03/14: Intellectual Property

The Capstone Experience

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Caveat Emptor

• Opinions Expressed
  ▪ My Own
  ▪ Do Not Represent MSU
• Not an Attorney
• No Warranty

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Lots of Variables

• Who Your...
  – ...Employer Is
  – ...Customers Are

• Very Different Rules/Laws/Policies
  – Industry
    ▪ Privately Held
    ▪ Publically Held
  – Government
  – Government Contractor
  – Educational Institution
  – Etc...
Intellectual Property

• “Ideas” Worth Money
  Must be able to “fix in a tangible medium”.
  ▪ How to Make Something
  ▪ How to Do Something
  ▪ Work of Art (Music, Movie, Photo, Painting, Novel, Etc.)
  ▪ Pharmaceutical
  ▪ Process
  ▪ Algorithm
  ▪ Etc...

• Must Protect

• Types of Protection
  ▪ Copyrights
  ▪ Patents
  ▪ Trademarks
  ▪ Trade Secrets
  ▪ Etc..

• Check with an IP attorney.
Patent vs Copyright

• Patent
  – Own “Idea” For 20 Years
  – Protect Via Patent Process
  – Harder to Obtain
  – Easier (but not Easy) to Enforce Protection

• Copyright
  – Own “Text” For Life of Author + 70 Years
  – Protect Via Copyright
  – Easy to Obtain
    ▪ Automatically
    ▪ “© 2022 by Wayne Dyksen. All Rights Reserved.”
    ▪ By Formally Registering
  – Harder to Enforce Protection

Check with an IP attorney.

What’s the motivation for granting patents and copyrights?

• Happy Birthday Song
  Patty and Mildred Hill, 1893

• Google Books
• Software
Patent vs Trade Secret

• Patent
  – Own “Idea” For 20 Years
  – Protect Via Patent Process
  – Easier to Enforce Protection

• Trade Secret
  – Own “Idea” Forever
  – Protect Via Non-Disclosure and Non-Compete
  – No Enforcement Protection if Secret Disclosed

Interesting Examples of Trade Secrets
• Coke Formula
• Houdini’s Escapes
IP Enforcement

• Laws
  – US State & National
  – Non-US National
  – International

• Big Problem
  – Counterfeiting Rampant
    ▪ Software
    ▪ Drugs
    ▪ Music, Movies, Etc.
    ▪ Clothing & Accessories
    ▪ Etc...
  – Stealing Rampant
  – Enforcement Non-Existent in Some Countries
  – Software Alone Big $$
Aside: Patent Trolls

- AKA Patent Hoarders
- Shell Companies
- Buy “Unused” Patents
- File Frivolous Lawsuits
  - Claim Defendant Violating Their Patent
  - Hoping for Settlement
  - Something Like Blackmail
- Google “patent troll”
Non-Disclosure Agreement (NDA)

- You agree not to misuse company information.
  - Trade Secrets
  - Copyrights
  - Confidential Information
    - Product Plans
    - Software
    - Schematics
    - Etc...
  - Etc..

- Misuse Includes...
  - ...Disclosing
  - ...Selling
  - ...Using for Your Startup Company
  - ...Using at Next Employer
  - Etc...
Intellectual Property Agreement (IPA)

- You agree to assign all IP created to your employer.
  - Copyrights
  - Patents
  - Trade Secrets
  - Etc...
- Agreements Vary in Scope
  - Relationship of IP to Your Job
  - Time
- What happens if you...
  - ...create patented IP that earns your employer $1B?
  - ...leave your employer to patent an idea on your own?
Non-Compete Agreements

- You agree not to compete with your employer.
- Agreements Vary in Scope
  - Relationship of Employer Markets
  - Position
  - Time
- May Affect
  - Moonlighting
  - Career
- Can Be Very Restrictive
Employment Agreements

• Required as Condition of Employment

• Agreement May Cover
  ▪ Non-Disclosure
  ▪ Intellectual Property
  ▪ Non-Compete
  ▪ Etc..

• Agreements Vary
  ▪ Employer
  ▪ Position

• Probably Non-Negotiable for You
Remedies

• What happens if you violate an agreement?
• Agreements Vary
  ▪ Function of
    o Employer
    o Position
    o Etc.
  ▪ Can Be Severe
  ▪ Should Be Taken Seriously
• Often Monetary Damages Levied Against
  ▪ You Personally
  ▪ Your Startup Company
  ▪ Your New Employer
• Not to Be Taken Lightly

Typically pursued in civil courts vis-à-vis criminal courts.
Seek Professional Advice

• If your idea is valuable,...
  – ...protect it,
  – ...in advance.

• Invest
  – Time
  – Money

• Consult
  – Trusted, Experienced Mentors
  – State and Local Development Authorities
  – Experienced IP Attorney

• In Advance
Questions?