

Intellectual Property, Conflict of Interest

Legal Definitions and Considerations

Conflict of Interest: A situation in which regard for one duty results in disregard for another. Doing work for or with two parties whose interests are “adverse potentially or in fact.” Another common situation occurs when a person’s financial, personal, or career interests are “inconsistent” with the professional performance of the work (e.g. motivation for personal gain may influence the work you do and the professional decisions you make).

Copyright: Statutory or common law protection granted to literary works. Gives owner exclusive rights to reproduce the work.

Disclosure of Intent: Whether or not there is an intellectual property issue or conflict of interest cannot be unilaterally determined or rationalized. If there is even a remote chance that other parties involved may take issue, it is best that you disclose to all potentially affected parties what you propose or intend to do. Examples might be moonlighting (conflict of interest or impact on performing your primary job), use of proprietary information, or taking on a new project where there may be a conflict of interest. Failure to disclose in situations where problems develop, is much worse than disclosing early on and giving everyone involved a chance to object to what you propose to do.

Intent: A state of mind wherein a person knows and desires the consequences of his or her act (see “disclosure of intent”).

Intellectual Property: Certain creative works, e.g. original literature, computer software, trademarks, trade secrets, semi-conductor chip masks, and inventions.

Non-competition Clause: Also known as “Covenant not to Compete.” A contractual agreement to refrain from conducting business or professional activities similar to those of another party. This clause commonly appears in contracts of employment, partnership, or sale of a business. At issue are the protection of trade secrets, customer lists, and business methods. For example, your employment contract may legally prohibit you from leaving your job and starting a similar competing business. Typically, there are geographic and duration limits. Also, noncompetition agreements “must not unreasonably restrict an employee from earning a living if he leaves the company.”

Non-disclosure Agreement: Agreement to keep confidential, during and after employment, information that if revealed outside the company would be detrimental. Usually, this protects trade secrets or proprietary information.

Royalty: A share of product or profits that come from the use of a patent or intellectual property owned by others. The owners of the intellectual property are paid for “permitting another to exploit or use his or her property.”

Patent: Legal protection for inventions. Patents might also protect the concepts of the inventions.

Proprietary Property: Unpatented or uncopyrighted Information, knowledge, or trade secrets in which the person developing it has ownership rights. These rights are usually protected by contract, but may sometimes only be implied. As engineers, we see this as pre-existing information owned by someone else and provided to us so that we can perform our project. We cannot claim it as our own or make use of it on another client's project. And we cannot share or disclose it to anyone else.

Trade Secret: Information that gives a business an advantage over competitors who do not have the information. Examples:

Employee Salaries	Advertising Methods & Plans
Customer Lists	Plans for Future Products
Sources and Suppliers	In-House Procedure or Policy Manuals
Manufacturing Processes	Manufacturing Costs
Computer Program Source Code	Sales and Profit Figures

Work-Made-For-Hire: A work created by an employee as part of his/her job. A work-made-for-hire belongs to the employer, who is recognized as legal creator, author, or copyright owner. For example, a valuable design process, technology, data from test measurements, simulation technique, or patent that you develop becomes the property of your employer -- they have purchased it from you by paying your salary. Read your employment contract carefully.

References:

Dictionary of Legal Terms, 3rd. Edition, by Steven H. Gifis, Barron's Educational Series, Inc., © 1998, ISBN 0-7641-0286-9.

Intellectual Property Protection - A Guide for Engineers, by David S. Goldstein, Professional Publications, Inc., Sixth Printing, © 1986, ISBN 0-932276-61-X.