

US Policies for Fostering Intangibles

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Exploring the promises and pitfalls of the global information economy

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Intangibles
are
More than IP

FASB list of intangibles

A. Marketing-related intangible assets

- (1) Trademarks, tradenames
- (2) Service marks, collective marks, certification marks
- (3) Trade dress (unique color, shape, or package design)
- (4) Newspaper mastheads
- (5) Internet domain names
- (6) Noncompetition agreements

B. Customer-related intangible assets

- (1) Customer lists
- (2) Order or production backlog
- (3) Customer contracts and related customer relationships
- (4) Noncontractual customer relationships

C. Artistic-related intangible assets

- (1) Plays, operas, ballets
- (2) Books, magazines, newspapers, other literary works
- (3) Musical works such as compositions, song lyrics, advertising jingles
- (4) Pictures, photographs
- (5) Video and audiovisual material, including motion pictures, music videos, television programs

D. Contract-based intangible assets

- (1) Licensing, royalty, standstill agreements
- (2) Advertising, construction, management, service, or supply contracts
- (3) Lease agreements
- (4) Construction permits
- (5) Franchise agreements
- (6) Operating and broadcast rights
- (7) Use rights, such as drilling, water, air, mineral, timber cutting, and route authorities
- (8) Servicing contracts, such as mortgage servicing contracts
- (9) Employment contracts

E. Technology-based intangible assets

- (1) **Patented technology**
- (2) Computer software and mask works
- (3) Unpatented technology
- (4) Databases, including title plants
- (5) Trade secrets, such as secret formulas, processes, and recipes.

Intangible monetization - same as for IP

Lease

Sell

Borrow

Corrado, Hulten, and Sichel

Computerized information

1. Computer software: own use, purchased, and custom software.
2. Computerized databases

Scientific and creative property

3. Science and engineering research and development (costs of new products and new production processes, usually leading to a patent or license):
4. Mineral exploration (spending for the acquisition of new reserves)
5. Copyright and license costs (spending for the development of entertainment and artistic originals, usually leading to a copyright or license): Development costs in the motion picture industry, development costs in the radio and television, sound recording, and book publishing industries.
6. Other product development, design, and research expenses (not necessarily leading to a patent or copyright): New product development costs , new architectural and engineering designs, R&D in social sciences and humanities

Economic competencies

7. Brand equity (advertising expenditures and market research for the development of brands and trademarks)
8. Firm-specific human capital (costs of developing workforce skills, i.e., on-the-job training and tuition payments for job-related education)
9. Organizational structure (costs of organizational change and development; company formation expenses)

See Carol A. Corrado, Charles R. Hulten, and Daniel E. Sichel, "Measuring Capital and Technology: An Expanded Framework," Federal Reserve Board, August 2004, and

... "Intangible Capital and Economic Growth" NBER Working Paper No. 11948 January 2006

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Size of investments

Leonard Nakamura, Philadelphia Fed: the value of US gross investments in intangibles is over **\$1 trillion annually**

Corrado, Hulten, and Sichel: **\$3 trillion missing from our accounting of capital stock**

