and plans to be effective. Many companies deal with outsiders who need access to information that is as strategically and tactically sensitive as the information made available to their employees. Yet the traditional model protects the information shared with non-employees only by requiring that they sign a non-disclosure agreement.

The new protection model takes into account the dependencies and collaborative working environment in which most companies operate. The new protection model addresses not only employees, but also contractors, business partners, vendors, customers, and any other stakeholders with access to company information. Non-employees, as well as employees, need to be not only obligated, but also educated and held accountable. Under the new protection model, we protect not only trade secrets, but any confidential information that may have value to the company.

Most importantly, the new protection model recognizes the importance of protecting information as an integral component of the company's IAM strategy. In a bear market economy, we need an information protection strategy with long term benefits. Specifically, the new information protection model now focuses on protecting information to maintain and grow competitive value, by growing market share through market differentiation, establishing rights to trade secrets and other intellectual property, preserving reputation and credibility and building a return on investment through a campaign for IAM profit opportunities. For many companies, full implementation of the new protection model is an aspiration, not

yet a reality. A best-in-class protection strategy requires that information and intellectual asset protection is:

- 1) Ingrained in corporate culture
- 2) Integrated into business processes
- 3) Facilitated by legal, information technology and security infrastructure
- 4) Applied to all stakeholders.

For many companies, implementing a best in class information protection strategy, which protects all of the company's business and legal interests in information and intellectual property, is too high a goal to hope to achieve. For these companies, taking reasonable measures, by applying due diligence to protect their information and thereby meet the minimum legal requirements for establishing intellectual property, is sufficient.

As noted earlier, protection creates value. In most cases it is the companies that have implemented a world-class information protection strategy that have also seen exponential profits from their IAM strategy.

Optimizing Intellectual Assets

Intellectual assets that have been identified and protected are intangible units of value. Each of these intangible units of value can and should be optimized.

Optimization may take many forms, such as:

- 1) Exploiting commercial value, by selling or licensing the asset.
- 2) Harnessing internal value, by keeping the asset as a differentiator, giving it away for promotion, or leveraging its internal strategic value.
- 3) Poisoning the well by publishing it and thereby making it impossible for other companies to use the asset for their advantage.

The analysis required to determine which of these options is most appropriate is necessarily based on the business objectives of the company conducting the analysis. Will an intellectual asset yield more profit if it is held internally as a trade secret or licensed externally? Is it more destructive to a competitor to publish certain information than it is productive to the company to hold it as a trade secret? These are the kinds of questions that need to be answered to optimize the profit potential of intellectual assets. The answers will be unique to each company asking the questions, determined by the company's strategic business objectives.

While the answers and the analysis are necessarily different for any company, the key questions are the same:

- 1) How can the intellectual asset be exploited to enhance revenue and profit?
- 2) How can we best align use of the intellectual asset with the company's business objectives and target market?

- 3) Can the intellectual asset be used to maneuver offensive competitive advantage?
- 4) How can the intellectual asset be used to increase the company's value to investors or business partners?
- 5) What use of the intellectual asset will provide the best incentive for the creation and capture of new innovation?

As indicated earlier, CI professionals are well suited to conducting the analysis needed to answer these questions and thereby determine the best intellectual asset optimization strategy for their company.

Creating Intellectual Assets

It may seem counter-intuitive to discuss the creation of intellectual assets after a discussion of their identification, protection and optimization. Here, however, we discuss IAM as a business management approach that facilitates the transformation of information into intellectual property and then profit. In this business management approach, creating intellectual assets is an intentional process aimed at developing the information that is most likely to result in valuable intellectual property that can be optimized for profit.

Similar to the new protection model, the model for creating intellectual assets takes into account dependencies on outsiders and collaborative business relationships. Creating intellectual assets, therefore, includes harvesting the intellectual assets created by partners, customers, vendors and suppliers.

IAM includes fostering creativity through incentives and recognition programs. It is often helpful to articulate the targeted burning questions that drive research and development into the most profitable areas. Creativity can also be fostered with real-time facilitation, encouraging, monitoring, and harvesting the intellectual asset developments that are most likely to reap the biggest profit rewards.

Tough Judgment Calls

IAM addresses some of corporate strategy's most important judgment calls:

1. **Identifying IP:** On the continuum between identifying all potentially valuable IP and only what is patent-able where does one draw the line? Identify too much and corporate resources are consumed wastefully. Identify too little and value is not captured or is lost.
2. **Protecting IP:** On the continuum between promoting the free and productive flow of information and avoiding wasteful leaks of valuable IP, where does one draw the line? Too much sharing and IP is lost; too little sharing and IP doesn't grow.

3. **Optimizing IP:** With finite resources to allocate to developing IP, by what criteria does one identify the best portfolio strategy? Which potential IP? How broad a portfolio? What to develop in-house? What to farm out?
4. **Creating IP:** On the continuum between expecting creative IP development from employees and promoting it through incentives, where does one draw the line? Expect too much and employees may under-produce, rely on incentives to motivate and they may also under-produce because their expectations are heightened.

The appropriate way to promote IAM varies from company to company depending on numerous factors including corporate culture, structure, leadership patterns, and economic position. In many cases these nuances make it particularly useful to consult with a specialist on IAM program development to devise the best strategy.

Next Steps

The intellectual asset management approach presented here provides a process for turning information into intellectual property and profits. CI professionals can contribute significantly to their company's ability to identify, protect, optimize and create intellectual assets that reap the highest rewards for the company. CI professionals spend years cultivating the skills to assess the value of intellectual property in their industry. It is time to turn those talents inward, to help one's own company identify, protect, optimize and create its valuable intellectual assets.

Most companies address many of the elements of an IAM program, but do so in a disparate and uncoordinated fashion that produces a non-optimal prioritization of intellectual assets. A first step toward IAM then is to inventory your company or division's disparate efforts and estimate what efficiencies could be gained through better coordination under an IAM regime. This inventory and estimate will prove invaluable in promoting IAM within your company.

An assessment in collaboration with IAM experts is an excellent way to begin, and can often be expensed under existing budgetary allocation for portfolio management, security, or legal. Typically such efforts are initiated by chief executives and senior members of the legal department, though CI professionals have also mounted the initial effort. With the results of such an assessment, an internal IAM advocate can formulate a vision for transition toward a comprehensive program for managing intellectual property, for achieving buy-in from internal collaborators, and convincing top management of the efficacy of the IAM approach.

For years now, there has been a voice advocating a broadened definition of the CI professional's work to include more than competitive intelligence and corporate espionage. IAM is the obvious avenue for such expansion.

About the Author

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Naomi Fine, Esq. is a nationally recognized authority in information and intellectual property protection and intellectual asset management. Her depth of knowledge comes from working with hundreds of world-class companies to assess needs, develop tailored strategies, identify sensitive information, establish policies and procedures, and provide training and tools which secure competitive advantage. Ms. Fine has been cited by Fortune, Business Week, Time Magazine, USA Today, The New York Times Cybertimes the LA Times and the Industry Standard as a leading expert in her field. Ms. Fine's work for MCI, Apple Computer and Tandem Computers has been described as exemplary in industry trade journals, including The Personnel Journal, The Sales & Marketing Management Magazine, and Security Management Magazine. Ms. Fine is an authoritative and enthusiastic speaker for many industry associations, as well as being a published author of numerous articles related to information and intellectual property protection. Prior to founding Pro-Tec Data, Ms. Fine was a business attorney counseling high technology companies on protection, licensing and other transactions related to intellectual property. For more information about Ms. Fine and her work, see www.pro-tecdata.com