

IP Theft and the Role of Technical Communicators in Small Businesses

Dan Boyts

Missouri State University

Prepared as part of the requirements for the Technical and Professional Writing

Master's Degree Program

2015

Abstract

This heuristic study interviews several small business owners on the topic of intellectual property and the role technical communicators play in their organizations. It focuses on changes in technical communication practices because of IP theft or infringement, the ethical philosophies technical writers bring to the small business environment, and the value of technical communicators in small business organizations. This discussion relates how technical communicators make themselves more valuable to small businesses through unique perspectives, considered (deliberative) judgment, and knowledge of issues pertinent to small businesses, and outlines written and unwritten rules in technical communication that influence and direct communication products. In turn, these characteristics influence the organizations we work for and how they approach IP to reduce or eliminate many of the costs associated with IP protection.

Keywords: Technical Communication; Ethics; Intellectual Property; Small Businesses; Innovation; IP; IP Regulation.

The work product technical communicators generate contains information that is frequently proprietary and becomes increasingly available to more individuals and organizations as technology continues to improve. Foreign and domestic entities attempt to steal information in order to replicate it, sidestepping the process of research and development, many times without the rigorous safety standards of original creations, reducing their costs in the process. This reduction in costs, time, and investment by the developers of counterfeit products can place the original creator at a significant disadvantage.

Developers of technical documents need to know more about the influence this condition has on small businesses who depend on Intellectual Property (IP) in their product development, and the potential remedies available to alleviate or eliminate adverse effects on products or processes. In addition, technical communicators must understand how they might further their knowledge to increase their value in organizations, and the benefit that is transferred to innovation, research, and development of products and processes through their skills, experience, and unique perspectives.

The moral concepts and ethical values at the cornerstone of technical communication instruction become instrumental in documenting and protecting intellectual property. In addition, the ways in which technical communicators are taught to think from many perspectives can be of tremendous benefit to organizations of all sizes. When addressing intellectual property issues, writers have been protecting their work, and mindful of potential threats for many years. As all of our work product becomes IP at its inception, we are fully cognizant of the many factors concerning IP. However, there is always room for improvement and scholarship. This can be a compelling reason for small businesses to maintain professional writers on staff as a necessary component of the organization.

Much of the current discourse on Intellectual Property (IP) rights addresses the economy, regulation, and the ethics of IP infringement for large economically influential corporations. However, there is very little academic discussion on the effects of IP theft to small business owners, or its effect on changes in technical communication, and the value of technical writers in an IP-driven business environment.

The two prevailing theories supporting the need for IP rights include a “utilitarian bargain between the creator and society,” where the creator is granted a limited monopoly for their work in exchange for disclosure and circulation of that work, and a “Lockean justification,” where property rights are granted to creators in consideration of their labor. Many believe that creators have an exclusive right to their ideas, and the profits and benefits that ensue. Others feel that ideas should be free and open to the public for development and innovation.

By way of this study, an attempt is made to discover and understand how IP theft changes the way small businesses protect their investment, and how it changes the way technical documents are produced. Through personal interviews, the answers to questions of how IP infringement affects small business owners, how expenses associated with infringement influence innovation, and how this changes the preparation and construction of technical documents may present itself. By answering these questions, technical communicators may reach a reasonable conclusion to the ongoing debate over the advantages and disadvantages of IP regulation and the way IP theft affects small businesses and their technical communication practices.

Literature Review

It is important to discuss some of the issues and existing literature involved in IP infringement, as well as questions as to the future of both protection mechanisms and technical

communication. As the global economy moves into a more knowledge-based system, it is essential to understand and adjust to changing models and philosophies. The topics addressed in this article focus on small businesses, but impact businesses of all sizes and sectors of industry and are all connected by the increasing presence of Intellectual Property theft.

Overview

The founding fathers of the United States realized the importance of protecting the work product of creativity. It is part of the U.S. Constitution and recognized in the right to express ourselves freely. Goldsborough (2009) says,

The cornerstone of democracy is the free exchange of ideas, and our legal system promotes this in part through the fair use doctrine of the copyright law...The key concept is "fair." As a general rule, it's more likely that you can fairly and legally reuse the work of others if your purpose is more for the common good than your own profit, if what you're copying is factual rather than creative, if you copy a relatively small part of the work, or if your copying the work doesn't diminish the originator's ability to profit from it. (Goldsborough, 2009)

One of the catchphrases of the Internet is "information wants to be free," giving the impression that anything online is free for the using (Goldsborough, 2009). This is a misconception. At some point, someone created the text, art, photographs, music, software, or literature, and they own that work. Information can be used for personal enjoyment, but if it is used for personal or corporate gain, or claimed as our own, it becomes problematic. This is especially true in small businesses. Incorporation of others' work into documentation processes without proper authorization may cause ownership issues as the product or process becomes available to the public.

Although there is a strong belief in the free exchange of ideas and images, there are consequences to IP theft. The economic damage to industry, academia, health and culture is vast. The effects of IP theft can be felt across the globe. Without protection for inventions and creative property, prices increase on consumer goods and medicine may not be distributed into places where the need is great. “Knock-off” items create a false value for high quality products of superior construction and denigrate expectations of durability and worth. In the article “Counterfeiting Culture” (2006), columnist Jeff Randall from UK’s *The Telegraph*, reminds us, “The consumer is the ultimate victim. And in an industry such as pharmaceuticals, that can have serious implications” (pp. IV-V).

Literature is one of the few venues that is automatically protected from IP theft. DeVoss (2009) outlines the benefits of the current IP system as it applies to written work:

When a work is set in fixed form (e.g., printed out or saved to a hard drive), it is automatically copyright protected, with all the rights that copyright affords. Thus, when we ask students to produce any work in fixed form, we invite them into the U.S. intellectual property system — whether we realize it or not, and whether they realize it or not. Students hold the right to their work, although certainly what this implies and the effects of such rights have come under scrutiny lately, especially given the popularity of plagiarism-detection software. (p. 203)

This has an important effect in academia. Much of the work created in academic settings is intellectual in nature and exposed to potentially improper use and/or plagiarism. Professors and administrators rely on research and publication to advance their careers and bring money into the institution. In fact, the Association for the Study of Higher Education concludes, IP is:

Essential to higher education because of economic, political, and social forces making knowledge and research serve as central commodities of the ‘information age.’ Because ideas and expressions translate into commodities, the environmental pressure over the treatment of intellectual property at colleges and universities [has] changed. (Overview of Intellectual Property, p. 3)

Ethics education informs students of potential violations and to some degree lessens the effects of improper use. This in turn generates greater value for the commodity that is created.

