

The premium on perception

How various audiences see IP rights, and why, is starting to receive the serious attention it deserves

By Bruce Berman

Whether one sees copyrights, trademarks or patents as assets or threats largely depends on where one sits. But value is not simply in the eye of the beholder, nor is theft. Facts do matter.

The perception of IP rights by businesses, investors and other audiences is not a new field, nor is it an exact science, but it is finally starting to be taken seriously. Perception, known to affect value in everything from consumer products to collectables, is on the rise in the intangibles universe. Stakeholders are realising that even sophisticated audiences do not fully understand what IP rights generate and for whom, and that the growing hostility towards them has profound implications.

Some audiences refuse to recognise the integrity of IP rights. Whether this is simply a failure to communicate or a function of self-interest is unclear. More data is needed about how various audiences – not just IP professionals – regard intellectual property and what informs their perspective. Several recent reports suggest an immediacy about decoding attitudes towards IP rights and their accuracy.

Research results

The EU Intellectual Property Office surveyed 26,000 EU citizens in 2013 and again in a 2016 follow-up research report published this year, European Citizens and Intellectual Property: Perception, Awareness and Behaviour. The findings show that while 97% of EU citizens regard IP rights favourably, 41% of youths 15 to 24 believe that it is sometimes alright to buy counterfeits – and many say they do, particularly when cost is an issue.

Gregory N Mandel, dean of Temple University Law School, questions the accuracy with which audiences see the IP system. In two seminal papers he considers whether a system that is widely misunderstood can be effective. Mandel and his team conducted experiments with some 1,700 subjects, researching intellectual property and perception for more than a decade with some startling results: “The Public Perception of Intellectual Property” was published in 2015, and “What is IP for? Experiments in Lay and Expert Perceptions” was published this year.

“The Aistemos IP Strategy Report” (Quarter 2 2017), edited by Jeremy Phillips, provides additional useful data points regarding intellectual property and perception. “What is the level of understanding of intellectual property (IP) within companies?” asks the report, concluding that it is: “A tangible recurrent theme, that IP is important to more sectors and more companies than ever before.” Participating in the survey that led to the report were more than 70 large IP owners working within major corporations, including BAE Systems, Siemens and Bayer, small and medium-sized enterprises, professional services and financial services firms.

In a report published earlier this year that examined

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how patent disputes are covered by the technology, business and general media, the Center for Intellectual Property Understanding (CIPU) found that the technology media tends to be more subjective than other business or general press when it comes to reporting on patent infringement. “Patterns in Media Coverage of Patent Disputes” examined 127 articles published in 2016. CIPU, on whose board I serve with current or former executives from Microsoft, IBM and Philips, is holding the first IP Awareness Summit in Chicago on November 6 2017 in an effort to understand the disconnect in IP understanding. A diverse group of rights holders, scholars, organisations and business schools will participate.

IP education

Perhaps the most compelling evidence about the US need for IP education was co-written by a Canadian researcher, Dan Breznitz. “What the US should be doing to protect Intellectual Property?” appeared in the *Harvard Business Review*.

“IP education. Engineers, managers, and entrepreneurs need to understand what intellectual property is, why it’s valuable, and how it can be deployed in the global economy to the greatest advantage,” writes Breznitz. “Therefore, governments at multiple levels in the U.S. should ensure that citizens have easy access to IP education... China already does this. Since 2010 China has had a national IP education program that offers curricula for specialized academic programs including individual courses and graduate degrees... Although China has not always acknowledged the value of intellectual property – whether Chinese or foreign – programs like this are helping China shift its status from IP offender to IP leader.”

Permissive environment

IP professionals have done an exceedingly poor job of explaining patents and other rights to key audiences, including their own boards of directors and shareholders. Perhaps they are fearful of setting the stage for future accountability?

A permissive environment for IP infringement is becoming increasingly acceptable. Certainly, the Internet has played a role by providing ready access to almost everything, to everyone. Rights holders may be partially to blame for allowing audiences’ cavalier attitudes toward intangibles become the norm. Intellectual property is not just for lawyers – it affects everyone. A wide range of audiences need to understand IP right from wrong, and this needs to start early.

The laws governing patents, copyrights and trademarks are not a form of fake science for people to decide to respect or not as they see fit. IP theft may be subject to some interpretation, but it is not in the eye of the beholder. Permitting it to exist in a grey zone between fair use and stealing benefits those few businesses with sufficient brand recognition and market share not to need IP rights, and threatens the future of those that do. iam