

BEE/CSS 371 Business of Technology
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Lecture 15

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Topics

1. [Types of ventures](#)
2. [Intellectual property](#)
3. [Ethics](#)

Chapter 10.

Types of Ventures

Types of ventures

TABLE 10.1 Legal form of the firm.

Type	Taxation
1. Regular taxable corporation: C-corporation	Taxation of the corporate profits as well as taxation of any corporate distributions to owners
2. Flow-through entities <ul style="list-style-type: none">■ Sole proprietorship■ Partnership■ S-corporation■ Limited liability company (LLC)	All profits or losses flow through to the owners and are not separately taxed to the firm

TABLE 10.2 Key elements of the five types of legal form for a new business in the United States.

Factors	Sole proprietorship	General partnership	Regular C-corporation	S-corporation	LLC
Owners' personal liability	Unlimited	Unlimited	Limited	Limited	Limited
Taxation	Proprietor's personal tax forms	Partners' personal tax forms	Profits taxed at corporation and owners pay tax on distributions	Profits or losses flow through to owners	Profits or losses flow through to owners
Continuity of business	Terminated by proprietor	Dissolved by partners	Perpetual	Perpetual	Varies
Cost of formation	Very low	Low	Moderate	Moderate	Moderate
Ability to raise capital	Low	Moderate	High	Moderate	Moderate

S Corp vs. LLC

Similarities

1. Limited liability protection.
2. Separate legal entities from the owners.
3. Pass-through taxation.
4. State reporting requirements.

Differences

1. S corps maximum 100 shareholders. LLCs are unlimited.
2. All shareholders of an S corp must be citizens or residents. LLCs may have foreign owners.
3. LLCs may have subsidiaries.
4. S corps must file a tax return. LLCs only file if more than 1 owner.
5. S corps must have slightly more formalities, like adopting bylaws, having a board of directors and having directors and shareholder meetings, etc.

Source: <http://www.bizfilings.com/learn/llc-vs-s-corp.aspx>

Chapter 11. Intellectual property

- Trade secrets
- Patents
- Trademarks
- Copyrights

TABLE 10.3 Comparison of physical and intellectual property.

Factor	Physical property	Intellectual property
Multiuse	Use by one firm precludes simultaneous use by another	Use by one firm does not prevent unauthorized use by another
Physical depreciation	Depreciates, wears out	Does not wear out
Protection and enforcement from encroachment	Generally can enforce and protect ownership	May be difficult or expensive to enforce and protect ownership

Trade secrets

A confidential intellectual asset that is maintained as secret by the owner and provides a competitive advantage.

Lifetime is potentially indefinite. Formula for Coca-Cola is over a 100 years old.

Protecting trade secrets

- Employees may learn the information and then leave, possibly to start a competitor.
- The information could be stolen.
- It could be independently invented.
- Responses:
 - Non-disclosure agreements
 - Employment agreements

Patents

- Grants the inventor the right to exclude others from making, using or selling their invention for a limited time in return for public disclosure.
- In the US, patent lifetime is 20 years from date of filing.

What can be patented

New and useful machines

Manufactured products

Industrial processes

New chemical compounds

Foods

Medicines

Types of patents

1. **Utility patents:** new, useful, *non-obvious* processes, machines and manufactured products.
2. **Design patents:** new, original, ornamental and *non-obvious* manufactured items, e.g., Steve Jobs's staircase, Macintosh and iPod designs.
3. **Plant patents:** New varieties of plants that have been asexually reproduced.
4. **Business method patent:** A type of utility patent covering a process or method, e.g., Amazon's "one-click" ordering process.

Non-obvious

One of the main requirements of a utility patent is that the invention must be *non-obvious*.

The definition is that a "*person having ordinary skill in the art*" would not know how to solve the problem in the manner being disclosed without being told.

Design patents

A ***design patent*** protects an *ornamental* design of a functional item.

Ornamental designs of jewelry, furniture, beverage containers and computer icons are examples of things that may be protected by design patents.

Source: https://en.wikipedia.org/wiki/Design_patent

Nicole

The 7 Iconic Patents That

techcrunch.com/2011/08/25/the-7-iconic-patents-that-define-steve-jobs/

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Gadgets Steve Jobs patents Apple

The 7 Iconic Patents That Define Steve Jobs

Posted Aug 25, 2011 by Matt Burns (@mjburnsy)

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Steve Jobs is a man who lives in the minutiae of details. He, with his loyal staff, perfects what others would pass off as perfect. He has 313 patents to his name, which range from the Apple III to the iPod's acrylic packaging. Almost all of them are notable but only a few are iconic.

