



Click here to agree: Managing intellectual property when crowdsourcing solutions

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Abstract Tapping into the creativity of a crowd can provide a highly efficient and effective means of acquiring ideas, work, and content to solve problems. But crowdsourcing solutions can also come with risks, including the legal risks associated with intellectual property. Therefore, we raise and address a two-part question: Why—and how—should organizations deal with intellectual property issues when engaging in the crowdsourcing of solutions? The answers lie in understanding the approaches for acquiring sufficient intellectual property from a crowd and limiting the risks of using that intellectual property. Herein, we discuss the hazards of not considering these legal issues and explain how managers can use appropriate terms and conditions to balance and mitigate the risks associated with soliciting solutions from a crowd. Based on differences in how organizations acquire intellectual property and limit associated risks, we identify and illustrate with examples four approaches for managing intellectual property (passive, possessive, persuasive, and prudent) when crowdsourcing solutions. We conclude with recommendations for how organizations should use and tailor the approaches in our framework to source intellectual property from a crowd. © 2016 Kelley School of Business, Indiana University. Published by Elsevier Inc. All rights reserved.

1. Crowdsourcing: Let's get legal

While the term 'crowdsourcing' may be relatively new, the practice of outsourcing an organizational activity to a crowd has been around for centuries.

The Australian flag and the marine chronometer that Captain James Cook used to navigate the Australian coastline were both products of crowdsourcing. Toyota also crowdsourced its logo in 1936, with the winner chosen from 27,000 submissions (Morozov, 2014).

The internet and social media have brought crowdsourcing into the 21st century by facilitating access to hundreds of millions of potential participants (Kietzmann, Hermkens, McCarthy, & Silvestre, 2011). Consequently, crowdsourcing today has been

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defined as an “online, distributed, problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals” (Brabham, 2013, p. xix). Organizations employ crowdsourcing to construct, assimilate, and harness crowd capital that is used to (Prpić, Shukla, Kietzmann, & McCarthy, 2015):

- Make decisions between known choices (*crowd voting*);
- Undertake small jobs (*microtask crowdsourcing*); and
- Innovate and solve problems (*crowdsourcing solutions*).

While the legal aspects of crowdsourcing can be diverse—involving tax, investment, and employment law—we focus specifically on the intellectual property issues that arise when crowdsourcing solutions. An understanding of the legal considerations surrounding intellectual property is crucial to leverage the crowd successfully and safely in search of innovative solutions.

Two examples highlight the importance of firms recognizing the potential intellectual property management risks associated with crowdsourcing solutions. One is the case of PhantomAlert, a mobile app that alerts drivers regarding traffic conditions, road hazards, and traffic enforcement locations, based on data crowdsourced from its users. PhantomAlert recently asserted claims against Waze, a competing traffic management app acquired by Google in 2013 that also sources its data from the crowd. In 2015, PhantomAlert successfully registered copyright ownership of its compiled data, and subsequently alleged that Waze copied its proprietary points of interest for use within the Waze app—without PhantomAlert’s permission. On March 4, 2016, a California court ruled that PhantomAlert’s claim of copyright infringement could proceed (*PhantomAlert Inc. v Google Inc. et al.*, 2016). For businesses, litigation associated with crowdsourced content like this can be a risky and expensive exercise.

A second example illustrates the non-legal risks that can surface from intellectual property management, relating to mismanaged expectations and perceived unfairness. Moleskine, a popular stationery brand, partnered with DesignBoom, an advertising agency, to crowdsourcing the design of a logo for its blog. Moleskine offered a €7,000 prize for the best design but retained property rights for all submissions. Only one winner would benefit, yet all participants would lose ownership of their designs

with no compensation. Additionally, the contest terms and conditions were written in confusing legal jargon. As a result, the design community lashed out at Moleskine for what was perceived as profiteering and free riding on the intellectual property rights of creative fans of the brand (Opp, 2011). Moleskine’s lackluster response to criticism on Facebook—including the company’s claims that it was not the only organization to engage in such a strategy and that contributors were not obligated to participate if they felt that the conditions were unfair—prompted further backlash and, subsequently, an apology from the company.

Both of these examples demonstrate organizations’ need to consider intellectual-property-related risks when sourcing solutions from the crowd. Therefore, in this article, we aim to answer a two-part question: How—and why—should organizations deal with intellectual property issues when engaging in crowdsourcing solutions? To do this, we first present some recent scholarly contributions related to managing intellectual property and crowdsourcing. Second, we discuss the importance of terms and conditions as the principal legal mechanism for organizations to acquire appropriate intellectual property rights and limit risks. We then present a framework for understanding and responding to issues regarding intellectual property management in crowdsourcing. The framework is based on two legal considerations that organizations must be mindful of when engaging in solutions crowdsourcing: the need to acquire sufficient rights from the crowd to achieve organizational objectives, while also ensuring that the terms and conditions limit liability exposures associated with using crowd content. Based on these two caveats, we present and illustrate four different approaches to managing crowdsourced intellectual property. We conclude by offering recommendations for businesses managing intellectual property when crowdsourcing solutions.

2. Hazardous material: Intellectual property-related risks from crowdsourcing solutions

Crowds can serve as a significant resource for firms and offer potential payoffs if their contributions are valuable and used effectively (Franke, Keinz, & Klausberger, 2013). Crowds, however, are not governed by employment laws that might stipulate employer rights ownership of employees’ creative works. As a result, in designing crowdsourcing endeavors, organizations must incorporate plans

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