Category: IP, Technology & E-business
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Human resources managers can do many practical things to protect an organisation's intellectual property.

Few do. One reason is that HR professionals and boards know too little about what IP is and how to benefit from it. So here's a simple list of tasks that will increase the value of the HR function and minimise legal costs from disputes or litigation.

Implement these tasks and you'll be using law and lawyers for fire prevention. (It usually costs much more if you only use lawyers for putting out legal fires.) You'll also make important links in your organisation between intellectual property and the people who create it for the organisation.

1. Understand IP categories for organisational assets

As intellectual property ("IP") and intangible assets are valuable for most organisations, how important is it to recognise and manage the impact of those laws on affected assets?

- "Very, " is the short answer.

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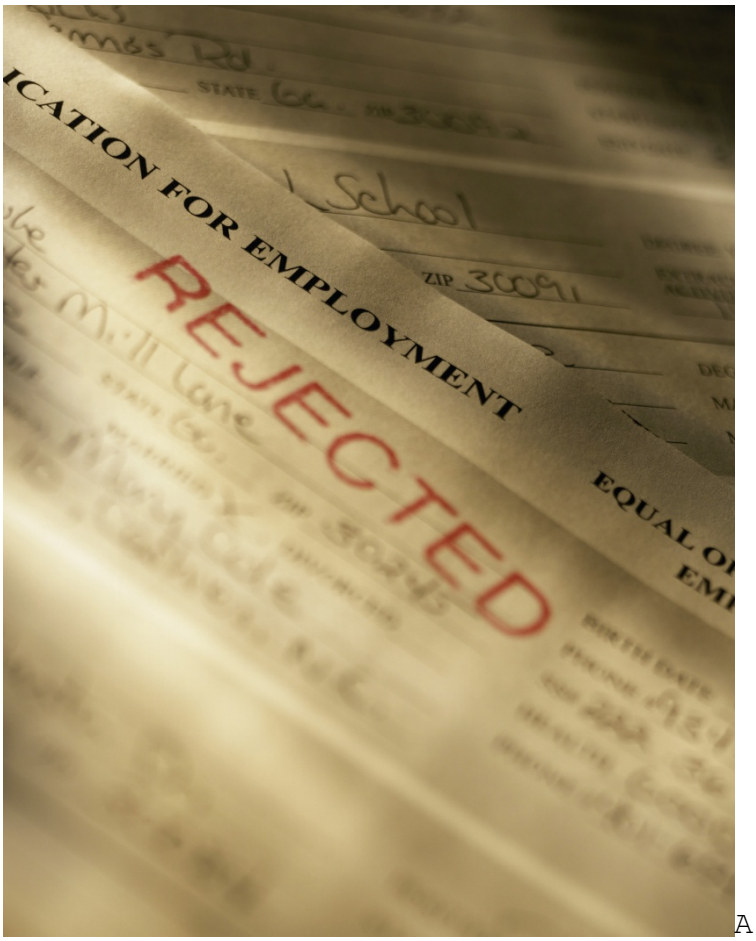
- 

A key task is to understand the categories of IP and what they protect, at least for these categories - copyright law, trade mark law, patent law and confidential information law. There are other IP laws, but that's a start. See Intellectual property defined.
- There is no separate legal category for "IP" law as such, it is just an umbrella word for the categories.
- The importance of each category varies industry by industry, eg patents are crtical for organisations making inventions. Hence the role of a HR manager - working with consulting lawyers - is to customise HR practices to suit the type of IP that is most important for his or her organisation.
- Now comes the key task - connecting know-how about the relevant categories of IP to the specific industry, types of activities and assets of the organisation which needs to do more with and to its IP.
- Exporters and importers need to be aware that some countries have additional laws to consider that in a practical sense overlap with the operation of IP law (eg publicity rights, trade practices laws, and customs laws).

2. Put umbrella policies in place

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How important is it for organisations to have appropriate policies in place to deal with risks to IP and what role should HR professionals play?

