



Intellectual property ownership before and after acquisition

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Abstract

This article explores the growing significance of intellectual property (IP) in corporate acquisitions, where IP assets often play a substantial role. It examines the fundamental principles of IP ownership in India, covering specific legislations. It analyses the complexities surrounding IP ownership in employer-employee relationships. The article further analyzes the shift of IP ownership in corporate acquisitions, where IP due diligence serves as a vital tool for risk mitigation. Through case studies of major entities, the paper illustrates how strategic IP acquisition allows for either rebranding or the preservation of brand goodwill.

Keywords: Intellectual property, acquisition, ownership, due diligence, goodwill

1 Introduction

Intellectual Property (hereinafter referred to as 'IP') is the intangible creation of human mind, and includes a vast variety of creations¹ like literary, artistic work, or a cinematographic film or a photograph or inventions or logos you see daily and many more. Those who create these, have special rights with respect to these creations as to exclusively gain financial benefit from these creations or to earn recognition in the world.

IP has an important role to play in today's modern knowledge-based economy. In an era driven by innovation, technology and digitalization, where IPs are created at every step of a functioning of a venture, it becomes crucial to ascertain the ownership and control of the IP.

In India, IP is regulated by separate legislations for different categories of IP like copyright, patents, trademark, designs, geographical indications etc. while the general principle of ownership is that the creator of the first owner of an IP but there are certain exceptions to the principle like where the work is done on contractual or commissioned basis or especially when the work is one under the contract of employment.

¹ 'What is IP?' <www.wipo.int/en/web/about-ip> accessed 22 December 2025.

When a company/start-up is found, it is either successful or not, and when it is acquired by some big giants, IP assets of the company often constitute a substantial portion of the transaction value. IP due diligence therefore forms a critical component of corporate acquisitions.

2 IP owners under different legislations in India

Under the Copyright Act, 1957 the general rule lays down that the author will be considered the first owner²; except where work is done under contract of service or under employment of employer then it is considered the work of the employer, also when a work is commission based like a photograph, a painting, an engraving, or a cinematograph film the owner of the work is the person who is paying consideration for such work.

Under section 6 of the Patents Act, 1970 any person who claims to be the true and first inventor of the invention or any person assigned on behalf of such inventor may apply for patents of such invention, and that person shall be the owner of the invention.

The owner of a trademark is the person or entity, usually a corporation or other business, that uses the mark in the market to identify the product or service it sells and is registered under the Trade Marks Act, 1999.³ Any proprietor who claims to be the owner of any novel or original design, not previously published in any country, can file for an application for registration of such design and after the process of registration, such person shall be considered to be the owner of the design.⁴

3 Exceptions to the general rule

Generally, any person who invents anything owns the invention, but sometimes where a person was specifically employed or hired to make a particular type of intangible property, then the owner is the employer, or sometimes it may happen that employee has expressly agreed, which may or may not be in writing, to declare the employer owner, after the invention is made.

Therefore, any work made by employee in the scope of their employment belongs to the employer and the employer is considered the author of that work but where the employee's work is outside the scope of their employment and they have done it with their own time, resources, creativity and initiative the work belongs

² The Copyright Act 1957, s 17.

³ 'Who is the owner of a trademark?' <www.lawyersclubindia.com/forum/who-is-the-owner-of-a-trademark--53546.asp> accessed 5 December 2025.

⁴ The Designs Act 2000, s 5.

to the employee and not the employer. As a result, Employment contracts are entered into, to govern such issues as IP ownership.⁵

In the case of *V.T. Thomas v. Malayala Manorama*⁶, where a cartoonist was employed by a newspaper publisher to publish his cartoons it was held that the characters he evolved and the names given to the characters were of the cartoonist and the specific cartoons that were published in the newspaper were of the publisher. The employer did not acquire copyright in the names of the characters but he acquired copyright in the cartoons published in the Newspaper and not the characters and the employer had no right to continue to use such names after the termination of the employee.

