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3 Legal Challenges In-House Counsel Face with 3-D Printing

As 3-D printing becomes more widespread, in-house counsel will be tasked with complex IP and liability challenges.

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Yet another potentially disruptive technology is set to join the ranks of blockchain and AI as a headache for legal: 3-D printing. While its use in legal is limited, 3-D printing's growing adoption in various industries, from medical and pharmaceuticals to consumer products and candy bars, presents unique challenges to in-house counsel prosecuting or defending IP and liability issues.

The market for the technology, which enables consumer or corporate users to manufacture or "print" products by inputting digital files and raw materials into a machine, is set to grow to \$26.7 billion by 2019, according to [a report from the International Data Corp](#) .

And as the market grows, so too will the various legal complexities it creates. Here is a look at three of the most pressing challenges counsel will face with the advent of 3-D printing.

IP Infringement

As 3-D printing become more widespread, counsel will likely have to defend or prosecute far more IP infringement cases on behalf of clients.

Maya Eckstein, head of the 3-D printing practice at Hunton & Williams, noted that as the purpose of 3-D printing is to print a product from a single digital file that is a replica of an original design, the technology can easily be used for counterfeiting products that are "literally exact [to the original], all the way down to the trademarks and the patented designs."

Chinh Pham, who co-leads the emerging technology practice at Greenberg Traurig, added that 3-D printing companies themselves can also be at risk of direct infringement charges if they directly print and sell patented products, as well as contributory or indirect infringement charges insofar as their 3-D printing technology enables infringement.

And such IP challenges are not far-off possibilities. Eckstein noted there are currently various websites that host 3-D printing files to make exact replicas of popular products, such as "Star Wars" and Disney figurines. In addition, "there are also websites online that are more subversive and purport to have on them files that were obtained inappropriately that can be then downloaded and printed," she said.

As with the IP infringement in the music industry, counsel may find themselves having to go after each of these individual file-sharing websites to protect IP rights. Eckstein said counsel can rely on the Digital Millennium Copyright Act (DMCA) to send takedown notices to those websites.

But she added that the problem with such an effort is that it requires counsel to engage in "extensive monitoring [of the online space] to be able to ensure that their products aren't being counterfeited, that no one is violating their trademarks, copyrights or patents."

Security Regulations

Counsel at companies employing 3-D printing also need be aware of evolving regulations governing what can and cannot be printed. One of the most well-known of these are the regulations surrounding 3-D printed firearms.

Eckstein noted that the printing of firearms "and the providing of computer files online for the individuals to download and print their own firearms" has been declared unlawful by the U.S. State Department.

The State Department's argument that such printing violates federal export laws and does not constitute free speech was upheld in a ruling by Fifth Circuit Court of Appeals in *Defense Distributed v. Department of State* in September 2016, she explained.

While Eckstein believes that federal scrutiny over 3-D printed firearms will increase in the future, she also predicted such scrutiny will also extend to other 3-D printed products that pose different types of security risks, such as medical devices.

"When something like a medical device is counterfeited, that's scary. Are they using the same materials to print the medical device, and if they're not, what kind of effect will that have on the body?"

Given these dangers, Pham noted it is likely that 3-D printed medical devices will have to meet future regulatory standards that are put in place to ensure safety. Additional standards, he added, may also come to govern 3-D printed products in the automotive or aerospace industries—where safety can be an issue.

Questions of Liability

When a 3-D printed product is unsafe and causes harm to its owner or another party, the question of who liable is not always straightforward and simple for counsel to ascertain. Eckstein said the answer for who is liable in these cases "is going to be different in different scenarios."

She highlighted a specific scenario where a consumer with a home 3-D printer has a broken and leaking kitchen sink. The consumer purchases a digital file from the sink's manufacturer, as well as the proper raw components from a hardware store, to 3-D print a replacement part to fix the leak.

After the part is printed and installed in the sink, however, it malfunctions and causes even more property damage. But who is at fault for the damage, Eckstein said, is not entirely clear.

"Is it the manufacturer responsible because they sold you the file? They didn't actually sell you the product; they just sold you the file. Are you responsible because you used the wrong materials? What if your printer as malfunctioning—is the printer manufacturer responsible? There's a multitude of potential liabilities there," she said.

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