

The Record

# Business

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ASK THE EXPERTS

## Copyright law and bankruptcy

**I own a copyright, which I license to an entity that recently filed for bankruptcy. What are my rights?**

In a high-tech world, rights to intellectual property such as copyrights and patents may be critical to a business enterprise. Such rights often are governed by contractual license agreements, which may be affected adversely by a bankruptcy filing of the licensee (the "Debtor").

In bankruptcy, assuming the license agreement at issue constitutes an executory contract (i.e. one that requires performance by both parties), the Debtor can keep the license in effect (called "assumption") or reject it. Debtors are allowed to exercise their business judgment in making that decision. In some instances, the Debtor also may want to transfer the license interest to a third party. However, the Bankruptcy Code restricts assignment when applicable non-bankruptcy law (such as copyright or patent law) gives you, as licensor, the right to refuse to deal with someone else. This principally affects non-exclusive licenses, but may impact certain exclusive licenses as well, depending on where the bankruptcy case is filed. Additionally, the Bankruptcy Code grants you, as licensor, specific rights in the event an intellectual property license is rejected, which amounts to a pre-petition breach of that license.

The relationship between intellectual property law and bankruptcy law is complex. Licensors should consult their attorneys to ensure full protection of their rights in the event the Debtor-licensee determines to reject, keep or transfer its license.

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