

The intellectual property within the Kickstarter funding method¹

By Quentin Blanchard

ABSTRACT

Currently working on an engineering oriented project with some friends, we need to figure out what is the best way to protect our idea. The funding method we have in mind is quite dangerous for the intellectual property. It is the crowdfunding. So, the aim of this paper is to determine the best protection or a crowdfunding solution.

The method use for this analysis is the comparison of several criteria from different solution to determine which one is the most appropriated (The force field analysis).

The main finding of this study is that it depends of the kind of work you want to protect. If it is about an author work (song, painting, dance, paper, etc.), the copyright appears as the best solution. But if it is not the case (engineering design or process, etc.), the patent is the way to protect your idea.

For our project (engineering oriented) the best fit is the patent. It will permit to protect ours designs and process we developed during the project development time.

Key words: Intellectual Property, Crowdfunding, Patent, Dispute, Terms of use, Backer

INTRODUCTION

In 2015, a start-up called KAZbrella presented its project on the crowd founding platform Kickstarter. Their concept was a patented reverse folding umbrella. A short time later, another similar umbrella strangely appeared. This “copie” has been realised under the name “Suprella”. This strange causality hides something more interesting, Suprella is a website detained by Hiram Trade GmbH, a German company known for that kind of machinations. Nowadays, this kind of problem is growing rapidly. The Crowdfunding platform Kickstarter defines itself as a platform with the purpose to link entrepreneurs (and their ideas) and backers, and it does not want to take part in that sort of problem.

In a project, intellectual property can be a real success factor. For the product development project, this is most of the time a key element. Entrepreneurship has now new ways to find the funds required to develop their ideas. Crowdfunding is one of them. The results can be quite

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impressive. For instance, (eg: Kodama, 3D printer reached their fund raise target in 6 minutes). But the protection of the idea or the design is not part of the deal you sign with Kickstarter. Usually, the intellectual property – perceived as a specific idea, process or design – is protected by patents. But patents are expensive and hard to write when the idea is just at a starting phase. Does any system exist to protect your idea when you share it on Kickstarter except the last ones?

When a project is presented on the platform and the idea is stolen, who are the stakeholders involved in the dispute? Kickstarter has defended its position since its creation with the following baseline: “Kickstarter is not linked to the project in any case and does not want to be part of any dispute”. The disputes about intellectual property are included. But what are the real implications of Kickstarter about it? How do they defend themselves inside their contracts? The document used for this analysis is the “Kickstarter terms of use”.

We will provide answers to the following questions:

- Is there any protection for intellectual property inside the Kickstarter terms of use?
- What are the potential risks about sharing your idea on such a platform without any protection?
- Does any way exist to reduce those risks and what is the cost of the solutions?

For a project which chooses to finance itself by this method, the intellectual property appears as a key success factor which requires attention. Not being able to manage this issue could lead to a total failure of such a project.

THE FEASIBLE ALTERNATIVES

Given the fact that the terms of use does not offer any protection about the intellectual property, we have to look for other solutions. In this paper, we consider three different options to protect intellectual property. The options are the patent, the copyright and the “enveloppe Soleau”. The two first are international solutions while the last one is a French possibility. Each solution has its specificities and limits. A look at them is mandatory and a study of the income too. The terms of use of Kickstarter will also be compared. But because it has already been described in the introduction, it will not be presented again.

THE OUTCOMES FOR EACH FEASIBLE ALTERNATIVE

Feasible alternative N°1: Patent your idea

This one is the most known. It is the safest solution to protect your idea. How does it work? You must hire an attorney in law to redact your patent to describe your idea/design as precise as possible. This patent will offer you a protection generally for 20 years. But a patent must be very well written because the smallest mistake may have a huge impact as the unprotection of your idea. Once the patent is disclosed to the public, its owner can decide to give the licence,

to use it or to sell the intellectual property to someone else. The patent considered for this study is the international patent.

Feasible Alternative N°2: The copyright

A copyright is an option which protects the work of authorship such as literary, dramatic, music or research essay. The protection duration is around 70 years after the death of the author. To get the copyright of one of your works, you must produce your work on a tangible support (paper, song, etc.) and share it. Then, the copyright is automatically attributed. But you can also register your copyright with the US Office to have more protection.

Feasible Alternative N°3: “L’enveloppe Soleau” French protection

It is a French kind of protection. It is not expensive at all (a little bit more than 100€) and does not require an attorney in law to be redacted. You only need to present your idea/design and depose it.

THE CRITERIAS USED FOR THE COMPARASON

To compare those different options, the following criteria will be used:

- The price
- The duration of the protection
- The level of protection
- The kind of intellectual property covered by the solution
- The globality of the protection (if it is worldwide, national, etc.)

