

Get smart when tackling estate planning for intellectual property

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If you've invented something during your lifetime and had it patented, your estate includes intellectual property ("IP"). The same goes for any copyrighted works. These assets can hold substantial value, and, accordingly, must be addressed by your estate plan. However, these assets are generally treated differently than other types of property.

4 categories of IP

IP generally falls into one of four categories: patents, copyrights, trademarks and trade secrets. Let's focus on only patents and copyrights, which are protected by federal law in order to promote scientific and creative endeavors by providing inventors and artists with exclusive rights to benefit economically from their work for a certain period.

In a nutshell, patents protect inventions, and the two most common are utility and design patents. Under current law, utility patents protect an invention for 20 years from the patent *application filing* date. Design patents last 15 years from the patent *issue* date. For utility patents, it typically takes at least a year to a year and a half from the date of filing to the date of issue.

When it comes to copyrights, they protect the *original* expression of ideas that are fixed in a "tangible medium of expression," typically in the form of written works, music, paintings, film and photographs. Unlike patents, which must be approved by the U.S. Patent and Trademark Office, copyright protection kicks in as soon as a work is fixed in a tangible medium.

Valuing and transferring IP

Valuing IP is a complex process. So, it's best to obtain an appraisal from a professional with experience valuing this commodity.

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 you also should 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 of the IP if you feel that your children or other transferees lack the desire or wherewithal to take advantage of its economic potential and monitor and protect it against infringers.

Whichever strategy you choose, it's important to plan the transaction carefully to ensure 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.

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. Please contact us with any questions on how to incorporate IP in your estate plan.

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