



## Question Q241

**National Group:** AIPPI-US Division of AIPLA

**Title:** IP licensing and insolvency

**Summary:**

Under the United States law governing bankruptcy (i.e., insolvency), a trustee representing a bankrupt Licensor has the right to assume (i.e., continue) performance of an IP license, to assign the IP license (if assignable), or to reject (i.e., terminate) the IP license. If the IP license is rejected, then the Licensee may either treat the rejection as a breach of contract resulting in monetary damages or retain the IP rights. If the Licensee retains the rejected license, it must continue to pay royalties and meet its contractual obligations, whereas the bankrupt Licensor may be relieved of some of its obligations. A bankrupt Licensee may unilaterally reject an IP license, and the Licensor cannot prevent the termination but may seek monetary damages. Provisions in an IP license that automatically terminate the license upon bankruptcy are usually not enforceable. Trademark rights do not expressly fall under the definition of IP rights in U.S. bankruptcy law, but some bankruptcy courts may offer the same options for trademark licenses.