

## Legal Issues In Collaborations

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Innovation depends on collaboration and leveraging the expertise of diverse individuals is instrumental to creating new technologies. While there are many benefits to collaborations, significant legal issues can arise such as the ownership of intellectual property and the protection of confidential information. It is critical each party in collaborations understand these issues and take steps to minimize any business risks.

There are four main ways to protect intellectual property: patents, trademarks, copyrights, and trade secrets. Each type of intellectual property protection is designed to protect a different aspect of the work product. Patents protect novel, useful, and non-obvious machines, methods, manufacturers, and compositions of matter while trademarks serve as brand identifiers and identify the source of a good or service. Copyrights protect original works of authorship and trade secrets protect information that derives business value from the fact that it is not generally known.

When working on a new collaboration, all four types of intellectual property should be considered. Layering intellectual property protection can dramatically increase the value of the end work product. The protection and enforcement of each type of intellectual property is governed by its own set of laws and regulations and it is critical that every party involved in the collaboration understands their rights under these rules.

For example, ownership of a patent arises with the inventors. Absent an agreement to the contrary, each inventor will be a co-owner of the patent. This means that each joint owner may make, use, sell, and import into the United States the entire invention without seeking the permission of the other inventors and without accounting to the other inventors for any profits.

Similarly, joint ownership of a copyright arises when two or more authors, intending for their contributions to be merged, each contribute in the creation of a joint work. As with patents, each co-owner of a copyright can use or license the entire work without the permission of the other owners. However, unlike patents each co-owner of a copyright must account to the other owners for any profits they receive.

All of these default positions may be changed by a written agreement between the parties. So, it is critical that each party fully understands their rights under these default rules and use agreements as necessary to ensure their expectations are met.

In addition to intellectual property issues, collaborations also present risks with respect to protecting confidential information. The more parties that have access to confidential information, the easier it is for this information to be inadvertently disclosed. It is essential that all parties involved agree on what information is to remain confidential and agree to implement the appropriate safeguards needed to protect such information. For example, information deemed confidential should be marked as such. The parties should have Non-Disclosure Agreements (NDAs) with each other and agree in writing to keep this information confidential. If the parties agree it is beneficial to share confidential information with a third party, such as a potential investor, NDAs should be used to maintain the confidentiality of the information being shared. Periodic audits of the information classified as confidential and the safeguards that are in place are also essential parts to an effective protection plan.

While collaborations do raise significant legal issues for the parties involved, the majority of these risks can be easily avoided by careful planning and open communication between the parties from the beginning of the relationship. Using agreements to ensure the intellectual property rights reflect the business relationship of the parties and taking steps to maintain the confidentiality of confidential information are a few ways parties can reduce risks while leveraging the

benefits of collaborations.

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