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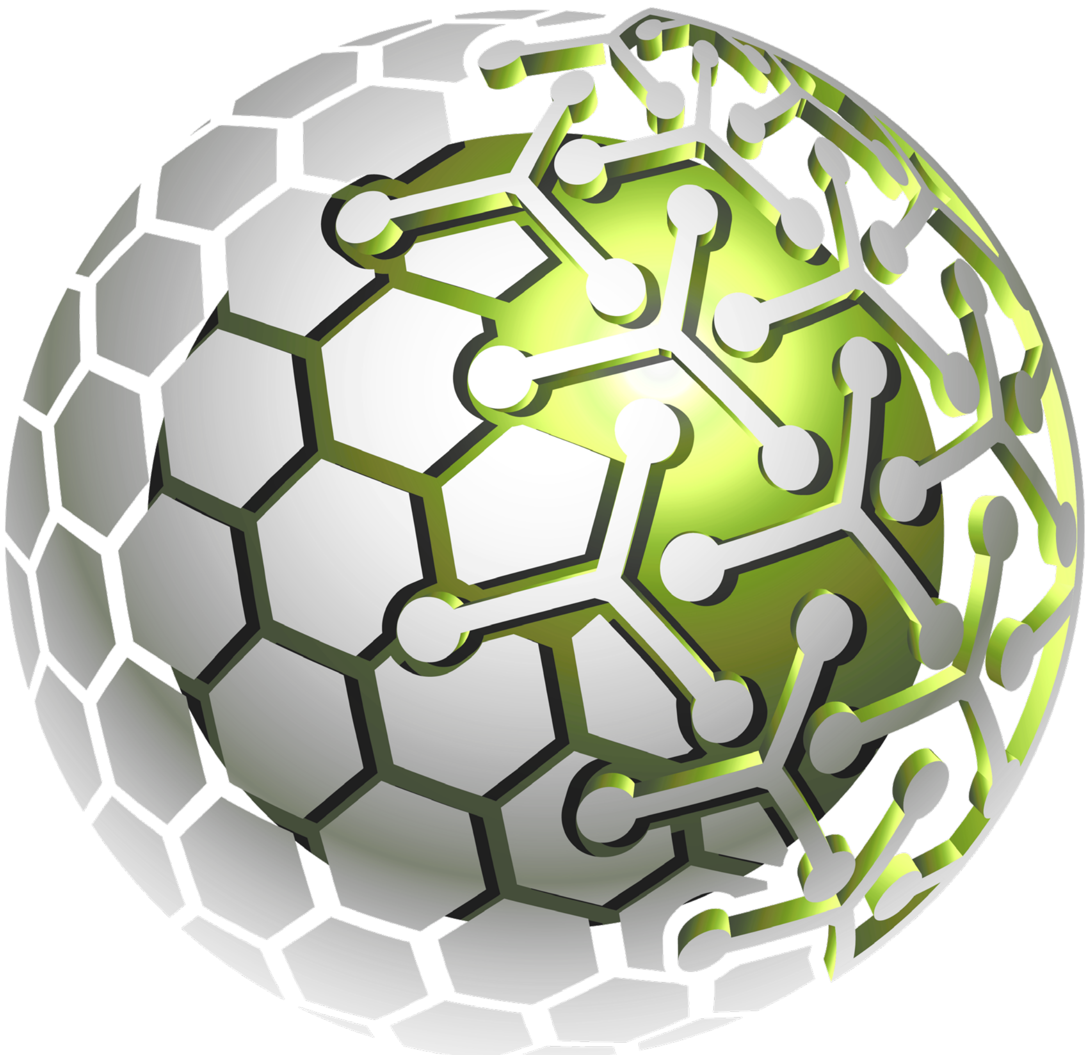

Identify. Protect. Exploit.
The impact of intangibles—unlock unseen value

February 2024

For many of the world's largest and most valuable businesses, **more than 90% of their assets are anow classified as intangibles**.* Advances in digital transformation and the digital economy, and increasingly artificial intelligence (AI), have driven an exponential increase in this percentage. These critical assets are typically undermanaged, and there is an opportunity for businesses to use them to drive significantly more value. However, doing so requires a fundamental shift in how both traditional intellectual property (IP) and growing broader intangible data is viewed and managed. This shift is closely aligned to the transformation that has also taken place in the General Counsel (GC) and Chief Legal Officer (CLO) role, from risk guardian to business driver.

A narrower view of a company's intangible investments is now outdated. A focus solely on efforts to manage and defend IP rights such as patents, copyrights, and trademarks leaves out a vast landscape of intangibles that may represent immense value for a company. Intangibles now extend beyond just considering IP—it's about more than just protecting what your business creates. A broader view must include digital, data, AI capability, and brand and reputation. And as GCs and CLOs are increasingly more responsible for better business outcomes, intangibles represent an opportunity to shift legal from a consideration to a business enabler.

