



Getting It 'Right' For The After-Life!

Succession planning for Intellectual Property Rights is critical to avoid future disputes and becoming increasingly complex as digital properties and various co-ownership structures come into play

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No matter how much and how often we talk of intellectual property rights (IPR), for most of us, the word 'property', by default, always stirs an image of 'land', 'cash', 'jewellery' and other such capital assets of some kind. We forget that IPR, like the tangibles, is an integral part of our wealth and needs to be dealt with very carefully not only during the lifetime of owner but for benefit of family as well. Improper management and allocation of IPR may irk disputes amongst the IPR holders, devaluing the economic worth of rights. Readers may have heard about the dispute regarding inheritance of Marilyn Monroe's 'right to publicity', which even today earns a fortune.

In this article we have discussed the relevance of IP wealth planning specially for the patrons of the entertainment industry.

In the current age, we often find talent having various revenue streams, such as from films, singing opportunities, brand endorsements and other financial investments (like a restaurant or a sports team). In such situations, the IP may be scattered in different ventures, making it difficult to track, plan and monetise IP in an effective and tax efficient manner. Further, even the succession planning may get complex for IP rights.

In the film industry we have seen several examples where there have been disputes over rights among family members. This arises mostly due to lack of IP succession planning by the right holders. Joint ownership among warring heirs, devalues the IP substantially. When there is no will the joint ownership rights among heirs often gets created. Sometimes, even if there is a will, the producer of a film may simply state that the property be jointly owned by say his sons and daughters. Since the copyright and trademark law require permission all the joint owners for commercialisation of

rights, the IPR cannot be monetised till all the heirs so consent.

Similar issues may arise for an author of a work (for instance a scriptwriter, actor, lyricists, singer etc.) who has the right to receive royalties as per the latest amendments to the copyright law. The right to receive royalty and copyright in the author's work may be divided among heirs after death of the owner. While royalties will still be paid to the heirs, they may not be able to further commercialise right unless they jointly agree to the exploitation of right.

The IP so fondly created by the authors and producers may become a matter of dispute after their lifetime. This can be easily avoided by proper succession planning of the IP.

Another phenomenon in the industry is where the 2 or 3 creative talent come together to form LLPs or companies which hold IP. Any dispute among them leads to shareholders disputes again, devaluing the effective exploitation of IP by such LLPs or companies.

Digital inheritance is another interesting concept being discussed internationally. The celebrities create blogs, facebook accounts and the like, which are controlled either by them or their agents. Huge content and IP may get created. Complex issues arise in these cases as well, on ownership of content, exploitation

and succession of such IP rights and of course access to such account post demise of the celebrity.

Internationally, the concept of loan out corporations exists, where all the rights of the talent are housed and incomes earned. This not only helps in consolidation of all rights in one entity, but also in better tax planning when there is income generated from different jurisdictions and of course for limiting the liabilities of individuals.

In so far as succession planning is concerned, some interesting structures can be created, which can manage the IPR and flow of funds during as well as after the lifetime of the owner of rights. Such structures can give the owner or co-owners of right the flexibility to decide the manner of exploitation of rights and the flow of funds in advance to avoid conflicts in future. Further, IPR structuring and planning may prove to be extremely beneficial in cases where the owners multiple heirs, to ensure that everyone's interests and needs are be taken care of. The structures set up by the owners can be used to collate the IPR in different works of the owners, be authorised to enter into arrangements and agreements, such as licensing and distribution deals, endorsement deals etc, collect revenues and royalties and to distribute it amongst the beneficiaries as per the wishes of the owner.

To summarise, the owners and stakeholders in IP need to understand the intricacies of the nature of rights, manner in which they can be held, exploited during the lifetime and of course inherited... as the saying goes, the only certain thing in life is death !

