Legal Guide
for IDEA Ventures

Preface

The most important thing to remember when using this legal resource is that it was not written by attorneys, and is not intended to be used as the basis for important business decisions.

Indeed, no good lawyer would give generic advice to every venture, because each has its own particular needs. That said, this resource should give you a sense of the kinds of legal issues that you will confront in launching your venture with IDEA, and the very serious questions that you might ask when you do meet with a lawyer.

A lawyer will help you apply this general information to your venture. Ultimately, a lawyer's value is his or her ability to save you and your venture from trouble down the road. By helping you to anticipate liability, protect your rights, and tailor your business structure to fit your goals, a lawyer can allow you to focus on what matters to you: launching a successful venture. This resource should be used to prepare you for any meeting you have with IDEA's Legal Office or an IDEA Service Provider. You should work with your coach and the Legal Officer to decide when the time is right to speak with one of IDEA's legal service providers about a pressing issue or important decision.

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Introduction

In the course of working with hundreds of ventures and budding entrepreneurs, the IDEA Management Team, Faculty Advisor, and Legal Officer have identified some common concerns regarding ventures' legal issues. This resource is intended to inform you about those concerns so that you are better aware of the challenges that you may face.

Ultimately, any important business decisions will be up to you. This guide should be used as a resource for gathering information before you actually make those decisions.

Entity Formation & Incorporation

Before discussing entity formation and the process of incorporation, it is important to state that you do not need to form an entity to do business. By simply doing business, you are automatically regarded as either a sole proprietor or a general partnership. These are terms used in law and business to describe an arrangement where the principals of a business are not separate from the organization, and personal liability is unlimited.

SOLE PROPRIETORSHIP

A sole proprietorship is simply a single person doing business under a business name. In a sole proprietorship, there is no legal distinction between the company and the proprietor. Therefore the business owner is exposed to a great amount of personal liability, including tort liability (negligent acts or omissions), contract disputes, and employee conduct.

Although a sole proprietorship is very simple and inexpensive to run, anyone entering substantial business agreements or looking for investments may want to consider using a separate business entity. Sole proprietorships are not likely to be attractive to angel

investors or venture capitalists, and running a business without limited liability can be very risky.

GENERAL PARTNERSHIP

A general partnership forms when two or more people engage in profit-making activities as co-owners. A partnership does not need to be expressed in writing in order to be formed, but rather may be implied by the conduct of the parties. As a general rule, all parties that invest in a general partnership are partners, and therefore have a say in how the business will operate and are entitled to an equal share of profits. However, these default rules can be modified by a partnership agreement, which should lay out the ownership, expectations, and responsibilities of each partner.

Forming a general partnership is the easiest and least expensive way for multiple parties to go into business together. However, like a sole proprietorship, this business model exposes each partner to unlimited personal liability and will likely be unattractive for investors. Therefore, a general partnership may be a good starting point for ventures that are not yet investment ready, but any venture that is entering substantial business agreements or looking for investors should consider using a separate business entity.

WHY USE A SEPARATE ENTITY?

There are several reasons why using a separate business entity may be a good choice for you and your venture. In the business and legal world, the word 'entity' represents an organization separate from its owners. This distinction between an organization and its principals generally means that the principals receive limited liability, only risking the amount that each contributor invests in the company. Another way to think about this concept is that the entity provides a layer of insurance for your personal assets. It also provides your venture with a vehicle by which to attract funding, pool resources, and hire employees.

WHAT TYPE OF ENTITY CAN I FORM?

There are several kinds of business entities that you can form. Generally, formation occurs by filing documents with the Secretary of State in the state where you have offices, bank accounts, and employees. As you will see, there are other considerations that may require you to register with more than one state. Below is a list of the entities formed by virtually all IDEA ventures.

LIMITED LIABILITY COMPANY (LLC)

As the name implies, LLCs provide liability protection similar to corporations – owners are not personally liable for business debts and liabilities. LLCs are also taxed favorably, enjoying "pass-through" taxation. While a Corporation's profits are taxed twice – once for the corporation and once for the dividends received by shareholders – an LLC is NOT taxed at the corporate level. The third advantage of an LLC structure is that it is very flexible both with respect to management and the structure of membership interests. The owners of an LLC have significant leeway in structuring the management of the company. While the owners are free to manage the day-to-day operations if they choose, they may also hire outside managers to handle these tasks. However, this flexibility adds to the importance of carefully drafted agreements between owners, meaning that it can carry a big price tag for legal fees.

