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VALUATION OF INTELLECTUAL PROPERTY IN KENYA

In Kenya's increasingly knowledge-driven economy, intellectual property has moved from the margins of business strategy to the center of value creation. As companies invest more in brands, technology and creative works, intellectual property rights have emerged as assets capable of driving growth and investment. IP valuation provides the mechanism through which these rights are translated into quantifiable economic value, supporting financing, transactions and strategic decision-making. Against this backdrop, this article examines the practice of IP valuation in Kenya by outlining recognized valuation methodologies, the applicable legal framework, key practical challenges and offering guidance on how businesses can effectively unlock value from intellectual property assets.

The legal framework governing IP valuation

Kenya's constitutional and statutory framework provide the foundation for the protection and commercialization of intellectual property. Article 11(2)(c) of the [Constitution of Kenya, 2010](#) mandates the State to promote and protect intellectual property rights. This obligation is implemented through statutes such as [the Trademarks Act \(Cap. 506\)](#), [the Copyright Act \(Cap. 130\)](#) and [the Industrial Property Act \(Cap. 509\)](#).

Further, the [Movable Property Security Rights Act \(Cap. 499A\)](#) expressly recognizes intellectual property rights as movable assets capable of being used as collateral. Under Section 2 of the Act, movable property includes intangible assets, specifically intellectual property. Further, the [Movable Property Security Rights \(General\) Regulations](#) establish an electronic registry for security interests, facilitating registration, searches and enforcement.

While the Act enables the use of IP as collateral, it does not prescribe valuation methodologies. As a result, IP valuation in Kenya relies on internationally recognized valuation standards rather than statutory provisions.

IP valuation and its purposes

IP valuation is the process of determining the monetary value of a specific IP asset at a particular point in time. To be suitable for valuation, an IP asset must be identifiable and legally enforceable, with characteristics that allow its income, sale or licensing to be distinguished from other business assets. IP valuation serves multiple strategic and commercial purposes including:



- 1. Commercial transactions:** Licensing, franchising, mergers and acquisitions, joint ventures and IP sales.
- 2. IP enforcement:** Calculating damages, royalties or settlements in cases of infringement.
- 3. Internal business strategy:** Informing research and development investment, IP portfolio management and raising capital.
- 4. Financial and regulatory purposes:** Supporting insolvency proceedings and insurance of IP assets.

IP valuation methods

There is no single method for valuing IP. In practice, IP valuation combines qualitative and quantitative assessments to arrive at a reliable estimate of value.

- 1. Qualitative methods** assess factors that influence the potential of an IP asset, such as legal strength, market position, brand recognition, technological uniqueness, competitive advantage and enforceability. These methods do not assign a direct monetary figure but provide insight into the IP's potential and risk profile.
- 2. Quantitative methods** convert the IP asset's potential into a monetary value. These are generally divided into three recognized approaches:

2.1 Income approach

The income approach values IP based on the future economic benefits it is expected to generate, discounted to present value.

This involves:

- Projecting revenues directly attributable to the IP asset over its remaining useful life;
- Deducting costs directly associated with the exploitation of the asset; and
- Applying a discount rate to account for risk and the time value of money.

2.2 Market approach

The market approach determines value by comparing the IP asset to prices paid for similar assets in actual transactions.

This requires:

- Access to reliable market data or transaction comparables; and
- Adjustments for differences in legal scope, market conditions and commercial context.

2.3 Cost approach

The cost approach estimates the value of an IP asset based on the cost required to recreate or reproduce it, either internally or externally. It is useful when the IP is not yet generating income or future revenue streams are uncertain, such as early-stage technology or new brands.

In practice, professional valuers triangulate among these approaches, using qualitative assessments to inform assumptions and quantitative methods to calculate a commercially realistic value.

The challenges facing IP valuation in Kenya

Despite regulatory progress, several challenges continue to constrain effective IP valuation in Kenya:

- a) Limited specialized expertise:** There are relatively few professionals with combined knowledge of IP law, valuation techniques and sector-specific business dynamics, which can lead to inconsistent valuations.
- b) Scarce market comparables:** The absence of an active secondary market for IP assets makes it difficult to benchmark values using the market approach.
- c) Lack of binding valuation standards:** Kenya does not have statutory guidelines for IP valuation, leaving courts, lenders and investors reliant on professional judgment and international best practices.
- d) Limited financial and operational data:** Small and medium enterprises often lack the historical financial records or market studies needed to support robust income-based valuations.

Conclusion

IP valuation is a strategic tool that transforms innovation and creativity into measurable economic value, enabling businesses to access finance, structure transactions and drive sustainable growth. By prioritizing robust valuation practices, Kenyan enterprises and investors can convert IP assets into capital and strengthen competitiveness.

How CM Advocates LLP's Intellectual Property and Technology Unit Can Support You

At CM Advocates LLP, our Intellectual Property and Technology Unit assists businesses across Kenya and the wider African region in understanding, protecting and maximizing the value of their intellectual property. We help clients unlock the economic potential of their IP assets by providing expert guidance on valuation, monetization and strategic management.

Our services tailored to IP valuation include:

- IP valuation and assessment: Conducting comprehensive valuations of IP assets to support financing, licensing, mergers and acquisitions or internal strategic decision-making.
- IP audits: Performing audits of IP portfolios to identify unexploited assets, assess compliance and inform strategic IP management.
- Transaction support: Advising on the use of IP as collateral, structuring IP-backed financing and ensuring valuations are defensible and aligned with both legal and market standards.
- Enforcement and dispute resolution: Assisting clients in litigation or alternative dispute resolution where IP valuation impacts damages, royalties or settlement negotiations.
- Strategic IP management: Developing frameworks to optimize IP portfolios, maximize economic returns and integrate valuation insights into business planning and investment decisions.

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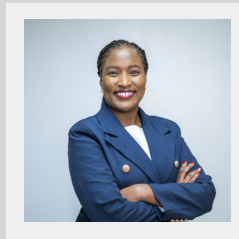
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Need legal guidance?

For businesses seeking expert legal guidance on intellectual property protection or related technology matters, please contact :

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