Apart from this rule there are contracts entered between employer and employee with regard to the IP these are called 'Employment Contract'. Some of the points relating to the employment contract are as follows:

- a) The mere fact that an employment contract exists would not entitle the employer to IP, but there needs to be specific mention relating to IP ownership in employment contract.
- b) When the employee creates an IP during the work hours and using the resources of the employer, the IP belongs to the employer, not otherwise.
- c) If an employment contract was not entered into at the beginning of employment, the employer may need to provide additional and sufficient consideration to support the agreement, when later an IP has been created by the employee.

Any IP created by the founders, prior to the incorporation of the company would be owned by the founders themselves and not the company, unless an agreement provides otherwise. The founders may later assign the IP to be used by the company, either wholly or with some restrictions. IP created by a founder after a company is formed generally belongs to the company by default.⁷

4 Acquisition and IP

After acquisition of a company, not only the shares or the economic assets are transferred, but IP is also transferred, it is considered one of the most valuable and strategically significant elements of the transaction. The copyrights, trademarks, patents, designs, trade secrets, domain name, logos, etc. of a company are essential when determining the worth of the company, therefore, it becomes a necessity to ascertain the ownership and control of IP after the acquisition. When an acquisition takes place, IP assets can be fully

⁵ Purdue Global Law School, 'IP Rights of Employees: Who Owns IP?'
<www.purduegloballawschool.edu/blog/news/intellectual-property> accessed 6 December 2025.

⁶ *V T Thomas v Malayala Manorama* AIR 1989 Ker 49.

⁷ *Supra* note 5.

transferred, or partial specific transfer may be made, or they may be assigned or licensed or a brand may even retain or agree to jointly own the IP.

IP due diligence becomes a critical step in acquisitions to ensure that the acquirer receives clear and enforceable rights, free from third-party claims or defects in title, as any ambiguity in IP ownership can significantly affect valuation and post-acquisition integration.

5 IP due diligence during acquisition

In relation to IP, due diligence is the process to review and evaluate inventory of a company's intangible assets, and to determine whether there are any potential risks associated with the intangibles. The goal is to guarantee that the buyer has an understanding of the IP portfolio's worth and any associated responsibilities so that an educated decision can be made.⁸

Why is it important?⁹

- a) Helps in determining the true value of the company's IP assets.
- b) Reveal potential risks such as IP infringement claims, invalid patents, or the expiration of key trademarks.
- c) Ensures that there are no outstanding third-party claims or disputes.
- d) Helps in understanding the strengths and weaknesses of the company's IP.
- e) Allows the acquiring company to make strategic decisions.

5.1 Key considerations in IP due diligence

Identification of IP assets: The first step is to identify and list all the IP assets of the company whether registered or unregistered at the time. It must be insured that no assets or liabilities are kept hidden.¹⁰ The seller must supply complete documentation concerning patents, trademarks and service marks, trade secrets, licenses issued or obtained, contracts and agreements associated with IP records of any litigation or conflicts

⁸ Vikrant Rana, Rupin Chopra, Shantam Sharma, 'Safeguarding the Deal: IP Due Diligence in Mergers and Acquisitions' <<https://www.einfolge.com/case-studies/safeguarding-the-deal-intellectual-property-due-diligence-in-mergers-and-acquisitions>> accessed 7 December 2025.

⁹ David Cain, 'The Role of IP in Corporate Valuation and M&A: A Strategic Asset' <<https://www.linkedin.com/pulse/role-intellectual-property-corporate-valuation-ma-strategic-cain-czgwc/>> accessed 7 December 2025.

¹⁰ 'IP Due Diligence For Mergers & Acquisitions, (M&A), Joint Ventures (JV), And Fund Raising' <<https://www.rkdewan.com/blogs/ip-due-diligence-in-india/>> accessed 7 December 2025.

and proof of domain name ownership.¹¹ Complete and well-maintained documentation enhances the valuation of the transaction.

Verification of ownership: It is important to confirm that the company has clear and undisputed ownership of its IP assets.¹² This includes Reviewing Assignment Agreements, Investigating Third-Party Rights, Examining Licensing Agreements. The intention is to confirm that all the IPs created by employees, contractors are properly assigned to the company¹³ and the company is the owner of the IP. But generally, problems occur when ownership is wrongly declared.

