

What you need to know about law and software

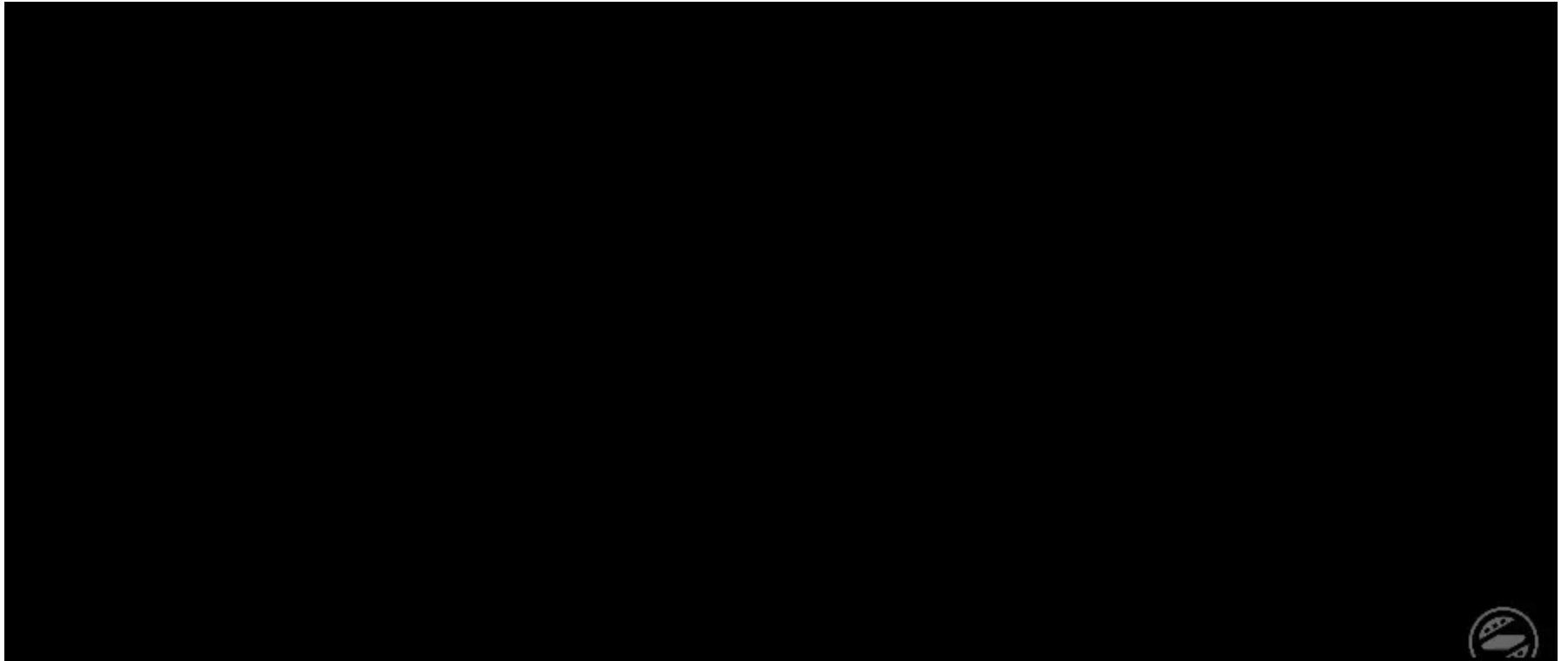
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Overview

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

Video Clip



Who owns it?

Scenario 1

- Gru has been tweeting like crazy the hashtag #StealTheMoon and getting lots of follows. But Dr. Nefario says he was the first one to say “Steal the Moon.” Dr. N says he owns the phrase and Gru 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.

- You come to work every day and do something that makes you feel like you're part of a team. You don't have to tell anyone, but you know it's there. You don't have to let your boss know, but you know it's there. You don't have to tell a company, but you know it's there.



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Who owns it?

Scenario 4

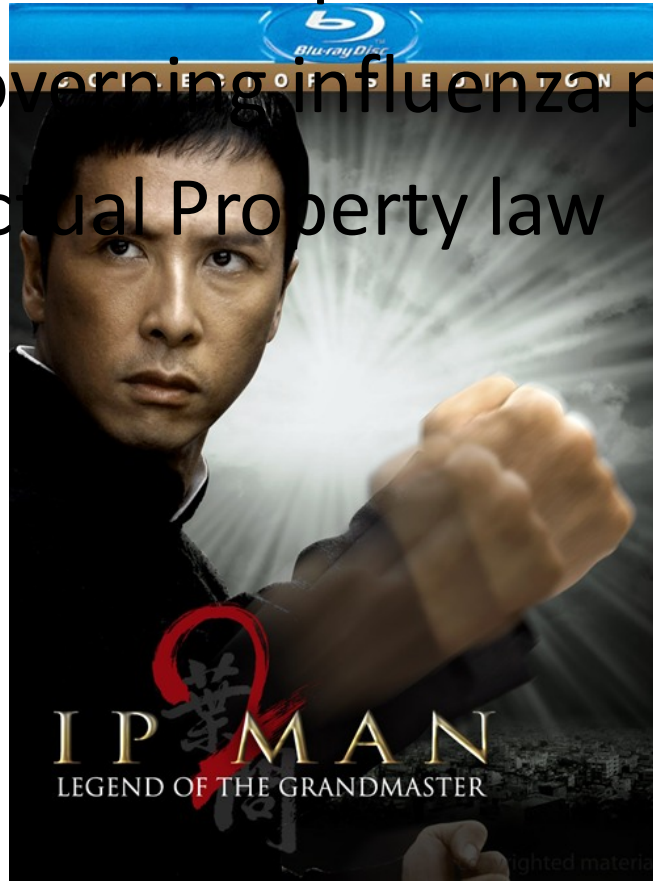
- You and a friend come up with an idea for a startup – Fogger – to write easy to deploy fog computing code to be hosted on common network switches. You write the code, and she creates a website, logo and marketing materials.



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 “Steal the Moon”?)
 - 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?