Whedbee (2008) notes that readers have an “expectation of originality” when they read a book or look at a news story. She tells us, “The claim of authorship carries an obligation to offer the audience ‘something new’ or ‘something original’ that goes beyond just summary...[it is this] offering that gives one the right to distinguish between being a ‘copier’ of other people’s ideas and being an author in one’s own right.” In addition, there are severe consequences of being exposed aside from the ethical concerns of claiming others’ works. This carries over into the economics involved and the impact on publishers, corporations and other businesses (pp. 282-286). Although students are taught to give credit where credit is due, it has not deterred the unauthorized use of others’ work. This becomes another important reason for expanded ethics education in public institutions.

IP infringement effects business and industry in many ways, and has caused a change in the manner in which organizations conduct themselves. This factor not only influences tangible businesses, but those that exist in the realm of the internet as well. Images and ideas are even more readily available with just a click of the mouse. In today’s world, corporations must now be extremely cautious about their business relations with others and protective of even basic information. Even when they are, theft can occur.

Foreign groups have made it common practice to take and use information from private and public organizations. Bullis (2014) reports on the current awareness of the problem:

There has recently been much talk in Washington about the need to guard critical infrastructure against possible enemy cyberattacks. But energy companies say that their key inventions and business data are already the target of increasingly sophisticated cyber-espionage. (p. 69)

Increasingly, the public is alerted to cyberattacks and the potential damage that may be caused. As a result, estimates of stolen intellectual property vary ‘so widely as to be meaningless,’ according to a 2011 report on foreign Cyberspying by the U.S. Director on National Intelligence, which cited calculations of between “\$2 billion and \$400 billion a year” in damages (Bullis, pp. 69-70).

Cyber-attacks have created a significant impact on how businesses operate and to what extent companies apply their creativity and innovation. Innovation continues to be vitally important for enhancing social development and creation of wealth in addition to property concerns. IP has a direct connection to innovation and one of the objectives of the IP system is to stimulate innovation. In fact, IP constitutes a central component for the legal basis of innovation and the economic development of society. It is possible it is one of the most significant factors in market-related competition (Kelli & Pisuke, pp. 223-24).

Technical Communication

In today’s highly technical marketplace, the role of the technical writer is becoming increasingly important. Some of the professional voices in the field of technical communication believe the technical writer has largely been left out of an innovation process that relies on engineers, attorneys, developers, and multi-functional personnel to fulfill the highly specialized

task of documentation. As we move further into a knowledge-based economy, we will need to safeguard ideas and creative works even more thoroughly, increasing the role of the technical communicator. Products and processes must be fully documented, and designs and information must be protected from those who would benefit from the work of others. Traditionally, owners and creators have reasoned that writers do not have the technical expertise to assist in the development of products and processes (Giammona, 2004).

This role is changing rapidly, especially in small IP-based businesses where fewer individuals fill many roles. Giammona (2004) tells us “the contribution technical communicators make to innovation, is the information products we produce and the products that we deliver and contribute to, form the success of the businesses we work for” (p. 355). She relays that currently, there is no expanded role for technical communicators in innovation and suggests that technical communicators be allowed to become involved in the development and innovation process early. This may be difficult to do when they are not a part of the product design process. The knowledge technical communicators bring to documentation and design discussions may help to avoid problems later in the production process.

Herrington (1997) reminds us that technical communicators who engage in authorship and who create works for hire develop commodities of trade. Writers must adopt the unwritten rules of the community they are a part of and are supported by the legal qualities of reputation and goodwill. One colleague is not allowed to benefit from the goodwill of another. In exercising options for how technical communicators shape and form creative works, product developers express something about their employers, themselves, and sometimes even about the society of which they are a part. They become the voice of the organization and express the views and

values of that same group. Alternatively, they may also be able to change the value structure of an organization through the ethical values of technical communication.

Harrington (2011) recommends technical communicators employ ‘phronesis,’ or practical wisdom as a means to “guide decision-making about the creation of knowledge, the arrangement of information, the selection of tools and the design of work practices associated with the making of texts” (p. 69), which enable a focus on work that furthers the “good of the community,” (p. 69) rather than on the text itself. Furthermore, she tells us it is the job of the technical communicator to innovate. This can only be done if there is involvement early in the discussion and as part of the development team, but technical communicators cannot contribute this valuable service if they are left out of the initial process.

In the field of technical communication, several ethical principles are observed, both functionally and philosophically. They include not plagiarizing others’ work, giving credit where credit is due, not concealing or distorting objections or concerns, not falsifying or misinterpreting data, not harming others with our words, and not concealing information that may be relevant to a similar discussion at a later time. Although not mandatory, many technical communicators follow ethical guidelines outlined by Institutional Review Boards, or Independent Ethics Committees when obtaining data through observation or interaction with human subjects while performing usability testing for products and processes (Booth, Colomb, & Williams, 2008, p. 274).

The Society for Technical Communication (STC) has a specific set of principles that guide technical communicators on the issues of legality, honesty, confidentiality, quality, fairness, and professionalism. These are not inflexible rules as in many ethical contracts, but models that allow us to maintain our loyalty with the organizations that we represent, and

continue to honor our readers or the public by providing accurate, and honest communications (1998).

Many authors of ethics in technical communication, note the need for writers to be deliberate in decisions about how information is to be produced and distributed. Dombrowski (2000) suggests technical communicators are the gatekeepers of ethical communication and “our responsibilities extend beyond the bare relaying of information between expert and audience, even though that act has its own ethical significance” (p. x). Furthermore, it is the obligation of technical communicators to establish how the information we produce will be used, and the consequences of our words “beyond the immediate audience...as our influence grows, so do our responsibilities” (p. 3). If we do not alert our clients and employers to the potential dangers of improper communication, and impending legal action against the company because of faulty research, hasty production, or lax standards, we have not fulfilled our responsibility.

Rachels and Rachels (2010) describe a minimum conception of morality that is “at the very least, the effort to guide one’s conduct by reason – that is to do what there are the best reasons for doing – while giving equal weight to the interests of each individual affected by one’s decision” (p. 13). The authors summarize this responsibility:

[The technical communicator is a] conscientious moral agent...concerned impartially with the interests of everyone affected by what he or she does; who carefully accepts principles of conduct only after scrutinizing them to make sure they are justified; who is willing to ‘listen to reason’ even when it means revising prior convictions; and who, finally is willing to act on the result of this deliberation. (p. 13)

The act of careful deliberation is crucial to the role of technical communicators in small businesses. As we perform greater functions, this must be one of our primary concerns and one of our greatest values in an organization.

Surma (2005), tells us that the development of technical communication and attainment of the status of professional writer involves discipline and practice. She refers to Sullivan and Porter's (1993) representation of the shifting nature in professional writing today that extends beyond the boundaries of the field in important ways when they articulate the role of the technical writer as "not to better represent [a] company to the public, but, rather, to help the company better understand the needs and interests of the public" (p. 414) This shift not only places more weight on the judgment of technical communicators, but it also provides a means to which businesses may rely on well-deliberated decision-making, and a value from professional writers that cannot be found by other means or other positions in the organization.