Because an LLC is more like a partnership than a corporation, it is more complicated to issue equity-based compensation like stock options. If you would like to provide equity as a form of compensation, a corporation might be a better entity for your venture. Also keep in mind that it is always possible to change from an LLC to a Corporation down the road.

Forming as an LLC requires filing a Certificate of Organization to the Secretary of State. The founders will also likely create an LLC operating agreement, a document that defines

the company's structure, each member's powers and responsibilities, voting requirements, etc.

C-CORPORATION

Like forming an LLC, incorporating as a C-Corporation creates a separate legal entity, shielding owners from liability. Corporations are also attractive to investors. C-Corporations file their own tax returns and pay taxes on their profits. Shareholders may also pay taxes on dividends (a corporation's way of distributing profits), meaning that the corporation's profits are technically taxed twice. As you will see below, S-Corporations are able to avoid this double taxation.

In order to form a C-Corporation, you will need to file Articles of Organization with the Secretary of State, which provide basic information about your business. You will also adopt corporate bylaws, and may implement a shareholder's agreement describing various rights and obligations of the owners. These documents will typically outline the structure of your business and provide clear processes for business functions. For instance, bylaws typically address election of officers, shareholder meetings, voting requirements, etc.

S-CORPORATION

It may help to think of an S-Corporation as a younger, smaller C-Corporation. An S-Corporation is simply a corporation that conforms to certain requirements under Subchapter S of the Internal Revenue code. S-Corporations have a strict limit on the number of shareholders allowed – usually less than 100 – and on the types of stockholders – just individuals – and finally on the kinds of equity that may be issued – just common stock. The benefit of choosing the S-Corporation is "pass-through" taxation, similar to how an LLC is taxed. It is also simple to convert to a C-Corporation from an S-Corporation when the time comes to add shareholders or issue new kinds of stock.

NON-PROFIT CORPORATION

Before considering the benefits and drawbacks of a non-profit corporation, you should understand that non-profit corporations are NOT eligible for grant funding or legal service provider assistance from IDEA. IDEA encourages ventures interested in becoming non-profit corporations to consult with Northeastern's Social Enterprise Institute out of the College of Business Administration (220 Hayden Hall).

Non-profit corporations pursue matters of public concern for non-commercial purposes. This category is distinct from for-profit corporations with a social mission, such as a benefit corporation. Achieving non-profit status requires extensive filings with both state and federal governments, as well as many of the formalities of being a corporation. The benefit of being a non-profit corporation is the tax-exempt status you receive.

In general, non-profit corporations are rare among IDEA ventures. They present unique challenges in raising capital, usually depending on donations rather than typical venture capitalist funding. However, non-profit corporations do have two advantages in raising capital. First, contributions to non-profits are tax deductible, attracting private investors from high tax brackets who are interested in the "social return" on such investments. Second, non-profits are eligible for many state and federal grants. If your venture operates for religious, educational, charitable, scientific, literary, testing for public safety, fostering of national or international amateur sports, or prevention of cruelty to animals, you might discuss non-profit status with your coach, mentor, attorney, and tax advisor.

WHERE SHOULD I INCORPORATE?

The short answer to the question is, anywhere. In truth though, there are a number of reasons why Massachusetts and Delaware may be your best choices. If your venture has employees, bank accounts, and/or physical addresses in Massachusetts, you are probably going to have to at least register with the state, whether or not you are from here. If you are interested in pursuing investments from venture capitalists, however, you are almost

certainly going to have to form in Delaware. Delaware is also famously the state with the most developed and predictable corporate laws.

It is generally most common for IDEA ventures to incorporate in Delaware, and also register with the Massachusetts Secretary of State and Department of Revenue. If Massachusetts is neither your home state, nor the home state of your venture, you will have to discuss with an attorney the possibility of registering elsewhere. Delaware will probably remain the best option for formation. However, as is the case in Massachusetts, the location of your employees, bank accounts, and facilities may dictate where else you need to register your business. Speak with a licensed attorney about what your best options are.

QUESTIONS TO ASK YOURSELF:

(1) Should I form a separate legal entity?

Think about the reasons for forming a separate legal entity. Are you getting ready to enter substantial business agreements or attract investors? Will you be hiring employees soon? Do you or your partners have any valuable intellectual property that should be assigned to a company?

(2) What type of entity should I use?

