Chapter VI
A Guide to Non-Disclosure Agreements for Researchers Using Public and Private Sector Sources

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ABSTRACT

This chapter provides a set of guidelines to assist information systems researchers in creating, negotiating, and reviewing nondisclosure agreements, in consultation with appropriate legal counsel. It also reviews the use of nondisclosure agreements in academic research environments from multiple points of view, including the perspectives of both public and private sectors. Active academic researchers, industry practitioners, and corporate legal counsel all provided input into the compiled guidelines. An annotated bibliography and links are provided for further review.

INTRODUCTION AND OBJECTIVES

Nondisclosure Agreements (NDAs) are an important and necessary tool for researchers when dealing with a research subject which wants to contractually protect its confidential information, or when the researcher's own confidential information needs to be protected. Research subjects may require agreement to a NDA before allowing researchers access to data, to protect the research subject's proprietary data, procedures, and identity. Likewise, researchers may require

agreement to a NDA to protect the creation of intellectual property as a result of the research. Failure to execute a proper NDA could result in legal disputes, fees, and liability, as well as an inability to use the data collected for research purposes.

The objective of this chapter is to provide the reader with a set of guidelines and observations about NDAs that are specific to the needs of the academic community. Most NDAs are executed between commercial and/or public-sector enterprises, and as a result it is difficult to find reference material that provides guidance appropriate to information security researchers on this critical topic.

Nondisclosure agreements are often used in the larger context of intellectual property policies and management. These policies may be created by universities or other sponsoring organizations, or may be created by outside organizations. A full discussion of intellectual property policies is beyond the scope of this chapter.

BACKGROUND

These guidelines were developed as the result of a research project to seek out information about academic NDAs. The research was conducted as an e-mail-based survey, using open-ended questions. A request for suggested guidelines went to the ISWorld distribution list, an e-mail distribution delivered to a global community of Information Science (IS) researchers, students, and faculty members. The request was not country-specific, nor specific to any particular segment of IS.

The 11 contributors, including 10 in academia, were self-selected and responded to the initial request. Of those 10, at least 2 had some industry experience as well; 1 contributor is a corporate legal counsel who provided significant reviews and provided guidance both from the corporate perspective and what academics should consider.

Of the 11 contributors, 9 were based in the United States, 1 in the United Kingdom, and 1 in Canada. Of the 10 in academia, 8 were faculty members, and 2 were students.

This research is exploratory in nature, and is not intended as an exhaustive guide to the topic. The chapter focuses primarily on United States legal definitions and practices, but we anticipate that many of the guidelines and principles may apply in other jurisdictions.

Different research methods may, of course, have different impacts on the need for nondisclosure agreements. The key question, of course, is whether your research will either expose you to intellectual property that needs to be protected, or will create intellectual property that needs to be protected. Comments on key methods used in most recent IS research (Chen & Hirschheim, 2004) follow. In all cases, if new intellectual property is to be created by the research and needs to be protected from disclosure, a nondisclosure agreement is an appropriate consideration.

- **Case study:** Case studies often look at organizational activities that may well expose the researcher to intellectual property. Multiple case studies may further expose the researcher to similar intellectual property at competing organizations, and, as such, it may be in the researchers' best interest to be clear about how they will protect that property.
- **Survey:** This method seems somewhat less likely to call for a nondisclosure agreement, unless the questionnaires address (or might address) intellectual property.
- **Laboratory experiment:** May call for a nondisclosure in cases such as when the experiment will leverage intellectual property belonging to the researcher, partner, or research subject that needs to be protected.
- **Field experiment:** Similar to laboratory experiments, but may also call for special consideration if the field location will put