In the review of a compilation of essays edited by Kahin and Varian (2002), Campbell points out "developments that affect how society assesses the value of information could affect technical communication practices" (p. 119). The public trusts the communications they receive to tell them how information applies to them and to products. The book's first essay written by DeLong and Froomkin (2000) explains that, "concepts of value based on limited access to physical goods are difficult to apply to digital products that are potentially available to an almost unlimited number of users" (2002, p. 119). One task of technical writers is to express that value and applicability of products to consumers of goods. It also poses a problem. Many writers in technical communication have limited access to product development, even though it has a direct impact on the work they do.

It is difficult to advise management or independent clients about issues pertaining to product development, when those issues are unfamiliar to the technical communicator. Many are based on legal constructs rather than a familiar unwritten value system or conditional deliberation. This is why it is imperative that technical communicators make themselves knowledgeable about Intellectual Property rights and protection, especially when involved in an IP-intensive industry, so they may guide management and create documents that serve and protect the organizational foundation, as well as participate in product development. This function is even more important in small businesses where the position may be spread among many actors or by a single individual who fills several roles. It is important to ask how this function affects business and innovation in IP-based small businesses, and how the ethics of technical communicators, as well as their abilities, enhance the value of their service to the organization.

Innovation

The fear of counterfeit products is always present for small businesses. In his report on the role of IP rights in innovation, Pham (2010) relates the worldwide effects of IP theft. His data shows us the World Customs Organization believes that all sectors of business from horticulture to the auto industry are threatened. The World Health Organization estimates 10% of all prescription drugs are counterfeit. Italy's Chamber of Commerce estimates minimally 20% of purchased apparel is counterfeit, and 20% of PC software sold in the U.S. is pirated. The worldwide monetary value of unlicensed software losses to vendors in 2008 was 53 billion dollars (Pham, 2010).

The costs associated with protection and litigation of IP become a burden on small businesses. Many do not have the resources to protect themselves properly. As a result, they

leave themselves vulnerable to potential harm. Fear of infringement may cause small businesses to constrain investment in R&D, wages, and marketing. In their study, Eischer and Newiak (2013) show that both physical and intellectual property rights are critical development determinants and that IP rights act similarly to the “Rule of Law” (p. 4). Their research concludes it is the level of enforcement not just the enforcement mechanisms themselves that cause development. Increasing enforcement by one standard deviation causes a 42% increase in long-term development.

Regulation and Enforcement

Regulation and enforcement are some of the most difficult aspects of IP rights. Because of the diverse and complex makeup of factors involved, and because of the many different forms IP takes, there is no uniform solution to a singular regulatory structure. Opinions and research show differing models from both sides of the spectrum with no consensus. Academia has requested that legislators avoid “over-zealous and improper enforcement” (National Council of Teachers of English, 2010), while government agencies are requesting stronger legislation and enforcement mechanisms to combat violations and strengthen economic concerns nationally and globally. Both sides of this discussion hold valid concerns for their positions.

Biron (2010) claims there should be no such thing as Intellectual Property. She suggests ideas cannot be classified as property, and abstract objects cannot enter into causal relations such as binding agreements; the causal relationship is in the created object produced, which is intangible. Another factor to be considered is which ideas to protect? There are both good and bad ideas. The problem is in determining the value of an idea and who will make that determination. If we protect each equally, we risk time and resources on ideas that will never be fully realized, or of benefit to the consumer or society. The market may ultimately decide as

consumers discover the value or lack thereof in products and processes, or creative ideas may turn bad ideas into good. However, at some point we must limit the extent to which we protect ideas in favor of opening them up to new perspectives and creating opportunities for development outside the original creator.

The government position (U.S. Congress Joint Economic Committee Chair Senator Bob Casey's staff, 2012; Doms, et al., 2012; Shapiro & Pham, 2007; Pham, 2010) is that strengthening IP enforcement and creating a more timely resolution of infringement complaints will alleviate some of the IP theft that continues to rise. Nevertheless, even with greater protection and swifter resolution, good ideas will be “copied, modified, improved upon, and invented around” (Shapiro & Pham, 2007, p. 2). Boldrin and Levine (2005; 2006) suggest that no matter how many times an idea is copied, it retains its value, and regulation does not protect the creator, but only how other people make use of their ideas. They favor eliminating the current system of patents and copyrights to open the market through government prizes and awards. Others agree that competition drives the economy, and tell us industries without protection contribute more to the economy than the limited monopolies of regulation.

Lemley (2005; 2014; Fromer & Lemley, 2014) would like to see an expanded public domain where there is a limited period for the creator to recover costs, and then allow others to expand those ideas. He believes this will enhance innovation and creativity better than other methods. His article on free-riding explains if IP owners are permitted to internalize the benefits of their creativity, the intended balance the Framers of the U.S. Constitution articulates will be wrong. He contends that the way for private parties to invest efficiently in innovation is to allow them to realize the full social benefits of the invention. Gallini and Scotchmer (2002) agree with a finite period for protection allowing innovation from old ideas where there is protection in

products that serve the greatest social good. This, they contend, will follow the Framers' original intent to provide knowledge and social benefit from ideas through innovation.

Herrington (1997; 2011) has an alternative theory. From her perspective, we should employ the principles of fair use, which satisfy both the Framers' intent to further knowledge, and the creators' rights to protect their work. Like Lemley, she believes that innovators must have access to existing knowledge in order to create new knowledge. By applying ethical standards, which would allow for good faith use of materials in the advancement of knowledge and learning, we could also reduce the harm to creators from unfair use or capitalization on their efforts through self-regulation, although self-regulation has not achieved the results Herrington suggests. Ethical standards are good in theory, but in practice, they may not be sufficient. Because the clear intent of the law is to protect creators from lost revenue, as long as there is no monetary or social harm, Harrington believes that free use should apply. This is becoming more common in businesses today, especially in smaller businesses where funds are limited. The need for protection is greater, but the ability to protect one's investment is not.

Harrington, along with Lanjouw and Lerner (1997), Boldrin and Levine (2006), Rao, Borg, and Klein (2008), Boyle (2009), Dobusch (2012), and Lemley (2014), all support expansion of the public domain, Open Source Software (OSS), Creative Commons, and reducing the length of monopoly by providing access to ideas and inventions through limitations and licensing, which in their estimation would incentivize innovation while reducing infringement and litigation.

