

## ILLEGAL TRANSFER OF INTANGIBLE ASSETS IN COMMERCIAL COMPANIES: LEGAL MECHANISMS AND PROTECTIVE MEASURES

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***Annotation.** The illegal transfer of intangible assets in commercial companies constitutes a complex and increasingly significant legal issue in modern corporate practice. In the digital and innovation-driven economy, intangible assets—such as intellectual property rights, trade secrets, proprietary software, databases, brand value, and contractual rights—often represent the core value and competitive advantage of a business entity. Unlike tangible property, these assets are more vulnerable to unauthorized use, concealed transfer, and cross-border misappropriation, which complicates detection and enforcement. This article analyzes the legal nature and classification of intangible assets within commercial companies and examines the most common forms of unlawful transfer, including unauthorized assignment by corporate officers, fraudulent conveyance, breach of fiduciary duties, and misappropriation of confidential information.*

*Particular attention is devoted to the legal mechanisms available for preventing and remedying such violations, including corporate governance controls, contractual safeguards, registration systems, civil liability measures, and criminal sanctions.*

*The study further explores comparative and international dimensions of asset protection, emphasizing the challenges posed by globalization and digitalization. The article concludes that effective protection of intangible assets requires a comprehensive compliance framework integrating internal corporate procedures, regulatory oversight, and judicial enforcement.*

*Strengthening legal safeguards in this area is essential to maintaining corporate integrity, protecting shareholders' and creditors' interests, and ensuring sustainable economic development.*

**Key words:** *Intangible assets; illegal transfer; commercial companies; corporate governance; intellectual property rights; fiduciary duties; unauthorized assignment; fraudulent conveyance; trade secrets; civil liability; corporate fraud; asset protection; compliance mechanisms; shareholder rights; legal remedies.*

### **Introduction**

In today's global economy, intangible assets have become central to the value and competitive advantage of commercial companies. Unlike tangible assets such as machinery or real estate, intangible assets—including intellectual property rights, software, trade secrets, brand reputation, and contractual rights—are non-physical resources that often determine a company's long-term profitability and market position. Companies increasingly rely on these assets to innovate, maintain a competitive edge, and generate economic returns. For instance, studies show that in knowledge-intensive industries, intangible assets may account for over 70% of a company's total market value.<sup>1</sup>

The illegal transfer of intangible assets poses a unique set of risks. Unauthorized assignment, misappropriation, or concealment of these assets can result in significant financial

<sup>1</sup> Corrado, C., Hulten, C., & Sichel, D. (2005). Measuring capital and technology: an expanded framework. In *Measuring capital in the new economy* (pp. 11-46). University of Chicago Press;

losses, undermine shareholder confidence, and damage the company's reputation. Unlike tangible assets, intangible assets are often harder to trace and protect, which makes them vulnerable to corporate fraud, conflicts of interest, and misuse by insiders such as directors, managers, or employees. This vulnerability is particularly pronounced in cross-border transactions, where differences in legal systems, intellectual property protection, and enforcement mechanisms can create opportunities for unlawful transfers.<sup>2</sup>

Corporate governance frameworks and legal safeguards are essential to mitigate these risks. Strong oversight mechanisms, clear regulatory requirements, and effective enforcement procedures help ensure that intangible assets are properly managed and protected. Shareholders, creditors, and other stakeholders increasingly demand transparency and accountability in transactions involving high-value intangible assets. Furthermore, as globalization and digitalization accelerate, the potential for illegal transfers has grown, requiring companies to adopt proactive risk management strategies and compliance frameworks.<sup>3</sup>

This article examines the legal nature of intangible assets, identifies common forms of illegal transfer in commercial companies, and explores legal mechanisms and protective measures designed to prevent, detect, and remedy such violations. By integrating legal analysis with corporate governance principles, the study aims to provide practical insights for companies, regulators, and legal practitioners in safeguarding intangible assets in the modern business environment.

