



[For Washington-Based Startups, Where To Incorporate—Delaware or Washington?](#)

By [Joe Wallin](#) – January 12, 2011

Washington vs. Delaware

If I was a Washington-based startup company anticipating potentially raising angel or venture capital financing, where would I incorporate—Delaware or Washington?

I would incorporate in Washington for the following reasons:

- In this lawyer's opinion, Washington law is just as good as Delaware law. Washington doesn't have Chancery Courts (special courts dedicated to handling just corporate disputes), and Washington doesn't have a long line of judicial precedent, but for a startup I don't see this as a big deal. Washington courts regularly look to Delaware precedent for persuasive opinion when appropriate. There are nuanced differences between the two state's laws, but they are substantially similar.
- Washington, unlike California, is not a review state. If you were in California and trying to decide where to incorporate, California or Delaware, you would choose Delaware to avoid the practice of the California Secretary of State of reviewing and approving filings before they are effective (which can slow down a financing). Washington, like Delaware, is not a state which reviews filings with the Secretary of State before they are effective.
- Washington corporations regularly receive funding from venture capital firms (as reported in TechFlash and in other news reports). (I have yet to hear in my 12+ year legal career a funding source say they wouldn't fund a Washington corporation unless it reincorporated in Delaware—but if one did it would not be a big deal to reincorporate.) Microsoft is a Washington corporation (significantly, it reincorporated to Washington from Delaware).
- In fact, if you study the companies reported in TechFlash and other news media that are reported to have raised funds or done M&A deals and look and see on the Washington Secretary of State's web site where those corporations are formed, <http://www.secstate.wa.gov>, most Washington-based companies in the news for raising money or doing M&A deals appear to be Washington corporations (with Delaware running a close second from the sampling I've done).
- Washington is less expensive than Delaware. It costs more to incorporate in Delaware, you will have to pay a registered agent there (which you could do yourself if you incorporated in Washington, or have a lawyer here do it for you, saving the cost), and if you incorporate in



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Delaware but do business in Washington you will still have to file paperwork with the Washington Secretary of State and pay a fee to qualify as a foreign corporation here in Washington. And Delaware's annual franchise fees can be significantly greater than Washington's annual fee (less than \$100).

- If you do incorporate in Delaware and happen to run into an issue which is a novel or complex issue under Delaware law in the midst of a transaction, you may have to retain separate Delaware counsel at additional expense for legal opinions. This is cost that you would avoid if you were incorporated in Washington and working with Washington counsel on your transactions.
- If you want to see how much more Delaware can cost you in annual fees, you can run example calculations [here](#).

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