Although we know that enforcement is limited and requires lengthy litigation in many cases, "shrugging one's shoulders is not the answer; it hurts not only the individual, but the community as a whole." We need to examine how we can curb the theft of IP globally. It is well

known that “copyright registration is not a cure all, but failing to take any action seems to embolden imitators” (Berman, p. 22). Reducing the incidence of IP infringement starts with education. We must get past the idea of “fair use” and focus on meaningful discussions about how IP theft affects us all, and then act on it. Berman underscores the relevance for educating students about fair use:

Academic programs, workshops, and instructional books must coach young artists on ethical issues such as copyright or trademark infringement. “Fair use” does allow copying for the purpose of education, but that work should not leave the cloister of the classroom and definitely not be shown in an exhibition or sold as an original work. At a minimum, an attribution or a credit to the originator should be footnoted or referenced as a source (as is the common practice in the print industry and the research field). (Berman, p. 22)

Providing ethics education will minimally provide one segment of the population information about the impact of using creations of others as their own.

Some do not believe that changes will be beneficial. Because the current model has been entrenched into our system of intellectual property, it will be difficult to change attitudes. Businesses do not invest because of protection or regulation. Barnett emphasizes the difficulty in changing the current system:

It is not clear that changes—even substantial changes—in intellectual property protection typically make any meaningful difference in regulating access to the underlying pool of intellectual goods, which in turn means that these changes do not clearly make any meaningful difference in regulating the anticipated profits that drive innovation incentives. (Is Intellectual Property Trivial?, 2009, p. 1692)

Businesses will not invest in ideas and processes that do not have potential to bear fruit. If there are no profits, there is no incentive to innovate, and the market will self-regulate.

Additionally, “Intellectual goods that are unprotected. . . May still be protected directly or indirectly by other legal or extralegal mechanisms, which broadly include technology, contract, organizational form, and various complementary assets,” as well as in technical or academic writing (p. 1693). However, individuals at all levels must be aware of the consequences of IP infringement and take precautionary steps to avoid being the target of those who would intentionally or inadvertently use others’ ideas and inventions.

Methodology

To determine the effects of Intellectual Property infringement on small IP-based businesses, five business owners or managers were asked to participate in a study concerning aspects of Intellectual Property regulation, innovation, and technical writing. Questions were designed to discern the impact of potential threats to the businesses in each of these categories to obtain an idea of how they manage their Intellectual Property. Information was also obtained to determine if they are hindered in any way by the process of IP protection and if they, as business owners or managers, have a better sense of regulation than the current system. In addition, these questions were directed to determine the role of technical writers in their organizations and the value they hold in innovation and corporate image.

Research Design

The participants are owners or managers of small IP-based businesses who have first-hand knowledge of Intellectual Property concerns that directly or indirectly affect their businesses. The five businesses in the study are from different industries as to get a sense of general effects on small IP-based businesses. They were chosen because of their relationship

with Intellectual Property and the scope of industry. They are also small businesses whose products or processes depend on IP. The categories of industry they fall under are technology, transportation, IT and music software, fitness equipment, and health and nutrition.

The methods used in the research study were one-on-one personal interviews with a combination of heuristic surveys containing both yes or no and multiple choice questions, as well as short answer questions conducted either in person or by telephone. The answers to the survey may be found at the end of this paper in Appendix A. These qualitative methods of testing were chosen because they provide input and feedback on issues important to this discussion. After obtaining IRB approval for the study, each subject was provided with an informed consent document that outlined the parameters of the study, as well as the potential positive or negative impacts of participating. As the study is completely anonymous, there is no consequence to the general answers solicited by the survey and interview questions. Their information does not contain proprietary information, and does not identify or damage the individuals or the organizations in any way.

Each subject was encouraged to answer honestly and directly without indication or preference for a particular answer over another. None of the questions relies on information specific to their industry but towards IP-based small businesses in general. At the end of the formal questions, each participant was asked to provide any additional information they felt pertinent to the study. The conversation that ensued covered several topics pertinent to this discussion. Through the information collected in the study, there may be a consensus as to the conversation on the need for change of IP protection and/or regulation, or a preference in the type of protection preferred by small businesses.

Results

Although this is a small sample of participants, it represents a wide range of industry. In addition, it represents a broad sample of protection mechanisms and philosophies concerning IP rights, protection, and theft. As the results are lengthy, they have been organized into sections that will assist in separating the information provided. The results of this study suggest that business models and approaches are similar across industries. At the completion of the survey it was determined that in all sectors, small businesses feel the necessity to have some type of IP protection, and worry about IP theft either frequently or significantly. All participants indicate the desire for a simpler, impartial, more expedient resolution process, and a reduction of unnecessary litigation and its expenses. The table in Appendix A notes the questions and responses of the participants and provides a means to evaluate the information collected further through the trends presented.

It appears that IP theft is a frequent and common concern for small IP-based business owners and encourages the need for protection. In a wide scope of industry, expenses due to protection mechanisms are becoming a regular component of their budget. This instigates changes to documents, products, and research methods, as well as the philosophies of owners and managers. However, these additional expenses do not deter from their capacity to develop their products or processes, nor does it reduce the amount they spend to research and develop their creative ideas. Nevertheless, the possibility of IP theft alters the direction and degree of confidentiality in business focus, as well as construction of technical documents. On a positive note, it encourages businesses to create more unique and practical goods and creates a strong documentation process for possible litigation.

As noted in previous literature, small businesses are able to adapt and respond to changing circumstances making them more stable in uncertain conditions. The responses would suggest that innovation of existing products is a benefit to creativity. It also creates a certain amount of reluctance to produce products that are not fully researched and protected. This in itself slows down the momentum of good ideas. However, this also creates a community of competition, which is looking for the best products to improve and produce.

Following the trends of national surveys of larger organizations, the participants note that changes in regulation and stricter enforcement of existing laws would alleviate some of the burden from rigorous protection mechanisms and encourage business development for small businesses. Currently, civil action seems to be a preferred remedy to theft or infringement as law enforcement and the judicial system appear to be inadequate and expensive for smaller organizations. Increased protection mechanisms, such as fully researched ideas and confidentiality agreements, are just a delay against infringement. Confidentiality agreements, although binding to those who are involved in the product or process, or who have been exposed to the Intellectual Property through consulting or other methods, fails to address the problem of copycat or knock-off designs. In addition, cyber-crimes that obtain proprietary information through computer systems are also outside this method of protection. In examining the responses of the participants, it is apparent that they do not have any information or solutions that have not been considered by many others. The problems of regulation are as relevant to IP-based small businesses as they are to large corporations and there may not be a single answer. Although some believe the public domain, OSS, and the Creative Commons detract from conventional protection mechanisms, the data from this study does not reflect this position. In fact, the respondents tell us

there may be potential benefits from the public domain to some small businesses with traditional methods of IP protection.