ATTRIBUTES	VALUES	RANK	FORMULA	RATIO	1-x
PRICE	LOW	3	$(1-1) / 2$	0	1
	MEDIUM	2	$(2-1) / 2$	0,5	0,5
	HIGH	1	$(3-1) / 2$	1	0
DURATION OF THE PROTECTION	LONG	3	$(1-1) / 2$	0	1
	MEDIUM	2	$(2-1) / 2$	0,5	0,5
	SHORT	1	$(3-1) / 2$	1	0
LEVEL OF THE PROTECTION	HIGH	3	$(1-1) / 2$	0	1
	MEDIUM	2	$(2-1) / 2$	0,5	0,5
	LOW	1	$(3-1) / 2$	1	0
KIND OF PROPERTY COVERED	EVERTHING	3	$(1-1) / 2$	0	1
	ALMOST EVERYTHING	2	$(2-1) / 2$	0,5	0,5
	AUTHOR PROPERTIES	1	$(3-1) / 2$	1	0
GLOBALITY OF THE PROTECTION	INTERNATIONAL	3	$(1-1) / 2$	0	1
	RESTRICTED TO SOME COUTRIES	2	$(2-1) / 2$	0,5	0,5
	NATIONAL	1	$(3-1) / 2$	1	0

FINDINGS

ATTRIBUTES	ALTERNATIVE I	ALTERNATIVE II	ALTERNATIVE III
PRICE	0	1	1
DURATION OF THE PROTECTION	0,5	1	0
LEVEL OF THE PROTECTION	1	0,5	0,5
KIND OF PROPERTY COVERED	1	0	1
GLOBALITY OF THE PROTECTION	1	1	0
TOTAL	3,5	3,5	2,5

ATTRIBUTES	RANKING	FORMULA	RATIO (A)	ALTERNATIVE I		ALTERNATIVE II		ALTERNATIVE III	
				B	A x B	C	A x C	D	A x D
PRICE	5	5/15	0,33	0	0,00	1	0,33	1	0,33
DURATION OF THE PROTECTION	1	1/15	0,07	0,5	0,03	1	0,07	0	0,00
LEVEL OF THE PROTECTION	2	2/15	0,13	1	0,13	0,5	0,07	0,5	0,07
KIND OF PROPERTY COVERED	3	3/15	0,20	1	0,20	0	0,00	1	0,20
GLOBALITY OF THE PROTECTION	4	4/15	0,27	1	0,27	1	0,27	0	0,00
TOTAL	15	1	1,00	3,5	0,63	3,50	0,73	2,50	0,60

SELECTION OF THE PREFERRED ALTERNATIVE

Regarding to the analysis conducted, the best solution seems to be the copyright. The second one is the patent and the third one, “l’enveloppe soleau”.

Answering the question is unfortunately not easy because we must take into account one last thing, the kind of intellectual property covered by the protection. For this specific problem, we must distinguish two separate hypotheses:

1st: Your intellectual property is about an author work (paper, song, article, thesis, painting, art, etc.)

2nd: Your intellectual property is not linked to this kind of field (engineering design, process, code, etc.)

On Kickstarter, the projects are both artistic and engineering/development. So, it will depend of the nature of your project. If it is about art, take the copyright. If it is not, take the patent.

	paper, song, article, thesis, painting, art, etc.	engineering design, process, code, etc.
Copyright	✓	
Patent		✓

FOLLOW UP OF THE SOLUTION

The follow up of the solution cannot be done using any method because it is not an improvement situation but a protection one. It is a 1 or 0 situation. Either the product is protected or it is not. So, the follow up of the solution would be a competitive intelligence and any person using the intellectual property might be prosecuted.

CONCLUSION

For our project, which is an engineering one, the best solution is the international patent. It is the safest way to protect the idea. But the price of such a protection is very high and a study must be conduct to be sure of the viability of the product and/or concept.

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Quentin Blanchard is currently finishing his Master's degree at SKEMA business school in Project & Programme Management and Business Development. He has a strong academic interest in the alternatives solutions to finance a project (Crowdfunding, backing, micro loan, etc.). In addition of this, he also spends a lot of time studying the different project management methods and the application of those latest ones in projects. About professional experiences, he is working on a project related to agronomy and the food industry. He started work in the petroleum industry and moved then to the agronomic industry. He works closely today in the bakery industry to develop the market and products. He also has some expertise in 3D printing.

Quentin is not only defined by professional experiences. He has several hobbies, including horse riding, scuba diving, surfing and playing guitar. He loves to travel the world (Congo, Angola, Thailand, EAU, etc.) and discover new fields.