Assessment of scope & validity of IP: To ensure the validity and enforceability of IP, it is required to register and manage patents and trademarks appropriately. The process helps ensure that the patents, copyright, trademarks are valid, subsisting and the maintenance fees are up to date.¹⁴

Review of IP litigation and disputes: Disputes over IP ownership or infringement have a critical financial impact on the value of the transaction. It is therefore essential to investigate any past, ongoing, or potential IP litigation or disputes so that the risks associated with IP can be mitigated. Such risk can be reduced by making agreements.^{15,16}

Freedom to operate: It is a legal check for the company to determine if any existing or new product or service infringe any third-party rights in specific countries. Indian and international databases should be reviewed to check if there are any overlapping rights. Recommendations must be provided to mitigate any infringement risks.¹⁷

6 Examples of acquisition and impact on IP

1. Merger of 'JioCinema' and 'Disney+':

The joint venture business model of 'JioCinema' and 'Disney+' merging in India led to the reorganization and consolidation of IP rights, and not the death of pre-existing IP.¹⁸ Previously independently owned assets including trademarks, copyrights, software platforms, content licenses, databases, and domain names of

¹¹ 'Safeguarding the Deal: IP Due Diligence in Mergers and Acquisitions'

<<https://www.einfolge.com/case-studies/safeguarding-the-deal-intellectual-property-due-diligence-in-mergers-and-acquisitions>> accessed 7 December 2025.

¹² 'IP Due Diligence: Essential Considerations for Mergers and Acquisitions'

<<https://www.ellipseip.com/mergers-and-acquisitions/>> accessed 7 December 2025.

¹³ *Supra* note 10.

¹⁴ *Supra* note 12.

¹⁵ *Supra* note 11.

¹⁶ *Supra* note 12.

¹⁷ *Supra* note 10.

¹⁸ 'Disney+ Hotstar'

<[https://en.wikipedia.org/wiki/Disney%2B_Hotstar#Disney+_Hotstar_and_JioCinema_merger_\(2024%E2%80%93present\)](https://en.wikipedia.org/wiki/Disney%2B_Hotstar#Disney+_Hotstar_and_JioCinema_merger_(2024%E2%80%93present))> accessed 20 December 2025.

‘Disney’/‘Star India’ and ‘Reliance’/‘Viacom18’ still exist, but they are now under the commercial exploitation of the joint venture and merger arrangements.¹⁹ The deal thus converted the decentralized ownerships of IP into a single system of control which enabled the resulting entity to control and put these assets into use together.

The most noticeable IP implication, branding and trademark-wise, is the one where two separate OTT brands are replaced by a single one, ‘JioHotstar’. It means that the licensing or assignments of the rights to use the trademarks of the streaming service ‘Hotstar’ and ‘JioCinema’ to the joint venture entity have occurred.²⁰ Though ‘Disney’ can have retained legal rights to some trademarks, their use in India would be regulated by a contract, thus allowing possible coexistence, rebranding or gradual abandonment of older brands without breaching the trademark law.²¹ There was also the consolidation of technology, digital, and data related IP assets that came about as a result of the merger.

2. Acquisition of ‘Twitter’ by Elon Musk and total rebranding of IP:

Elon Musk acquired ‘Twitter Inc.’ in 2022, the acquisition led to full transfer of ‘Twitter’s’ IP in the acquiring company (‘X Corp.’). These comprised trademarks, software and platform design copyrights, patents, trade secrets, user databases and domain names. Musk has exercised the maximum control over the IP by renaming the former brand as ‘X’ (‘Twitter’ to ‘X’)²², unlike the acquisitions where the acquiring company retains the existing brand identity, exemplifying that the acquirer has the right to change or discontinue or replace the acquired trademarks, which is why this is referred to as control on the IP. The original trademark of ‘Twitter’, bird logo, and other related branding was practically ceased to be used in a commercial manner, although legal ownership of such marks remains vested in the acquiring company for enforcement purposes.²³

Within the IP perspective, this acquisition demonstrates that brand identity is not maintained unless safeguarded through a contract. The purchaser, who had taken title to the full title of the trademarks and goodwill, was at liberty in the law to drop or use the brand. The software IP, algorithms and associated user

¹⁹ ‘JioHotstar domain finally with Mukesh Ambani's Viacom 18’

<<https://economictimes.indiatimes.com/industry/media/entertainment/media/jiohotstar-domain-finally-with-ambanis-viacom-18-whois-data-shows/articleshow/115958080.cms>> accessed 20 December 2025.