The original all-in-one, the Mac 128K

<http://techcrunch.com/2011/08/25/the-7-iconic-patents-that-define-steve-jobs/>

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www.uspto.gov

<http://patft.uspto.gov/>

A patent is property

- It may be sold or assigned or mortgaged.
- It may passed to heirs of a deceased inventor.
- It may be licensed.
- If a patented invention is used without authorization, the patent holder may sue for money damages.

Cost to get a patent

- \$20,000 to \$50,000 in legal fees to file an application.
- Not all applications ever result in an issued patent.
- Litigation to enforce a patent even more expensive.
- Competitors may invent around a patent anyway.

TABLE 10.5 Developing a patent strategy.

1. Identify the goals of a patent portfolio.
 2. Identify the intellectual assets and gather supporting documents.
 3. Identify those assets most suitable for patent applications.
 4. Draft invention disclosures and patent applications.
 5. Develop a plan for licensing, enforcing, and enhancing patents.
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Source: Fenwick & West LLP, R. P. Patel.

Trademarks

- Any distinctive word, name, symbol, slogan, shape, sound or logo that identifies the source of a product or service.
- Renewable indefinitely as long as commercial use is proven.
- May lose exclusive right to a trademark if it becomes generic, e.g., Aspirin, thermos, cellophane.

Copyrights

- Right of an author to prevent others from printing, copying or publishing his or her original works.
- Life of a copyright = life of the author + 70 years
- A copyright exists from the moment of creation, even if there is no copyright notice.
- To sue for infringement, must register your copyright with the US Copyright Office, but process is simple and cheap.

Work for hire

Only the author or those deriving rights from the author can rightfully claim copyright.

Exception: “Works made for hire.”

If a work is made for hire, an employer is considered the author even if an employee actually created the work. The employer can be a firm, an organization, or an individual.

Definition of a work for hire

Section 101 of the Copyright Act (title 17 of the U.S. Code.

Two parts:

1. A work prepared by an employee within the scope of his or her employment .
2. A work specially ordered or commissioned which the parties agree in a signed written document is a work made for hire and which is one of the following.
 - a. A contribution to a collective work
 - b. A part of a motion picture or other audiovisual work,
 - c. A translation,
 - d. A supplementary work,
 - e. A compilation,
 - f. An instructional text,
 - g. A test,
 - h. Answer material for a test, or
 - i. An atlas

Examples of works made for hire created in an employment relationship

1. A software program created by a staff programmer within the scope of his or her duties at a software firm.
2. A newspaper article written by a staff journalist for publication in the newspaper that employs the journalist (who is not a freelance writer).
3. A musical arrangement written for a music company by a salaried arranger on the company's staff .
4. A sound recording created by salaried staff engineers of a record company.

First sale doctrine

The physical ownership of an item such as a book, painting, manuscript or CD is not the same as owning the copyright to the work embodied in that item.

Ownership of a physical copy of a copyright-protected work permits lending, reselling, disposing, etc., of the item.

It does not permit reproducing the material, publicly displaying or performing it, or engaging in any of the acts reserved for the copyright holder.

Licensing

A contractual method of exploiting intellectual property by transferring rights to use without a transfer of ownership.

Rights to use are defined in a contract and usually require payment of a royalty or fee.

Ethics

You spot a valuable painting at a garage sale for \$1. Can you keep that knowledge secret and buy it for \$1?

What if you're an art expert, the seller is aware you're an expert and he's asked you if it's worth anything?

You're selling a house and you know the roof leaks and it has carpenter ants. Must you disclose?

You're selling a house with a history: A previous occupant was murdered and there have been stories about ghosts. Must you disclose?

You own a coffee shop promising “the world’s best coffee.” Could you get in trouble for making a false claim?

Ethics

- What does it mean to be ethical?
- What does it mean to be fair?
- When do you have a duty to disclose?

What does it mean to be fair?

What does it mean to be fair?

Typical components:

1. Don't take advantage of people.
2. Don't abuse power over others.
3. Treat people equally.
4. Be tolerant.
5. Accept diversity.
6. Be open-minded.
7. Admit mistakes.

What does it mean to be ethical?

What does it mean to be ethical?

- This is a tougher question.
- What do we mean by ethics?

Ethics

One possible definition:

Moral principles that govern a person's behavior or the conduct of an activity.