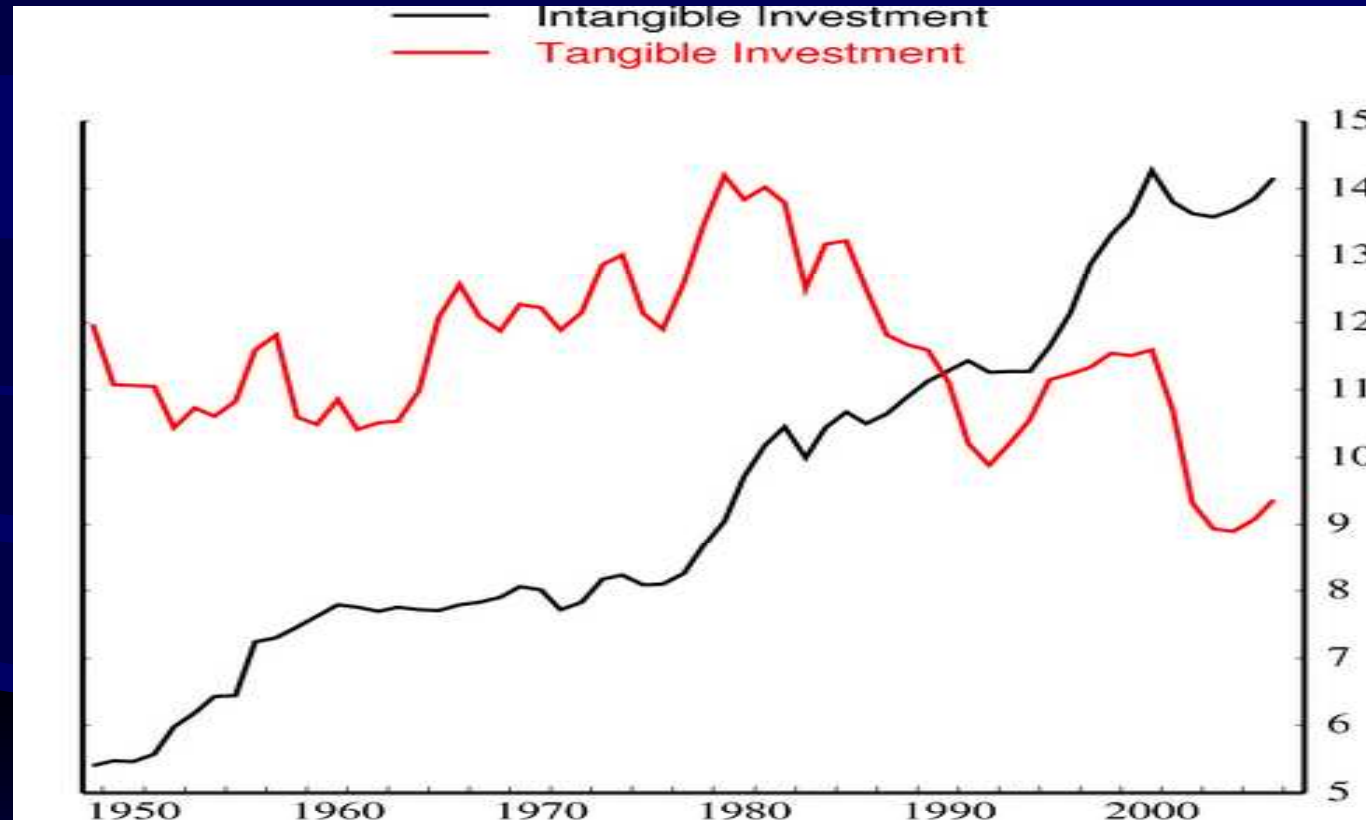
Leonard Nakamura, "A Trillion Dollars a Year in Intangible Investment and the New Economy," in John Hand and Baruch Lev, editors. *Intangible Assets: Values, Measures and Risks*, Oxford University Press, 2003.

Carol A. Corrado, Charles R. Hulten, and Daniel E. Sichel, "Measuring Capital and Technology: An Expanded Framework," Federal Reserve Board, August 2004, and

... "Intangible Capital and Economic Growth" NBER Working Paper No. 11948 January 2006

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Business investment in the US, tangible and intangible investment (% business output)



From OECD, *Intellectual Assets and Value Creation*, March 23, 2008

Based on Carol A. Corrado, Charles R. Hulten, and Daniel E. Sichel, "Measuring Capital and Technology: An Expanded Framework," Federal Reserve Board, August 2004, and

... "Intangible Capital and Economic Growth" NBER Working Paper No. 11948 January 2006

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Interactions between IP and other intangibles

Weston Anson: Enterprise-value also rests in proprietary methodologies, best practices, application-specific software, operating systems, enterprise information infrastructures, and the tools that operate and manage the information needs

Nir Kossovsky: intangible are like the stones of a Roman arch where the loss of any one stone could cause catastrophic collapse

Weston Anson, et al. "Bundling and Grouping of Intangible Assets," In *Fundamentals of Intellectual Property Valuation*. American Bar Association, Chicago, 2005.

Nir Kossovsky as quoted in Are "Patents an Asset Class?" *Intellectual Asset Management Magazine* blog, April 28, 2007.