### **Legal Nature of Intangible Assets in Commercial Companies**

Intangible assets have emerged as a critical component of corporate value, particularly in knowledge-driven and technology-intensive industries. Unlike tangible assets such as machinery, buildings, or inventory, intangible assets are non-physical resources that provide future economic benefits and competitive advantages. They include intellectual property rights (patents, trademarks, copyrights), trade secrets, software, databases, licenses, goodwill, brand recognition, and contractual rights. The unique nature of these assets lies in their invisibility, non-depreciable physical form, and potential for unlimited replication or use, which differentiates them from traditional assets in accounting and legal terms.<sup>4</sup>

In commercial companies, intangible assets are legally recognized as property rights, meaning they can be owned, licensed, transferred, pledged, or otherwise encumbered under civil and corporate law. The ownership of intangible assets often requires formal legal procedures, such as registration with relevant intellectual property offices, contractual documentation, or corporate approval processes. For instance, patents and trademarks are generally subject to registration and state recognition, which grants their holders exclusive rights and legal protection against unauthorized use or transfer.<sup>5</sup>

From a legal perspective, intangible assets are particularly vulnerable to disputes and unauthorized transfers due to their non-physical nature.

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<sup>2</sup> Bontekoe, F. E., & Wallot, M. (2019). World intellectual property organization (WIPO). In Research handbook on the European Union and international organizations (pp. 275-292). Edward Elgar Publishing and World Intellectual Property Report 2019., <https://www.wipo.int/en/web/world-ip-report/2019/index>;

<sup>3</sup> Education at a Glance 2018 OECD INDICATORS., [https://www.oecd.org/en/publications/education-at-a-glance-2018\\_eag-2018-en.html](https://www.oecd.org/en/publications/education-at-a-glance-2018_eag-2018-en.html);

<sup>4</sup> Corrado, C., Hulten, C., & Sichel, D. (2005). Measuring capital and technology: an expanded framework. In Measuring capital in the new economy (pp. 11-46). University of Chicago Press;

<sup>5</sup> Bontekoe, F. E., & Wallot, M. (2019). World intellectual property organization (WIPO). In Research handbook on the European Union and international organizations (pp. 275-292). Edward Elgar Publishing and World Intellectual Property Report 2019., <https://www.wipo.int/en/web/world-ip-report/2019/index>;

Unlike tangible property, which can be secured physically, intangible assets require a combination of legal instruments, corporate governance measures, and internal controls to ensure protection.

Mismanagement or unauthorized disposal of these assets by directors, executives, or employees can result in significant financial and reputational damage, as well as potential liability for breach of fiduciary duties.<sup>6</sup> Furthermore, the valuation of intangible assets poses additional legal and accounting challenges. Because these assets often lack a clear market price, determining their fair value requires specialized methodologies, such as discounted cash flow analysis, relief-from-royalty methods, or market comparables. Accurate valuation is essential not only for financial reporting but also for legal enforcement in cases of unlawful transfer or infringement.

Courts and regulators increasingly rely on independent expert appraisals to assess damages and restitution in disputes involving intangible assets.<sup>7</sup> The legal nature of intangible assets in commercial companies combines elements of property law, corporate governance, and intellectual property regulation. Proper recognition, registration, documentation, and oversight are critical to safeguarding these assets. The unique challenges posed by their non-physical, high-value, and easily transferable nature make them particularly susceptible to illegal transfers, highlighting the importance of comprehensive legal and managerial protection strategies.

### **Forms of Illegal Transfer**

Illegal transfer of intangible assets in commercial companies represents a significant risk to corporate stability, shareholder interests, and market integrity. Due to their non-physical and high-value nature, intangible assets—such as intellectual property rights, trade secrets, software, licenses, and brand recognition—are particularly vulnerable to unauthorized or fraudulent transfers. The methods by which these assets are illegally transferred can be diverse, ranging from breaches of corporate governance to deliberate concealment or misappropriation.

Understanding these forms is critical for designing effective preventive and remedial legal mechanisms.

**Unauthorized Assignment** - One of the most common forms of illegal transfer occurs when directors, executives, or authorized officers assign or license intangible assets without proper corporate approval. In many jurisdictions, significant transactions involving the transfer of core assets require prior consent from the board of directors or shareholders. When such approvals are bypassed, the transfer may be considered unauthorized and potentially voidable.

Unauthorized assignment often occurs in situations where management seeks to benefit personal interests, related parties, or competing firms at the expense of the company.<sup>8</sup> Fraudulent conveyance involves the deliberate transfer of assets at undervalued prices or to affiliated entities to evade creditors, reduce tax obligations, or manipulate financial statements. This type of transfer is often associated with insolvency scenarios, where a company on the verge of bankruptcy seeks to hide or divert intangible assets.

