

VALUATION OF COPYRIGHT

Dr. S K Gupta

*Managing Director
ICMAI Registered Valuers Organization*

TS is true with all intellectual property, a copyright has a special set of legal rights and protections that is afforded to the copyright owner. These legal rights are the basis for the value of a copyright. Section 62(1) (b) of Companies Act, 2013.

The Perspective

The resources of a business such as technology, copyright, trademarks and other IP are the building blocks of Brand Value. When we hear the word value, what comes into one's mind? For some, the word value may mean something worthy, something precious, something that is valuable, or something that is important. Most of us value our possessions, skills, knowledge, and property, which may include a cell phone, clothes, watches, cars, houses, farms, land, domestic animals, laptops, and music systems, to name a few. Children value the little scribbling or drawings they make on papers, walls, boards, or even the toys they create for themselves from paper, clay, boxes, wire, and many more. These are just a few items, which their owners may value.

However, when it comes to intellectual property (IP), which are the human mind's creations and coming in the form of intangible assets, a few people know and appreciate their value. Nevertheless, products of creativity and innovation can change one's life and even a country's economy. Intellectual property is as valuable (if not more) as any other property that a person may hold and treasure. Copyright and intellectual property valuation and audits requires a unique kind of business precision. IP is divided into two branches, Industrial Property, and copyright. This article addresses the copyright perspective

Prerequisites

To be able to value an IP asset, the asset should meet the following conditions:

- It must be separately identifiable (subject to specific identification and with a recognizable description)
- There should be tangible evidence of the existence of the asset (e.g. a contract, a license, a registration document, record in financial statements, etc.)
- It should have been created at an identifiable point in time.
- It should be capable of being legally enforced and transferred.
- Its income stream should be separately identifiable and isolated from those of other business assets.
- It should be able to be sold independently of other business assets.
- It should be subject to destruction or termination at an identifiable point in time

What is a copyright?

A legal right granted to an intellectual property owner is copyright. It helps protect the creator of the original material so that no one can duplicate or use it without authorization. Copyright is an important practical component of intellectual property / IP rights, brands and intangible assets. In general, copyright protects work such as:

Categories of materials that may be subject to copyright

These several categories of works that are subject to copyright protection are listed below:

- artistic—including paintings, sculptures, and drawings
- choreographic works—including ballet
- dramatic works—including plays and operas
- literary works—including books, manuscripts, newspapers, magazines, poetry, and advertisements

- musical works—including compositions, song lyrics, and advertising jingles (musical works include the compositions themselves and the recordings of the works)
- pictorial and photographic—including cartoons, pictures, maps, prints, drawings, and photographs
- video and audio visual works—including movies and motion pictures, music videos, and television programs

A Copyright provides for a bundle of exclusive rights to authors of original literary, musical, dramatic and artistic works, the sole right to authorize (or prohibit) the following uses of their copyrighted works:

- To reproduce all or part of the work.
- To make new (derivative) versions.
- To distribute copies by selling, renting, leasing, or lending them.
- To perform (that is, to recite, dance, or act) the work publicly.

To display the work publicly, directly, or by means of film, TV, slides, or other device or process

What are the benefits of copyright valuation?

As is true with all intellectual property, a copyright has a special set of legal rights and protections that is afforded to the copyright owner. These legal rights are the basis for the value of a copyright. A copyright can confer monopoly to the owner by creating a barrier to entry and thereby translate to buying power and greater profit margins for the owner.

