

Enhancing effective Intellectual Property management



Every day, businesses lose countless dollars without even realizing it. The reason? In many cases, revenue can vanish because vendors, distributors, and licensees unintentionally fail to meet all their contractual obligations. Today, intellectual property (IP) is at the core of many business relationships—it is a key enabler. As business increasingly takes place through a network of separate entities such as joint ventures, alliances, and less-structured arrangements, IP makes it possible to share intangible assets in an effective ecosystem that spans the globe. If your organization licenses its valuable trade secrets, designs, patents, and trademarks, or shares IP with other third parties

(e.g., vendors for use in contract manufacture or channel partners for comarketing efforts), KPMG's IP and Contract Compliance Services (CCS) professionals can help you manage, protect, and leverage IP assets as well as enforce IP rights when others infringe.

IP-related risk can stem from highly complex contracts that do not clearly identify key requirements or responsibilities, or from changed circumstances, mistakes, or deliberate misstatements but managing IP means much more than enforcement. IP can be used as a separable asset to be sold or licensed for revenue, to support tax-efficient structures or as collateral for borrowing. Whatever your situation, the need to manage risks related to your third-party IP relationships is critical to delivering significant bottom line benefits. KPMG's CCS professionals can help determine compliance of your third-party IP contracts to help protect your company's assets.



KPMG's Contract Compliance Services

KPMG was the first “Big Four” accounting, tax, and advisory firm to set up a dedicated CCS practice. For more than a decade, our CCS engagements have been helping companies across all industries manage and exploit their IP as well as identify and recover millions of dollars arising from noncompliance. Today, more than 450 full-time contract specialists in KPMG member firms in the United States, United Kingdom, Australia, and across Europe, Africa, Asia Pacific, and Latin America help clients manage their IP governance in order to increase performance and decrease risk.

Our CCS assistance features:

- **Integrated international teams:** Supported by KPMG's Global Center for Industry Solutions, KPMG's integrated international CCS teams comprise diversely skilled U.S. and global professionals with leading experience and in-depth knowledge of intellectual property agreements and contract-related issues.
- **Cross-cultural versatility:** We understand regional cultures and business practices as well as the complexities and nuances of a wide range of contracts, processes, and procedures. We have the language and cultural skills to operate effectively anywhere. KPMG's professionals know local laws, customs, and business practices so they can effectively provide intellectual property management services, help our clients optimize financial benefits and achieve contractual compliance, and recommend practices that can help achieve higher overall levels of IP maturity going forward.



Common errors

KPMG's Contract Compliance Services professionals have seen a pattern of client oversights that may have deprived them of revenue and increased their risk, including:

- Lack of centralized inventory of client-owned IP
- Inappropriate access that has led to the loss of valuable IP
- Missed opportunities to leverage IP through royalty relationships
- Incorrect treatment of IP assets for tax purposes

IP issues and opportunities

While the role of IP in the relationships and agreements between parties is generally well understood in licensing, outsourcing, contract manufacturing, distribution and comarketing, R&D, product development, and joint ventures, companies nevertheless face many unfamiliar and, in some cases, unrecognized challenges and opportunities involving broader IP issues.

These include:

Incentivizing end-users to manage IP effectively:

- Reducing piracy or excess customer use
- Determining carrot or stick approach in mature software markets
- Stimulating voluntary software asset management.

M&A issues:

- Inadvertent disposal of IP required for continuing activities
- Post-merger structuring of IP ownership
- Costs of terminating distribution or other contractual relationships
- Consolidating or relocating IP-based activities and functions
- Group consistency and quantification in pricing or converting IP for other uses.

Data privacy and data security:

- Theft or leakage through weak systems
- (Lack of) security over IP assets such as trade secrets.

Regulatory issues:

- Distribution of IP in a tax-effective and compliant manner
- Export of goods utilizing unlicensed, restricted, or improperly obtained IP
- Accounting for IP (including valuation of intangibles).

Compliance:

- How to create an effective compliance program to test security and exploitation obligations
- Making sure the business model of IP-related components is consistent with internal and external compliance requirements.

KPMG can help with IP management strategies

KPMG draws on multidisciplinary IP and CCS skills to help provide industry-specific, tailor-made IP management strategies for clients. We examine issues that range from external protection to reviewing internal IP use and holdings, governance programs, policies, and procedures.

