

## 8 Tips for Protecting Your Intellectual Property

- 1. Identify Your IP.** Use a set of appropriate questions (such as those mentioned in our recent seminar) to identify your IP. Then create an inventory that identifies creators, inventors and investors.
- 2. Make sure you're not infringing someone else's rights.** Make enquiries and conduct searches.
- 3. Ensure all creators, inventors and investors have assigned the intellectual property to you or acknowledged your ownership of the intellectual property.** This is particularly important when the relevant parties are consultants or independent contractors. Do your employees own any IP?
- 4. Ensure all creators, inventors and investors are subject to any necessary restraints of trade.** This is particularly important when dealing with copyright, since the ideas expressed in the copyright material are often not protected.
- 5. Hold your IP in an appropriate structure.** Should you place your IP in a non-trading entity which licenses it back to you or your group of companies?
- 6. Don't expect 'world-wide' protection.** Global protection is a myth. Identify key markets and focus on the necessary steps in those countries. Consider the costs associated with each step and the peculiarities of each relevant country.
- 7. Be prepared to litigate.** Litigation, or at least the threat of litigation, is often the only way to enforce intellectual property rights against an infringer. Since litigation is expensive and time-consuming, it should only be used when it is worthwhile having regard to the value of the asset at risk and long term implications.
- 8. Know what it's worth.** This is particularly important when weighing up the need to enforce an intellectual property asset and whenever businesses or assets are being bought and sold or are the subject of capital raisings.

### Contact:

Mathew Alderson, Partner  
Gray & Perkins Lawyers  
02 8235 1204  
m.alderson@grayperkins.com.au



## 4 Tests for Valuing your Intellectual Property

For IP to be valued and be valuable it must pass these 4 tests:

- 1. Separately identifiable.** IP must be identified with an estimate of the future economic benefits that flow to the owner.
- 2. Protected (or capable of being protected).** For an asset to retain or increase its value it must be able to be protected, whether by patent, trademark, common law or barrier to entry. A lack of protection limits value, as it allows other parties to exploit the future benefits.
- 3. Transferable.** Fair market implies that an asset can be sold. This does not necessarily mean by physical sale but can include by license or franchise.
- 4. Enduring in nature.** It is important that the asset is enduring in nature to be valuable.

An important part of planning should be to focus on these criteria when looking at intangible assets to ensure they are structured to achieve maximum value.

### Contact:

Brad Higgs, Principal  
WHK Corporate Advisory  
02 9619 1631  
brad.higgs@whk.com.au