²⁰ The Times of India, ‘JioHotstar Merger: What this means for existing DisneyHotstar and Jio Cinema subscribers; migration plan and more’

<<https://timesofindia.indiatimes.com/technology/tech-news/jiohotstar-merger-what-this-means-for-existing-disneyhotstar-and-jio-cinema-subscribers-migration-plan-and-more/articleshow/118242009.cms>> accessed 20 December 2025.

²¹ ‘JioHotstar streaming platform launched as JioCinema and Disney+ Hotstar merges content’

<<https://www.livemint.com/technology/tech-news/jiohotstar-streaming-platform-launched-merging-content-from-jiocinema-and-disney-hotstar-11739495401060.html>> accessed 20 December 2025.

²² Wikipedia, ‘Twitter under Elon Musk’ <https://en.wikipedia.org/wiki/Twitter_under_Elon_Musk> accessed 20 December 2025.

²³ Emmanuel Umahi, ‘X updates its terms to assert ownership of the Twitter name after trademark challenge’

<<https://www.techloy.com/x-updates-its-terms-to-assert-ownership-of-the-twitter-name-after-trademark-challenge/>> accessed 20 December 2025.

data of the platform are also transferred to the property of 'X Corp.' and made it possible to make modifications to the interface, content moderation policies and monetization strategies without any requirement to retain the original product identity of 'Twitter'.²⁴ This acquisition explains the power of IP consolidation to instigate radical rebranding assuming that there are no contractual or regulatory limitations.

3. 'Instagram'/'Facebook' (Meta) acquisition retention of a brand as a strategic IP asset:

When 'Facebook' (now 'Meta') acquired 'Instagram' in 2012, the IP strategy was aimed at retaining the brand name but not absorbing it. The trademarks, design of the app, the software code and the user database were sold to 'Facebook', but 'Instagram' remained an independent product and brand.²⁵ This suggests that the ownership of IP changed, but the use and presentation of the IP was contractual and strategic. Publicly, 'Facebook' pledged to keep 'Instagram' as an independent platform,²⁶ emphasizing that brand continuity after an acquisition is a commercial decision and a governance issue, and not a legal one.²⁷

This was legal because 'Facebook' owned the 'Instagram' trademarks and technology and decided not to use its right to rebrand or merge the platform at the moment.²⁸ Gradually, through time, 'Meta' has acquired the systems and advertising infrastructure of 'Instagram' under the hood demonstrating that IP integration is a way to be functional without changing an external brand.²⁹ This acquisition is a clear example of how IP can enable preservation of consumer trust and goodwill and at the same time internal consolidation.

4. 'WhatsApp' acquisition by 'Facebook' ('Meta'):

The sale of 'WhatsApp' to 'Facebook' in 2014 also entailed the sale of the IP, trademarks and encryption technology and user data architecture of 'WhatsApp' to 'Facebook'. That said, the brand name of 'WhatsApp', its logo, and minimalist design were not changed after the purchase.³⁰ This is the result of a conscious IP strategy wherein the purchaser obtains the complete ownership but then limits himself or herself to the utilization of IP, lest he or she will scare away users. Although 'Facebook' had acquired the right to the underlying technology and data architecture, the branding and user interface of 'WhatsApp' remained substantially unaltered in several years.³¹

²⁴ *Supra* note 22.

²⁵ 'Facebook to Acquire Instagram' <<https://about.fb.com/news/2012/04/facebook-to-acquire-instagram/>> accessed 20 December 2025.

²⁶ 'Facebook acquires Instagram for \$1 billion'

<<https://www.cbs19.tv/article/news/facebook-acquires-instagram-for-1-billion/501-266949922>> accessed 20 December 2025.

²⁷ 'Instagram' <<https://en.wikipedia.org/wiki/Instagram>> accessed 20 December 2025.

²⁸ *Supra* note 26.