As technical writers are a valuable asset for organizations and assist in navigating regulatory, marketing, documentation and labeling requirements, it is probable that writers now and in the future will find it necessary to increase their knowledge of multiple business aspects to fulfill the responsibilities of their positions. Technical writers are the business's connection to the public and present the organization's image to the outside world. Progressively, technical communicators are being involved in the research and design process earlier as to help direct production in secure and documentable ways as suggested by Samuelson (2003). This would seem to create a sense of necessity for small businesses to hire experienced and knowledgeable communicators, who will become increasingly more important to the health of the organization.

Technical Communication

To determine the role of technical writers in IP-based small businesses, the subjects were asked several questions concerning the use of, and responsibilities for specialized writers (Appendix A). Each of the subjects employ technical communicators in some form. One of the organizations reported that they do not employ a specific individual, but handle the position as a function of management. All subjects stated that technical communicators are very valuable to their business and image.

When asked if IP infringement affected the way they produced documents or documentation, two subjects responded that it had a "significant" effect on document production, and each of the others responding with "frequently," "occasionally," and "very little." The ways in which change occurred in those reporting significant effect, was through higher levels of caution, increased documentation and record-keeping, as well as limiting information to

unknowns, and use of confidentiality agreements to protect information. The other businesses already maintain these high levels of caution and documentation. One participant assumes at some point the process will end in litigation and prepares their documents to that end. The previous experience of their writers were extensive, although each company trained them for applications specific to their own business model.

The participation of technical writers in the design or innovation process varied with two of the participants reporting they are involved very little, two are involved frequently, and one reported that their technical writer was involved significantly. In these businesses, technical writers perform a variety of functions. Subject A reported the roles of their technical writer as internal/external communications, presentations, instructional manuals, content form layout, and all vetted through IT for accuracy. Subject B stated the function in their organization as effectively translating industry vernacular into digestible information. Subject C cited adherence to protocols as the main function of their technical writer. Subject D reported the use of engineers in Asia for instructional manuals, specifications and manufacturing for in-house writing, marketing for media-related documents, advertising for product claims or representations, and translation of product research, which were all sent to their legal department for approval. Subject E described their technical writer as wearing many hats and listed regulatory, labeling, marketing, and product descriptions as their responsibilities. This would indicate that technical writers must have a wide range of skills in their positions. Furthermore, technical writers are an important part of the organizational structure across the study's spectrum of inquiry.

Innovation

All subjects noted additional costs associated with IP protection but not at a level that would act as a deterrent for job growth. Their expenditures on R&D, are either minimally impacted by costs for protection mechanisms or not at all. When asked if they were hindered by the public domain, OSS, and the Creative Commons, three of five organizations reported little or no effect with the remaining two stating that it helps their business through greater exposure. It appears that in small businesses the costs of protection do not detract from the health and productivity of the organization. In addition, the public domain, OSS and Creative Commons do not seem to have a negative effect on those with patents, copyrights, and trademarks.

All but one subject responded that they believe competition enhances innovation, and three out of five improved their product from an existing idea or product. Subject A reported IP infringement's influence on innovation as "directing where they work. If patent space is full it hinders innovation, if patent space is open it provides more opportunities for innovation." Subject B reported that it "precludes innovation" through research of previously protected products being considered by the company for development. Subject C reported it makes them "work harder to innovate." Subject D believes their primary concern is not to infringe on others' products. Additionally, it increases their need to protect their product line. Subject E told us it makes them extremely careful and slower to disclose innovative ideas and products publicly.

Regulation and Enforcement

The types of protection mechanisms small businesses use vary with industry, but all fall within the current system, which involves a complicated and lengthy process. Subject A primarily protects their product through copyright, trademark, patent and trade secret, but has also considered the International Trade Commission procedures. Subject B primarily uses

trademarks, but has also considered patents. Subject C primarily uses copyrights and licensing but has also considered patents, Creative Commons, and OSS. Subject D uses patents, trademarks, registration, licensing agreements in both foreign and domestic markets and has not considered other options. Subject E focuses on patents and trademarks, but has considered trade secrets as an alternative.

Concerns about IP infringement are typical of those cited by many larger organizations. Subject A stated their main concern is with knock-offs in Asia. Subject B stated other entities using their name and reputation, copying designs, producing inferior or inconsistent products all of which devalue their IP. Subject C cited piracy and loss of proprietary information as their main concern. Subject D remarked that their company does not infringe on other patents so they fully research their concepts to determine that their ideas and products are unique and protectable.

When considering the factors used in determining how to protect their investment, Subject A noted the novelty or uniqueness of their product, how widespread the product is, its commercial value, the likelihood of being copied and by who, as well as the possibility of the product being reverse engineered. Subject B stated their primary consideration is their name, reputation, and expense of protection. Subject D stated the marketability and the potential of the product. Subject E cited the cost of protection and the likelihood of obtaining adequate protection as their main factors of determining the best way to protect their investment of time and money.

In determining the best way to handle IP theft, Subject A believes it is through civil action because criminal cases are too difficult to prove and law enforcement is unwilling to enforce existing laws. Subject B feels that confidentiality agreements are the best means of

deterrent. Subject C describes litigation and protection as their preferred method. Subject D reports spending money to protect their property through research, products and protection mechanisms. Subject E has a negative view of the judicial system and would like to see stronger enforcement mechanisms. They state that currently it is very difficult to prove claims of theft. They believe the best alternative is through confidentiality agreements.

The most discussed topic of IP rights is potential changes in current regulation. When asked if they would like to see changes made to existing IP laws there was mixed reaction. Subjects A, C, and D reported yes, while Subjects B and E said no. When asked the kinds of changes they would like to see, Subject A listed easier criminal prosecution for existing laws, and suggest that the patent system institute variable patent lengths and the patent office improve the way its processes work. It is their belief that there is too much variability in administrative oversight and lack of consistency in the application process. Subject B was not familiar with options. Subject C states that there should be stronger penalties for infringement and tougher laws on violators. Subject D suggests shortening the submission process, and states that in the current legal system, the only winners are the attorneys. It is their recommendation that updating current regulations would hinder those that “play the system” where “might makes right.” In those cases, litigation drags out where organizations with considerable resources can “spend you to death.”

Subject E feels that simplifying the process of dealing with theft would be beneficial. In their opinion, the first-to-file concept is beneficial because it encourages production of ideas rather than sitting on perfectly good ideas or products so you either “use it or lose it.” It is also their belief that in the current system, only lawyers benefit.

Additionally, Subject D addressed the issue “submarine patents,” which is a patent whose issuance and publication is intentionally delayed by the applicant for a significant period, sometimes several years. This strategy extends the patent term by measuring it from the grant date rather than the filing date. These types of patents may “stay under water” for lengthy periods until they surprise the relevant market. Individuals or corporations using this system are sometimes referred to as patent pirates or as a patent ambush. This type of action would be considered by some as an unethical business practice meant to undermine legitimate efforts towards innovating existing products and processes.