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<sup>6</sup> Education at a Glance 2018 OECD INDICATORS., [https://www.oecd.org/en/publications/education-at-a-glance-2018\\_eag-2018-en.html](https://www.oecd.org/en/publications/education-at-a-glance-2018_eag-2018-en.html);

<sup>7</sup> Zammit, P. (2022). Measuring the value of intangible assets in the local gaming industry: an analysis (Master's thesis, University of Malta);

<sup>8</sup> Bainbridge, S. M. (2012). Corporate governance after the financial crisis. Oxford University Press;

Courts may later set aside these transactions if they are deemed to be conducted with the intent to defraud, hinder, or delay legitimate creditors.<sup>9</sup>

Trade secrets, proprietary information, and confidential business data are frequently misappropriated by employees, contractors, or executives. Misappropriation occurs when such information is disclosed to competitors, used for personal gain, or transferred without authorization. Legal frameworks such as the Uniform Trade Secrets Act (UTSA) in the United States or equivalent national laws provide remedies for companies, including injunctions, damages, and criminal sanctions in cases of deliberate theft.<sup>10</sup> Illegal transfers can also be hidden through complex contractual arrangements or disguised as ordinary business transactions.

For example, an intellectual property license might be structured as a service agreement, or assets may be transferred in stages to obscure the nature of the transaction. Such concealment makes detection difficult and can lead to extended legal disputes over ownership, valuation, and restitution.<sup>11</sup>

Executives or board members may transfer intangible assets to companies in which they hold personal interests, creating conflicts of interest. Self-dealing transactions not only violate fiduciary duties but can also constitute a form of illegal asset transfer. Corporate law and governance regulations often require disclosure of such interests and independent approval to prevent abuse.<sup>12</sup>

In multinational operations, illegal transfers of intangible assets may occur across borders, taking advantage of differences in intellectual property protection, registration requirements, and enforcement mechanisms. Companies operating internationally are particularly exposed to the risk of misappropriation due to inconsistent legal regimes, which may complicate legal remedies and enforcement actions. Overall, the illegal transfer of intangible assets undermines corporate integrity, reduces shareholder value, and increases the risk of litigation and regulatory penalties.

Recognizing these forms is essential for companies to implement preventive measures such as internal controls, governance policies, contractual safeguards, and monitoring systems.

### **Legal Mechanisms for Prevention and Remedy**

The prevention and remedy of illegal transfer of intangible assets in commercial companies require a combination of legal, corporate governance, and contractual mechanisms.

Intangible assets—including patents, trademarks, copyrights, trade secrets, software, and goodwill—are inherently vulnerable due to their non-physical nature, high economic value, and often complex ownership structures. Unlike tangible property, which can be secured physically, intangible assets rely primarily on legal frameworks, corporate oversight, and contractual enforcement for protection.

Corporate governance plays a central role in preventing unauthorized transfers of intangible assets. Boards of directors are legally obliged to exercise fiduciary duties, including the duties of loyalty and care. These duties require directors and officers to act in the best interests of the company and its shareholders and to avoid conflicts of interest.

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<sup>9</sup> Diamantis, M. E. (2019). The extended corporate mind: When corporations use AI to break the law. *NCL Rev.*, 98, 893;

<sup>10</sup> Rivette, K. G., & Kline, D. (2000). *Rembrandts in the attic: Unlocking the hidden value of patents*. Harvard Business Press;

<sup>11</sup> Education at a Glance 2018 OECD INDICATORS., [https://www.oecd.org/en/publications/education-at-a-glance-2018\\_eag-2018-en.html](https://www.oecd.org/en/publications/education-at-a-glance-2018_eag-2018-en.html);

<sup>12</sup> Bainbridge, S. M. (2012). *Corporate governance after the financial crisis*. Oxford University Press;

Legal frameworks often stipulate that any significant transfer of assets, particularly those central to a company's operations or intellectual capital, must be approved by the board or the shareholders. Failure to comply with these governance rules can result in civil liability, personal responsibility for damages, and even criminal liability for fraudulent conduct.

