

# **Protecting Confidentiality When Selling or Licensing Source Code**

- I. Actual Code
  - a. On your own premises
    - i. Confidentiality provisions in your employment agreements;
    - ii. Secure networking;
    - iii. Filters to keep certain strings of text from being sent out.
  - b. Yourself
    - i. Avoid being overly trusting in your zealous attempt at marketing your product.
    - ii. Avoid bragging.
  - c. Transferring confidentially
    - i. Obtain a strong NDA before transferring.\
    - ii. When transferring valuable material, always endeavor to use consider transferring it in read-only/non-copyable/protected format.
  - d. Sub-licenses
    - i. Make sure you review all documents that your licensees will be using for their sublicensees.
    - ii. If possible, insist that potential sublicensees license directly from you as a licensee so you have additional means in which to enforce your rights against them and you can keep a better eye on them and control your secrets.
- II. Protecting the Concept/Idea
  - a. Besides the obvious, “reverse-engineer” protections, include a non-competition clause in the agreement helps prevent a licensee or potential licensee from misappropriating your ideas without actually stealing your code.
- III. Remember your obligations with, respect to any third-party licenses you incorporate

into your product.

- IV. List employees who are entitled to receive the confidential information by title rather than by name. If necessary, and particularly if a company says that they are too big to list every title, at least limit it to “those employees of the other party with a bonafide need to know.”
- V. Consider having each employee of the other party who will see the confidential information to sign an individual confidentiality agreement directly with you. If that is not practical, then have the other party provide a representation and warranty that anyone to which it provides access to your confidential material has agreed or will agree to hold all such information confidential prior to being given such access.
- VI. The most important thing is a **STRONG AGREEMENT!**