It is the policy of all participants to look at all aspects of potential use before proceeding. Integrity and ethics must be the cornerstone of any future regulatory structure. As each of the participants noted in their responses, making sure a product is not owned by another entity avoids many of the problems discussed in this survey.

Conclusions

The success of small business has a significant impact on the health of the American and global economies. IP theft is a substantial threat to that health. The effects of IP infringement on small businesses can be a time-consuming and expensive component of their operating costs, which has a direct correlation to the creativity and profitability of organizations. Although the participants in this study tell us that these expenses do not detract from job creation, it is difficult to understand how the additional costs of research, documentation, and protection do not influence profits or investment in new ideas . However, IP infringement does not hinder small businesses in maintaining a high degree of creativity, innovation, and economic success. Small businesses continue to produce a healthy and prosperous sector of the economy.

While this study did not discover an ultimate solution to the ongoing debate over IP regulations, it does present some potential remedies for IP-based small businesses. IP rights are a multi-faceted and complex system that may not provide singular solutions. Government-funded studies investigating effects in the most economically impacted corporations have indicated a need for a more expedient, less costly forms of resolution to complaints over theft and infringement. In fact, many problems for small businesses involve the interaction with larger businesses and their seemingly unlimited resources when disputes over ownership occur creating an uneven playing field between large and small business organizations. This emphasizes the need for detailed documentation that technical communicators provide, which can alleviate this disparity to some degree.

Innovation

The continued development of existing ideas is a valuable instrument to small businesses in the innovation process and a benefit to both economic growth and productivity. By adapting and adopting existing products through creative mechanisms, small businesses expand the products and processes in the market and provide additional avenues for revenue streams. However, this does not mean that ideas should be infringed upon or stolen, and the participants of this study do not engage in this practice. Small businesses can build better products without creating negative situations by infringing on both protected and unprotected ideas.

Small businesses use several remedies to alleviate the effects of theft and infringement on their productivity and growth, including existing protection mechanisms. In today's environment, it is unlikely that a small business could operate competitively without some form of IP protection. The most common remedy for theft or infringement is through civil action, which is time-consuming and expensive. Although these mechanisms are costly, they do not

affect the success of small businesses to a great degree. Small businesses continue to discover ways to innovate and prosper.

Regulation and Enforcement

Changes in the way disputes are settled could be a means to greater profits and economic success. Binding arbitration, which would reduce litigation costs in time-consuming disputes over ownership, and resolution that is more expedient would benefit not only small businesses, but larger corporations as well. The government position of stronger enforcement mechanisms and greater consistency in administrative processes would also be an asset to both large and small businesses.

Whether we consider IP as “real” property or a separate entity, one thing is certain, without some form of IP regulation there are those who will run rampant over the ideas of creators, which influences the propensity of small businesses to create. The penalties must be sufficient to deter unfair use and still maintain a balance between protection and innovation. Innovation drives the world economy in many different ways and without protection from theft, creativity and the willingness to take risks narrow to the few that can afford a battle in the courts, or with governmental entities that house massive privacy technology. Even then, it is not certain that creators will prevail or that their proprietary information will be protected.

The additional time and caution small businesses expend in confidentiality agreements, documentation, and research, produce substantial effects on operations and delays in production. These factors reduce the effectiveness of creative products and processes, and consume progressively larger portions of available resources. This adds to the benefits of professional writers and strong documentation procedures. Specialized personnel in the form of technical communicators will be a tremendous asset in the efforts to document and protect small

businesses from potential harm. Not only do technical communicators present information about subject matter, but also provide creativity to the workplace by thinking outside the box and providing fresh perspectives to ideas in order to advance the productivity and image of small businesses.

Technical Communication

While this study did not directly address the issue of ethics, during the course of the interviews, all of the participants noted the importance of fair practices and ethical standards in researching and developing products and markets. Many have this philosophy built into business models. From the perspective of the participants in the study, this alleviates or eliminates many of the problems associated with IP theft. By ensuring there are no potential issues looming in the future, they either reduce or exclude disputes over ownership or infringement. By applying the ethical principles utilized by professional writers, technical communicators can benefit small business by reducing the occurrence of these incidents.

It is imperative that technical communicators make themselves knowledgeable about Intellectual Property and IP rights, especially when involved in an IP-intensive industry, which is becoming more significant as technology advances. This will allow them to advise management and create documents that serve and protect the organizational foundation as well as the public, creating value for the product and themselves. In this way, technical communicators will make a valuable contribution to the innovation of products and processes in IP-based organizations. Additionally, technical communicators must also increase their knowledge in the field of IP protection methods and mechanisms to assist owners and managers in their responsibilities. This can be done by continuing to stay up to date on government regulations and new developments in IP rights, and through constant scrutiny of research and development of potential products and

processes. Furthermore, it will be beneficial for small businesses to allow technical communicators to take a larger role in the design and production process to reduce immediate and potential problems with Intellectual Property and communication issues.

The pursuit of persistent education in whatever discipline technical communicators choose is vital to the level of expertise they bring to the workplace and one of the most important aspects of professional growth. Continued scholarship and professional development enhance and reinforce the contribution of well-informed and deliberative decision-making towards successful small businesses and increase trust and confidence in the input of technical communicators. In addition, it presents opportunities to find new ways to look at issues that become routine over time. Maintaining a fresh perspective is of great benefit when performing reiterative tasks. The role of technical communicators must include knowledge in all aspects of the small business so their contribution will support and enhance other divisions in the organization. Ethical education and the strengthening of ethical values is an important part of that development. The stronger the reinforcement of ideals and principles through continued development, the easier it will be to maintain high standards and avoid compromise even in the most difficult circumstances.

The ethical role technical communicators play in decision-making, product design, public relations, and in the anticipation of factors that will impact the organization past or future, make technical communicators invaluable to small IP-based businesses. The ability to consider all options is part of the training and development in the craft of communication. Ensuring that organizations do not present adverse information to the public or overlook proprietary factors in researching and developing potential products is a skill that is not found in other positions in the organizational structure.

The comprehensive knowledge of the technical communicator is a valuable asset for small businesses against IP theft. By applying this knowledge, and through their perseverance to maintain ethical and legal guidelines for the organizations they serve, small businesses are less likely to make an error that will result in costly litigation or wasted investment of time and resources. By incorporating the experience and knowledge of technical writers in the beginning stages of development, owners and managers of small businesses may reduce the occurrence of unforeseen issues later in production. Early participation by technical communicators can alleviate or eliminate many additional costs associated with IP theft in small businesses, reduce the effects of IP theft and infringement, and further the goals and objectives of small business entities. Ultimately, the technical communicator is an invaluable resource for small businesses and should take a greater role in multiple aspects of business operations.

