

Co-ownership of intellectual property

what can go wrong?

When two or more parties collaborate on a creative or innovative project, establishing clear ownership arrangements of the resulting intellectual property (IP) is crucial. Given that IP rights often represent the most valuable asset generated from such collaborations, how these rights are negotiated can significantly impact the project's success and its future opportunities for licensing, sale or enforcement.

Joint ownership of IP can arise by explicit written agreements. For instance, a patent may list multiple inventors and in the absence of specific ownership arrangements or employment agreements addressing ownership, each named inventor is automatically considered a co-owner of the entire patent unless an agreement states otherwise. Similarly, a team of programmers developing a new application might share copyright rights as co-authors. In another scenario, two companies collaborating on a project may agree to split costs equally and jointly own trademarks or other related IP rights as a matter of fairness.

Intellectual property grants its owners exclusive rights and can be a major component of a company's assets. These rights can be sold, licensed to third parties, enforced through legal action against infringers, or used as collateral for loans, thereby enhancing a company's value. While joint ownership might seem like a straightforward and cost-effective solution, it can also lead to complex challenges down the line. Proper planning and agreements are crucial to avoiding future disputes and maximising the value of the intellectual property.

Why Co-ownership can Cause Problems?

- A patent grants its owner the exclusive right to prevent others from commercially using the invention. When multiple parties own a patent together, that exclusivity becomes weaker. Without everyone's approval, no one can give a license to a third party, which limits the rights of all owners.

- Consequently, co-owners may have different ideas about how to use, license, or exploit the IP, disagreements can arise, which might lead to costly disputes.
- Additionally, sharing income or royalties can become a source of conflict if the parties have different expectations about how profits should be divided.

Copyright protects creators by letting them prevent others from copying their work. Who owns the copyright depends on how the work was created. Typically, an employer owns the copyright if the work was produced by employees within the scope of their employment. If no ownership provisions apply and no other agreement exists, the work is owned by its creator.

When multiple people create a work together, like a book or a song, all of them must agree before giving someone exclusive rights to publish it. Many publishers prefer exclusive rights, therefore sharing ownership can make it harder to find a publisher. Each co-owner also is required to account for any profits made from the work with the others. This can become complex, especially when derivative works are based on the original. Unlike patents, a co-owner of a copyright can enforce it against third parties without needing consent from other owners.

***A notable case is the copyright dispute among members of the band Pink Floyd. Waters left Pink Floyd in 1985 and began a legal battle with the band regarding their continued use of the name and material. As

joint copyright holders of their music, conflicts arose, once Roger Waters left the group, particularly concerning the use and performance of shared works. The dispute revealed how joint ownership can create problems especially to the licensing, enforcement and future exploitation of the work.

Therefore, enforcing rights against third parties (e.g., patent infringement) can be difficult when ownership is shared. All co-owners must act together, which isn't always feasible.

Moreover, a trademark's primary purpose is to

Joint ownership of IP complicates rights, profits, and legal enforcement

identify the specific source of goods or services. Joint ownership of a trademark is less common than joint ownership of patents or copyrights. Similar to patents and copyrights, an exclusive license cannot be granted without the consent of all owners. Additionally, in enforcement actions, one owner might license activities that the other views as infringement, potentially complicating the protection of the mark.

Conclusion

While co-ownership of intellectual property may seem a straightforward solution, it can lead to various issues that are best addressed through carefully drafted agreements at the beginning of a project. To minimise risks, alternative arrangements such as assigning sole ownership to one party with licensing rights granted to others or establishing clear joint ownership agreements are advisable. These agreements should explicitly specify IP ownership, detail how rights are shared among the involved parties, and outline procedures for potential scenarios such as enforcement, licensing, or sale of the IP rights.

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