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Have Confidence in Communal Working Spaces – Practical Ways for Entrepreneurs to Protect Their Intellectual Property

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As communal working spaces grow in popularity, entrepreneurs may be placing their intellectual property in jeopardy. Many communal working space providers emphasize the synergies that may be achieved by enabling the free flow of ideas between tenants, both symbolized and facilitated by the absence of physical barriers between working areas. Indeed, the explosive growth of such working spaces is a testament to the effectiveness of such open-format environments. Entrepreneurs should, however, be aware of the risks inherent to such low-privacy environments.

Confidentiality is key.

All companies are best served by maintaining the confidentiality of their intellectual property. Any disclosure should be accompanied by a bespoke non-disclosure agreement (NDA). Often the gateway to vital business relationships, it is critical that an NDA capture the specific spirit and scope of each relationship.

Although the NDA should not disrupt the business relationship, certain terms should be considered. For example, which party bears a duty of confidentiality, which entities are parties to the agreement, what confidential information will be shared, and what exceptions might exist.

In some scenarios, where an NDA is impractical or impossible, be careful to tailor any disclosure and avoid confidential information. There may be benefit by stating that the contents of a presentation, discussion, or some other communication contain proprietary or confidential information that should not be disclosed to any third party. If a patent application has already been filed, try not to disclose any information that is not included within the application.

Prioritize physical security.

Entrepreneurs should be conscious of the risks of inadvertent disclosure and be aware of some simple steps to increase physical security. Exposing confidential information to the public should be avoided wherever possible. Accidental disclosure may create a bar to patentability and forfeit the right to potential trade secret protection.

To avoid accidental forfeiture of patent and trade secret protection, parties should take measures that are reasonable under the circumstances to maintain confidentiality. Although no measure is perfect, basics such as not leaving unattended documents, using locked containers, and being aware of one's surroundings when having confidential conversations can be implemented.

Formalize agreements with employees and contractors.

Consulting agreements may be used to protect both the company and the employee or contractor by clearly establishing the parties' obligation with respect to confidentiality and intellectual property that may be disclosed, exchanged, or created, the scope of the relationship, the duration of the parties' obligations, and payment terms.

With respect to confidentiality and the assignment of intellectual property rights, the agreement should state that any information exchanged pursuant to the relationship is confidential. The period of the obligation of confidentiality on the consultant should be indefinite, particularly with respect to information considered to be trade secret.

Avoid premature sales offers.

Companies should appreciate that patent protection may be forfeited merely by offering to sell the invention to a third party. Any offer for sale does not need to be accepted, nor does the offer need to be made public; even an unaccepted offer to sell may still create a bar to patenting. Although the United States provides a one-year window after an offer to sell during which a patent application may be filed, in most other countries an offer for sale creates an immediate bar to obtaining patent protection.

Companies should be aware of common intellectual property pitfalls encountered both inside and out of communal working spaces. Simple actions, such as remaining mindful of confidentiality, using written agreements, and avoiding premature offers, can help maintain intellectual property rights. With an awareness of the commonly encountered pitfalls and some modest steps to address them, entrepreneurs can confidently establish a meaningful intellectual property protection plan.

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