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End goal is management and utilization

Business sector:
higher value added

Public sector:
create appropriate public policies
better management of public assets

Federal Investment in Intangibles

\$200 billion in FY 2006

8% of \$2.5 trillion total budget

20% of \$1 trillion discretionary spending

Federal Investment in Intangibles

FY 2006 outlays (rough estimates)

Information and intellectual property	
R&D funding (does not include facilities and equipment)	\$122.4 billion
Arts & humanities/museum funding (including Smithsonian)	\$1 billion
Government information creation	
Statistical agencies	\$2.2 billion
Weather service	\$0.7 billion
Library of Congress/CBO/GAO	\$1 billion
PTO	\$1.6 billion
Individual Human Capital (know-how)	
Education and training	\$61 billion
Training of government personnel (military)	\$9 billion
Social Capital (Alliances & Networks)	
Organizational capacity building & technical assistance	
Community (HUD, EDA, HHS, USDA extension service)	\$0.5 billion
Company (MEP, SBA)	\$0.5 billion
Brands and marketing - reputation	
Export promotion	\$1.5 billion
Product safety, food safety, drug safety (investments in product reputation)	\$3 billion
Total	\$204.4 billion

Does not include tax expenditures or value of landing slots, grazing rights, water rights, mining rights, spectrum and broadcast licenses, etc.

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UK Public Sector Intangibles Project

Cross Departmental framework for maximising wider social and economic impact from intangible assets generated / owned in the public sector

Pilot project to assess intangible assets of 5 public sector organizations

Public Sector Intangibles in the US

Who owns public information?
Weather data; SEC data

IP from government funded research

Brands and trademarks
Smoky the Bear
FBI
Presidential seal

Policies on Intangibles

Policies to encourage understanding of intangibles

Policies to encourage financial investments in intangibles

Policies to foster utilization of intangibles

Policies to encourage understanding of intangibles

Increase corporate disclosure of intangibles:

- Reinstate the joint FASB and IASB research project on expanded disclosure guidelines for intangibles.
- Clearly designate nonfinancial measures for evaluating intangibles in MD&A portion of financial statements.
- Create a safe harbor in financial statements for reporting of intangible assets.
- Modify Sarbanes–Oxley so that there is a clear directive for assessments of the “material” intangible assets.
- Utilize the stock exchanges as initial testing grounds for increased intangible disclosure by requiring listed members to make additional disclosures that capture intangible metrics.

Policies to encourage understanding of intangibles

con't

Explore the possibility of creating a “best practices” guidelines for intangible asset management.

Include innovation and intangibles as part of the Baldrige Award.

Create a crosscutting special analysis of the Federal budget.

Include intangibles in the GDP accounts.

Policies to encourage financial investments in intangibles

Convene a special FASB/SEC task force on valuation methodologies and support and encourage increased research on valuation standards. (including efforts of International Valuation Standards Council)

Explore the creation of an Intangibles Mortgage Corporation (Ida Mae) to regularize the intangibles-backed securities market.

Undertake a review of the Basel II Accords to better understand their implications for intangible-backed lending.

Coordinate with ongoing efforts at market reform to ensure that intangible-backed assets are properly included.

Policies to foster utilization of intangibles

Expand/reorient the MEP program to include intangible asset management.

Review federal and state insurance laws and regulations to promote the development of financial sound insurance coverage of intangibles.

Create a permanent knowledge tax credit that would increase investments in intangibles.

Explore lowering the tax rate on intangible asset royalties, in conjunction with stricter regulations on international transfer pricing mechanisms and cost-sharing arrangements and on passive investment companies. (Levin “Stop Tax Havens Act”)

Policies to foster utilization of intangibles

Enact patent reform legislation and include a review of patent litigation and patent liability insurance and a review of federal and state technology policies to encourage promotion of patent pools.

Review how the federal technology transfer system, including Bayh–Dole, does or does not facilitate the creation of intangible assets.

Review federal government business loan programs, especially in the small business arena, to ensure that intangible assets can be used as collateral, including requiring SBA to work with its commercial lenders to develop standards for the use of intangible assets as collateral, similar to existing SBA underwriting standards.

For Further Information

Intangible Asset Monetization: The Promise and the Reality; Working Paper #03, Athena Alliance, April 2008

Measuring Intangibles: A Summary of Recent Activity; Working Paper #02, Athena Alliance, June 2007

Reporting Intangibles: A Hard Look at Improving Business Information in the U.S., Working Paper #01, Athena Alliance, April 2005

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