



PROTECTING YOUR IDEAS

Ideas cannot be protected by copyright, trademarks or patents which are all very specific and distinct intellectual property rights. Ideas can however, in certain circumstances, be protected under law of confidentiality.

The law of confidentiality is used to protect sensitive commercial information including: know-how; trade secrets such as manufacturing processes, recipes, formulae or customer lists; TV show formats; and creative ideas or new products, all of which are becoming increasingly vulnerable to theft and plagiarism.

Before beginning negotiations with prospective commercial partners, companies often receive Confidentiality or Non Disclosure Agreements (NDAs). An NDA is a contractual agreement between two parties not to disclose information to any third parties that either one party has disclosed to, or that they have each disclosed to the other party.

It is essential to raise the issue of confidentiality before any classified information is exchanged. Obligations of confidentiality cannot be imposed retrospectively – once information is in the public domain it is impossible to claw it back.

The first step is to assess the subject matter of the proposed discussions. Is the subject matter of the meeting confidential? Would you be happy for the information to be released into the public domain and possibly brought to the attention of your competitors?

Next, determine whether you will be divulging this information to your commercial partner, receiving information from your commercial partner, or both? Depending on the direction of the likely flow of information, you should consider a “one-way” or “mutual” form of agreement.

The reality is that it is hard to prove a breach of confidentiality but not impossible, as demonstrated in *Talbot v General Television Corporation Pty Ltd* [1980]. A film producer had discussions with a TV company and suggested they should consider making a TV series on how millionaires got their money. The TV company subsequently developed the idea without him but the judge ruled that the producer’s idea had been set out in his written proposals to the TV company and that the idea for the show had been disclosed in confidence to the TV company.

Unfortunately an NDA cannot guarantee protection from a breach of confidentiality; you would need to go to court to prove such a breach had occurred and that some financial loss had been suffered. However, it is good practice and producing a signed NDA to potential investors and purchasers would prove you are actively trying to protect your intellectual property. It would also be supporting evidence of a confidential relationship if you ultimately needed to go to court over a breach.

If you would like further information about how to protect your ideas and what you can do if someone is unwilling to sign your NDA, contact Irfan Baluch at Vertex Law on 0870 084 4006 or irfan.baluch@vertexlaw.co.uk