

GUIDE TO IMPROVING YOUR IP PROTECTION PROGRAM





This is a preview of the Improvement Guide for CREATE Leading Practices for IP Protection. The full 200+ page guide has specific recommended steps and resources for improving the management systems to protect IP. For more information about CREATE Leading Practices, please email: info@CREATE.org

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CHAPTER 1

Introduction to IP Protection: **RISKS AND BENEFITS**

The CREATE Leading Practices *Guide to Improving Your IP Protection Program* provides practical, step-by-step advice for improving how your company manages and protects intellectual property (IP). This guide offers different things for different people. For people with a legal background, it offers an introduction to using management systems to enhance your company's IP protection program. For those familiar with supply chains and enterprise risk, it offers insight into how existing management systems can be expanded, or new ones created, to encompass IP protection. The guide shares today's leading practices on protecting IP and describes how your company can adapt a proven management system approach.

Ultimately, a problem as challenging as protecting IP requires a multi-pronged approach involving governments, as well as companies. Clearly, governments and the rule of law are a critical aspect of protecting IP. But there are very specific actions that you can take today to improve IP protection in your company and in your end-to-end supply chain. It is time to take action. Our hope is that as more companies realize they have the power to drive change, it will begin to create a culture of improved IP protection.

THE CHALLENGE

IP makes a company more valuable, innovative, and competitive. But for many people, the idea of IP is vague. It is hard to picture. Throughout this guide, when we refer to IP, we are referring to very specific, valuable assets that fall into the following categories:

- ▶ Trademarks
- ▶ Copyright
- ▶ Trade Secrets
- ▶ Design Rights
- ▶ Patents

Increasingly, companies of all sizes are developing their own IP. In fact, many small companies rely on a single product design or manufacturing process for their success in the marketplace. Think about the IP your company has developed that gives it a competitive advantage.

Government leaders around the world are realizing the critical importance of developing indigenous IP as a key to driving economic growth. They are creating incentives for domestic companies to do research and development and to innovate. Governments are also realizing that protecting IP rights is becoming essential for all companies doing business in their countries—both domestic and multinational firms.

International trade and investment involve the constant flow of capital, information, technology, raw materials, components, and finished products in increasingly complex supply chains. This has also dramatically increased the pressure of international competition. Businesses no longer compete just locally. Your company is now vying for customers and business partners with companies around the world.

JUST AS YOU MAY HAVE A UNIQUE TYPE OF IP THAT GIVES YOU A COMPETITIVE ADVANTAGE, YOU CAN DEVELOP ANOTHER COMPETITIVE ADVANTAGE BY DEMONSTRATING THAT YOU HAVE A STRONG PROGRAM TO APPROPRIATELY MANAGE AND PROTECT IP.

Each type of IP mentioned above has specific legal definitions and typical contractual methods of protection. Yet owners of all types of IP face a common threat—an increasing risk of infringement and theft. So whether your specific concern is counterfeit products, pirated software, copied designs, or stolen trade secrets, it is all part of a larger challenge.

Any company with valuable commercial information, processes, or IP—in other words, virtually every company in the world—is vulnerable to IP theft and infringement.

ABOUT CREATE.ORG

The Center for Responsible Enterprise And Trade (CREATE.org) is a non-profit organization dedicated to helping companies and their suppliers and business partners reduce counterfeiting, piracy, trade secret theft, and corruption. To achieve this goal, we have developed CREATE Leading Practices for IP Protection and CREATE Leading Practices for Anti-Corruption to help companies develop and implement effective management systems in their company and their supply chain.

Our programs include practical, scalable, and cost-effective online assessments, independent evaluations, training, and other resources designed to benchmark and improve processes for safeguarding IP and preventing corruption. Please visit our website at www.create.org or contact us at info@create.org if you would like more information.

A NEW TYPE OF SOLUTION

Just as there is a common threat to all types of IP from infringement and theft, there is also a common solution. The solution is to develop and implement an IP protection program based on management systems. You can do this to protect your own IP, and to develop a competitive advantage in attracting customers and business partners, by demonstrating your company's ability to appropriately manage and protect the IP your company touches from others.

First, do this inside your company—if you are not already doing it. Then, encourage or require the companies in your supply chain to do this inside their companies, and in their supply chains. This will create a cascading effect that accelerates improved IP protection and compliance. The stronger your program is and the farther it extends into your supply chain, the safer your IP will be and the more attractive your company will be to others.

EACH COMPANY NEEDS TO ELEVATE THE IMPORTANCE OF IP PROTECTION IN ITS COMPANY AND IN ITS SUPPLY CHAIN RELATIONSHIPS.