- "Very, " is the short answer.
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Too few organisations have policies in say a Policy and Procedures Manual. Those that do, and do them well, benefit from having the manual as a safety net to overcome workplace issues - before they become disputes, let alone litigation.
- Policies can be grouped into one manual or extranet area. Alternatively different policies, or extracts from the main policies, can be placed where or for who they are most relevant. For example, it is a good idea to have a policy or procedure that is noted when anyone in an organisation is considering registering a domain name or trade mark.
- Policies are a good place to put fundamental requirements or at least some reference to rules or guidance for treatment of intellectual property by all organisational personnel.

3. What to include in specific IP policies

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What areas should be included in a specific organisation's IP policies?

- All areas of IP law as apply given the nature of IP in the relevant organisation.
- One topic to cover in all policies is information on how an organisation expects its trade secrets and confidential information to be treated. I would argue that their value in the Australian and global economy vastly exceeds the value of all other categories of intellectual property put together. They are not capable of legal registration, but they can be documented.
- What gets registered often gets measured. This can lead to over-emphasis on trade mark, domain and patent registration. There's a lot of noise about those areas, including from professionals. Yet documenting say a valuable methodology or secret recipe (both can be confidential information) can be vastly more important for many companies.
- It is remarkable that organisations accept employees doing work on their own mobile phones. When the employees leave with those phones and numbers they walk away with the customer list in the contact database.

4. What to include in employee training in IP

What areas should be part of employee training on IP?

- Training should cover know-how needed to own, control and use IP in practice. This is not necessarily something most lawyers, even IP lawyers, are skilled in. An organisation's staff with decades of experience in their organisation would be a store of enormous know-how on how the organisation goes about doing its business. That know-how will inevitably connect to the creation and protection of IP in the organisation. Before training topics are finalised it is vital for trainers and others to obtain feedback from these people with "corporate memory".
- Often central to training is know-how is preparation, storage, sharing and management of documentation. This is part of proper knowledge management. The documentation includes emails and other correspondence, reports, file notes, and contracts as well as records in various software programs (eg contact database, customer relationship management (CRM) system, and content management system (CMS) for web materials.
- Critical for such documentation and records tasks are training on know-how for IP identification, monitoring and collation; how to write, check and keep records; and how to manage and keep up-to-date basic data in registers (eg of domain names, trade marks

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and patents). Remember, intellectual property is "intellectual", if it is not recorded in some fashion it is difficult or more expensive to protect or register.
- A great time to begin training is during the induction process, a time when most employees are listening carefully. The focus of training should be on practical things such as record making, keeping and sharing.

4. HR systems for IP – from staff recruitment to exit

What HR systems should be in place to cover IP issues from recruitment to exit?

- If the set of properly prepared and integrated foundational documents is in place (see question 4), they make sensible and economical management of IP feasible. The less this is done, usually the greater the mismanagement of IP.
- A recurring instance of mismanagement of IP exists exists when organisations ask their lawyers to race off to court to get an injunction to protect organisational assets against a departing employee. Nine times our of 10 those requests arise due to IP management documentation and training being non-existent, insufficient or poor.
- A non-competition or restraint of trade clause in an employee contract does not get assessed in a vacuum by courts. Instead courts can and do often consider to full range of documents that might be read together to collectively form the "employment contract". Lesson: drafting good restraints of trade is a process, not a cut and paste job.
- On the foundation of those documents an organisation should have in place its suite of employee contracts and related legal documents. They include such items as an offer letter, terms and conditions of employment, and job description.
- Organisations that don't comply with the last three bullet points have more problems protecting assets when employees depart or contracting intellectual property.

Takeaways on IP Management & Protection

In conclusion, human resources professionals have a lot to gain for themselves and their organisation by strengthening the virtuous circle that exists between identifying and treating links between three things.

First, what's important to an organisation and its business objectives, including what assets are its current and future focus.

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Second, what policies, documents and contracts are relevant to those objectives.

Thirdly, how to weave IP know-how into the organisation's strategy, policy and procedures in ways that really are quite simple, actionable and enormously valuable for performance improvement and achievement of the objectives.

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