

Get smart when tackling estate planning for intellectual property

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If you own intellectual property ("IP"), such as a patent or copyright, you need to know how to account for it in your estate plan. These intangible assets can be highly valuable, and you'll want them to be handled according to your wishes after you die.

2 important questions

IP generally falls into one of these categories: patents, copyrights, trademarks or trade secrets. For estate planning purposes, IP raises two important questions:

1. What's it worth?
2. How should it be transferred?

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

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 is 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 exploit 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 — even if the work is sold or given away.

Don't overlook your IP

A primary goal of your estate plan is to ensure your assets are distributed per your wishes after your death. It's easy to remember to include tangible assets, such as homes and vehicles, but don't forget to account for intangible assets, including IP. We can help you determine how to address any patents, copyrights or other IP you own in your estate plan.

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