

Royalty investigations.



As a licensor of valuable intellectual property rights, do any of the following statements apply to you?

- I've been collecting royalties that differ significantly from projected amounts;
- I deal with companies in jurisdictions that are less strict about intellectual property laws;
- I've been experiencing fluctuations in royalty income and receiving royalty reports that have changed in format and content; and/or
- I deal with a licensee who has sublicensed my rights.

If so, it is possible that your royalty or licensing income may be understated.

So what?

At all times, companies seek assurance over their future cashflows:

- licensors should be seeking to maximise the revenue to which they are contractually entitled; and
- licensees want to minimise their exposure to penalties, unexpected payments and potentially costly litigation.

In addition, new corporate governance provisions require the board to demonstrate to shareholders the steps taken to ensure the completeness of its income. Where licensing revenues represent a significant proportion of a company's income, regular royalty investigations are advisable.

Our experience of royalty investigations

In our experience:

- licensee reported royalty payments were found to be incorrect in 80% of investigations;
- mis-payments represented between 8% and 45% of reported amounts;
- the incorrect payments identified by Deloitte exceeded engagement fees more than 90% of the time; and
- additional revenues obtained by Deloitte's global royalty and revenue recovery services have totalled on average more than \$100 million per year over the last four years.

How we can help

Our team works with both licensors and licensees of valuable intellectual property rights and assists in the following areas:

- advising on the structuring of licences for clear, unambiguous royalty flows and appropriate rights of access to audit the licensees' records;
- negotiating a fair licensing agreement, by reference to industry practices and economic analysis;
- conducting investigations to identify and assist in the recovery of unpaid royalties or understated profits;
- reviewing licensee operations for potential risks of fraudulent underpayment;
- advising during settlement discussions or litigation proceedings; and
- determining the suitability of licence income as a basis for raising debt or securitisation.

Whether a licensor is seeking confirmation that there are no problems with its licensee's royalty payments, or if it has specific suspicions as to underpayments, a Deloitte royalty investigation could help to maximise the revenue to which it is entitled.

Expert witnesses

As well as assisting in settlement negotiations, if matters progress to litigation, we can act as an expert witness and provide assistance whether the matter proceeds to arbitration or Court.

Our team includes credible and experienced professionals who have been instructed as an expert witness, and who have prepared reports on a wide range of intellectual property related issues for courts and tribunals in the UK and overseas. We are fully conversant with our duties under the UK's Civil Procedure Rules. We work together with instructing solicitors, members of the IP Bar, witnesses of fact and experts in other technical disciplines.

Global resources

We understand that your licensees aren't necessarily in your own local market. Our global network of 120,000 people in 140 countries means that we can call on the appropriate local resource with the relevant language and investigative skills, and cultural awareness, to staff your investigations. We offer cost-effective investigations even where the fieldwork takes place far from home.

Our forensic investigations team has extensive experience in large scale commercial investigations. Our well established and proven methodologies are supported by leading software and electronic investigative tools, and by our large team of staff, which includes forensic accountants, former law enforcement officers and analysts.

If you would like to discuss the potential benefits of royalty investigations and the practicalities of implementing a licensing investigation programme, please contact us.

Case studies

Royalty investigations – film rights

We acted for an international film library which was concerned about the royalties received from a distributor. We identified unauthorised deductions and incorrect cost calculations. Following our investigation, our client recovered over £0.75m.

Contract compliance – life sciences

We recently carried out a contract compliance review on behalf of a licensor of a database of genomic information. Our team evaluated the licensee's contract compliance by monitoring how the licensed information was tracked within the drug development process and captured for any eventual royalty payments.

Contract compliance – DVD technology

We acted on behalf of a licensor of encryption technology, investigating several licensees as part of the licensor's royalty examination programme. Breaches were identified in each one of the investigations.

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