

Intellectual property and business plans

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What is a business plan?

A business plan is a strategic plan for keeping a business on track. For a new business, a business plan allows it to develop and retain a competitive edge by setting realistic goals and focussing on the key issues. For an established small and medium-sized enterprise (SME), a business plan provides an overview of its current market position, assets, resources, and long-term objectives.

A business plan also usually forms part of a funding application. The funding enterprise will be looking for a well-formulated and realistic plan, so it is well worthwhile spending time identifying the key issues that aid commercial success and future expansion.

What has intellectual property (IP) got to do with business plans?

Because IP gives a company competitive advantages, it is important that these assets are integrated into any business plans. The following are some key points relating to IP that need to be considered when preparing a business plan. The importance placed on these will depend on the particular range of business activities..

What IP assets do you own?

Identify and classify your IP portfolio. Example categories include registered and unregistered rights, IP agreements, and IP related resources like marketing profiles, customer databases, and distribution networks.

How is your IP portfolio managed?

- What measures have you taken to protect your IP?
- Which of these assets are registrable?
- Should they be registered locally or overseas for export business?
- Has a time-critical reminder system been created for filing, application deadlines, and renewals?
- Do you conduct or plan to conduct IP audits? If so, at what periods and by whom?

What measures do you take to protect IP assets from new projects?

Do you have contracts in place to secure or clarify ownership or co-ownership of IP assets?

How do you control or authorise use of your IP assets? If the IP asset is registered, has the licensing agreement been recorded at the relevant intellectual property office? Have you included confidentiality and non-compete clauses in the employment contracts?

How easy would it be for others to acquire or duplicate your know-how and trade secrets? Do you have an integrated security policy and plan for your physical and electronic assets? Have you ensured that confidential business information/trade secrets are not available or lost by display on or through your website? Are all your URL headers free of confidential information? Do your web pages provide links to pages that have confidential information?

How important are IP assets to the success of your business?

How useful are the IP assets in your portfolio? Which assets are essential to your business and which assets could be licensed, sold or abandoned?

What competitive advantage do your IP assets, whether owned or licensed, provide to your business? Assess and explain how IP provides or adds value to you customers and contributes to developing a sustainable competitive edge.

What barriers are stopping you from using or acquiring IP assets? (e.g. lack of resources, ownership issues, licensing issues, distribution issues, export or import difficulties).

Do you own all the IP assets you need, or are you relying on IP assets owned by others?

- How could you prove that you own or are free to use the IP assets? Do you have records, registrations, agreements, or other proof an investor, business partner or a court of law may require?
- Do you have any employees who recently worked for a competitor? If yes, are they bound by any non-compete or non-disclosure/confidentiality agreement?
- What agreements have been made with personnel, contractors, consultants or other external suppliers? Have the agreements been formalised?
- When you commission somebody else to write or design promotional material, including websites, music and photographs, do the contracts specify who owns the IP created?
- Do you have permission to use written material, graphics, photographs, music or other works which were not created by your SME?
- When applying for IP registration, is there an obligation to inform or offer a license to business partners or industry sponsors involved in the project?

How do you monitor the competition?

- What is your plan for monitoring competitive intelligence? Do you search the IP registers for detailed legal, technical and business information about a competitor's or potential business partner's operations, company structure, products or services? Do you conduct market research to keep up with the desires of your target market and identify markets your competitors have left open?
- Are there any IP-related barriers to enter your competitor's market? (e.g. patents, trade marks or industrial designs that underscore customer loyalty to competitors' corporate image, brands).

What is the company IP strategy and policy?

- How do you currently identify, protect, leverage and manage your IP assets? Do you have a special marketing strategy? Do you plan to export? If so, have you used or plan to use a regional or international filing or registration system? Do you plan to use your IP assets as security for a loan or as leverage in new venture negotiations?
- How do you evaluate the commercial potential of a new or old IP asset? Has the IP portfolio ever been independently valued or audited?
- Are you aware of potential funding opportunities available for developing or securing IP assets?
- Do you have a staff education programme that covers management and protection of potential and current IP assets?

How do I find out more about intellectual property?

The information in this fact sheet is based on material available, and used with permission, from The World Intellectual Property Organization (WIPO) SME division. Readers interested in a variety of very useful, business-oriented content, including some free publications in WIPO's new "IP for Business Series", may visit the website of the SMEs Division of WIPO and also subscribe to the monthly, free e-newsletter of the SMEs

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