

Services

Intellectual Property Auditing

THE UTILITY OF AUDITS

Our firm conducts intellectual property audits in a wide variety of industries for clients and stakeholders such as those discussed below.

1. Buyers and Sellers

Buyers and sellers can benefit from a legal and management audit when they seek to:

- Buy or sell assets, companies or businesses
- Make deals involving technology or knowledge intensive assets or businesses
- Assign or sell a right to make, use, distribute, market or sell a product, service, invention, technology, system, franchise or other intellectual property asset

2. Owners and Managers

Owners and managers can benefit from a legal and management audit when they seek to:

- Conduct a feasibility study
- Depend on intellectual property as a store of value or tradable asset
- Require a valuation for a litigation matter involving intellectual property
- Experience market share erosion from infringements, knock offs or pirated copies
- License intellectual property
- Test grounds for legal risk
- Establish a domestic or international distribution arrangement
- Consider changing the tax status or accounting method for their technology and other intellectual property assets
- Give personal guarantees

3. Investors and venture financiers

Investors and financiers can benefit from a legal and management audit when they seek to:

- Fund a start-up or spin-off
- Finance a technology-based business
- Consider accepting a security interest in intangible assets, eg a charge over IP
- Enforce contracts
- Evaluate a portfolio of trade marks, patents, designs copyrights or trade secrets
- Enter a joint venture or other collaboration involving ownership of a product, service, invention, technology, system, franchise or other intellectual property asset
- Underwrite an initial public offering

THE NECESSITY FOR IP AUDITS

Dilanchian has extensive experience in conducting intellectual property audits. They are necessary for the reasons overviewed below.

- 1. IP defects require discovery** Defects in intellectual property assets are not as easily observed as defects in physical assets such as buildings and equipment
- 2. Legal liability** The office holders of organisations, such as company directors, have been legally held liable by shareholders and others for both action and inaction, especially as regards failures in risk management
- 3. Increased exposure of sellers** The development of common law and statutory law have in recent decades reduced the prior wide scope of the common law's "buyer beware" principle
- 4. Inadequacy of warranties and indemnities** The complexity, duration and costs of litigation have seen increased focus on due diligence and mediation mechanisms to avoid risks. Rarely should there be just reliance on written provisions in warranties and indemnities
- 5. Valuation depends on protection** The value of an intellectual property asset is often greatly dependant on how well and securely it is legally protected and this can be assessed with a good legal audit
- 6. Inadequacy of valuation methods** Use of metrics to value intellectual property is useful but often questionable. Subjective impressions, such as hunches and intuition based on experience and following due diligence, sometimes provide an alternative and more helpful guide. An outcome of a thorough due diligence process is information which helps both evaluate and value assets.