

# Mind the gap – the high cost of low credibility

The IP community has failed to connect with CEOs, investors and the public who are sceptical that IP rights matter – it has a responsibility to prevail

By **Bruce Berman**

IP holders and creators who are quick to complain about disrespect for IP rights have done surprisingly little to increase the understanding of what intellectual property achieves. They have failed intellectual property in the most important venue – the court of public opinion.

Rather than discussing among themselves the disconnect between IP awareness and understanding, those who know better should do better when it comes to providing context. IBM chief patent counsel, Manny Schecter, a member of the board of directors of the Center for Intellectual Property Understanding and the Intellectual Property Owners Association Education Foundation, believes that IP professionals – whether they are lawyers, inventors, authors or analysts – have a responsibility to share their knowledge.

Schecter told a group of IP experts gathered at the Intellectual Property Awareness Summit at Columbia University that intellectual property is suffering from an information gap that is encouraging doubt and weakening rights. “Everybody in this room who understands intellectual property has an obligation to help others who need to know about it to learn”, he told the audience gathered in the Columbia Journalism School. “If we want our competition to respect our IP rights, we need to respect theirs. If we want other nations to respect us, those countries need to see us in the United States behaving towards each other as they would like to be treated.”

Inventors such as Josh Malone and songwriters such as Taylor Swift have helped to shine the spotlight on IP abuse and to better the lot of fellow creators. Some lawmakers, including Senator Chris Coons and Congressman Doug Collins, have made strong IP rights a priority. But for the most part, IP professionals have thrown up their hands in frustration – which is a big mistake. To improve the way that IP rights are perceived, they must be regarded as more than a blip on the CEO radar. Appropriate IP behaviour is a financial and moral imperative, not just a legal one.

## Step up

There is broad agreement that intellectual property is among our most important resources. Yet both individuals and businesses remain largely hostile towards IP rights and are reluctant to pay for them. Bad IP behaviour is built on ignorance and fuelled by agenda. It is no surprise that IP abuse has become widely accepted. In a fast, digital milieu where images, content and fakery abound and rules are uncertain, inventions are licensed only when they are required under threat of litigation, respect for the role of intellectual property and the rule of IP law has been eclipsed by greed.

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The issue is not so much how we got here, but how the negative effects can be mitigated. With so much at stake people with IP knowledge must step up and find new and better ways to connect with stakeholders.

Senior management and investors are important because they are in a unique position: they have the power to compel businesses to recognise the legitimate IP rights of others, whether in relation to inventions, content (eg, recorded music and authored works), branded products or know-how. Businesses must find a way to behave that balances profit with respect for legitimate competition and faith in the future. Quarterly earnings are only a part of the picture.

## Social contract

Just as some funds refuse to invest in companies that engage in the sale of tobacco, treat the environment poorly or do not support equality in the workplace, investors should draw the line with enterprises that consistently undermine the IP rights of others and do not respect an unwritten social contract.

Boards of directors must be more mindful of not only how their businesses manage IP rights but also how they recognise the IP rights of others, both businesses and individuals. Inclusion is as important to creativity as it is to diversity. Corporations did not become more diverse overnight. It was hard-won over many decades. Eventually, businesses realised that inclusion was not only right but smart. Fostering an ecosystem that facilitates invention and creative expression and that encourages products and services from new sources helps industries to grow.

As Schecter concludes: “We [IP professionals] must overcome confusion, misinformation and our own rhetoric, as well as pressure from clients not only to speak honestly and respectfully, but to act in the same way. Our future and economy depend on it.”

## It starts with us

There is evidence that we have started to recover from the devaluation of patents and patent licensing, which was an overreaction to the more level playing field that emerged in the mid-1980s and lasted until the mid-2000s. This period of opportunity led to innovative enterprises, such as Microsoft, Apple, Amazon and Google, but also enabled some of those who had built soaring tree houses to pull up the ladder behind them.

Leadership starts with us in the IP community. Schecter points out that responsible IP professionals will not only act but lead. They need to find ways to communicate earlier and more effectively with a range of IP stakeholders. Helping audiences to connect the dots when it comes to intellectual property is as much an opportunity as it is a test of character. **IAM**

*This is my 96th and final intangible investor, although I will be contributing to IAM in the future. I am grateful to IAM and Jeff Wild for entrusting me with the column, which has appeared in every issue of the magazine since it was founded in 2003.*