The value of copyrights can be a significant factor in determining reasonable royalty rates for licensing agreements. Further, the value of copyrights can be an important factor in determining damages in cases of copyright infringement. Copyright used to generate the following benefits

- * Increases the pricing power
- * Greater Profit Margins
- * Litigation award (PV of award less cost)
- * Protect from threat of litigation
- * Additional Sales
- * Reduced Marketing
- * Incremental margin

Copyright valuation

As with any form of valuation, the first step in copyright valuation is determining why the valuation is required. Are you faced with a licensing deal, merger, acquisition or litigation? Copyright protection is often a key asset in mergers, acquisitions and bankruptcy transactions. A copyright benefits from a specific bundle of legal rights that provides the author/creator the right to authorize or to prohibit the uses of the copyrighted work. Pertinent questions that pinpoint the nuances that affect value, such as:

- Is the work registered?
- Is the work factual?
- Does fair use erode value?
- Is the work made for hire?
- Does the copyright provide notice?
- Is the copyright in the public domain?

Widely adopted copyright valuation approaches

When carrying out a copyright valuation Intangible Business adopts widely accepted approaches based on a combination of the income, market and cost approaches.

The income approach: uses estimates of future estimated economic benefits or cash flows and discounts them, for the associated time and risks involved, to a present value. Each type of copyright has key sensitivities to consider such as the duration of the copyright and the expected lifetime of its creator. Another key consideration during copyright valuation is what drives the value of the copyright. The Income method values the IP asset based on the amount of economic income that the IP asset – Copyright is expected to generate, adjusted to its present day value. To determine the Economic Income

- Project the revenue flow or cost savings generated by the Copyright over the remaining useful life (RUL) of the asset.
- Offset those revenues/savings by costs related directly to the Copyright. Here, Costs could comprise labour, materials, required capital investment and any appropriate economic rents or capital charges.
- Take account of the risk to discount the amount of income to a present day value by using the discount rate or the capitalization rate

The Various Income Approach Methods typically involve some form of the following types of Analysis

- Incremental Income Analysis: This is the estimation of the difference between the amount of income that the owner/operator would generate with the use of the subject copyright and the amount of income the same owner/operator would generate without the use of the subject

- copyright.
- **Profit Split Income Analysis:** The estimation of the total income that the owner/operator would generate from the use of the copyright where the total income estimate is split between the copyright and all of the other tangible and intangible assets that contribute to the generation of the owner/operator total income estimate.

- **Residual or excess Income Analysis:** The estimation of the residual owner/operator income with the ownership/operation of the copyright. This residual income analysis is accomplished by first estimating the total owner/operator income.

The analyst then identifies and values all of the owner/operator tangible and intangible assets. A fair rate of return, which represents a capital charge or an economic rent, is then assigned to each category of the tangible and intangible assets. The analyst would then subtract the capital charge on contributory assets from the total owner/operator income estimate. Finally, the residual or excess income is assigned to the copyright.

The market approach: uses market based indicators of value. For copyright this can be transactions involving selling, buying, franchising or licensing copyright and related IP rights, which are often in practice bundled together. The Market Method is based on comparison with the actual price paid for a similar IP asset under comparable circumstances. Market approach methods are commonly used in a copyright valuation analysis

- **The cost approach:** This method is based on the intention of establishing the value of an IP asset by calculating the cost of developing same or identical IP asset either internally or externally.

The method aims to determine the value of an IP asset at a particular point of time by aggregating the direct expenditures and opportunity costs involved in its development and considering obsolescence of an IP asset. The Cost Method is generally the least used method as, in most cases, it is considered suitable only as a supplement to the income method. Both creation cost and re-creation cost methods may be used with regard to copyright valuation analysis. In all cost approach valuation analyses of copyrights, the analyst should consider as cost components both, the developer's profit and the entrepreneurial incentive – both of which often represent the largest components of value. The cost approach has certain limitations when analysing of a corporation-owned copyright and is often considered to provide a minimum estimate of value — as opposed to a maximum estimate of value.

References

<https://blog.ipleaders.in/copyright-valuation/>

<https://www.appraisaleconomics.com/copyright-valuation/>

<https://www.intangiblebusiness.com/legal/copyright>

<https://www.aripo.org/success-stories/creating-value-in-the-copyright-industry/>

<https://www.mondaq.com/india/trademark/772158/what-is-intellectual-property-valuation>