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Channeling your IP

By Jason Romer, Partner, Collas Day and Director, Collas Day IP Management

Guernsey is forging ahead with plans to introduce laws offering greater protection and exploitation of IP rights. By Jason Romer, Partner, Collas Day and Director, Collas Day IP Management.

As the world attempts to drag itself out of recession, many corporate and international organisations are looking to maximise the value of their intellectual property (IP), which is seen as an increasingly valuable asset.

As Liverpool Football Club signs up to a new sponsorship deal with Standard Chartered, reportedly almost tripling the figure of that paid by Carlsberg, the sports and media world continues to deal with the ever higher commercial values they can extract from individuals' images and brands. Image and brand matters more now than ever before and the commercial exploitation of these assets is big business.

Take advantage of every opportunity

As a well established specialist finance centre, Guernsey has an excellent reputation for managing assets in a professional and tax efficient manner. In contrast to some specialist finance centres that did not make the white lists straight away, Guernsey's and the Channel Island's brand and image was hugely reinforced by this endorsement.

Intellectual property is simply another asset that needs to be managed to maximise its value from an income and capital growth perspective.

Typically, the IP laws of such specialist finance centres have not kept up to date with developments in the modern, commercial world. Guernsey has seriously bucked this trend and now has laws that are internationally accepted and, in some cases, will offer IP protection not existing elsewhere. The advantage of being outside the EU allows Guernsey to adopt the best of breed in terms of IP protection (patents, trademarks and database rights) and to recognise the value of image rights and programme format rights in legislation to be introduced shortly.

What is so special?

The value of IP depends on the strength of legislation in any jurisdiction. Guernsey has recently updated all its IP legislation. This has given the jurisdiction an opportunity to introduce some really special laws that create certain unique rights.

The concept of a database right in the EU was narrowed beyond the scope of protection originally expected by some commentators. Guernsey's legislation specifically widens that protection in the drafting of its database right.

Patents can be registered in Guernsey and legislation currently under consultation will allow the concept of an innovation warranty, a form of petty patent. This is of considerable interest to those seeking a quick route to market and initial funding.

The ability to register a primary trademark in Guernsey demonstrates real substance for certain entities in Guernsey.

Image rights are big business and are already established and licensed from Guernsey to reflect the value of those rights. Proposed new legislation will see the ability to register an image right in Guernsey. While a trademark demonstrates the distinctiveness of a brand, so the image right will demonstrate the distinctiveness of an individual.

As programmes such as *The X-Factor*, *Strictly Come Dancing*, *Big Brother* and *Who Wants to be a Millionaire?* continue to dominate our screens, we can no longer deny that the formats of such programmes have a value. Guernsey proposes to recognise that value in legislation that will be unique.

Decades ago in the era of printing, copyright was established to protect works of originality. Society has now moved on and the importance of more esoteric rights such as the image right and the programme format right are more important commercially. Larger jurisdictions have struggled to keep their laws up to date in these areas but Guernsey has the flexibility, to offer protection where none exists elsewhere in the world. This means that individuals, corporations and other international organisations are increasingly seeing Guernsey as the location from which to manage and maximise the value of their intellectual property rights.

By structuring IP royalties or license fees through a Guernsey company or trust structure, the value of that IP may be enhanced and maximized benefiting from a benign tax environment and strong IP laws.

Conclusion

Guernsey continues to develop the laws underpinning some of the most valuable assets of the modern era, intellectual property. The Island is already experiencing increased interest and demand for the specialist services required to manage and exploit IP in an environment that nurtures and protects the value of IP. The investment in world leading legislation means that Guernsey is ideally placed as a jurisdiction to ensure that its brand continues to look as good in 20 years time as it does now.