IP agreements for SOEN 490

by Peter C Rigby

Note: I am not a lawyer, so these are my interpretations and are not legal advice.

In this discussion, I will mostly cover copyright as other types of IP such as patents, trademarks, etc are rarely involved in Capstone projects or are covered by existing agreements.

Copyright does not cover ideas, but only the actual code, documentation, etc written. For example, if code is rewritten copyright is not violated.

## A lack of formal IP agreement is terminal for a project

The **lack of formal agreement is project killing** because without an agreement the copyright is owned by the person who wrote the code, documentation, etc. Each team member owns a small portion of the project making use of the whole product impossible without an agreement from each contributor. This effectively kills the project for future development unless an agreement can be reached.

To avoid this from happening, I have the following goals:

1. Ensure that IP is adequately designated at the start of the project.
   1. Usually this is just copyright as other types of IP such as, patents, trademarks, are rarely involved in a Capstone project or are covered by existing agreements
2. Ensure that a clear and fair agreement is reached between the stakeholder and the students.

Below are the types of potential agreements and a discussion of their advantages and shortcomings.

## Inequitable agreements

### Stakeholder owns the project.

* 1. This is very common with large companies like Bombardier. Students accept these agreements in return for exposure to a large company.

### The students own the project

* 1. It is difficult to find a motivated stakeholder who effectively does not get any compensation. Note: The Capstone stakeholder agreement requires the stakeholder to signoff on all work, which is significant effort.

## Simple equitable agreements without incentives for continuing work

### The project is open source (simplest solution)

* 1. The source code can be used by anybody. In the case of a MIT style license, the code can also be used in proprietary software.

### Everyone independently owns the project

* 1. The copyright is assigned to every member of the project, so that anyone can use the product after the course without the need for permission from team mates. A license would also need to be written as otherwise there would need to be revenue sharing and potential liability.

## Equitable agreement that incentivise continuing work

### Assignment to a new startup company

* 1. **would need Concordia’s legal department to create an agreement**
  2. An agreement is made to start a company after the completion of the project
  3. The company will own the all intellectual property including copyright
  4. The stakeholder and students can join the company as founding members on the conditions that
     1. Each founding member contributes at least halftime work (ie 20 hours per week)
     2. When venture funding occurs and the idea is valuated, a previously agreed upon formula will turn time invested, money, etc into ownership in the company.
  5. The agreement is equitable because each person can join the company.
  6. The agreement encourages commitment to the project. This commitment requires the work of turning the prototype into a real product as those who do the extra work will own the product.
  7. Note: the compensation is for the additional work. Those who do not join the company and stop working on the product have already been compensated as with course credit as part of their degree program.

## Notes and Additional Information

The agreement needs to keep in mind the following:

1. Students cannot be paid or otherwise compensated for coursework
2. The stakeholder is volunteering his or her time on the assumption that they will be able to use the output of the work, ie the software product. We need motivated stakeholders as they provide critical and time consuming feedback to the students.
3. We want to incentivize continuing work on the project after the course. Given the short timeframe of the project, the product tends to be a prototype that will require significant additional work to be ready for production use. (e.g., the two products that “went live” in 2015-2016 crashed and had significant failings and problems and need substantial future work.)
4. Provided that the stakeholder is not employed by the university (eg a professor), by signing the university opt-out form, the university does not have any liability for or IP claims on the Capstone product.
   1. Students should make sure to scan and distribute a copy of this form for each and to all team mates and the stakeholder to avoid future problems.