

# Don't Forget to Address IP In Your Estate Plan

Over your lifetime, you may have accumulated a wide variety of tangible assets, including automobiles, works of art and real estate, which you've accounted for in your estate plan. But *intangible* assets can easily be overlooked.

Consider intellectual property, such as patents, copyrights, trademarks or trade secrets. These assets can have great value. So if you own IP rights, it's important to properly address them in your estate plan.

## 2 Common Forms of IP

Here, we'll focus on patents and copyrights, creatures of federal law intended to promote scientific and creative endeavors by providing inventors and artists with exclusive rights to exploit the economic benefits of their work for a predetermined time period.

**1. Patents.** Patents protect inventions. There are several types of patents; the two most common are utility and design patents. A utility patent may be granted to someone who "invents or discovers any new and useful process, machine, article of manufacture, or compositions of matters, or any new useful improvement thereof." A design patent is available for a "new, original and ornamental design for an article of manufacture." To obtain patent protection, inventions must be novel, "nonobvious" and useful.

Under current law, utility patents protect an invention for 20 years from the patent *application filing* date. Design patents last 14 years from the patent issue date. There's a difference between the filing date and issue date. For utility patents, it takes at least a year and a half from date of filing to date of issue.

**2. Copyrights.** Copyrights protect the *original* expression of ideas that are fixed in a "tangible medium of expression," typically in the form of written works, music, paintings, sculptures, photographs, sound recordings, films, computer software, architectural works and other creations. 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 (although there are additional steps you can take to strengthen the protection).

For works created in 1978 and later, an author-owned copyright lasts for the author's lifetime plus 70 years.

## **Estate Planning for IP**

For estate planning purposes, a key question is: What's it worth? 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 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.

### **Don't Try This at Home!**

Before you begin to address IP in your estate plan, discuss your options with your estate planning attorney. IP law can be complex, so properly documenting your IP wishes is essential to ensure they'll be carried out after your death.

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