It usually comes down to LLC or Corporation. Consider the factors that make each appropriate. Are you expecting high growth and heavy investment soon? Do you expect to use equity compensation plans? Which tax structure makes most sense for your venture?

(3) Where should I incorporate?

If you're looking for investors, remember that many investors prefer corporations to form in Delaware. Aside from that, where do you expect to do business? Where will your offices, bank accounts, and transactions occur?

Intellectual Property

WHAT IS INTELLECTUAL PROPERTY?

Intellectual Property (IP) is exactly what it sounds like: ownership rights over intangible creations of the mind. The common types of IP that you are likely to encounter are trademarks, trade dress, patents, trade secrets and copyrights. If you have created some artistic or expressive work – like a website, computer program, mobile app, or book – you might be interested in pursuing *copyright* protection. If you have invented something new and useful, you might want to pursue *patent* protection. If you have a secret production method or something that is essential to your competition in the market, but which no one could figure out by buying your product, you may have a *trade secret* worth protecting. Finally, you will almost certainly seek *trademark* protection for your product name, and possibly also your logo, slogan, or some other distinctive marks that identify your company.

WHY IS INTELLECTUAL PROPERTY IMPORTANT TO MY BUSINESS?

Your intellectual property may play a powerful role in your business. You can use your IP to accomplish your company's goals. Successful marketing combined with trademark protection, for instance, can create an extremely valuable brand, which customers recognize for its quality. If you do not protect the marks of your brand – your product name, logo, unique product packaging, etc. – then someone else can use the same or similar marks, and you would not have any recourse. If your competitor's products are inferior, the value of your brand might be negatively affected by the imposter. The potential problems are even clearer with patents, copyrights, and trade secrets. Imagine someone producing a knock-off of your invention, profiting from your mobile app by publishing it under a different name, or stealing your production methods and replicating them in their own factory. As you can see, your business and your position in the market are disadvantaged by failure to obtain and protect intellectual property.

It goes without saying that properly protected IP will also be a valuable asset in the eyes of potential investors. It is essential that any IP has been assigned from the individual creator to the business entity that is commercializing. This ensures that the creator of any IP does not leave the company one day, taking with him or her all the valuable intellectual property that the business may be built around.

Lastly, as important as it may be to protect your intellectual property, it is equally important not to infringe upon others intellectual property. By unlawfully using others' distinguishing marks, inventions or copyrights, you could be opening yourself up to extensive lawsuits and fines. You will want to conduct searches beforehand to see if anyone has already been using your marks or created your inventions. If your business involves using others' products or marks, you will likely need to discuss licensing. Additionally, if you have previously signed non-disclosure agreements or non-compete agreements, you may be prohibited from disclosing certain things or conducting certain activities. For more information on this topic, read the following sections on Intellectual Property and Legal Agreements, or contact IDEA's Legal Officer.

COMMON TYPES OF IP AND WHAT THEY COVER

TRADEMARKS

Trademarks are the words, phrases, logos, and symbols that producers use to identify their goods. One of the primary intentions for trademark protection is to allow consumers to easily associate marks with the companies or products they represent. For this reason, trademarks offer protection against same or similar marks that may diminish a company's brand or confuse consumers. For many ventures, the most important trademarks are product names and logos.

The process of protecting those marks is done through a combination of selection and use on your part. Although registration has many advantages, it is not a requirement

for obtaining or protecting a mark. However, the first thing to discern is whether or not you are the first person to use it. Although an exhaustive trademark search can be a lengthy process requiring professional help, you can get a head start by doing some simple preliminary searches. This should give you an initial idea of whether anyone else is already using it. Here are a few good resources to complete these informal searches:

(1) **Google Search**: as simple as it sounds, doing a Google search on your venture's name and any similar variations can provide a lot of information

(2) U.S. Patent and Trademark Office (USPTO) Search: The USPTO is the organization responsible for collecting registrations for all patents and trademarks in the U.S. However, keep in mind that not all trademarks are registered, so this is not an exhaustive search

(3) Secretary of State's Office for Your Applicable State: Legal entities have to register with the Secretary of State in the state they do business. Checking these databases may give you insight into whether some other business is already using your name. States also register product names and other trademarks

(4) Domain Name Search: Sometimes it is useful to search domain names similar to your own. Remember, if you find a company with a similar name as your own, you may not be completely out of luck. Similar names are more of a concern where the products or markets of the two companies are also similar

Once you are relatively comfortable that nobody else is using that mark, you will want to think about protecting it. In the world of trademarks the rule is first-to-use, first-in-right. Therefore, once you begin using your trademark you can place a ™ symbol next to it, signifying that you plan to protect the mark but have not yet registered it. Registration requires filing with the state or USPTO, wherefore a more comprehensive check will be done to ensure that the mark is eligible. Generally, the more unique or *distinctive* a mark is, the better chance that it will be eligible for protection and registration. Because formal registration can require some complicated searches and processes, you may want to hire a professional for this service.