Our focus is on helping enhance the business of IP through strong governance, value measurement, accounting, and compliance—complementing your existing legal and commercial resources. Stronger IP governance reduces risk, while generating substantial value enhancement from compliance.

CCS engagements—often triggered by a “right to audit” clause—help clients manage self-reporting contractual IP relationships with third parties including patent, copyright, trademark, trade secrets, and other self-reported arrangements. Our CCS professionals can help provide advice on contracts associated with:

- Software end-user licenses
- Royalties
- Suppliers
- Software asset management
- Intellectual property management
- Third-party administrations
- Digital content and distribution
- Investigation aimed at prevention of counterfeiting or other illicit use of IP.

KPMG emphasizes strong communication

KPMG’s IP CCS team specializes in a nonadversarial, facts-based approach to process-control effectiveness and compliance analysis. Our professionals determine whether your organization lacks current and effective IP management processes through answers to questions such as:

- What processes and controls have you put in place that allow you to effectively protect your most valuable IP such as trade secrets, patents, and trademarks?
- Do you have documented policies or processes for capturing, acquiring, protecting, enforcing, managing, and preventing the exploitation of your IP?
- Do you have any known or suspected occurrences of IP leakage or infringement? Have you taken any action against infringers or remediated any damages?

If control weaknesses and reduced benefits (e.g., loss of revenue) for an IP owner are found, our CCS professionals seek out the root causes and offer recommendations to strengthen the underlying processes (both internal and external) to enhance governance and compliance.

Key potential benefits of an IP management engagement include:

- **Improvement** of approach and monitoring controls
- **Greater** internal process consistency and enhanced controls
- **Visible** return on investment (ROI)
- **Better** protection of intellectual property.

KPMG offers multidisciplinary strength of service

KPMG has helped leading global corporations (including several of the FORTUNE 50) to address challenges related to IP with a view toward reducing compliance exposure, optimizing costs, and achieving higher overall IP management maturity. Our global network of professionals from many backgrounds regularly collaborate on global projects and offer a wide array of services related to IP management:

Compliance

- Technology, brand, and software rights
- Gray market and channel reseller and distribution
- Shared IP assets (i.e., contract manufacture)
- Other third-party contractual obligations.

Accounting

- Internal audit and SOX process review work in relation to IP processes, e.g., royalty accounting and license management
- Structuring IP profit and loss flows
- Accounting for intangibles
- Analyzing IP profitability in relation to fiscal issues, brand rationalization, and R&D prioritization
- Assessing damages in IP disputes

M&A

- Due diligence in IP-related transactions
- Valuing IP for third-party acquisition, post-acquisition accounting, disposal, and transfer pricing
- Buy or sell mandates for companies—full service for IP-rich companies and individual IP assets.

Governance and security

- Developing business models for IP ownership
- Identifying and building an overview of IP inventory
- Incentives and subsidies for R&D and related IP investment activities
- Investigating misconduct around IP
- Reviewing physical and electronic security of IP and digital content.

Our results can help benefit your business

KPMG structures engagements to provide informed communication at all levels. We establish open communication and set client expectations, determine key risks and agree on the scope of the engagement. When a KPMG CCS review finds that governance or compliance risks exist, we provide recommendations to help resolve and mitigate them.

Active IP management ensures that our clients obtain full business benefits and reduces compliance risks later.



Leading IP management

Successful global IP management examples include:

- An IT company proactively protects its IP through a program of channel audits and is known for its thought leadership on gray market issues in the industry.
- An electronics and entertainment corporation, part owner of the core patents for CDs, enforces IP rights through a long-term, worldwide program of royalty audits and enforcement actions.
- A global cellular equipment manufacturer reviewed its functions, risks, and expenditures undertaken within the related group and found significant opportunity for competing jurisdictional claims of ownership rights in critical IP.
- An Asia-based semiconductor manufacturer reviewed its means of compensating affiliates for R&D efforts, discovering its U.S. affiliate had come to own substantial worldwide IP rights in a new generation of semiconductors.
- A global consumer products company analyzed its tax-related ownership of advertising and marketing expenditures, and decided to establish separate U.S. and European marketing arms.
- A multinational drinks producer and distributor reviewed the impact of an acquisition on its internally developed brands and established new regional marketing and brand.

Contact

The KPMG team will comprise individuals with significant contract compliance experience in your industry. We are one of the leaders in compliance with a global reach. For more information about intellectual property management and compliance, please contact:

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