An industry-agnostic opportunity

In today's dematerialized economy, institutional knowledge and intellectual capital are integral to value.

This value is perhaps easiest to grasp when looking at software or social media companies, or makers of high-value technology products that own no factories. These are among the most valuable corporations in history. But investment in intangibles management is increasingly important for growth and value creation for companies outside the direct technology sphere—across industries ranging from retail to healthcare to manufacturing—where technology continues to be transformative.

The growing impact of intangibles on businesses and the economy can hardly be overstated. Intangibles today have a greater role than tangible assets in the creation of value in both manufacturing and services.*

With all of this in mind, every company should be examining how best to protect and manage its intangible assets. Many companies have yet to fully grasp the importance of proper stewardship of intangible value to their future growth and success. In fact, 94% of respondents to Deloitte's recent IP 360 Survey said their company doesn't have a formal process for asset monetization, only one that is largely ad hoc.

The effort should go beyond the traditional focus on the legal protection of IP rights, which takes place as a registration process or mostly in reaction to specific events, such as a trademark infringement or the purchase or sale of assets. Rather, efforts should tap internal legal resources—who only 46% of respondents of the IP 360 Survey say are currently looped into strategy discussions—and external legal and business partners, working in coordination to identify, protect, manage, and commercialize intangible value.

*Jonathan Haskel and Stian Westlake, authors of the book *Capital Without Capitalism*. The trend has only accelerated in the past two decades, and spread around the world.

Taking a business-first approach to intangibles

1 *Identify* intangibles across the organization

As it becomes increasingly important for every company to manage and enhance the value of intangibles, it's essential to know what intangible assets the organization has and where they reside.

But cataloging the registered rights—the patents, trademarks and designs a company holds—is not enough. **The growing importance of intangible assets creates a complex environment, and every company needs a holistic and multi-disciplinary approach supported by appropriate legal and business expertise.**

The first step should be to undertake a broad examination or audit of intellectual capital, encompassing knowledge and know-how, relationships and networks, human skills, organizational culture, and more. This review should also address data, systems and software, reputational assets, research and development insights, know-how, trade secrets, and other confidential information.

The scope of a company's intangibles will have increased significantly in just the past few years. As business models were adjusted in response to the pandemic, digitalization came to the fore. Digital transformation and innovation, of course, give rise to increasing volumes of intangibles. A company may have, for example, developed an entirely new digital customer channel or a software system that improves supply chain reliability. These are intangibles that need to be mapped and managed.

According to the IP 360 Survey, the number one intangible asset that drives competitive advantage was viewed to be know-how. And data is consistently under-valued as a driver of revenue and value, but rarely will a business have a clear understanding of what specific revenue and growth is underpinned by these assets.

So there is room to expand the depth and frequency of reviews of intangibles covering far broader asset classes. Due to the ever-increasing rate of innovation, more regular reviews will help companies keep their intangibles strategies up to date and their portfolios aligned with business objectives. There is also potential to reference quarterly or annual review of intangibles portfolios as best practice, to ensure alignment and proper use of funds as strategies, competitive environment, and the landscape changes—which now happens faster than ever before.

This is a significant shift of approach that will require investment and upskilling. Auditing of the value created by a company's investment in intangibles may be a starting point, defining for the organization where pockets of value lie. A next step after that involves the dissemination of knowledge about the scope and importance of the intangibles throughout the organization.

② *Protect* the value of intangibles

The risks a company faces to the value of its intangibles have never been greater.

It has become more difficult to protect new technologies, intellectual capital, software, data, and other intangibles using traditional methods. Indeed, the protection of intangible value can no longer be seen as a technical, legal topic, related primarily to IP rights, driven by events, and attended by lawyers and other specialists. Real-world data shows this view still reigns, as 49% of IP 360 Survey participants (IP teams) reporting to the GC indicate that IP is largely perceived as a legal function.

Rather, intangibles need to be viewed as something that will permeate corporate strategy and policy as well as drive growth and market share. Across the organization, leadership should be primed to leverage a broader range of systems, processes, and controls to manage and deploy the value of its intangibles.

Critically, intangibles that are not protected by traditional IP rights may be particularly vulnerable to cyber threats, which are increasing in volume and growing more sophisticated. Along with all the other good reasons to boost the focus on cybersecurity, data policies and internal controls, a company must now also consider the protection of its intangibles. Digital assets may be particularly easy to copy or steal, giving more urgency to their being identified, managed, and protected.

