

Follow the crowd

Simon Brown founder of United Innovation Association UK discusses the importance of crowd funding and its impact on IP rights

Crowd funding is the name given to a way of raising money for a project from a large number of individuals. Each individual contributes a small amount of money which eventually adds up to the total required to fund a project.

This is a technique that is growing rapidly as the conventional means of raising finance remains difficult, particularly for small amounts under £10,000 which might typically be used for early-stage invention design and prototype development.

This way of raising finance started off in the film, arts and media fields, although it has mushroomed significantly in the last few years. The most successful crowd funding project has probably been the 2008 presidential campaign for Barack Obama, where he raised many millions of dollars for his campaign costs through this method of financing.

For a project to raise finance via this method, there are a number of options as to how the deal can be structured:

- An offer can be made to back an idea where there is no direct return for the money which has been pledged by the crowd. This method has its roots in patronage of the arts and, of course, charity projects;
- An offer can be made to back an idea where the return for the pledge is a sponsorship deal. The crowd gets the opportunity to display its commitment to the project based on its pledge;
- The offer could be for a straight loan, often referred to as microfinance; or
- There are equity investment schemes which (and this is where the regulators are showing some interest especially in the area of initial public offering) do have financial regulations attached. These schemes can involve a great deal of work and there is a growing number of websites that are coordinating the potential investment by listing all the projects that they have under their control. Potential investors can pick and choose which projects they are interested in helping to fund.

Often in the case of crowd funding projects, there is a threshold pledge system in place. This means that if the project is looking to raise, say £5,000, and this level is not achieved by the deadline, then the project funding will not go ahead. The funds pledged are then returned to the original 'investor', sometimes with a small fee, usually around 2%.

When the threshold system is successful, there is often no direct financial return on these projects but there are rewards offered in return for the 'gifts' or 'donations'.

There are a number of advantages of crowd funding. The most obvious is that it avoids the conventional methods of raising finance and the hoops a project has to go through to attempt to receive funding in this way. It opens up the idea to many people in the "crowd" and this can provide very strong word of mouth promotion through the power of the internet.

Nemesea is arguably the first crowd funded music band which raised \$50,000 on music crowd funding site Sellaband, as far back as November 2006.

Next, is MyFootballClub. On 21 February 2008, Ebbsfleet United Football Club was bought by approximately 26,000 people



each paying £35. The money was raised online through www.myfootballclub.co.uk and the club is now controlled and managed by the members (the crowd), even taking decisions regarding transfers and team selections.

Finally, as an example of how crowd funding can be used to market-test an idea or product and take pre-orders, is the Glif, which is an iPhone stand and tripod mount. The inventors needed \$10,000 to be able to start production of their gadget and asked the crowd, on the funding website for creative projects Kickstarter, to pledge \$20 a time to effectively pre-order a Glif. Some 5273 people raised a total of \$137,417.

As with anything there are also disadvantages, the main one being the fact that often the idea is out in the public domain at a very early stage of its development. Without the proper IP protections in place, the idea could be developed by a better funded competitor soon after it is made public, or worse. The ability to gain a patent is reduced by the fact that the inventor has published too much information, thus putting the idea in the public domain.

In the US, the easiest way is to file a provisional patent application which represents a low cost way of making an invention "patent pending" for a full year while raising money. If the project meets its goals, then you move on to the more formal "utility patent application". If not, then the inventor has saved money in legal fees.

In the UK, a patent could be filed at early stage by the inventor himself, without the need for a patent attorney's input. An application for a patent should include a full description of the invention (including any drawings), a set of claims defining the invention, a short abstract summarising the technical features of the invention and then filed. However, the information needed may not all be available at this point in time. I have personally been involved with many projects where the overall concept has no patentability in its original form. However, once in the hands of a good designer, new components, for example, are devised which can be patented.

Often funding is requested to provide money for prototype or design development, and then this course of action is not practical.

The safest course to follow is to make no public disclosure of the invention anywhere until after the filing of a patent application but this is not possible when crowd funding relies on the internet to provide details and gain support.

In crowd funding, where publication of some sort is required, it may be possible to avoid making a publication which results in loss of rights. For example, the inventor may make a disclosure of the beneficial results of using the invention without actually disclosing details of the invention, thus protecting the IP rights.

For example, a research physician could just report successful results in the treatment of a particular disease, without disclosing details of

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the inventions. However, if a company chose to advertise its finished product, this could be viewed as disclosure of the invention and possibly result in the loss of rights.

If using crowd funding keep the details of the project or idea to its bare minimum, only disclosing benefits of use, potential sales figures or market strategy.

There is no need for disclosing the thought processes behind the idea or what has been designed or achieved. Neither should any pictures, drawings or photographs be used or offered when describing or publishing details.

It is also recommended to have advanced specialist advice regarding whether a proposed publication will jeopardise patent rights.

There is one other major disadvantage, with offering information of any sort at an early stage in the project and this might be deemed even more important than jeopardising patent rights, and that is, copyright and plagiarism – who owns the idea and how do you protect your original concept from theft or copying?

New intellectual property mechanisms fit for a digital age

One feature that has come on the market is Creative Barcode.

Creative Barcode is a not for profit organisation digitally-encoded online IP protection system which launched in 2010.

It protects creative concepts and propositions at the pre-commercialisation presentation stage by embedding application-driven digital codes into written and visual concepts, proposals and creative works, in order to denote ownership and permission-based usage.

Each barcode embeds a unique number to each new project, enabling originators to digitally tag, encode and date their work, denote its origins and ownership, and record and track its use by visiting the creative barcode website, registering online and downloading the software application.

The clever feature of Creative Barcode is that whilst it accepts that ideas can, at times, be similar – even identical – it nonetheless identifies the original source, ownership and creation date. And further, the creator warrants to third parties that it is their original knowledge based idea and all articulation and execution of the idea is their own. On that basis, recipient parties undertake to the creator neither to disclose to another party nor to utilise the knowledge, written or creative works in any way, without the permission of the creator.

Therefore it becomes a mutually beneficial process protecting both parties' interests. It is being hailed as the first 'open-protection' system to enable crucially beneficial early stage conversations to take place between creators and their commercial partners – something up until now that has been hard to achieve. Removing vulnerability of disclosure is critical if open innovation and crowd funding is to reach its full potential.

It is one step removed from traditional IPR options and is specifically designed for the early-stage, pre-contract negotiations and co-creation. It is an ideal partner to crowd funding and open innovation within professional ideation communities. It does not seek to replace patent applications or non-disclosure agreements or copyright but rather, to provide early stage protection before traditional IPR options become applicable.

Creative Barcode users have the support of the World Intellectual Property Organisation (WIPO). Should a breach occur they will intervene and mediate, rather than litigate, a solution.

Analysis

These are interesting times and I am sure there is a lot more to come as we start to see the truly talented, knowledge-based ideation, innovation and invention crowds become their own crowds and rise in importance to the industry, rather than rely upon it or be unfairly exploited by it.

No-one party can achieve true success without the other. Therefore a new age of balance, efficiencies, ethics and trust that recognise, reward and remunerate all contributory parties will become the standard way of doing business.

Author

Simon Brown is an inventor turned founder of the UIAUK, the UK's foremost invention and innovation resource centre. The UIAUK is a national non-profit organisation dedicated to inventor education and support.