Bibliography

- Barnett, J. (2009). Is Intellectual Property Trivial? *University of Pennsylvania Law Review*, 157(6), 1691-1742.
- Berman, H. (2010). Copycat, Copyright, or Coincidence. *Metalsmith*, 301(1), pp. 22-23.
- Biron, L. (2010). Two challenges to the idea of intellectual property. *The Monist*, 93(3), pp. 382-394.
- Boldrin, M., & Levine, D. K. (2005). *The economics of ideas and intellectual property*. Proceedings of the National Academy of Sciences of the United States of America.
- Boldrin, M., & Levine, D. K. (2006). Globalization, intellectual property, and economic prosperity. *Spanish Economic Review*, 8(1), 23-34.
- Booth, W. C., Colomb, G. G., & Williams, J. M. (2008). *The Craft of Research* (Third ed.). Chicago, IL: University of Chicago Press.
- Boyle, J. (2009). What intellectual property law should learn from software. *Communications of the ACM*, 52(9), 71-76. doi:10.1145/1562164.1562164
- Bullis, K. (2014). Cyberspying Targets Energy Secrets. *Technology Review*, 117(3), pp. 69-70.
- Campbell, A. (2002, February). [Review of the book, *Internet Publishing and Beyond: The economics of digital information and intellectual property*, by Brian Kahin and Hal R. Varian, eds.]. *Technical Communication*, 49(1), pp. 119-120.
- Counterfeiting Culture (cover story). (2006). *New Statesman*, pp. iii-xv.

- DeLong, J. B., & Froomkin, A. M. (2000). Speculative microeconomics for tomorrow's economy. In B. Kahin, & H. R. Varian (Eds.), *Internet Publishing and Beyond: The Economics of Digital Information and Intellectual Property*. Cambridge: MIT Press.
- DeVoss, D. (2009). English studies and Intellectual Property: Copyright, Creativity, and the Commons. *Pedagogy: Critical Approaches to Teaching Literature, Language, Composition, and Culture*, 10(1), pp. 201-215.
- Dobusch, L. (2012). The digital public domain: Relevance and regulation. *Information & Communications Technology Law*, 21(2), pp. 179-202.
- Dombrowski, P. M. (2000). *Ethics in technical communication*. Needham Heights, Massachusetts: Allyn & Bacon.
- Doms, M., Bond, B., Burston, J., Langdon, D., Yu, F., Graham, S., & Hancock, G. (2012). *Intellectual Property and the U.S. Economy: Industries in Focus*. Economic and Statistics Administration; U.S. Patent and Trademark Office, U.S. Department of Commerce.
- Eischer, T. S., & Newiak, M. (2013). Intellectual property rights as development determinants. *Canadian Journal of Economics*, 46(1), 4-22. doi:10.1111/caje.12000
- Fromer, J. O., & Lemley, M. A. (2014). The audience in intellectual property infringement. *Michigan Law Review*, 112(7), 1251- 1304.
- Gallini, N., & Scotchmer, S. (2002). *Intellectual property: When is it the best incentive system?* National Bureau of Economic Research, Innovation Policy and the Economy. doi:<http://www.nber.org/chapters/c10785>

- Giammona, B. (2004). The future of technical communication: How innovation, technology, information management, and other forces are shaping the future of the profession. *Technical Communication*, 51(3), 349-366.
- Goldsborough, R. (2009). Internet Information Might Be Readily Accessible, but It's Not Necessarily Free. *Community College Week*, 21(21), p. 33.
- Herrington, T. (1997, May). From paper to digitized expression: A treatment of intellectual property issues in application to rhetoric and technical communication (Doctoral Dissertation). 1-226. Texas Tech University. Retrieved from <http://hdl.handle.net/2346/18595>
- Herrington, T. (2011). Copyright, free speech, and democracy: Eldred v. Ashcroft and its implications for technical communicators. *Technical Communication Quarterly*, 20(1), 47-72. doi:10.1080/10572252.2011.528321
- Jolly, M., Fletcher, A. C., & Bourne, P. E. (2012, November 8). Ten Simple Rules to Protect Your Intellectual Property. *PLOS Computational Biology*, 8(11). Retrieved from PLOS Computational Biology.
- Kelli, A., & Pisuke, H. (2008). Intellectual Property in an Innovation-based Economy. *Review of central and East European Law*, 33, pp. 223-238.
- Lanjouw, J. O., & Lerner, J. (1997). *The enforcement of intellectual property rights: A survey of empirical literature*. National Bureau of Research. Retrieved from <http://www.mber.org/papers/w6296>
- Lemley, M. A. (2005). Property, intellectual property, and free riding. *Texas Law Review*, 83(103), 1031-1075.

- Lemley, M. A. (2014). Does 'Public Use' mean the same thing it did last year? *Stanford Public Law Working Paper No. 2394153*, 1-21. doi:10.2139/ssrn.2394153
- National Council of Teachers of English. (2010, March 24). Intellectual Property Caucus of the Conference on College Composition and Communication. *Letter to the Office of Management and Budget/President of the U.S.*
- Overview of Intellectual Property. (2008). *ASHE Higher Education Report*, 34(4), 1-12.
- Pham, N. D. (2010). *The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages, and Exports*. NDP Consulting.
- Rachels, J., & Rachels, S. (2010). *The elements of moral philosophy* (6th ed.). New York: McGraw-Hill.
- Rao, P. M., Borg, E. A., & Klein, J. (2008). The Information and communication technologies and enforcement of intellectual property rights: A relationship perspective. *The Journal of World Intellectual Property*, 11(2), 115-119. doi:10.1111/j.1747-1796.2008.00336.x
- Samuelson, P. (2003). Mapping the digital public domain: Threats and opportunities. *Law and Contemporary Problems*, 66(1/2), 147-171. doi:10.1145/1113034.1113057
- Shapiro, R. J., & Pham, N. D. (2007). *Economic Effects of Intellectual Property-Intensive Manufacturing in the United States*. a report by World Growth.
- Society for Technical Communication Board of Directors. (1998, September). *Ethical Principles*. Retrieved from Society for Technical Communication: <http://www.stc.org/about-stc/the-profession-all-about-technical-communication/ethical-principles>
- Sullivan, P. A., & Porter, J. E. (1993). Remapping curricular geography: professional writing in/and English. *Journal of Business and Technical Communication*, 7, 389-422.

Surma, A. (2005). *Public and professional writing: ethics, imagination, and rhetoric*.

Houndmills, Basingstode, Hampshire and New York: Palgrave Macmillan.

U.S. Congress Joint Economic Committee Chair Senator Bob Casey's staff. (2012). *The Impact of Intellectual Property Theft on the Economy*. U.S. Government Printing Office.

