

copyright

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS FOR TECHNOLOGY COMPANIES

Intellectual Property laws protect the proprietary rights of creators over their creations. The infringement of Intellectual Property Rights undermines genuine investment in creativity, innovation and knowledge. Invariably, the granting of exclusive proprietary rights creates an incentive for creators to develop, produce, and distribute new and genuine products and services for commercial purpose.

Without a doubt creativity and inventions are highly valued within the technology environment as reflected by the disruptions by technology in almost all facets of human life. The use and application of technologies to the creation, production and distribution of works of the mind has changed the way businesses operate with the traditional concepts of intellectual property being blurred with innovators left without protection of their works.

YOUR IDEAS, YOUR RIGHTS

Intellectual Property Rights protect the exploitation of ideas, information and inventions for economic or proprietary value. While an idea in itself is not accorded legal protection in law, it can be exploited and/or be reduced in a fixed form to come under a head of protection under Intellectual Property laws as it is often said **“Intellectual property does not protect your idea per se – it protects your expression of the idea”**. Therefore, the loss of the right to these ideas by the founders of an early stage technology company can mean the end for their business venture.

Below are a few steps that can be taken to protect the ideas from being infringed:

1. Share ideas but do not share secrets. It is almost impossible to get an idea executed without sharing it with others. However, there is a need to adopt a strictly **'need to know'** policy in order to control who to share the idea with and to what extent.
2. Engage a Lawyer. A number of technology startups fail not because their ideas are not groundbreaking or implementable but because of their non-involvement of a lawyer at the early stage of the venture. Having a lawyer to advise and assist with negotiating the terms of any early agreements and how to register your ideas with the appropriate authorities will help eliminate the risk of infringement of your ideas.
3. Conduct adequate due diligence on potential investors: The golden rule is never to pitch business ideas to just anyone. Before sharing ideas with an investor, there is need to conduct due diligence on such investor to know their capacity and capability to enhance your venture.
4. Documentation: There is need to document all correspondence relating

to discussions on your idea so that there is documentary evidence should there be an infringement on your ideas.

CATEGORIES OF INTELLECTUAL PROPERTY RIGHTS

In the technology environment, there are four types of proprietary rights that require attention namely, Copyrights, Patents, Trade Secret and Trademarks. Each of these rights has a distinct property and protection template, while some requires registration with the requisite authority before it can be enforced, some do not require registration.

COPYRIGHT

Copyright is concerned with protecting creative works of the human intellect. It relates to literary and artistic works. It is important to bear in mind that “literary or artistic works” is not limited to literature and music; it also includes such technical expressions of human creativity such as software design, electronic databases, multi-media productions, applications, and all other forms of technological development. It doesn't protect the idea behind your product, but rather the way this idea is implemented. Copyright protection gives the owner the exclusive right to authorize or prohibit the reproduction, distribution, translation, adaptation, broadcasting or communication of the idea.

Registration is not a requirement for protection but “depositing” a copy of the work with the Nigerian Copyright Commission (NCC) is a prudent way to prove authorship. It is usually notified by an encircled “C” sign ©. While this is not necessarily a requirement of law in Nigeria, it serves as a warning to the public of the author's rights. Copyright is an incorporeal right that may only be enforced through legal action and the person seeking to enforce must have

sufficient interest in the work to justify his action.

PATENT

Patent is a right over the exploitation of an invention granted by the government in return for disclosing the full working of the invention. An invention can be either a new solution to an existing problem or an improvement on an existing invention. For an invention to be patentable it must be **novel**, possess an **inventive step** and be capable of **Industrial application** that is, it must be capable of practical use. Patent protects the idea behind a particular product, but not the execution of the idea and the effect of the grant of a patent is that the patented invention may not be exploited by any person other than the owner unless such exploitation has the consent of the owner.

Software and technological process falls within the categories of products that can be patented; it is granted for a fixed number of twenty (20) years by the Patents and Designs Registry and is subject to annual renewal within the period of validity. One fundamental issue about patentable invention is that it cannot be disclosed before registration. Once it is disclosed, the right to the patent is lost. It is pertinent to note that while the state may grant patent rights, it does not automatically enforce them, and it is the responsibility of the owner to bring an action at the Federal High Court for any infringement on his patented rights. Though no worldwide protection exists for patent yet, a single international application can be filed under the Patent Cooperation Treaty (PCT) to enjoy universal recognition.

TRADE SECRETS

Trade secrets have to do with proprietary information that a technology company discovers and works with; they are usually not registered with any authority

but are maintained indefinitely by members of the company or partners until they are discovered by another company in the market. For instance, if a technology startup develops an effective business model for its product, it is its trade secret until another company working in the same market, discovers the exact business model on their own. The best way to protect trade secrets however is to execute a Non-Disclosure Agreement (NDA) or a Confidentiality Agreement (CA) to dispel unnecessary worry about entrusting information on your idea or project to another. NDA or CA contains a clause restricting the investor or any partner from investing in or starting a business or using an idea similar to that disclosed for a period of time even after the termination of the NDA.

TRADEMARKS

Trademarks are characterized by the use of distinctive names, logos, slogans, domain names, shape, sound, or combination of any of them, all of which enables the company to have a uniquely identifiable mark for optimal market penetration. It is called a Trademark when it protects goods e.g. Samsung, Infinix etc. and a Service mark when it protects services e.g. Paga (a Nigerian mobile money solution).

Given the ease of infringement, trademark is best maintained by registration and it is valid for 7 years in the first instance and subject to perpetual renewal at 14 years intervals thereafter. Trademark also protects domain names that allow a company to operate in a virtual environment. While registration is not a requirement for protection under the common law, to bring an action under passing off. However, it is advisable for a technology company to register its marks with the Trademarks, Patent and Design Registry in order to be able to enforce its rights over any infringement under the Trademark Act.

INTERNATIONAL PROTECTION OF IPR

IP protection is territorial in nature and protection can only be enjoyed in the territory in which it is registered. However, there are international treaties and conventions that recognize singular

registration with the World Intellectual Property Organization (WIPO) which allows for protection in multiple countries.

Conclusion

One of the key risk issues for technology startups is intellectual property protection because it is the most important and valuable business assets of a technology startup/company. As innovation and technology is evolving at an accelerated pace, and competition among companies including tech startups is as fierce as ever, protection and enforcement of IP is now very important as the lack of it, is similar to operating a business without some form of insurance. For a small amount of money, you can protect your ideas against possible dangers which include but not limited to the loss of name, logo, ideas, and other valuable assets to a competitor in the marketplace. This protection therefore should be an essential component of your business plan and budget.

DISCLAIMER

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