



PROFIT

promoting regional opportunities
for investment and trade

Technology transfer & licensing

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1. Introduction

Technology transfer and licensing are closely related but are subtly different. Licensing allows the licensee to make use of the licensor's intellectual property. Often the licensee wants to license the use of a specific technology though they might also be able to license the rights to use a brand name or a trademark or even a piece of music. One of the least known, but most widely used, licences is that used by mobile phone companies for the design of their chip. The design for most phones is provided by a company called ARM, though they do not make anything at all. But the chips that are used by the phone companies are all made to ARM designs. Technology transfer usually implies a broader concept in which the transferor provides some technological know-how that can be used by the transferee. A transferor may, for example, have worked out a way to improve a manufacturing process or is offering a more effective approach to marketing and is willing to exchange that know how. The transfer may, but need not, include one or more licences covering specific aspects. With a licence, the licensee usually has to abide by a licence setting out what is allowed and what is not allowed. With technology transfer, the transferee will often build on the knowledge gained through the partnership.

2. Licensing

A licensor (that is, the firm with the technology or brand) provides their products, services, brand or technology to a licensee via an agreement. This agreement describes the terms of the arrangement. This can offer the licensor affordable and low risk entry into a foreign market while the licensee secures access to the competitive advantages of another firm. This is potentially a strong arrangement for both parties and is a relatively common practice in international business.

EXAMPLE

Let's consider an example. The licensor is a company involved in energy health drinks. Due to food import regulations in Japan, the licensor cannot sell the product at local wholesalers or retailers. To circumvent this barrier, the licensor finds a local sports drink manufacturer to which they license their recipe. In exchange, the licensee sells the product locally under a local brand name and pays a royalty of 15% of sales revenue to the licensor.

¹ This factsheet is based on material originally prepared by LE Sai Gon of Simex Training Centre and used with permission.

2.1 Advantages & disadvantages

Licensing affords businesses wanting to trade internationally with several advantages:

- It offers a rapid entry strategy, allowing almost instant access to the market with the right partners lined up.
- It can be low risk for the licensor, not least because it is the licensee that usually provides the necessary infrastructure, but if you are the licensee, then do assess the risk carefully. From the point of view of the licensor, however, this offers a low-risk route to test a new market.
- Localisation can be a complex issue legally and licensing offers a clean solution that addresses many, maybe all, of the barriers to entry.
- Licensing in which the name of the licensor is promoted – think of the Intel sticker on your laptop for example – provides free marketing for the licensor. It can offer opportunities for the licensor to be associated with new markets, thus building their reputation but also growing their potential market.
- If the new arrangement requires that a brand or trade mark is registered in the target country, then the licensor is building protection more widely.
- Cultural and linguistic barriers can be challenges for international market entry. Licensing provides critical resources as the licensee may be expected to have local contacts, local language and a deep understanding of the local market.
- The licensee is generally able to tap the knowledge and expertise of the licensor and thus become more successful more quickly.

Licensing also comes with some opportunity costs:

- Loss of control can be a disadvantage if it leads to lack of quality control. This can be troublesome if the licensor has licensed their brand name for example and the licensee fails to live up to the brand values.
- Usually a licensor will have to offer a degree of territorial exclusivity and that be a challenge if the licensee is perceived to be failing but is impossible to remove.
- Some would argue that the lower revenues for the licensor than could be achieved if they entered the market directly is a disadvantage, though I would argue that the risk is much lower and it allows the licensor to focus on larger more lucrative markets without the distraction of entering too many countries directly.

2.2 Licensing opportunities

There are many types of intellectual property that can be licensed, including trademarks, character and entertainment licensing (allowing you, for example, to use, say, Donald Duck in your own marketing material or to use a particular piece of music), brands and logos, fashion licensing (perhaps because you are in apparel but do not undertake your own design), etc. However, the major use of licensing is to enable a business to use a particular technology developed by another business. You do this every time you turn on your

computer – you are licensed to use the windows operating system rather than it being sold to you!

3. Technology transfer

The term, technology transfer, is often used by research institutions, universities and even corporate research laboratories as they aim to commercialise the fruits of their research. Some of them are very successful at doing this. But the term, as noted in the introduction, is actually used much more widely. It is a catch-all term that describes the flow of technical knowledge, which could include inventions or trade secrets or designs, from one organisation to another. It may accompany a sale. For example, a business manufacturing honey processing equipment may offer to provide specific technologies to help you become more efficient in the expectation that you will then want to buy their equipment. Or they may simply be keen to partner with you as a way to enter a new market on the basis that the transferor has some knowledge and expertise that can help you whilst you have knowledge of the particular market. The technology may be protected legally as intellectual property or may simply be offered on the basis that the transferee needs more than just the knowledge to be able to exploit it successfully. The key difference with licensing is that once you have the technology you can continue to build on it – unless of course you have licensed the key IP – rather than having to rely on the licensor when you want to improve it.

The advantages and disadvantages are much the same as for licensing but it tends to be a looser arrangement.

4. Securing an agreement

Once you have found a potential partner, agreed with the potential partner that you would like to work together and considered the boundaries of your cooperation and the rewards that you hope might accrue to each partner, it will be necessary to draw up an agreement. This needs to be done carefully to ensure that all aspects are considered and, if necessary, included in the agreement. Our advice is to use a specialist lawyer to help with this process. If you need to do this, then talk to your mentor and we may be able to help.

5. Further information

Licenseindia.com explains licensing in more detail (see www.licenseindia.com/about-licensing), gives a number of examples and introduces you to specific licensing opportunities.

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