IP Licenses and Insolvency Guide

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In the evolving global business environment — reshaped by the disruption of the pandemic, challenges to supply lines, the emergence of new transformative digital technologies, changing workforce trends, and soaring inflation and interest rates in some jurisdictions — it is critical that companies are proactive, consider issues holistically, and maintain the financial flexibility to adapt to rapidly changing circumstances.

Restructuring tools can help companies seeking to improve their capital position, manage their liquidity, streamline operations, or avoid distress. Such companies may seek to renegotiate current business arrangements with third parties, restructure their debt, or liquidate key assets to enable them to weather the storm and return to profitability.

For companies already experiencing distress and undertaking insolvency proceedings, creditors may pursue strategies to recover as much of their debt as possible and to protect valuable assets, such as intellectual property. The licensees of insolvent companies may seek to preserve their rights to use licensed intellectual property and licensors may want to ensure royalty payments are collected and optimized. Lastly, opportunistic third parties may find opportunities to bid on and acquire intellectual property assets that wouldn't ordinarily become available. Sales of intellectual property to third parties may have a considerable effect on both licensors and licensees.

Each of these parties will need to understand the unusual rules of intellectual property licenses in insolvency proceedings in order to effectively approach the risks and opportunities posed by this complex landscape. This complexity is enhanced when the intellectual property licenses at issue in an insolvency case cross borders. In some instances, the debtor in an insolvency case may seek to enforce the laws of its home jurisdiction in a foreign country where the counterparty to the license resides or operates, catching the counterparty off-guard. It is therefore critical that businesses involved in these types of transactions understand the insolvency laws and procedures in all affected jurisdictions.

This guide presents answers to some of the most common IP licensing issues arising in insolvency proceedings in key jurisdictions — including notably the United Kingdom, where recent insolvency legislation has introduced significant reforms to the insolvency process and the treatment of intellectual property in such proceedings.

\*The IP Licenses and Insolvency Guide was updated in 2022.

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