

Q&A With Latham & Watkins' Roxanne Christ

Law360, New York (September 29, 2011, 2:19 PM ET) -- Roxanne E. Christ is a partner in the Los Angeles office of Latham & Watkins LLP. Her practice focuses on intellectual property, technology and media transactions, including both U.S.-based and China-based cross-border acquisitions and dispositions of intellectual property portfolios, commercial loans secured by copyrights, patents and trademarks, securitizations of receivables arising from copyrighted works, licensing and strategic alliance agreements, and purchases, sales and restructurings of technology and media assets in bankruptcy. She regularly works with video game publishers and other companies in the interactive media industry, and she teaches video game law at Loyola Law School.

Q: What is the most challenging matter you have worked on and what made it challenging?

A: The RHI Entertainment bankruptcy between late 2009 and early 2011. We renegotiated and restructured about a half-dozen relationships between RHI Entertainment (one of the world's biggest distributors of made-for-TV movies and long-form television series) on the one hand, and several producing partners and their lenders, on the other hand. Our objective was to settle claims the producers and their lenders might have otherwise had against RHI for defaulting on payments, in order to facilitate RHI's filing for and emergence from bankruptcy pursuant to a "modified" prepackaged bankruptcy plan.

This was challenging on all fronts. On the legal expertise front, it required knowledge of the intersection of intellectual property, bankruptcy and secured transactions. On the industry front, it required us to learn the nuts and bolts of how made-for-TV movies and long-form TV series are financed, produced and distributed. On the factual front, it required us to gather a ton of information about dozens of television properties, a huge library of older television movies, specials and series; potential claims of virtually all third parties on these assets and revenue generated from them; their copyright ownership histories and chains of title.

Then, we had to find ways to distill this complex and voluminous information into a handful of slides that could be quickly and easily understood by everyone else. In the end, RHI Entertainment filed for bankruptcy and, as we hoped, emerged according to the agreed-upon plan.

Aside from helping our client achieve its goals, the best part of this project was working with Jan Baker and Rosalie Gray, who are two highly talented bankruptcy partners in our New York office.

Q: What aspects of your practice area are in need of reform and why?

A: The area of secured transactions involving intellectual property. There are still vexing differences among federal courts, and between federal courts and state courts on the questions of how security interests in intellectual property are perfected and prioritized among secured creditors, and how remedies against them are enforced. In the Ninth Circuit for example, the courts have held that security interests in unregistered copyrights are perfected by (and only by) a UCC-1 financing statement filing at the applicable state.

What happens then if works, like video game builds, with only unregistered copyrights, are later registered? Do previously perfected security interests in them become unperfected? Do they stay perfected as long as the secured creditor records at the U.S. Copyright Office within, say, one month of the registration issuance? If the latter is the answer, and assuming the borrower is being uncooperative, how is the secured creditor to know to file at the U.S. Copyright Office if it takes months or even over a year for the online records of the U.S. Copyright Office to reflect the fact of a registration?

Adding to the confusion is the reality that most assets comprised of intellectual property include multiple forms of IP — trademarks, copyrights, patent and trade secrets. Many also include publicity rights. However, for analytical purposes, published court cases often mash the IP together so that the treatment of each form cannot be discerned from the holding of the case. Practitioners would be helped if courts would more methodically analyze the issues on a form of IP — by form of IP basis.

The whole area of how secured transactions involving IP work, when federal law preempts state law, and whether state contract law or federal IP law controls is still rife with uncertainty and inconsistency. It's a problem because borrowing against intellectual property assets would be easier if how one takes an enforceable security interest in them were more certain.

Q: What is the most important case or issue relevant to your practice area and why?

A: The area of termination of transfer rights under the U.S. Copyright law is critical and growing more so every year.

Termination of copyright transfer rights are the rights contained in the U.S. Copyright Act that allow authors of any copyrighted works (other than works made for hire) and their heirs to terminate earlier assignments or licenses of their copyrights. The rights cannot be waived (although there is some debate about what constitutes a waiver).

The termination rights can be exercised during five-year windows that, as to older works, open up 56 years after registration of the work in question and close 61 years after registration. For newer (i.e., post-1978) works, the window opens up 35 years after the date of the assignment or license. Notice of termination must be given no more than 10 years and no less than two years before it is exercised.

So, for example, take a super popular song that was written by one songwriter and registered in 1964 and that the songwriter died leaving a widow one now-adult child. Assume the songwriter assigned the publishing rights to a music publishing company shortly after writing it and that they have rested with that publishing company (or its successors) ever since. From 2020 to 2025 that songwriter's widow and child can terminate the assignment to the publishing company.

To do so, they need to give the current rights-holder no more than 10 and no less than two years notice of termination. Thus, from 2010 and possibly until 2023 — for a full 13 years — the holder of the rights is at risk that it will receive notice that the music publishing rights it holds are being terminated.

Now, as a practical matter, the widow and child might be just as happy renegotiating the existing deal with the existing publisher. However, to get leverage for that renegotiation and to ensure that any new deal is binding, they will likely still want to serve up the notice of termination. The many ways that older works can be exploited in new media add to the value of older copyrighted works and make these termination rights especially powerful and valuable.

The bad news for authors and their heirs is that if they fail to exercise these termination rights in a timely fashion and following the procedure required under the Copyright Act and rules, then the rights go “poof” — all that potential value simply disappears as the right goes unexercised.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Mike Lindsey at Paul Hastings. Mike was one of my early mentors, so I’m biased. That said, from the mid-1980s (way before the Internet as we know it today — and during a time when most lawyers were 110-percent focused on working for investment bankers or becoming investment bankers), Mike saw the value of mastering intellectual property law and IP deals.

With around 80 percent of Fortune 500 companies’ value wrapped up in intangible assets, knowing how to protect, commercialize, raise money from, borrow against, and sell intellectual property is a skill set that is recession-proof and will endure for the remainder of my career and the careers of associates with whom I work. Aside from this and much more, Mike taught me excellent contract drafting skills.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I thought I needed to find the one practice area that most appealed to my strengths. Based on that criteria (I like to write persuasively and advocate a view), I thought I would be happy as a litigator. In fact, I discovered that it was far more important (at least to me) to find a mentor, and easier to mold my area of practice emphasis around the goal of sticking with, and pleasing, a gifted mentor. It taught me that it is more important to focus on the people with whom one is working day in, day out, than exactly what type of work one happens to be doing from time to time.

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