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Can You Enforce Rights In An Idea That Was Stolen From You?

[Kristie Prinz](#)

Q.

I am interested in information concerning intellectual property. If you have solid evidence that you had an idea before someone else and if someone took over your idea, do you have a case?

-- Tracy

A.

Unfortunately, ideas in themselves are not protectable as intellectual property.

Copyright law protects original works of authorship fixed in a tangible form of expression. Section 102 of the Copyright Act lists the following works of authorship as protectable subject matter:

1. literary works;
2. musical works, including any accompanying words;
3. dramatic works, including any accompanying music;
4. pantomimes and choreographic works;
5. pictorial, graphic, and sculptural works;
6. motion pictures and other audiovisual works;
7. sound recordings; and
8. architectural works.

Section 102 of the Copyright Act also states that the following is not protectable subject matter:

[an] idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Thus, ideas in themselves are not protected under copyright law; however, if those ideas constitute one of

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the eight protectable subject matters under copyright law, then they would be protected.

Ideas can also be protected intellectual property if they constitute inventions. Inventions are protected under patent law; however, in contrast to copyright law, inventions are not automatically protectable when they are created in fixed form. Instead, patents require a patent filing to be protected.

If, however, an idea is not copyrightable or patented, then the only way to protect it from theft is to limit disclosure of the idea to third parties that have signed a nondisclosure agreement protecting that idea from disclosure or from being used in an unacceptable manner. Nondisclosure agreements are contracts, so they can be enforced in the event of breach.

It is unclear from the facts you have provided whether the idea at issue is protectable or unprotectable, or whether you have entered into a nondisclosure agreement with the third party who stole your idea. Assuming the idea at issue constitutes protectable subject matter or you previously entered into a nondisclosure agreement with the third party in question, then you should be in a position to enforce your rights in the intellectual property or contract, as appropriate, in a court of law.

-- *Kristie Prinz*

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