

## Contractors need to protect intellectual property

For employees, there's no hope of ever preserving any intellectual property rights to anything they come up with on the job. For contractors, most clients will ask for similar rights, but you may be able to negotiate a better deal.

### Contractors Can, Employees Can't

"In most employment contracts, all intellectual property developed by the employee during the period of employment belongs to the employer," says [David Royden](#), a lawyer specialising in contract law with Layton's Solicitors in Manchester. "The same is generally true of contractor contracts. But the contractor may be able to negotiate specific instances of intellectual property development to which the contractor may retain ownership. Contractors have at least the potential opportunity to get a better deal if they know exactly what they want."

If your contract specifies that you must give up all rights to any intellectual property that you develop, you have no choice but to let it go. "There are really no exceptions to this rule, and the courts will enforce it," Royden points out.

### Unusual Situations An Exception?

Still very unusual situations might put you outside of the rule's boundaries. "If you are working as a software designer for a client, and you write a marvellous song while you're on the job, you could probably keep the intellectual rights to it," Royden says. "The courts will say that it's outside the boundaries of the clause in the contract."

Obviously this could extend to a less outlandish context. Developing something completely different from what you are working on might well mean that you could keep it. But it would have to be truly different from the work that you were hired to do, and it would be an extreme situation.

“ Contractors have at least the potential of getting a better deal ”

David Royden-Laytons Solicitors

### Background and Foreground Property

Typically, there is a distinction between "background" and "foreground" intellectual property rights. Foreground intellectual property is what the contractor works on for the client. "Here there is little chance of obtaining any rights," Royden says.

But if intellectual property which you've developed yourself is to be used in a project, the client will typically demand freedom to make use of this "background" intellectual property. "There is negotiating room where the client wants to use your work" Royden says. You can try and demand to keep ownership to what you develop out of the work you've brought to the table. "Use a very specific breakdown of what is yours and what belongs to the client," Royden advises. "And as the joint work develops, make sure you can distinguish what is yours and what is the client's."

It could then become ticklish as to who ultimately obtains any patent that the work might lead to. Typically a contractor is asked not only to hand over whatever work the client might wish to seek a patent on, but the contractor is also asked to actually help the client obtain the patent. Again, if you've properly protected your own work, this will become the subject of a further negotiation. Or, if you think this is likely to occur, seek to negotiate it when the contract discussions take place initially.

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It is of course wise to keep title to as much of your own work as you can, for it will become valuable in future contracts—in fact, it could accrue value as you develop it through different contracts.

But it may not be possible to keep it; some clients will simply refuse to deal with contractors who seek to retain any intellectual property rights of their own. "It's a ticklish area to negotiate," Royden says. But it's worth trying if you have something you think is of special value.

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