



Affiliated with International Council of Toy Industries

## **ATA's Guide for Budding Inventors**

You've conceived an idea  
for a new product concept,  
or an innovation to  
an existing product.

**NOW WHAT?**

*An initiative of the*

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## You must choose between two basic approaches.

1. **“Do It Yourself”:** You arrange the manufacturing, distribution and promotion of your product. Such an undertaking requires a tremendous amount of time, effort and money; or
2. **Selling or Licensing** your invention's proprietary rights to an established toy or game company.
  - i) **SELLING** for an agreed price to transfer ownership of your invention. At first glance this may appeal, as you receive compensation immediately, however, once the sale is made, you lose any future claims to your invention.
  - ii) **LICENSING** allows you to retain ownership of your invention.  
You grant to a manufacturer (the “Licensee”) the right to make and sell the invention for a certain period of time. The manufacturer would pay you, the “licensor”, a royalty (a percentage of earnings from the manufacture and sale of your invention).

### *Many inventors see significant advantages to the selling/licensing approach over “doing it yourself”:*

- a) The costs and financial risks involved in manufacturing and marketing the invention are the manufacturers – **not yours**;
- b) You are relieved of the full-time burden of arranging the invention's manufacture, distribution and promotion;

- c) The manufacturer, being a professional in the product field, is in a better position to effectively promote the invention and quickly correct any production problems that may arise;
- d) The manufacturer assumes **all liability** in connection with any returns, defects or injuries caused by the product.

## Understanding the Industry

Each year, toy companies review hundreds of thousands of new product ideas from which they select their new products for the following year. Some of the major toy companies plan even further ahead than that. If you were to present your new product idea to one of the major companies after June of a particular year, it would probably not be included in that company's next Toy Fair line but, instead, would only be considered for the following year's Toy Fair. That means that you would not actually see your product on the market for at least eighteen months and would not begin to receive meaningful royalty cheques for almost three years.

This is not to imply that every new toy idea will eventually become a new product or, for that matter, that every new product introduced at Toy Fair will succeed. In fact, the chances of actually placing a new toy product with a toy company in any one year are very slim and the competition is enormous.

Because of these numbers, rejection is the name of the game in the toy industry. As an inventor you must develop a thick skin and be able to readily accept rejection. It is rare that a new product idea is licensed to the first company that sees it.

To the non-pro, the one piece of advice we would offer is simply that the odds of placing your product with a major company are infinitesimally small. You should invent for the pleasure of inventing and the pleasure of creating, and not with a full expectation of making a profit or placing the product. These are sound words of advice. You should keep them firmly in mind to avoid developing unrealistic expectations. If you don't, you will approach the entire process of licensing unrealistically. Nothing scares toy companies more than an unrealistic inventor. Toy companies have dealt with (and have been “put through the mill” by) such unrealistic inventors enough to know they are nothing but trouble. If a toy company executive senses that there is any chance you are likely to fall into this category, you will immediately be sent packing.

## Locating and Contacting Potential Buyer or Licensee

Perhaps the most common mistake made by inexperienced toy inventors is attempting to sell or license their products to the wrong companies. More time is wasted by both the inventor and the company simply because the toy inventor did not do his homework and target the right company for the concept.

Focus on those companies most capable of manufacturing and marketing a product like your invention.

For instance, a field trip to the local toy store will also produce valuable information. Walking, for instance, down the board game aisle of such as Toys'R'Us will permit you to quickly identify all of the major (and most of the minor) manufacturers of board games, both domestically and internationally.

### DISCLAIMER NOTE IMPORTANT

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Perhaps the most common complaint voiced by most toy company gatekeepers is that the inventor did not understand the industry. The inventor attempted to sell or license them something that the company already had in their line (or would never put in their line). Strangely, many would-be inventors have not been inside a toy store or spoken with a child for years. As a toy inventor, you have to understand the industry and your target market if you want to be a player. Walk down the aisles of your local toy store. Watch what sells and what doesn't. Talk to the individuals you meet at toy stores who are buying product. Ask them why they want to buy that product and not another.

Don't fall in love with your idea.

Repeat play value is critical for the success of your product.

*To give yourself at least some chance you must identify a marketing niche:~*

- ◆ The product must be highly differentiated from existing products and must contain unique features.
- ◆ The product must communicate instantly to the consumer, who should be able to look at it and instantly know what it is.
- ◆ The product must contain important demonstrable features.
- ◆ Elements of the new product must be able to make an impact and be newsworthy.
- ◆ The product must be able to generate incremental sales for the toy company, independent of existing product sales.

- ◆ It must possess significant volume potential with the ability to sell hundreds of thousands of pieces every year, obviously not just in Australia
- ◆ The product must provide both price and play value to the consumer.
- ◆ It should not be a one-shot item, but, rather, should have the ability to be extendible into a product line or product extensions.
- ◆ The product must be compatible with the image of the company.
- ◆ The product should take into account safety requirements and the social responsibilities.

### Protecting Your Idea

There are three statutory forms of intellectual property protection – patents, trademarks and copyrights.

**Design patents** are granted for any new, original and ornamental design for an article of manufacture. Design patents cover the aesthetic appearance of an invention.

A **Trademark** is "...any word, name, symbol or device, or any combination thereof used... to identify and distinguish one's goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown."

**Copyright** protection is provided for original works of authorship fixed in a tangible medium of expression. That means one cannot copyright an idea, only the expression of the idea.

Copyright is usually your most relevant form of protection.

### Confidential Disclosure Agreement

Briefly stated, a confidential disclosure agreement (also called a non-disclosure agreement) provides that the receiving party (i.e., the toy company) will hold the idea in confidence and will not use or disclose such idea to any third party for a defined period of time without the prior express written consent of the inventor.

#### Please Note:

Some companies will agree to sign a Confidential Disclosure Agreement. Others, however, will not, particularly with first-time inventors. Instead, the toy company will usually insist that its standard "waiver agreement," which provides that no confidential relationship is being established between the inventor and the toy company and that the company is not assuming any duty to preserve the confidentiality of the disclosure, be signed by the inventor.

The company will typically agree to honor any valid intellectual property rights that the inventor may have or ultimately obtain in the idea.

All toy companies depend, to a large extent, on the inventor community to bring them the newest and brightest ideas. If a company gets a reputation for copying ideas from the inventors who present to them, the company would quickly develop a bad reputation in the inventor community, and the lifeblood of new ideas would be shut off.

You should, however, develop a clear record of your own demonstrating what was presented to the company, when it was presented and to whom it was presented.

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