Branches of ethics

- Normative:*** How individuals figure out the correct moral action.
- Meta-ethics:*** The nature of ethical properties and judgements, e.g., truth, theory of moral principles.
- Applied ethics:*** Applying theories to everyday life, e.g., should abortion be legal, should you report illegal behavior?
- Moral ethics:*** How individuals develop morally, why morality differs between cultures, what is universal?
- Descriptive or Scientific:*** How do people actually behave?

Within applied ethics

Business ethics: Business policies and practices regarding corporate governance, insider trading, bribery, discrimination, social responsibility, fiduciary responsibility, often set by law.

Professional ethics: Standards of behavior for a professional person, often written out as a code of ethics by a professional organization like the IEEE or set by law.

Personal ethics: What an individual believes about morality and right and wrong.

Concepts

Information asymmetry: When one party has more or better information than the other and could take advantage of the other.

Reliance: When one party to an agreement acts or changes their position based on the other's claims.

Fiduciary responsibility: A duty to act in the best interest of another.

Duty to disclose: A legal obligation to disclose information that may be contrary to your interests, e.g., known defects in a house you're selling.

Professional ethics

Define standards of behavior for people working within a profession.

Generally designed to address the problems of information asymmetry and reliance.

Often written out as a code of ethics.

Examples

- IEEE Code of Ethics
- AMA Code of Medical Ethics
- Society of Professional Journalists Code of Ethics

7.8 IEEE Code of Ethics

We, the members of the IEEE, in recognition of the importance of our technologies in affecting the quality of life throughout the world, and in accepting a personal obligation to our profession, its members and the communities we serve, do hereby commit ourselves to the highest ethical and professional conduct and agree:

1. to accept responsibility in making decisions consistent with the safety, health, and welfare of the public, and to disclose promptly factors that might endanger the public or the environment;
2. to avoid real or perceived conflicts of interest whenever possible, and to disclose them to affected parties when they do exist;
3. to be honest and realistic in stating claims or estimates based on available data;
4. to reject bribery in all its forms;
5. to improve the understanding of technology; its appropriate application, and potential consequences;
6. to maintain and improve our technical competence and to undertake technological tasks for others only if qualified by training or experience, or after full disclosure of pertinent limitations;
7. to seek, accept, and offer honest criticism of technical work, to acknowledge and correct errors, and to credit properly the contributions of others;
8. to treat fairly all persons and to not engage in acts of discrimination based on race, religion, gender, disability, age, national origin, sexual orientation, gender identity, or gender expression;
9. to avoid injuring others, their property, reputation, or employment by false or malicious action;
10. to assist colleagues and co-workers in their professional development and to support them in following this code of ethics.

AMA CODE OF MEDICAL ETHICS

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct that define the essentials of honorable behavior for the physician.

Principles of medical ethics

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
- VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
- VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
- IX. A physician shall support access to medical care for all people.

Society of Professional Journalists Code of Ethics

1. Seek Truth and Report It.
2. Minimize Harm.
3. Act Independently.
4. Be Accountable and Transparent.

Seek Truth and Report It

Ethical journalism should be accurate and fair. Journalists should be honest and courageous in gathering, reporting and interpreting information.

Journalists should:

- Take responsibility for the accuracy of their work. Verify information before releasing it. Use original sources whenever possible.
- Remember that neither speed nor format excuses inaccuracy.
- Provide context. Take special care not to misrepresent or oversimplify in promoting, previewing or summarizing a story.
- Gather, update and correct information throughout the life of a news story.
- Be cautious when making promises, but keep the promises they make.
- Identify sources clearly. The public is entitled to as much information as possible to judge the reliability and motivations of sources.
- Consider sources' motives before promising anonymity. Reserve anonymity for sources who may face danger, retribution or other harm, and have information that cannot be obtained elsewhere. Explain why anonymity was granted.
- Diligently seek subjects of news coverage to allow them to respond to criticism or allegations of wrongdoing.
- Avoid undercover or other surreptitious methods of gathering information unless traditional, open methods will not yield information vital to the public.
- Be vigilant and courageous about holding those with power accountable. Give voice to the voiceless.
- Support the open and civil exchange of views, even views they find repugnant.
- Recognize a special obligation to serve as watchdogs over public affairs and government. Seek to ensure that the public's business is conducted in the open, and that public records are open to all.
- Provide access to source material when it is relevant and appropriate.
- Boldly tell the story of the diversity and magnitude of the human experience. Seek sources whose voices we seldom hear.
- Avoid stereotyping. Journalists should examine the ways their values and experiences may shape their reporting.
- Label advocacy and commentary.
- Never deliberately distort facts or context, including visual information. Clearly label illustrations and re-enactments.
- Never plagiarize. Always attribute.