

# What you need to know about law and software

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# Overview

- Who owns it?
- What is “IP Law”?
- Who owns it? The Sequel.

# Who owns it?

## Scenario 1

- It turns out, Todrick Hall's friend Chris was the first one to start saying "boots." Chris says he owns the phrase and Todd should pay to use it.



# Who owns it?

## Scenario 2

- Background: Tyler and Cameron Winklevoss hired a young Mark Zuckerberg at Harvard in 2002 to develop a dating network called ConnectU...which looked a lot like Facebook that Zuck later launched.

# Who owns it?

## Scenario 2



- You come to work every day and do something that makes a difference next week. You don't tell anyone, but you want to let your company know that you are a



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# Who owns it?

## Scenario 4

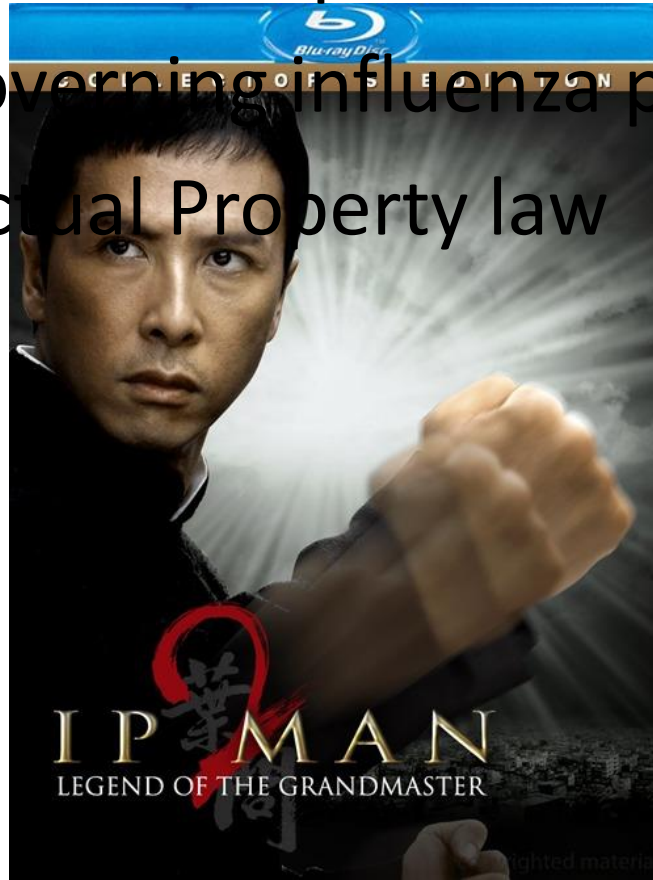
- You and a friend come up with an idea for a startup – Fogger – to write easy to deploy fog computing code to be hosted on common network switches. You write the code, and she creates a website, logo and marketing materials.



# IP Law

What does “IP Law” mean?

- (a) The kind of law practiced by IP Man
- (b) Law governing influenza pandemics
- (c) Intellectual Property law





# IP Law

- IP Law is the law of ideas
- Answer who owns it

# Principal Types of IP Law

- Copyright
- Patent
- Trademark
- Trade secret

# Copyright

- U.S. Copyright Act (also Digital Millennium Copyright Act)
- Covers artistic works
  - The creator owns the right to do certain things with the work (e.g. copy, publicly display, make “derivative works”)
- Most common protection for software

# Copyright

- Key aspects to remember
  - Doesn't protect just an idea – it has to be “fixed” in a tangible medium
    - You have to write the code, and the code is what is protected
  - Typically doesn't protect a word or phrase (not considered an artistic work)
  - Work made for hire: employer owns works within the scope of employment
    - Doesn't apply to consultants

# Patent



- U.S. Patent Act
- Protects inventions
  - Utility patents (how the invention works – most common patents filed)
  - Design patents (how the invention appears)
- Software patents are somewhat common

# Patent

- Key aspects to remember
  - You don't have protection unless you file it
  - Must be a new idea ("sufficiently novel")
    - It cannot be known by the general public before filing (careful about those public presentations – use an NDA)
  - You have to be able to actually do it ("reduce it to practice")
  - Patents are expensive; there are lots of patents by companies like IBM, HP, Oracle and others in the software space
  - Only an individual can be the inventor – not the company; so companies have to get the inventor to assign the idea and patent application.

# Trademark

- U.S. Federal Trademark laws (Lanham Act) and various state laws
  - aka – how to protect a “brand”
- Protects consumers against confusion
- Protects names, colors, sounds, logos



# Trademark

- Key aspects to remember
  - Must be used in commerce
  - Must not be confusingly similar to someone else's mark in the same space
  - You may not have to file to protect it; but filing can get nationwide protection



# Trade Secret

- U.S. Federal trade secret laws and various state laws
- Exactly like it sounds – cannot steal secrets
- Protects ideas, processes, business methods
  - Think the Coke formula



# Trade Secret

- Key aspects to remember
  - Must be secret – must use reasonable efforts to keep it secret
    - Nondisclosure agreements
  - No filing required
  - No requirement regarding novelty or originality, just secrecy

# Who owns it?

## The Sequel

- Scenario 1 (Who owns “boots”?)
  - Copyright: A single word/phrase is not a copyright
  - Patent: Not really an “invention” – so no patent
  - Trademark: Maybe if used “in commerce” and identifies a brand
  - Trade Secret: Not secret – so no trade secret

# Who owns it?

## The Sequel

- Scenario 2 (Who owns Facebook?)
  - Copyright: No written contract – no “work made for hire”
  - Patent: Not clear whether it’s novel – plus NO FILING
  - Trademark: Didn’t use the same name/branding – so no trademark
  - Trade Secret: Not clear whether a reasonable expectation of confidentiality – hard to claim trade secret

# Who owns it?

## The Sequel

- Scenario 3 (Who owns your process automation code?)
  - Employers require you to assign to the company all IP you create (usually called a “Confidentiality Agreement” or “Inventions Assignment Agreement”)



# Who owns it?

## The Sequel

- Scenario 4 (Who owns fog computing code? Who owns logo/website?)
  - Copyright: Both probably artistic and copyright owned by the creator
  - Patent: Did you file?
  - Trademark: Possibly owned by both if used by both.
  - Trade Secret: Was the code secret? Was the website?
  - Classic co-founder dilemma – when you start putting in major time/funds, form a company and get agreements in place

# Questions?

