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“Intellectual Property lies at the centre of the modern company's economic success or failure”

Lester Thurow : Economist

Trade marks & Brands

Patents & Inventions

Copyright

Designs

Database rights

Data Protection

Licensing and Franchising

Intellectual Property agreements

New Media Agreements such as directors and authors rights

Transactional Intellectual Property

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Making Money Out of Technology

by Elizabeth Ward
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Licensing is basically the grant of a right to do something, usually in return for a payment – also known as a royalty. Licensing is like someone owning a house and letting different parts of the house to different tenants. As with a multiple occupancy building, different tenants can be granted a variety of rights to occupy exploit and use some parts of the property. However, a licence does not grant the tenants any rights in the physical bricks and mortar of the property. The licensee has the right to use the patent, know-how, trade mark, design right or copyright etc, but the licensee does not own the legal title to it, nor (unless specifically permitted by the licence) are they often granted rights to grant sub-licences of the intellectual property.

Most people are vaguely aware of licensing through the software industry. At some point most people will have “clicked” to accept a Microsoft software licence or something similar. In fact, the wealthiest companies today are ones such as Microsoft and IBM which depend on “clicks not bricks” as assets. Licensing is therefore much more widespread than would appear at first.

Licences are widely used in the automotive industry. Licensing allows a car manufacturer to invest a great deal of resources in developing new technology such as new brakes or gearing and then to licence this technology to other car manufacturers in return for a royalty. This type of cross-licensing is widespread and by collaborating in this way many manufacturers can recoup the costs of research and development much sooner than they would by simply using the technology purely to their own advantage in their own products.

One of the most common questions asked is what is a particular piece of technology worth in terms of outright sale value or indeed when licensed what could one expect as a royalty stream. A number of factors affect this and it is essential to take expert advice. It is extremely difficult to value intellectual property and it is a very different process from valuing bricks and mortar. With tangible assets such as commercial buildings there will be an acceptable norm in any

particular locality for a type of building. Unfortunately, technology is often unique in the market place and it can therefore be a complex and time consuming process to fix any sort of value to it. To a certain extent the same happens with royalty streams although different industries do have accepted norms as royalty values. A number of accountants and solicitors specialise in this area and it is important to get the right advice early on so that negotiations can proceed on a proper commercial basis.

Factors affecting the value of technology will include the cost of creating the technology, the uniqueness of the technology, barriers for other people entering the market, whether or not the technology can be licensed and so on. When considering licensing it is vital to consider the income streams that are likely to be generated once the product is licensed. Obviously, products with mass market appeal can generate huge income streams even if the royalty payable on each individual item is very small. On the other hand, technology which is in a niche arena may attract a much higher individual percentage royalty payment simply because it is not capable of mass exploitation.