

**IP Governance Task Force**  
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Executive Summary: IP Governance Systemic Risks, Action Plan & Standards

Many banks and credit unions are failing to safeguard their intellectual property per federal regulations and this is contributing to the rapid growth of online identity theft per recent federal statistics. To reverse these trends, a paradigm based on current federal regulations is needed to address 14 systemic online identity theft risks that are being exploited, increasingly at the expense of consumers, as a source of funding for cyber criminals that include terrorists and organized crime. No new regulations are required. What is needed is a clear focus on intellectual property as a front-end operational risk by a Board of Directors with an action plan to limit identity theft losses and regain consumer confidence by safeguarding intellectual property, consumers and IT systems per existing federal and state regulations. Key IP Governance Goals, based on the [IP Governance Dashboard](#) (Matrixes A-E), and corresponding Chapters #1-#14 in the [IP Audit Report V1](#) (5mb, pdf), are as follows:

1. Common definition of online identity theft within industry and regulations: [Separate file](#).
2. Common understanding that IP Asset Frauds are the epicenter for down-stream federal and state crimes and attacks against consumers and IT systems with negative impacts on operational losses (Matrix A), compliance, disclosures, reputations, and law enforcement, domestically and internationally, all due to a common systemic, operational risk by Boards of Directors who are failing to safeguard bank intellectual property per federal and state regulations (Matrixes A, B, C, D, E). Metrics include federal statistics on Consumer Identity Theft and Corporate Identity Theft with multiple derivative identity theft losses in credit card fraud, mortgage loan fraud and bank fraud for consumers and banks per the FTC and FINCEN plus open source statistics measuring exposure to IP Asset Frauds by fraud type, i.e., email spam, and phishing and by financial firm. Includes Ohio Case Study on 31 banks and credit unions as part of a regional study of 91 financial firms headquartered in mid west and south.
3. Recognize enemy: Identity theft is a funding source for organized crime and terrorists.
4. Mapping (Matrix A) "Identity Theft" as an Operational Loss Event within Basel to:
  - o Square (1) the June 2006 Revised Framework from the Ten Member Countries that addresses breach of privacy, retail customer disclosure violations, systems security, related hacking damage and theft of information with (2) the 2-15-07 Basel II NPR which omits the foregoing terms and inserts "Identity Theft".
  - o Quantify Retail Banking Identity Theft Operational Losses as a % of Total Assets per the confidential data collection exercise in 2005 involving 23 of the largest US banks in the QIS '04 study by the Federal Reserve Bank of Boston.
5. Mapping (Matrix B) Identity Theft Operational Loss Events with Operational Risk Drivers and Exposures.
6. Coordinate Information Security Governance, (Matrix C), as an Enterprise Risk Management function (ISGovernance) to look beyond the "IT Perimeter" for

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management of inter-linked or dependent operational risks involving Information Technology, Intellectual Property, Network Vulnerabilities and relevant federal regulations.