Intangible value management—in practice

Manufacturers in the automotive sector are likely to find that current trends, such as the development of autonomous driving or the shift to electric vehicles, are filling their portfolios with new IP assets and other intangibles. With the companies' technology and data residing close to the consumer in millions of vehicles, they may be vulnerable to infringement, tampering or hacking. A proactive response to protect car technology might include advanced encryption to limit access. An appropriate intangible value management framework would include the deployment of systemic controls to protect assets from infringement, cybercrime, and reputational risk, preserving the value of the investment in intangibles.

Key takeaways:

Identifying and examining intangible assets can enhance the understanding of value drivers, enabling better decision making and investment strategy. Systemic controls are important in the management of intangibles.

③ *Unlock* intangible value

Proper intangible value management may require a company to develop and master new managerial skills and capabilities to manage and deploy key assets and capabilities effectively. There may be human capital needs or opportunities to reach outside the organization for expertise in order to fully capitalize on the value of the organization's intangibles.

Conventional accounting practice mostly does not measure intangible investment as creating a long-lived capital asset. But the value of intangibles can nonetheless provide a long-lasting benefit to a company. There are growing calls for more transparency around intangible assets in financial statements, especially given their importance in the capital markets. Organizations should be looking beyond just their IP, seeking to understand and articulate and report how their broader intangibles drive business value. They should be considering and clearly articulating the role that intangibles plays in business strategy.

The value potential of intangibles will not always be obvious to all the leaders and managers in an organization. For example, the IP 360 Survey found that 51% of participants are not monetizing their data assets within their own business. 64% of respondents also said their companies aren't seeking out monetization opportunities across the breadth of IP rights, licensing, selling, and commercial contracts; this was consistent across all industries.

It can be useful to pursue a discrete initiative to spread knowledge of how a company has invested in intangibles—and all the places where the value of these investments may surface. Greater understanding across the organization of the value of the company's intangibles will naturally foster their deployment and leverage. This is a cultural shift: how the intangibles are viewed internally has everything to do with how they will be protected, supported, managed, and commercialized.

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Maximizing value with a new mindset

Intangibles management that takes the broadest view of where value resides and how intangibles can be enhanced and commercialized will bring advantages to every organization. This proactive approach can help a company find its best growth path, while also avoiding pitfalls that might squander the investment it has made.

To ensure that the value of its intangibles will be recognized, protected, managed, and leveraged, a company should develop its internal resources, overcome existing siloes, and ensure their intangibles strategy—or ideally their overall intangibles strategy—is not something held within the IP team but flows across the whole business (the IP 360 Survey revealed that 60% of IP strategies are not even shared with the C-suite). The goal is to develop a clear picture of the intangibles the company has in its portfolio, the know-how it possesses, the hidden intellectual capital it holds—and to have a clear strategy to preserve and use all of these to further its business goals and create the greatest value and market share.

Intangible value management—in practice

The business of media streaming companies involves vast amounts of intangibles, including brands and copyrighted product. At the same time, it depends on intellectual capital and digital assets, including human knowledge, data, algorithms, and machine learning that may be vital to the customer experience. This situation demands a framework for intangible value management that can identify and understand how these intangibles underpin the business. That framework should help organizations develop the systems, processes and controls needed to protect intangibles and create value from them. Many assets cannot be protected as IP, meaning that a wider set of controls, encompassing contracts, company policies, and awareness training, will be needed.

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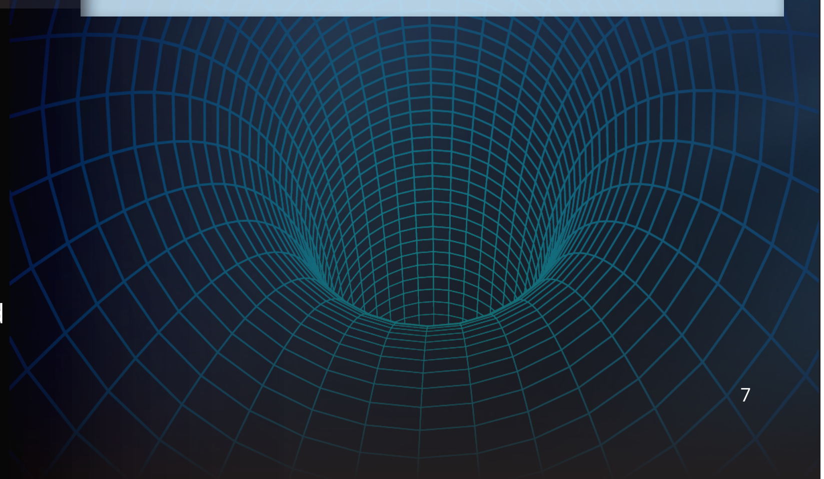

Deloitte Legal can help

At Deloitte Legal, we help clients respond to the challenges of intangible value management, combining global legal expertise in intangibles with business outcomes in mind and advanced technology. We deliver a holistic, end-to-end suite of services and solutions to increase corporate value.

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