

Technology transfer provides the scope for creativity in the organization and structure of what is usually a long-term relationship. The bottom line is always lasting profitability for the respective parties.

When setting a price for a technology transfer the initial objective should be to quantify the total size of the profitability pie to be generated by the combination of rights and resources which are expected to be contributed by the respective parties. There are many ways in which a licensor can realize a return on its investment in discovering, creating and developing the technology being licensed or otherwise transferred. However, a realistic approach to income expectations will facilitate a long-term relationship between the parties. It is the purpose of this briefing to outline specific criteria that should be considered to achieve a mutually satisfactory bottom line. Some of these are:

1. Size of the relevant market: is the item resulting from the licensed technology utilized by the general public, or is it a relatively specialized item that is important to only a narrow sector of the population, or even to a limited geographical region?
2. Dynamism of the market. This depends on the underlying sector of the economy that is expected to be caught as a result of the licence. Is it a market that is notably expanding and that may be expected to grow further? Or is this a flat market because of the excess production capacity, too many competitors or even general technological obsolescence?
3. Characteristics of the technology to be licensed. Is the licensed technology a unique one, that is, or is expected to, create a new expanding market? Is a pioneer IP right involved? Or is it only an evolutionary refinement of something relatively standard?

4. Quality of contribution by the owner of the technology. Does the proprietor enjoy a well-recognized reputation as an innovator and continuing source of useful ideas and improvements? Is it known to defend its rights vigorously against infringers?

5. Assets expected to be contributed by technology recipient. Is the recipient financially capable, an efficient manufacturer, and/or does it possess a sound marketing, organization? If properly motivated, is it likely to maximize the potential of the relevant technology?

6. General state of the economy. Are conditions considered to be healthy, expanding, in recession or in recovery? Is there an economic indicator, tax incentive, legal framework that could affect the contemplated business of the licensing parties?

approaches that might help them make a business determination when licensing technology.

Notwithstanding these basic criteria, an argument sometimes raised by a proprietor when it is offering an invention for license is that it has spent enormous time, effort and money to create and develop the technology involved. A realistic contra argument is that these are sunk costs to the licensor that are irrelevant to the licensee, who is only interested in the future profitability the licensed technology is likely to generate. The risk element is very important to determine profit sharing. Generally it is the licensee who bears the principal risk, since it is usually exposed to unknown elements in the marketplace that might help or hinder the introduction of the licensed product. In summary, these criteria should help the parties conclude that their portion of the profit pie is not always mandated by a standard practice formula, but rather by practical