3/7: 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...
“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

What’s the motivation for granting patents and copyrights?

Check with an IP attorney.

• 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
    o Product Plans
    o Software
    o Schematics
    o Etc...
  ▪ Etc..
• Misuse Includes...
  ▪ ...Disclosing
  ▪ ...Selling
  ▪ ...Using for Your Startup Company
  ▪ ...Using at Next Employer
  ▪ Etc...

The Capstone Experience 9
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?