Companies from all countries are increasingly looking for new customers, suppliers, and business partners around the world. As globalization has accelerated, the competition for new business has become more intense. Companies are seeking ways to develop a competitive advantage to attract new business. Governments are seeking ways to help their companies attract trade and investment. At the same time, there is a trend towards a more holistic and complete evaluation of potential suppliers and business partners.

Think about the importance of a strong quality management system in today's business world. When you select a new supplier or business partner, do you consider the strength of its quality management program? When you are competing for new business, do your customers consider the strength of your quality management program? For most businesses, the answer to both questions is clearly "yes."

COMPANIES ARE SEEKING TO WORK WITH OTHER COMPANIES THAT HAVE WORLD-CLASS MANAGEMENT SYSTEMS.

Today, having a strong quality management system is almost a requirement of competing in international business, rather than simply a competitive advantage. However, having a strong IP protection management system *does* provide you with a real competitive advantage.

For small and mid-sized companies, it is critical to have a strong IP protection program. A small company may not have thousands of patents, but it may be even more reliant on very specific IP for its survival. And while a large company may have a legal department and the financial resources to fight extended legal battles over IP, this may not be possible for a small or mid-sized company.

The key for companies of all sizes and in all countries is to take preventative action. If you look at the evolution of labor and environmental compliance, you will see that more companies are instituting penalties for third parties that lack compliance, and incentives for those with a higher level of compliance. They are using this “carrot-and-stick” approach to motivate their suppliers and business partners. Companies are beginning to take the same approach to IP protection. You may be doing this, or it may be happening to you. It is all part of the trend toward holistic due diligence. Companies are evaluating the whole picture in selecting new suppliers and business partners, including the quality of their IP protection program.

How Much of Your Company’s Value Depends on IP?

To get started in your company, you may need to convince senior management of the benefits of improved IP protection. Here is one figure that may catch their attention—economists say roughly three-quarters of most organizations’ value and sources of revenue are in intangible assets, intellectual property, and proprietary competitive advantages.

JUST AS WE SAW WITH QUALITY CONTROL, AS MORE COMPANIES MAKE THE COMMITMENT TO RESPECT IP, A CULTURE OF COMPLIANCE BEGINS TO EMERGE.

Sharing leading practices is a critical element, especially among supply chain members. Companies should not be left to do this on their own. Sharing what works accelerates improvement for all companies. And improvement is what is needed.

As you will see, creating a better IP protection program requires developing and implementing a management system. But any management system is a living, breathing thing—not just a stack of documents. It requires trained, committed people who know how to routinely follow procedures. It also requires the support of senior management.

For your company to have an effective IP protection program, you have to find a way to build awareness and commitment among all of your employees. Smart communications and effective training programs are critical to building awareness, gaining commitment, and providing the needed skills and knowledge to make the system work.

WHAT WILL DRIVE IMPROVEMENT IS FOR COMPANIES TO DEVELOP AND IMPLEMENT MANAGEMENT SYSTEMS TO PROTECT IP.

This guide will help you do that. It contains material to help you understand the risks and the benefits of improving. More importantly, it provides you with the knowledge and tools to get started.

GETTING THE MOST FROM THIS GUIDE

We hope this guide benefits anyone concerned with protecting and respecting IP at any company in the world. Its main purpose is to assist you to develop and implement an effective IP protection system at your company and then in your supply chain. We encourage you to skip around and explore.

It is important to point out this guide is not written just for lawyers, nor is it written just for supply chain experts. We believe that even if your legal department has the primary responsibility for IP protection, your efforts will be greatly enhanced by creating a cross-functional initiative, supported by senior management. Therefore, this guide focuses on improving business processes rather than reviewing legal issues.

Here is a quick look at what you will find in each chapter:

Chapter 1: Introduction to IP protection risks and a management system-based solution

Chapter 2: Information that will help you build the case in your company that IP protection is important

Chapter 3: A comprehensive look at the major types of IP, the related risks, and some potential solutions

Chapter 4: An explanation of how policies and procedures serve as the foundation of an IP protection program

Chapter 5: Details on the eight process categories that make up an effective IP protection program and specific steps you can take to improve. You will also find more than 30 tools designed to make it faster for your company to start improving.

In the back of the guide, you will find additional resources, including an alphabetical list of the CREATE tools, a glossary, and links to websites where you can find more information.

We recommend that your company completes the CREATE Leading Practices Self-Assessment, and if possible, the Independent Evaluation, before using this guide. While we advise reading the entire guide, you may wish to focus on the implementation guidance in Chapter 5. There you will find specific improvement steps matched to your current level of process development or maturity.

If your company has NOT completed the CREATE Leading Practices Self-Assessment and Independent Evaluation, review Chapters 1 to 4 carefully. Then we suggest that you look at the eight process categories in Chapter 5 and estimate where you are today in each category based on the description of each level of maturity. This will help you focus on the improvement steps that are most practical for you.

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