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How you can turn your intellectual property into cash

Introduction

The rise of technology is causing a re-think of what can be used as collateral. Capital providers when asking for security are shifting focus from tangible assets to valuable intangible assets. These most commonly take the form of intellectual property rights and particularly copyrights and trademarks.

What is intellectual property?

Intellectual property refers to creations of the mind. Intellectual property rights recognize, protect and promote these mental works and products. This enables creators and inventors to gain recognition and derive financial benefit from their creations and inventions. Copyrights protect literary and artistic expression in various media from music to mobile applications. Trademarks protect brands of goods or services from counterfeiting and infringement.

The entertainment industry has led this innovative push, and serves as a beacon of the value of intellectual property. The exponential growth of movie studios and music distribution channels, and more recently, streaming services is a result of colossal revenues generated from intellectual property. Similarly, the food industry has progressed this innovation further by the creation of valuable intellectual property.

What is securitization of intellectual property?

Securitization takes intellectual property assets and makes them marketable securities to secure financing. The intellectual property becomes security for repayment of a debt provided to its owner. For example, an artist can leverage future royalties to secure debt. This enables the owner to realize full value of intellectual property upfront.

This trend can be traced back to the 1990s. In 1997, David Bowie borrowed USD 55 million by issuing bonds secured by royalties on his music copyrights. In 2007

these bonds were successfully repaid setting an example many others would follow.

Securitizing intellectual property is not unique to the entertainment industry. US food giants, Dunkin Donuts and Dominos Pizza, and retail brand Sears have obtained in excess of USD 5 billion on the strength of their intellectual properties.

Thanks to not so recent changes, Kenyan law recognizes intellectual property as collateral. This means intellectual property can be used to secure a loan. These changes are a result of the Constitution, requiring the government to support, promote and protect the intellectual property rights of Kenyans.

Before these changes, Kenya had lagged behind in global developments in using intellectual property to raise capital. The 2017 Moveable Property Security Rights Act was a game changer. Surprisingly, despite these developments, Kenyans have not caught on to the full potential of intellectual property. This may be due to lack of awareness and the challenge of valuing intellectual property assets.

What you need to know

To unlock the full potential of intellectual property, you must know its value. This is done by valuing the intellectual property asset to give it a monetary value. Value for intellectual property comes from its owner's exclusive right to use and exploit it. The World Intellectual Property Organization only recognizes intellectual property assets which generate a measurable economic benefit to its owner or user as having quantifiable value. Such assets should also enhance the value of other assets with which they are associated.

Any lender will want certainty the asset will remain valuable and valid for at least the period of lending. An owner must be able to convince a financier the asset

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will remain marketable for the foreseeable future.

For instance, when securitizing a film catalogue, revenues are expected from movie sales, television syndications and digital sales. The key risk here is whether a change in cinematic interests due to a new generation of consumers will make the catalogue less marketable. This would drastically reduce the expected revenue and therefore the asset's value. Other risks including loss of legal protection diminish the attractiveness of an intellectual property asset. This may discourage capital being provided or limit it, reducing the economic benefit to their owners.

Lenders may be concerned there is no ready market to realise intellectual property security in case of default. However, this risk continues to diminish as the market realizes the immense value of intellectual property assets. Merrill Lynch, an investment bank, bet on Marvel Entertainment's intellectual property assets including the Avengers and Black Panther to lend Marvel USD 525 million. This bet paid off handsomely as Marvel went on to generate revenues in excess of USD 27 billion from the same assets.

What does this mean for you?

The biggest obstacle to realizing the full value of intellectual property assets, is lack of awareness of the available options. Despite the 2017 changes in law aiming to enhance credit access by enabling use of movable assets, there is still an overdependence on immovable assets. There is need to increase awareness on how intellectual property owners can get useful advice to realize maximum value.

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