7. IP Governance – Regulatory Compliance (Matrix D). This analyzes operational risk due to non-compliance with federal and state regulations on safeguarding intellectual property (trademarks and trade secrets) from fraud and use within federal crimes, such as IP Asset Frauds, that target downstream customers, IT systems and cause Identity Theft Operational Losses, reputation harm, and pressures for law enforcement, globally. Recommended reading for Boards of Directors and C-Level Executives: [“Perfect Storm”](#), published March 1, 2007 by Complinet. Matrix D.
8. IP Governance: Board of Director leadership, on Intellectual Property Operational Risks (Matrix E), is essential to overcome organizational silos, non-compliance within a maze of current federal and state regulations on safeguarding intellectual property and consumers from IP Asset Frauds. This includes setting a risk tolerance level at the Board level for exposure to IP Asset Frauds and supporting an IP Investment budget that includes independent verification and validation by qualified intellectual property counsel and quarterly board reports per the 2-15-07 Basel II NPR. Risk tolerance for IP Asset Fraud is measured by a firm’s ownership level of the universe of confusingly similar domain names for its trademarks on a scale of 0% to 99.5%. This includes a matching scale of Online Brand Ratings of “F” to “A”. Due diligence from open sources on trademarks and domain names reveals a systemic pattern of non-compliance with COSO ERM, FDICIA Section 112 and GLBA 501(b) on safeguarding intellectual property from criminal acts and use within federal and state crimes involving identity theft.
9. Scenario Analysis: Current IP Governance Operational Risk (litigation, regulatory fines) profiles are similar to (1) AML/BSA Civil Money Penalties from FINCEN involving a funding source, i.e., identity theft, for organized crime and terrorists, (2) a state banking department fine against Western Union for AML/BSA violations, (3) successful FTC lawsuits on deceptive privacy statements and deficient information security programs, (4) lawsuits for failing to avoid negligence and safeguard intellectual property. Examples: FINCEN Civil Money Penalties cite lack of adequate internal controls, senior management involvement, and submission of Suspicious Activity Reports – the same risk factors present in IP Governance risks. The FTC has won lawsuits against deceptive claims about privacy and security policies (Nations Title) and a failure to use reasonable security measures to protect consumers’ data (Guidance) – the same risk factors present in IP Governance risks. Under a business scenario and dependence analysis, financial firms face potential litigation and/or regulatory fines on current IP governance risks from federal and/or state regulators and/or civil lawsuits (California AB 1950).
10. Quantifying Intellectual Property Operational Risks: Average risk is 5% of 4<sup>th</sup>Q Net Income 2005 based on (1) non-compliance with federal and state regulations, (2)

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current high exposures to IP Asset Frauds identified as funding sources for organized crime and terrorists by the FBI, GAO, FINCEN and (3) the \$5,000 threshold (\$0 pound sterling threshold in the UK – Serious Organized Crime Agency) for Identity Theft, Credit Card Frauds and Mortgage Loan Frauds by FINCEN. Alternative valuations include \$500,000 per each infringing web site and domain name under state-based Anti-Phishing Laws. Civil Money Penalties by FINCEN for AML/BSA violations are in Matrix D and range from \$150,000 to \$30,000,000.

11. Board: Establishing a Risk Tolerance for IP Governance Operational Risks and Matching IP Investment Budgets. Currently firms have significant exposure to IP Asset Frauds as they own on average less than 7% of the universe of confusingly similar and infringing domain names for their brands. This equates to an average Online Brand Rating of F17. At the other end of the risk spectrum, firms selecting a minimal IP Risk Tolerance with a 99.5% ownership level can expect to budget an average of .05% of Net Income for 2004 and 2005, for firms with total assets in excess of \$1 billion, or .36% of Net Income for 2004 and 2005, for firms with total assets under \$1 billion. This IP Investment will convert current IP Asset Fraud risks into IP Assets thus solving deferred IP maintenance of 13 years while strengthening an IP Perimeter and minimizing downstream IP Asset Fraud attacks against consumers, IT systems and law enforcement, globally. It also earns a firm an “A” Online Brand Rating and recognition as a firm Protecting Consumers Online per federal and state regulations. The remediation process takes about 90-120 days. All costs, including legal, are included in the foregoing IP Investment budget. Ongoing monitoring, reporting and rating are quoted on risk-adjusted premiums tied to the Online Brand Rating of a firm with significant discount available for firms with low risk exposures per the “A” Online Brand Rating. The Online Brand Rating also facilitates a peer review on a state-by-state basis as well as by country as this is a global IP Governance risk for financial firms.
12. Cessation of the 5-day grace period for payment on new domain name registrations.
13. Complete and public disclosure of domain name ownership information within WHOIS databases.
14. Education for consumers, attorney generals and C-Level executives on federal and state-based regulations on safeguarding intellectual property as it relates to privacy and security issues plus potential litigation options for damages.

Basel Committee: “The Basel Committee on Banking Supervision is a committee of banking supervisory authorities that was established by the central bank governors of the Group of Ten countries in 1975. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States. It usually meets at the Bank for International Settlements in Basel, where its permanent Secretariat is located.”

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