Contracts and Intellectual Property Drafting Exercise

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**Contracts and Intellectual Property Drafting Exercise**

Small Business owners and large corporations will need to draft many contracts throughout the length of their companies operation. Drafting clear and concise contracts can be the difference in great business practices and longevity. This paper will discuss Intellectual property (IP) clauses regarding ownership of IP. In general, intellectual property “…is any product of the human intellect that the law protects from unauthorized use by others.  The ownership of intellectual property inherently creates a limited monopoly in the protected property” (Cornell University Law School, n.d.).

Intellectual Property most commonly deals with providing incentive for authors or inventors that produce works that will benefit the public by allowing the law to regulate works that ensure these authors and inventors are dutifully compensated for their work. For works that benefit the public and to protect the author or inventor; drafting a clear and concise contract that allows an understanding for all parties involved requires most of the agreements to be expressed during the drafting. This paper will explain the legal issues regarding a draft of a contract and its clauses for authors of creative works, which can be applied in a business managerial setting regarding ownership of IP.

**Operational Intellectual Property**

Operational intellectual property of an entities can include manufacturing processes, business processes, and other proprietary mechanisms for performing an activity (Hagelin, 2012). For example, married couple Tom & Sally write a book under their own publishing company regarding a specific parenting method. Together they defined a revolutionary method for helping parents to effectively discipline their kids.

**Patents**

A method for protecting this intellectual property is to draft a patent. The patent document will list the stated claims of the invention along with the mechanism for achieving those claims (Mallor, 2014). In exchange for making the idea publicly known the patent holder gains exclusivity over how the idea can be used. If the idea is used without authorization the patent holder has the ability to sue the violator for infringement. This is true irrespective of the patent holder's activeness with the patented content (Wreen, 2010).

Consider the scenario where Tom and Sallys publishing company sell their company and no longer in business. Later when XYZ Company reuses their patented method, Tom & Sally can still sue as they still hold the rights to the method. T**o minimize the impact to XYZ Company they need to research their business ideas and cross reference them with the patent office. If they discover in advance there method already exists they can work with the current owner to lease the rights. Patent lawyers also need to be consulted on the validity of the patent.**

**Patent Infringement**

Registered intellectual property gives the owner the right over the monopoly of a particular concept. In regards to many companies are under the impression that just by receiving a patent gives them complete protection against any patent infringement. Most often the case is that patents are often threatened and patent holders must take more drastic measures to protect their assets. Patent infringement occurs when one party makes or uses or sells a legally patented item without the expressed permission of the actual patent holder. Due to intellectual property being governed by federal law, the patent holder can only sue the unauthorized party in a federal district court. However, this must be done within six years from the date of the original infringement. In regards to business managerial setting with regards to ownership of intellectual property, as an author including a registered intellectual property clause in a contract with a business manager would be an important clause as it would protect the manager as well as anyone else from using written works or ideas of an author without expressed permission. This clause protects the business manager as well as the author of the creative and intellectual works.

**Conceptual Intellectual Property**

Conceptual intellectual property of a business includes the trade secrets that are used within the business. “The Uniform Trade Secrets Act ("UTSA") defines a trade secret … [as a] method…that derives independent economic value, actual or potential, from not being generally known to or readily ascertainable through appropriate means by other persons who might obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy ("Legal Information Institute", n.d.)”. The trade secrets of a company are what keep the company competitive.

The trade secrets of Tom and Sallys parenting method must remain the property of Tom and Sally. In the event either party decides to separate from the ownership of either book sales or the publishing company the trade secrets and methods are to remain the property of Tom and Sally. The release of such methods that were developed while in partnership to create a competing publishing company or create a competing book with the same method can be restricted by incorporating a conceptual intellectual property clause prohibiting this move.

**Distribution, Trademark, and Copyrights**

The distribution, trademark and copyrights are the intellectual property of the creator or the business that a product belongs to. Copyrights are given to the creator of a work and usually spans the life time of the creator plus 70 years ("Chegg", 2015). Trademarks are used to protect the name, word or symbol used by a business for commercial purposes to distinguish it from the competition ("Chegg", 2015). The distribution of the product or creation is determined by the holder of the copyright or the trademark.

The distribution rights and any copyrights or trademarks that have been used by the company are the property of the company. Any transfer of the business ownership will also transfer the copyrights and trademarks along with the ownership. The value of this property to the business and the ability to allow the business to distinguish itself from the competition will be a part of the company’s value if the company is ever sold or transferred to another party.

**Ownership**

Ownership Intellectual Property (IP) rights establish ownership of the product you produce. A company can determine the amount of information they are willing to share, and choose a format for the entire procedure which sets out the system for the determination of debate between the other companies copying. As Tom and Sally are the owners, they will need to be identified as such stating the product belongs to their person. The owners will be the ones that have full rights to exploit the product. ("Intellectual Property Rights: What You Need to Know - AAOS," n.d.pg 1). The person who creates or writes the work is usually the copyright owner, in the case of the mentioned draft, Tom and Sally are the copyright owners. However, Tom and Sally can assign the rights of ownership in the copyright to a third party that refers to reproduction or publication restrictions on an item party ("Intellectual Property Rights: What You Need to Know - AAOS," n.d.pg 1).

**Copy Right Infringement**

Copyright infringement is the utilization of works secured by copyright law without authorization, encroaching certain selective rights allowed to the copyright holder, for example, the privilege to imitate, disseminate, show or perform the ensured work, or to make subordinate works. Copyright infringement can cause legal issues for Tom and Sally as many individuals and companies will inevitably make unauthorized copies of their books however if this is the case, there is protection against copyright infringement with the guilty parties having to pay damages, profits, and attorney and court fees. Additionally the infringer must turn in all duplicated items. ("Copyright Infringement Penalties," n.d.pg 1)

In conclusion, for authors or inventors, drafting distinct and concise contracts prior to agreements that include many protection clauses for their work, allows an understanding for all parties involved for full understanding of agreement terms expressed at the time of drafting. In regards to authors Tom and Sally, being tied up in litigation due to failure of proper contract drafting prior to entering into an agreement can tie up further literary projects for many years due to avoidable legal issues such as copy right infringement, patents, or ownership issues. Drafting clear and concise contracts can be the difference in great business practices and overall longevity.

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