

HOW CAN I STOP SOMEONE STEALING MY GREAT IDEA?

You have this great idea for a business, a software program, a film, an invention ... whatever, and you want to protect it. How do you do that? Do you want the good news or the bad news?

OK, the bad news first – pure ideas are not property and cannot therefore be ‘owned’ or ‘protected’.

Now the good news – it is possible to build protection for that good idea in a number of ways.

1. You could record the idea in some way (write it down, for instance) and then claim copyright in that recorded media (i.e. the writing, film, software etc) called in copyright law ‘the work’. [HELPFUL HINT: This is not a very effective means of protection because it only protects the physical record (i.e. the work) from being copied, not the ideas in the work. Rating: 2/10.]

2. If the idea can be translated into a design capable of registration under the Designs Act you can obtain protection from that legislation. [HELPFUL HINT: Only applies to registrable designs, so not usually very useful. Rating: 3/10]

3. If the idea is inventive or novel enough you can apply to patent the idea. A patent creates a property right in the idea for 20 years and gives you the monopoly during that time. [HELPFUL HINT: Patents are expensive, apply only to a relatively small number of truly inventive/novel ideas and guarantee that the idea will be pinched once the patent expires. Rating 4/10]

4. If you reveal the idea, in certain circumstances the law will imply a duty of confidentiality on the person you tell the idea to. The important criteria are:

- a** the information must be truly confidential and not public property or in the public arena
- b** the information must have been communicated in circumstances suggesting an obligation of confidence, and
- c** there must have been an unauthorised use of the information.

[HELPFUL HINT: Proving these criteria is not always easy and will probably be expensive and time-consuming. By the time you get a court decision the idea’s original usefulness and value may have vanished. Rating: 5/10]

5. You can arrange for those to whom you reveal the idea to agree to keep the idea confidential. This must be done before you reveal it and the agreement should be in writing so that it is clear evidence about the confidentiality and obligation. It can also contain a few fine points that could improve your position. A verbal confidentiality agreement would still be enforceable, but you might have trouble proving that the other party agreed to it.

[HELPFUL HINT: Care should be taken to make sure everyone likely to hear the idea is covered by the agreement and that the person signing has the authority to bind their partners, employees, fellow directors and so on. Rating: 6/10]

Summary

You may have noticed that no protection mechanism scored higher than 6/10. That’s because they are all flawed in some way.

To protect your idea, keep it as quiet as possible and contact us for an appropriate confidentiality agreement. And if the person you want to tell the idea to doesn’t want to sign a detailed document (then maybe they aren’t the person you should trust with your idea!), we may still be able to achieve you a basic level of protection with a carefully worded letter before the meeting.