

7 MISTAKES
EVERY STARTUP SHOULD AVOID
TO PROTECT IP

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1 CROWDFUNDING WITHOUT PROTECTION



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While the public disclosure of ideas pursuant to a crowdsourcing initiative can be an effective way to quickly raise capital, it can be devastating for companies that have not already sought protection for their intellectual property. For example, under U.S. patent law, a crowdsourcing pitch may be a “disclosure” or “sale” that starts the clock on the one-year grace period for the company to file a patent on the technology.





2 LETTING IDEAS WALK OUT THE DOOR



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Even if your consultants and employees develop the next Facebook or WhatsApp while working for your startup, that invention is not necessarily your company's property. Few things unravel an investment deal quicker than discovering the company does not own the inventions they thought it did. To help avoid this nightmare, startups should at least ensure they have and use three key agreements for consultants or employees: non-disclosure agreements (NDAs), employment agreements including a provision mandating the "present assignment" of legal rights to inventions developed by employees as part of their work, and work-for-hire or independent consultant agreements.





3 USING SOMEONE ELSE'S SECRETS



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You do not want your own secrets walking out the door, but, you also do not want others' secrets walking in the door. With employees freely moving between companies the possibility of accidentally misappropriating a competitor's trade secrets is real and potentially disastrous. Instilling an environment where employees understand the importance of separating current R&D from the work they did with previous employers is essential to protecting an organization from unwanted future litigation.



4 FAILING TO PLAN FOR IP PROTECTION



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Successfully protecting intellectual property requires a well-managed strategy. Pivots on whether to rely on patent or trade secret law, timing registrations for protection, prioritizing and efficiently obtaining protection, and guiding research and development around protectable subject matter are just a few of the strategic decisions that can significantly impact the valuation of a startup.

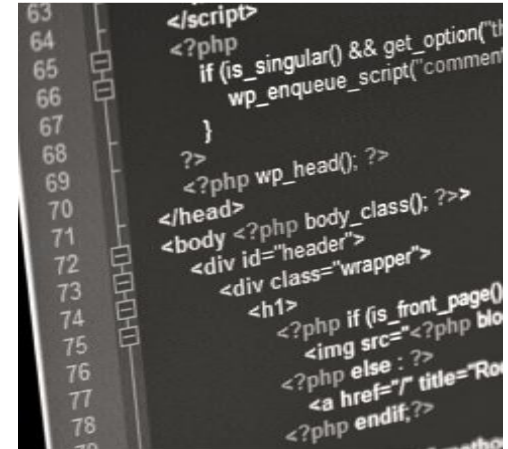


5 BEING TOO OPEN WITH YOUR SOFTWARE

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63 </script>
64 <?php
65     if (is_singular() && get_option("thread_comments")) {
66         wp_enqueue_script("comment-reply");
67     }
68     ?>
69 <?php wp_head(); ?>
70 </head>
71 <body <?php body_class(); ?>>
72     <div id="header">
73         <div class="wrapper">
74             <h1>
75                 <?php if (is_front_page() && Spaged < 2): ?>
76                     " />
77                     <?php else : ?>
78                         <a href="/" title="Root">" />
79                     <?php endif; ?>
80                 </h1>
81             </div>
82         </div>
83     </div>
84 </body>
85 </html>
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5 BEING TOO OPEN WITH YOUR SOFTWARE

To expedite development of necessary software, a startup may be tempted to use preexisting open source tools or libraries. This mistake, however, can jeopardize the value of the software and create numerous legal headaches down the road. Open source licenses are often very complex and may require distributed derivative works to be open sourced or similarly licensed. Depending on the license at play and how the startup uses the code, there can be dire consequences for the valuation of the startup's end product or even the possibility that the startup will be sued for breach of contract or copyright infringement if the code is used improperly.



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66         wp_enqueue_script('commen
67     }
68     ?>
69 <?php wp_head(); ?>
70 </head>
71 <body <?php body_class(); ?>>
72 <div id="header">
73     <div class="wrapper">
74         <h1>
75             <?php if (is_front_page()
76                 
```

6 FAILING TO MAKE YOUR MARK



brand

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Few things are worse than a startup investing time and energy building around a name it later finds out it cannot use. Trademarks drive significant value for startups and established companies. And, in an era where countless competitors have the resources and means to copy a successful model, it becomes essential for a startup to corner the market by making its brand synonymous with their product offering. Failing to obtain broad trademark protection may expose the startup to liability or to knockoffs with confusingly similar names that steal market share.



7 JOINTLY OWNING LITTLE



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Startups often look to collaborate with other companies on innovation. These joint-development efforts may expedite development but can substantially devalue the resulting IP. For example, in the context of patent protection, if a single claim within a patent was invented by more than one party, all of the claims of the patent are jointly owned by all of the parties and any can license that patent for whatever amount they chose without the permission of any other party. Startups should ensure that joint development agreements clearly define intellectual property ownership, and ensure the startup adequately segregates jointly-developed technology from technology developed in-house.



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REWRITING THE ODDS



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