

Short-changing intangibles – a risky business

Renowned economist and entrepreneur David Teece speaks out about the high cost of short-term thinking around IP rights

By Bruce Berman

Poorly designed IP systems are a threat to technological progress. When IP rights are routinely infringed by businesses and consumers, and clouded by antitrust issues, creative and inventive activities are undermined. When this happens, the most creative and inventive society – the United States – has the most to lose.

That is the perspective of David J Teece, a prolific scholar, economist and entrepreneur who is director of the Tusher Center for the Management of Intellectual Capital at University of California (UC), Berkeley's Haas School of Business. In a recent working paper titled "A Short Note on Intangible Assets and Intellectual Capital" (July 2017), Teece put into perspective the dilemma faced by economies that fail to recognise the importance of intangible assets.

"We are at a critical junction in the evolution of our society and the economy," he writes. "If we continue to protect and reward just the production of tangible goods (objects), while shortchanging intangibles (ideas, inventions, creative works, know-how, relationships, etc), we will be out of step with technological progress and the march of civilization. Economies will eventually stutter if the creation of intangibles is compromised through poorly designed and weakly enforced intellectual property rules."

Teece goes on to say that if IP rights continue to be undermined, "creative and inventive people may have to revert to making a living by producing tangible assets (objects) within large vertically integrated firms. This would put our skilled and creative people in competition with robots and low wage workers."

He argues that weakened IP rights would undermine licensing as a business model and force R&D and creative firms backwards. The result would be more large-scale, vertically integrated firms paying low wages, with the landscape defined by lacklustre growth. Smaller creative and inventive firms would tend to die off without the resources, capabilities or passion to compete. The legislature and the courts need to appreciate the growing importance of intellectual property and artificial intelligence, the Internet of Things and 5G mobile networks.

Better recognition

Teece has long been a proponent of better management of and protection for intellectual capital. He has been a scholar of innovation studies since the 1970s, when this was unfashionable. His book, *Managing Intellectual Capital*, laid out elements of his theories. In 1988 he founded the Law and Economics Consulting Group with his fellow UC Berkeley faculty members, which grew to 700 employees in 11 countries. The group went public and was eventually sold to Navigant Consulting. In 2010, Teece founded the Berkeley Research Group, which

now has more than 1,200 employees worldwide. As an expert, Teece has opined in many seminal cases, including *Napster*. In 2012, he provided expert testimony regarding damages in *Apple Inc v Samsung Electronics Co, Ltd*.

Teece has been recognised by Accenture as one of the world's top 50 business intellectuals; he has published more than 30 books and 200 academic articles and scholarly papers. Google Scholar indicates that he has been cited at least 120,000 times.

In November 2017, Teece presented the keynote speech at the first IP Awareness Summit in Chicago. The topic was "IP rights erosion: a growing threat to US economic leadership" and he was candid about the need to improve public understanding of intellectual capital. "The increasingly specialised economy we live in has led to the demise of vertical integration," said Teece. "Manufacture and design have become separated. Innovators like inventors, authors and other creatives – as well as innovative businesses – need a system that can be relied upon to capture value."

He suggests that corporate governance is partly to blame for the erosion of IP rights. "Short-term thinking pervades many public companies. Indeed, many investors today hold shares only for minutes if not micro-seconds. Public capital markets are dominated by a trading ethos. Shareholders with a longer-term view are hard to find today, and managing intellectual capital appears to be less of a priority for management, beholden to quarterly capitalism. Big companies are no longer the bastions of IP rights they once were; today, most use much more of other people's IP than they own."

Yin and yang

The absence of a reliable IP system could have a disastrous impact on standard-essential patents and other rights. In some industries, free-riders are not only tolerated but celebrated. The theft of intellectual capital takes many forms. Both business and consumers are responsible and, in some jurisdictions, government and courts are complicit in denigrating the contribution of inventors. "There is a 'yin and yang' between antitrust restrictions and IP rights," continues Teece. "Getting an injunction is much harder than it should be. Not surprisingly, 'no pay' or 'slow pay' is becoming the norm."

Teece believes that that improving awareness of and attitudes towards intangible assets ought to be part of industrial and innovation policy debates. Nations that rely on creativity, he argues, must be vigilante in maintaining systems that permit innovation, authorship and creativity to thrive.

The Tusher Center is working with the Center for Intellectual Property Understanding and others to identify awareness activities that will serve to educate businesses, consumers, investors and others about the consequences of eroding IP rights. The groups believe that a coordinated effort is more likely to change perceptions about the role of intellectual property and its big brother, intellectual capital. **iam**

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