Corporate governance mechanisms also include internal oversight structures, such as audit committees and compliance departments, which regularly review transactions involving intangible assets. By maintaining proper checks and balances, companies reduce the risk of unauthorized decisions by individual executives or employees.

In addition, policies such as segregation of duties, multi-level authorization, and reporting requirements ensure that no single individual can unilaterally transfer high-value assets.<sup>13</sup>

protection of intangible assets heavily relies on contractual agreements. Clear, well-drafted contracts define ownership, usage rights, and transfer conditions, creating enforceable obligations. Key instruments include:

- **Intellectual Property Assignment Agreements:** These ensure that inventions, creative works, or software developed by employees or contractors are legally assigned to the company.
- **Non-Disclosure Agreements (NDAs):** NDAs protect trade secrets and confidential business information from unauthorized disclosure or transfer.
- **Non-Compete and Non-Solicitation Clauses:** These prevent employees and executives from exploiting company knowledge for the benefit of competitors.
- **Licensing Agreements:** Proper licensing documentation clarifies the scope and limitations of third-party use of company assets, preventing unauthorized sub-licensing or misuse.

Breach of such contractual obligations provides companies with civil remedies, including damages, injunctions, or rescission of unauthorized transfers. In some jurisdictions, intentional violations may also trigger criminal sanctions.<sup>14</sup>

Formal registration of intangible assets strengthens their legal protection and provides public notice of ownership. For instance, patents, trademarks, and copyrights require registration with relevant authorities to secure enforceable rights. Proper documentation of internal policies, board approvals, licensing agreements, and assignment contracts ensures that all transactions are traceable and verifiable. Courts often rely on these records when adjudicating disputes over ownership, illegal transfers, or infringement.

Civil legal remedies for illegal transfers of intangible assets generally aim to restore the company to its original position and compensate for damages. These remedies include:

- **Injunctions:** Preventing further use or transfer of the misappropriated asset.
- **Restitution and Recovery:** Returning the transferred assets or their equivalent value.
- **Compensation for Damages:** Covering financial losses resulting from the unlawful transfer.
- **Voidable Transactions:** Courts may declare unauthorized assignments null and void, removing legal effect from illicit transactions.

In cases involving deliberate fraud, misappropriation, or theft of trade secrets, criminal liability may be imposed on individuals responsible for the illegal transfer. Criminal sanctions may include fines, imprisonment, and disgorgement of profits derived from the wrongful act.

<sup>13</sup> Education at a Glance 2018 OECD INDICATORS., [https://www.oecd.org/en/publications/education-at-a-glance-2018\\_eag-2018-en.html](https://www.oecd.org/en/publications/education-at-a-glance-2018_eag-2018-en.html);

<sup>14</sup> Rivette, K. G., & Kline, D. (2000). *Rembrandts in the attic: Unlocking the hidden value of patents*. Harvard Business Press;

Criminal enforcement serves both as a punishment and a deterrent, reinforcing the effectiveness of corporate governance and contractual safeguards.

Effective prevention combines these legal mechanisms with proactive corporate strategies.

Companies are advised to adopt a comprehensive compliance framework that integrates internal controls, contractual safeguards, registration procedures, and ongoing monitoring.

Establishing clear policies, documenting approvals, conducting regular audits, and providing employee training on intellectual property and confidentiality obligations enhances the company's ability to prevent illegal transfers before they occur

In conclusion, legal mechanisms for prevention and remedy encompass a multi-dimensional approach combining governance oversight, contractual agreements, registration, and civil and criminal enforcement. The effectiveness of these measures depends on rigorous implementation, regular monitoring, and alignment with the specific regulatory environment in which the company operates.<sup>15</sup>

### **Protective Measures and Risk Management Strategies**

Effective protection of intangible assets also requires proactive risk management.

