

Breach of confidential information

In addition to [copyright protection](#), software developers may protect valuable computer programs by ensuring confidentiality provisions are in place before the disclosure of any information or details to third parties. Source code in the context of software is perhaps the most valuable element: it is the key to understanding how software functions and is essential for its maintenance.

If specific written confidentiality provisions were not in place, third parties (including competitors) may gain an unfair advantage by misusing the information disclosed.

Aside from a [patent](#), there is no real protection for an idea or innovation in a computer program (as we have discussed, copyright only protects the representation of the idea), so confidentiality is important in providing another layer of protection. Also, with regard to copyright, it can be difficult to identify copying and once found, it may be expensive to then enforce rights through the courts. Therefore the law of confidentiality provides further useful protection.

In order for information to be considered 'confidential':

- It must be information imparted in circumstances importing an obligation of confidence; and
- It must have the necessary quality of confidence, not public property or knowledge.

Whilst the above may offer general protection under common law (the protection is not set out in any statute), it is recommended that all parties involved in the development of software are subject to express contractual terms of a Non-Disclosure Agreement (often referred to as an 'NDA'). Such an agreement allows the parties to clearly define what is 'confidential', reducing the risk of ambiguity and misunderstanding.

Breach of Confidence

If it is suspected that a party is about to breach confidence and disclose or misuse confidential information, it is recommended that urgent legal advice is sought. It may be possible to apply to the court for an interim injunction to prevent threatened disclosure, but it is important to avoid delay in that application as delay can be a bar to such an injunction.

If disclosure has already occurred however, an injured party may also claim damages for loss suffered as a result of an unauthorised disclosure.

First Step

Before any confidential information is disclosed however, it is recommended that advice is sought on drawing up a suitable confidentiality agreement or NDA. We have created a useful infographic which sets out some of the more important points to consider when preparing [confidentiality agreements](#).

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