TRADE DRESS

Trade dress is an important facet for many businesses. Generally the term refers to unique characteristics of a product's packaging or visual appearance. Distinctive color schemes or designs in the appearance of your product may be protectable as *trade dress* (think about the shape of a vintage Coca-Cola bottle). In order for trade dress to be eligible for protection, it must not serve any functional purposes – only ornamental elements are protectable - and must be sufficiently distinct as to create some level of mental association between a product design and a company or brand.

Like trademarks, trade dress protection does not require formal registration. As soon as you begin using your trade dress in connection with a product, you acquire legal rights against infringers, assuming you are the first to use it. However, formally registering your trade dress offers an added layer of protection, and may require hiring a professional to complete an exhaustive search and file any necessary applications.

PATENTS

Patents grant inventors an exclusive set of rights that prohibit others from producing the patented goods for a limited amount of time – usually 20 years from the time of filing.

UTILITY PATENTS

Utility patents are issued for the invention of a new and useful process, machine, manufacture, or composition of matter. Generally, the patents IDEA ventures seek for their inventions will be utility patents. In order to be patentable, an invention must meet several requirements:

(1) **Patentable subject matter**: the general rule is that any man-made product is patentable subject matter. This includes processes, machines, manufactures or

compositions of matter. As long as it is not naturally occurring, it is likely patentable subject matter

(2) **Utility**: the invention must be useful.

(3) **Novelty**: the invention must have never been made before

(4) **Non-Obvious**: the invention must not simply be a trivial extension of a prior invention

(5) **Enabling**: the invention must be able to be sufficiently described so that someone skilled in the art could make and use the invention

As part of the novelty requirement, you need to make sure that what you have invented has not been invented before. Since patents are necessarily registered, unlike trademarks, they can be somewhat easier to search. A few useful resources to search patents are the USPTO website, and Google Patents. Both these resources can be found in the "Additional Resources" section.

As of March 16, 2013, the U.S. converted to a "first-to-file" system, granting ownership rights to the first patentee to file. This is a shift from the previous system, which was "first-to-invent", requiring competing inventors to prove which person had invented first. However, prematurely filing for a utility patent can have unintended consequences. Aside from being an extremely long and expensive process, filing for a utility patent may result in the eventual public disclosure of your invention, triggering a statutory bar to patenting. Therefore, if you file for a patent that is not yet developed, you may unintentionally disclose your invention while wasting years of time and thousands of dollars. Luckily, there are measures you can take to increase your chances of being the first-to-file without prematurely filing for a utility patent. Inventors may file for a *provisional patent*, which establishes your date of filing as the date of your provisional patent. From that point, you will have one year to file a utility patent while still keeping the original date of filing.

Additionally, *provisional patents* are much cheaper, remain private, and allow you to attract investors by writing "patent pending" on your product.

DESIGN PATENTS

Design patents are intended to promote the decorative arts, protecting the unique appearance of a product rather than its functionality. The law on design patents says, "Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title." (35 U.S.C. § 171). Like utility patents, design patents must be original and non-obvious. However, design patents require ornamentation or decorative, non-functional appearance.

A design patent would likely only be relevant to your venture if you invent a new design for something – for example, an original design of an electronic device, a new ornamental design of shoes or jewelry, or a new type of font.

STATUTORY BARS ON PATENTING

If you plan on patenting your product but have not yet done so, you will want to be careful not to publicly disclose your invention or offer it for sale. Publicly disclosing your invention or offering it for sale may trigger a one-year deadline to apply for a patent on your invention, and forfeit certain international right you may have had. After that one-year deadline passes, you lose the ability to seek a patent.

