

Public Relations Society of America
Board of Ethics and Professional Standards
Code of Ethics Case Study Series

DISCUSSION KEY FOR CASE STUDY #7

Expropriation of Intellectual Property of Others

Case Summary:

You recently left a job as an account supervisor at a public relations agency that specializes in social media and technology clients to go to work in the public relations division of a leading smartphone manufacturer. You learned of the career opportunity a few months after the agency you worked for had failed to win the smartphone company as a client. You were a member of the team that developed and pitched the business and happen to have the agency's entire presentation on a personal flash drive.

Your new boss asks you to propose strategies and tactics to support launch of a groundbreaking application. The fastest and easiest thing for you to do is to copy relevant portions of your previous employer's proposal, including key messages for targeted markets, and present it to your new boss.

What do you do?

General Guidance

For information about using the creative ideas of another, see [Professional Standards Advisory #14 — Expropriation of Intellectual Property of Others](#).

1. The ethical issue and/or conflict.

Is it ethical to use the presentation materials developed at your old agency for your current company since those materials were developed for a pitch to that firm in the first place?

And if it is determined that those presentation materials are legally owned by your current company (due to the wording on the RFP when the pitch was solicited), is it ethical to use them for the current assignment without informing your boss of their origin or your former agency of their use?

What are your responsibilities to your former agency, your current firm, your boss and yourself?

2. Internal/external factors that may influence the decision.

Are there contractual or legal issues that arise from this situation? Some factors to consider:

- Was there explicit language in the original RFP from the Smart Phone company (your current employer) that gave them ownership of the presentation & pitch materials?
- Did you sign a non-disclosure agreement with your prior agency or enter into any other type of contract with them?
- Did your agency use language in its pitch materials retaining ownership of its intellectual property? Has it used (or does it intend to use these materials with other clients?)
- Even without any explicit contractual language, copyright law suggests that your prior agency has legal ownership of these materials unless they explicitly passed ownership on.

Beyond the legal issues:

- What do your company and professional values, policies or procedures require?
- What action do you believe is in your firm's best interest?

3. Identify key values.

- **Honesty** — We adhere to the highest standards of accuracy and truth in advancing the interests of those we represent and in communicating with the public.
- **Independence** — We are accountable for our actions.
- **Loyalty** — We are faithful to those we represent, while honoring our obligation to serve the public interest.
- **Fairness** — We deal fairly with clients, employees, employers, competitors, peers, vendors, the media and the general public.

4. Identify the parties who will be affected by the decision and define the public relations profession's obligation to each.

- Your current company's management and employees, whose reputations and financial interests might be hurt if there were a lawsuit over the ownership of the materials.
- Your prior agency, whose materials you are using for your current firm without their compensation or knowledge.
- Your own reputation if it is ever learned that you did not develop the strategies yourself but used existing presentation materials and presented them as your own ideas.

5. Select ethical principles to guide the decision.

Several key principles of the [PRSA Code of Ethics Code](#) provisions come into play in this case:

- **Safeguarding Confidences:** “Client trust requires appropriate protection of confidential and private information.” The intent of this provision is: “To protect the privacy rights of clients, organizations and individuals by safeguarding confidential information.” A guideline under this provision stipulates that a member shall: “Immediately advise an appropriate authority if a member discovers that confidential information is being divulged by an employee of a client company or organization.”
- **Competition.** The need to promote healthy and fair competition among professionals, and to serve the public interest by preserving and protecting intellectual property rights in the marketplace.
- **Disclosure of Information.** Society members are obligated to avoid deceptive practices.
- **Enhancing the Profession.** To build respect and credibility with the public for the profession of public relations.

6. Make a decision and justify.

Your employer’s interests are paramount in this case, but so should you respect and protect the intellectual property of your former employer.

It would not be ethical for you to simply pull useful ideas from those materials and present them to your boss as if they were your own. Not only would this be plagiarism and possibly a violation of copyright law that could put your own career in jeopardy, but you could also be creating a legal liability for your current employer.

You should inform your boss that your prior agency developed useful materials for a presentation that might be useful to the new product application and suggest that you negotiate an agreement to use those materials (and perhaps have them updated and improved upon for this new application). If an explicit agreement exists about the ownership of those materials, then you should ask your boss to look into to the legal use of them for this new application and inform your former agency of your intent to use them.

As PSA 14 suggests, “All too frequently, a prospective client takes ideas from a new business presentation but fails to hire, compensate or get permission from the proposing consultant or organization. This practice is unethical and can trigger serious legal and reputational consequences. The situation is exacerbated by the increasing use of blanket confidentiality agreements, which state that all ideas shared, shown or suggested become the property of the soliciting party by simply responding to a Request for Proposal (RFP).”

It is in the best interests of agencies and clients, alike, to explicitly address the ownership rights of all materials prior to their being presented to avoid protracted legal battles down the road. Some agencies and prospective clients have found it useful to negotiate a fee for developing these preliminary materials so both receive value and there is no dispute later about who owns the rights to them.