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[Written Contracts For Ideas V. Implied-In-Fact Contracts For Ideas](#)

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Probably, the most effective and efficient methodology to protect your ideas is through well-drafted contracts. Contracts could be express or implied-in-fact. If the agreement was not put into writing, the idea could NOT NECESSARILY be protected. Let us analyze how written contracts could protect ideas as opposed to the difficulty enforcing implied-in-fact contracts.

1. EXPRESS CONTRACTS PROTECTION FOR IDEAS

Generally, an Idea Creator should be able to protect his or her ideas under the terms and conditions set forth in a written contract. Still, for such express contract to be enforceable, it has to be shown, the Idea Creator has:

- Voluntarily submitted his or her idea;
- To an idea user;
- In consideration for an express promise by the user to either pay for its disclosure or pay for its use if used.

CAVEAT

There might be an additional element for enforceability of express contracts imposed by some courts. Some courts require the idea MUST BE PROTECTABLE. Protectability MUST meet the following criteria:

- Novelty
- Concreteness
- Non-Publication

2. IMPLIED-IN-FACT CONTRACTS PROTECTION (OR LACK THEREOF) FOR IDEAS

Implied-in-fact contracts are to a great extent similar to express contracts. The only difference would be acceptance of the proposed agreement or promise to pay the user is done by actions rather than by words, in implied-in-fact contracts.

Hence, in implied-in-fact contracts it MUST be shown, the Idea Creator:

- Has voluntarily submitted an idea to the idea user.
- With the reasonable expectation the Idea Creator to be compensated for its use.
- The Idea Contractor's expectation was reasonable under the circumstances.
- The User knew of the expectation and had an opportunity to REJECT the idea. And,
- The User used the idea as evidenced under the circumstances.

CAVEATS

Despite rather tenuous enforceability of implied-in-fact contracts, the following further cogently demonstrates the reason for importance of express contracts. In fact, based on the case law, it is INSUFFICIENT for creator of an idea to imply there was a promise to pay for an idea from the mere facts the idea was:

- Valuable, Or
- Has Been Used for Profit.

CONCLUSION

Hence, it behooves creators of ideas to put their understandings with a potential user in a well-drafted writing which cogently and correctly encompasses all applicable terms and conditions. In fact, it is much easier to protect ideas from the beginning than crossing fingers and praying later.

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