²⁹ 'What Facebook's Acquisition Of Instagram Means For Brands'

<<https://www.forbes.com/sites/onmarketing/2012/04/11/what-facebooks-acquisition-of-instagram-means-for-brands/>> accessed 20 December 2025.

³⁰ 'Facebook to Acquire WhatsApp' <<https://about.fb.com/news/2014/02/facebook-to-acquire-whatsapp/>> accessed 20 December 2025.

³¹ Mike Beasley, 'Facebook acquires WhatsApp messaging service for \$19 billion'

<<https://9to5mac.com/2014/02/19/facebook-acquires-whatsapp-messaging-service-for-16-billion/>> accessed 20 December 2025.

This purchase underscores a key IP difference; ownership does not necessitate exploitation. Although all IP rights are assigned, acquirers can restrict rebranding to maintain goodwill, regulatory trust and user expectations particularly in data sensitive firms.

5. Giving up of 'Myntra' to 'Flipkart' (India) - Brand preservation in group IP:

The case with 'Flipkart' and 'Myntra' is significant in India with regards to brand-retentive IP strategy. 'Flipkart' purchased the trademarks, platform technology, and the customer data of 'Myntra' but the company remained as an independent fashion-centric brand.³² The IP rights were centralized at the group level but the brand was maintained because of the high market awareness.³³ This necessitated in-house licensing or brand-usage solutions within the 'Flipkart' group in order to provide clarity with the law and still retain commercial autonomy.³⁴ This acquisition demonstrates the Indian approach to IP structuring where one corporate umbrella retains several brands in the market, where market segmentation can be done without any IP conflicts.³⁵

7 Conclusion

The concept of IP has transformed from being a mere legal right into a core commercial asset that has a substantial impact on the corporate valuation, competitiveness, and strategic decision-making. Although under Indian IP laws, ownership is generally vested in the creator, there are various exceptions that considerably change this position; the scope of employment, the use of employer resources, and the timing of the creation all play a major role. unclear IP ownership can lead to disputes and reduced valuation of a company, to avoid the same, Effective IP due diligence is necessary to provide protection against legal uncertainties by identifying the defects of ownership, third-party claims, issues of validity, and operational risks. The issue can be ameliorated by ensuring that the employment and consultancy agreements involve specific and unambiguous provisions pertaining to the ownership, assignment, the moral rights and the use of IP, after termination.

In addition, instead of waiting for an acquisition, businesses should have an updated record of all registered and unregistered IP assets, the evidence of ownership as well as license agreements. The companies should periodically examine whether existing products or services violate third-party rights that would devalue the company during the process of sale. The policymakers should consider issuing clear statutory or regulatory

³² 'Flipkart Acquires Myntra'

<<https://timesofindia.indiatimes.com/tech-news/flipkart-acquires-myntra/articleshow/35472797.cms>> accessed 20 December 2025.

³³ Mihir Dalal, Shrutika Verma, 'How Flipkart sealed the deal with Myntra'

<<https://www.livemint.com/Companies/p5nkYHmjFR5jNqn1Q9ZZLO/How-Flipkart-sealed-the-deal-with-Myntra.html>> accessed 20 December 2025.

³⁴ 'Myntra' <<https://en.wikipedia.org/wiki/Myntra>> accessed 20 December 2025.

³⁵ *Supra* note 33.

guidelines about ownership of IP formed during the employment, particularly in the digital and technology sector where the distinction between personal and professional production is becoming slim.

IP assets in the course of entering into an acquisition can be the most valuable part of the transaction, a symbol of goodwill and technological foundation of the organization. The comparative study of acquisitions of 'Twitter', 'Instagram', 'WhatsApp', 'JioHotstar', and 'Myntra' illustrates that acquisition of IP does not mandate uniform exploitation instead the acquirers can decide to rebrand or retain the brand, to share ownership or to use the brand minimally, depending on the business strategy and market perception. The decision of the Acquirers whether to absorb a brand (like 'Twitter' to 'X') or retain it (like 'Instagram') should be based on the 'goodwill' and user expectations associated with the IP.

IP is not just a legal property but a commercial resource that needs to be properly managed. The active and strategic approach to IP ownership and due diligence becomes of paramount importance in assuring legal security as well as business sustainability as corporate transactions are becoming more IP-centric.