

Intellectual property requires careful estate planning

Published on November 1, 2018

If your estate includes forms of intellectual property ("IP"), such as patents and copyrights, it's important to know how to address them in your estate plan. Although these intangible assets can have great value, in many ways they're treated differently from other property types.

2 estate planning questions

For estate planning purposes, IP raises two important questions: (1) What's it worth? and (2) How should it be transferred? Valuing IP is a complex process, so it's best to obtain an appraisal from an experienced professional.

After you know the IP's value, it's time to decide whether to transfer the IP to family members, colleagues, charities or others through lifetime gifts or through bequests after your death. The gift and estate tax consequences will affect your decision, but also consider your income needs, as well as who's in the best position to monitor your IP rights and take advantage of their benefits.

If you'll continue to depend on the IP for your livelihood, for example, hold on to it at least until you're ready to retire or you no longer need the income. You also might want to retain ownership if you feel that your children or other transferees lack the desire or wherewithal to exploit its economic potential and protect it against infringers.

Achieving your objectives

Whichever strategy you choose, it's important to plan the transaction carefully to ensure that your objectives are achieved. There's a common misconception that, when you transfer ownership of the tangible medium on which IP is recorded, you also transfer the IP rights. But IP rights are separate from the work itself and are retained by the creator — even if the work is sold or given away.

Suppose, for example, that you leave to your child a film, painting or written manuscript. Unless your estate plan specifically transfers the copyright to your child as well, the copyright may pass as part of your residuary estate and end up in the hands of someone else.

Revise your plan accordingly

If you own patents or copyrights, you probably have great interest in who'll take possession of your work after you're gone. Addressing IP in your estate plan can give you peace of mind that your wishes will be carried out, but the law surrounding such property can be complex.

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