Retrieved from www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=aa0183d4-8ad9-488f-9e38-7150a3

Whedbee, K. E. (2008). In Other's Words: Plagiarism as Deceptive Communication. In R. L.

Johannesen, K. S. Valde, & K. E. Whedbee, *Ethics in Human Communication* (6th ed., pp. 282-292). Long Grove, IL: Waveland Press.

Appendix A

| Question | Subject A | Subject B | Subject C | Subject D | Subject E |
|--|---|---|---|--|--|
| Do you have IP Protection | Y | Y | Y | Y | Y |
| How much do you worry about theft | Significantly | Frequently | Significantly | Significantly | Frequently |
| What sector of industry of you fall under? | Technology | Transportation | Software, IT, Music | Fitness Equipment | Health and nutrition |
| Do you employ technical communicators? | Y | Y | Y | Y | N; management addresses function |
| To what extent do they participate in the design or innovation process? | Very Little | Significantly | Frequently | Frequently | Very little |
| To what extent does IP Rights affect the way you construct documents or documentation? | Significantly | Very Little | Significantly | Frequently | Occasionally |
| What is the role/roles of your technical writer? | Internal/ External Communication , Presentations, Instructional Manuals, Content Form Layout, Vetted through IT, Accuracy | Effectively translate industry vernacular into digestible information | Adherence to protocols | Engineers in Asia for instruction manuals; In-house for specifications and manufacturing; Marketing for Media; Advertising for claims and representations; Translation of research; sent to legal for approval | Many hats; regulatory, labeling, marketing, product descriptions |
| Do they have prior experience in your field? How much? | Yes, Grant Writing, Oversight, Supervisory | Yes, but they adapted to their specific business model | Yes, extensive | Role specific; on the job training | Not in nutrition, but was in the pharmaceutical industry for ten years |
| How valuable is your technical writer to your image? | Very Much, Through Customer Comments | Very Much, Portal through the customer or public | Very Much | Valuable but secondary to product quality, they reliance on corporate partners and celebrity voices who have more value | Very valuable |
| Does IP infringement change the way you present or produce documents? | Y, Only Disclosure under NDA, Limited information for unknown, More open with familiars | Y | Yes, They are more cautious about how documents are presented | Yes, They assume it will end in a lawsuit; affects record-keeping and documentation for evidence in litigation | Yes, they have to be careful about disclosure and documentation which causes additional expense and time |

| | | | | | |
|--|--|--|---------------------------------------|---|--|
| Do you believe competition enhances creativity and innovation? | Y | Y | Y | Y | N |
| Did you model your product from, or improve an existing idea or product? | N | Y | Y | Y | N |
| How does IP infringement influence innovation in your company? | It directs where they work. If patent space is full it hinders innovation, If patent space is open it provides more opportunity for innovation | It precludes innovation through previously protected products being considered to incorporate into their process | It makes them work harder to innovate | They believe the primary concern is to not infringe on others' products; want to protect their product line | It makes them extremely careful and slower to disclose innovative ideas and products |
| Do you have costs associated with IP protection? | Y | Y | Y | Y | Y |
| How much does IP protection reduce the amount you spend on R&D? | None | None | Minimally | Minimally | Minimally |
| Does IP protection expenses keep you from creating new jobs? | N | N | N | N | N |
| How do you feel about the public domain and the creative commons? | N/A | N/A | They like them | They like them | N/A |
| Do they help or hurt your business? | No Effect | No | They help | It helps their business through greater exposure | Little impact |
| Does IP infringement affect your business performance or output? | Y, Concerns are with Asian market; semiconductor industry's length of availability; Where products are shipped; Who has access; Length of distribution | Yes, but not a great deal, mostly in aftermarket products | N | Y | Yes, negatively |
| Does IP infringement create or restrict job growth for your business? | Little effect but it grows the IT department, they will produce new products regardless which drives job growth | No | It creates job growth | Y, it restricts their potential revenue stream | Slightly restricts job growth indirectly |

IP Theft and Technical Communicators 40

| | | | | | |
|---|--|---|--|--|--|
| Would you like to see changes in existing IP regulation? | Y | N | Y | Y | N |
| Are you part of the Creative Commons or OSS? | N | N | Y | N | N |
| What type of IP protection do you have? | Copyright, Trademark, Patent, and Trade Secret | Trademarks | Copyrights and Licensing | Patents, Trademarks, Registration, Licensing Agreements foreign and domestic | Patents and trademarks |
| What other options have you considered? | ITC procedures | Patents | Patents, Creative Commons, OSS | None | Trade secrets |
| What are your concerns about IP infringement? | Knock-offs in Asia | Using the company's name and reputation; copying design; producing inferior/inconsistent products which devalue their own | Piracy and loss of proprietary information | They don't infringe on other patents so they fully research their concepts to determine that their ideas and products are unique and protectable | Knock-offs and other organizations cannibalizing their sales particularly internationally |
| What are the things you consider when protecting your IP? | Novelty, how widespread the product is, commercial value, likelihood of being copied and by who, reverse engineering | Name, reputation and expense | Back door strength | Marketability and the potential of the product; does it merit foreign protection | Cost of protection and the likelihood of obtaining protection |
| What do you think is the best way to handle IP theft? | Civilly because criminal cases are too difficult to prove and law enforcement is unwilling to enforce existing laws | Confidentiality Agreements | Litigation and protection | Spend money to protect it through research, products, and protection mechanisms | They have a negative view of the judicial system; would like to see stronger enforcement mechanisms. Now it is very difficult to prove claims of theft. The best alternative is through confidentiality agreements |

IP Theft and Technical Communicators 41

| | | | | | |
|--|---|----------------------------------|---|---|--|
| <p>Would you like to see changes in IP regulation? If yes, what?</p> | <p>Yes, easier criminal prosecution; In patents institute variable patent lengths; in the patent office improve the way processes work; too much variability of administration in oversight and consistency</p> | <p>Not familiar with options</p> | <p>Yes, stronger penalties, tougher laws on corporations</p> | <p>Yes, shorten the submission process; in the legal system the only winners are the attorneys; update regulations, people play the current system which is "might makes right," if you drag out litigation your opponents can spend you to death</p> | <p>Simplify the process of dealing with theft; likes the first to file concept and believes it encourages production of ideas, "use it or lose it," with the current system only the attorneys benefit</p> |
| <p>Other Comments</p> | | | <p>The subject brought up "submarine patents" that come up from out of nowhere to circumvent your ideas, they must look at all aspects of potential use before proceeding; protect continuation of ideas; Proposition 65 in California will hinder innovation; The subject knows the problem but doesn't have any solutions. They feel that there has to be a simpler more level way of implementing the process. One solution might be binding arbitration. Integrity has to be the cornerstone of any regulation.</p> | | |