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# Until death or assignment do us part: How may your intellectual property change hands during your life and after your death?

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When planning an estate, big ticket items like houses, land, the cat, and maybe an automobile or two are often at the forefront of the mind. Unfortunately, while navigating the miasma that is personal property, intangible assets like intellectual property can be overlooked despite having immense personal value and, in some cases, substantial economic value. Intellectual property, much like other personal property, can outlive its owner and in some cases will always outlive its owner.

For example:

- Design Patents can last for up to 15 years from the date of grant;
- Utility Patents can last for up to 20 years from the date of filing of the earliest priority date;
- Copyright Registrations for works made on or after January 1, 1978, can last for the entire life of the author plus 70 years;
- Federal Trademark Registrations can last as long as the marks are still being used in commerce.

Just like other personal property assets: trademark registrations, copyright registrations, and patents are all eligible to be bequeathed by will, passed as personal property by the applicable laws of intestate succession, or assigned to another entity. The major concern for all intellectual property assets is that they are often not properly accounted for in the estate planning process. Forgotten assets can lead to a potential estate planning horror story such as a trademark registration used by a limited liability company (LLC) being owned by a member who later dies without a will and said trademark registration passing by intestate succession to the 12-year-old kid brother of the deceased member.

Before an owner of intellectual property dies, they effectively have two proactive options for ensuring their intellectual property ends up in the right hands: (1) assignment of the assets and (2) devising the assets in a will or codicil to the will. Intellectual property assets can be assigned to another individual, business entity, or legal entity before death. 17 U.S.C. § 201 (d); 15 U.S.C. § 1060; 35 U.S.C. § 261. Assignments of assets, unlike the devising of assets, may prevent the assigned assets from being probated when the assignor dies. A valid assignment of an intellectual property asset *requires* a written document to that effect that is executed by both the assignor (the owner of the intellectual property asset) and the assignee (the recipient of the intellectual property asset). From an estate planning perspective, the potential assignee may include individuals such as a would-be heir, a trusted friend, or a partner, business entities such as LLCs and corporations, and legal entities such as trusts. Who or what the assignee will be is largely dependent on the circumstances and desires of the assignor. If the assignor is running a family business, it might be advantageous to assign the intellectual property to the LLC; whereas, if the assignor wants to exercise greater control over an asset over the lifetime of said asset, it may be advantageous to assign the intellectual property to a trust. Successful assignments to a trust, business entity, or to another individual can keep the intellectual property asset out of probate which can result in lower costs and a seamless transition without delay.

As mentioned above, intellectual property assets may also be devised in a will or codicil to the will. While devising the intellectual

property asset can ensure that the asset reaches the intended recipient, the intellectual property asset will still be subjected to probate. Probate can prevent the desired recipient from immediately exercising control over an intellectual property asset which may result in degradation of the asset in some situations, such as when renewal fees and maintenance fees are due for trademark registrations and patents, respectively. Additionally, the rightful owner may be unable to take actions in connection with pending intellectual property applications, to enforce their rights against third-parties, or to otherwise maintain their assets.

As an aside, while not everyone will acquire a trademark registration or a patent in their lifetime, one would be hard-pressed to find any individual who has not created at least one original work of authorship that is eligible for copyright protection. The standards for a work to be eligible for copyright protection are *low*: the work need only be original and fixed in a tangible medium of expression. Photographs, videos, writings, paintings, sculptures, recordings and more, may all be eligible for copyright protections. While a work would still need to be registered with the U.S. Copyright Office to be eligible for enforcement against alleged infringers, the later owners of the copyright to the work may still register. Therefore, it may be valuable to reflect on who the testator would want to receive the rights to any or all of their copyrightable works (both digital and non-digital) after the testator's death and potentially include a clause devising these assets to a beneficiary.

Finally, for recipients of intellectual property assets, whether by will, inheritance, or assignment, it is imperative to record ownership of an asset upon or shortly after receipt. Transfers of ownership can be recorded at the corresponding office. For example, transfers of trademark registrations and patents may be recorded at the United States Patent and Trademark Office and transfers of copyright registration may be recorded at the U.S. Copyright Office. Failure to record transfers of intellectual property rights may make the rights in question vulnerable to nefarious actors and may adversely affect the owner's rights in the intellectual property.

If you need any assistance assigning your intellectual property assets or planning who will receive your assets after death or have questions about meeting your intellectual property or estate planning needs, please contact Blake Hurt at [bhurt@tuggleduggins.com](mailto:bhurt@tuggleduggins.com) (336.271.5252), Theodora Vaporis at [tvaporis@tuggleduggins.com](mailto:tvaporis@tuggleduggins.com) (336.271.5238), Erin C.V. Bailey at [ebailey@tuggleduggins.com](mailto:ebailey@tuggleduggins.com) (336.271.5257), Reinier Smit at [rsmit@tuggleduggins.com](mailto:rsmit@tuggleduggins.com) (336.271.5266), or Connor Christensen at [cchristensen@tuggleduggins.com](mailto:cchristensen@tuggleduggins.com) (336.271.5254).

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400 Bellemeade Street, Suite 800  
Greensboro, NC 27401

P.O. Box 2888  
Greensboro, NC 27402

Phone: 336.378.1431  
Fax: 336.274.6590