Companies can implement several strategies to mitigate the likelihood of illegal transfers:

1. Internal Audits and Monitoring – Regularly auditing intangible assets ensures that unauthorized transfers are quickly identified.
2. Segregation of Duties – Distributing decision-making authority prevents concentration of power that could facilitate misappropriation.
3. Digital and Cybersecurity Measures – Protecting sensitive information through encryption, access controls, and monitoring reduces the risk of cyber-enabled misappropriation.
4. Whistleblower Mechanisms – Encouraging employees to report suspicious activity fosters an internal culture of accountability.
5. Due Diligence in Mergers and Acquisitions – Verifying the ownership, value, and encumbrances of intangible assets prevents post-acquisition disputes.
6. Insurance Coverage – Companies may obtain specialized insurance policies covering intellectual property theft, cyberattacks, and fraud, providing financial protection against potential losses.<sup>16</sup>

Together, these measures complement legal frameworks, enhancing the company's ability to prevent unauthorized transfers and mitigate associated risks.

### **Comparative and International Perspectives**

Cross-border operations introduce additional complexities in protecting intangible assets.

Different countries have varying laws regarding intellectual property registration, corporate governance, and enforcement of contractual rights. This creates opportunities for illegal transfer, particularly in multinational corporations or companies engaged in international licensing and joint ventures.

International treaties and organizations, such as the World Intellectual Property Organization (WIPO), seek to harmonize intellectual property standards and provide dispute resolution mechanisms across jurisdictions.

<sup>15</sup> Diamantis, M. E. (2019). The extended corporate mind: When corporations use AI to break the law. *NCL Rev.*, 98, 893.

<sup>16</sup> Education at a Glance 2018 OECD INDICATORS., [https://www.oecd.org/en/publications/education-at-a-glance-2018\\_eag-2018-en.html](https://www.oecd.org/en/publications/education-at-a-glance-2018_eag-2018-en.html);

Agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) establish minimum standards for IP protection and facilitate cross-border enforcement.<sup>17</sup>

However, enforcement often depends on domestic legal systems, making proactive corporate strategies essential. Companies operating internationally must integrate local compliance measures with global protective policies. Multinational corporations frequently adopt standardized IP management systems, conduct cross-jurisdictional audits, and maintain legal teams with expertise in multiple jurisdictions to safeguard intangible assets effectively.

The comparative perspective highlights that while legal frameworks differ across countries, the combination of rigorous corporate governance, contractual protections, internal monitoring, and international compliance practices is universally recognized as the most effective way to prevent illegal transfers and protect corporate value.

### **Conclusion**

The illegal transfer of intangible assets in commercial companies represents a significant legal, economic, and managerial challenge in today's knowledge-driven economy. Intangible assets—including intellectual property, trade secrets, software, licenses, and brand value—often constitute the most valuable components of a company's resources. Their non-physical nature, high economic worth, and ease of replication make them particularly susceptible to unauthorized transfer, misappropriation, and fraudulent conveyance. Such acts not only threaten shareholder value but also undermine corporate integrity, damage reputations, and may expose companies and individuals to civil and criminal liability.

This article has shown that the effective prevention and remedy of illegal transfers require a multi-dimensional approach. Strong corporate governance, including fiduciary duties, board oversight, and approval mechanisms, forms the foundation for protecting intangible assets. Legal instruments such as intellectual property assignments, non-disclosure agreements, licensing contracts, and internal policies provide additional safeguards. Registration and proper documentation of intangible assets further strengthen a company's legal position and facilitate enforcement in disputes.

Civil remedies, including damages, restitution, and injunctions, alongside criminal sanctions for intentional misappropriation or fraud, offer legal recourse for companies affected by illegal transfers. Moreover, proactive risk management strategies—including internal audits, segregation of duties, cybersecurity measures, and whistleblower programs—play a critical role in mitigating risks before they materialize. Comparative and international perspectives highlight the importance of aligning corporate practices with global standards, treaties, and regulatory requirements to prevent cross-border misappropriation of intangible assets.

In conclusion, protecting intangible assets is no longer optional but a strategic necessity for commercial companies. An integrated framework combining legal mechanisms, corporate governance, contractual safeguards, and risk management ensures that companies can maintain their competitive advantage, safeguard shareholder interests, and uphold market integrity in an increasingly complex and interconnected global business environment.

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<sup>17</sup> Bontekoe, F. E., & Wallot, M. (2019). World intellectual property organization (WIPO). In Research handbook on the European Union and international organizations (pp. 275-292). Edward Elgar Publishing and World Intellectual Property Report 2019., <https://www.wipo.int/en/web/world-ip-report/2019/index>;

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