Determining whether something was publicly disclosed or offered for sale usually requires a fact-dependent inquiry. Generally, any disclosure that would enable someone skilled in the art to recreate and use your invention constitutes 'public disclosure'. In other words, if the disclosure is specific enough to allow others to understand the make-up and design of your

invention, it may likely trigger a statutory bar on patenting. This could include publications in journals and news outlets, capstone presentations or expositions, and discussions with outsiders. Similarly, a triggering offer for sale occurs when the invention is: (1) ready for patenting, and (2) the subject of an offer for sale. An invention is "ready for patenting" once it has been reduced to practice, or disclosed enough for somebody skilled in the area to understand and recreate your invention.

TRADE SECRETS

A trade secret is any information that is both undisclosed and valuable to your business. For it to be protected, the information cannot be readily discoverable, meaning that you must take reasonable precautions to protect the secret. One of the most common solutions is to require all employees or other parties who have access to the trade secret to sign non-disclosure agreements. Other precautions could be requiring a password to access information, or implementing electronic permissions. Because of its nature, trade secret protection requires no formal registration.

Often something that is a trade secret might just as well be patentable. For a discussion of the advantages and disadvantages of choosing a patent over a trade secret, turn to the "Trade Secrets vs. Patents" section of this guide.

COPYRIGHTS

Copyright protection is available for original works of authorship that are fixed in a tangible medium. IDEA ventures most concerned with copyrights are typically tech or content related. To better understand whether copyright protection is important to your venture, see the list below of copyrightable material.

- literary works, including computer games, apps and programs
- musical works, including any accompanying words
- dramatic works, including any accompanying music

- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

These categories are to be understood broadly. What is important to note is that certain things are NOT copyrightable, including ideas, procedures, processes, systems, methods of operation, concepts, and discoveries. Many of the same principles of patent ownership likewise apply to copyright ownership. One essential difference, however, is that copyrights don't require any formal application. If you write an original work, you own the rights to that work on its creation unless you have agreed to surrender those rights. However, formal registration is required in order to file suit against anyone that copies your work.

Copyright protection grants, among other things, the rights to reproduce, distribute copies, and create derivative works of the original. The owner(s) of a copyright control those rights, but may license them out to others. In the case of co-owners of a copyright, both owners must agree to an assignment or sale of the rights. It is also important to note that hiring outside contractors to make something for your business may have serious IP consequences. For instance, if you hire someone to write a computer program for your venture and do not have a formal written agreement regarding the rights to that intellectual property beforehand, the programmer may be the co-owner of the rights to that software as a joint author, or the programmer may even be the sole owner of the rights. As you can see already, the situation can be very complicated without first agreeing to terms and consulting a legal expert. For more information, visit http://www.copyright.gov or consult a lawyer.

HOW DO I SELECT THE APPROPRIATE TYPE OF IP PROTECTION?

MATCHING BUSINESS OBJECTIVES TO IP

Before jumping headfirst into the world of intellectual property, it will be valuable to think about how to best match your business objectives to any IP you may have. For instance, many new systems or processes could be eligible for either trade secret protection or patent protection, or first trade secret followed by patent, but not both at the same time. You will want to think about the costs and consequences that each type of IP would have on your business. Furthermore, certain products or services may be eligible for a combination of multiple types of IP protection at the same time.

TRADE SECRETS vs. PATENTS

When deciding whether to protect your IP through a patent or trade secret, there are several considerations to keep in mind. Trade secrets, as opposed to patents, last for an unlimited amount of time as long as they remain secret. Additionally, trade secrets take immediate effect and do not require any registration fees. On the other hand, if your trade secret is embodied within a product, others may reverse engineer that product to discover your secret. Trade secrets also do not protect their owner from others who may incidentally discover the same secret and patent it. If this occurred and others obtained a patent, you may actually be committing infringement by using the trade secret. Alternatively, patenting your product would allow you to publicize your invention and possibly license it out for revenue, but requires extensive time and money. If the invention has a useful life of only a few years, that life could end before you get a patent. In the end, the decision between pursuing a patent or a trade secret should be made on a case-by-case basis, with your specific business objectives in mind.

COMPLIMENTARY COMBINATIONS OF IP

Sometimes a product may be protectable by several forms of intellectual property all at once. For instance, a new invention may be protectable by a utility patent, while its

design is protectable by a design patent and its name by a trademark. Furthermore, the packaging the product is shipped in could be protectable by trade dress and copyright. Your job is to consider each type of IP in order to ensure that your product, service, or company is receiving the proper amount of protection it needs.

WHAT'S THE NEXT STEP?

If you have some intellectual property, and now have an idea of what protection entails and what the risks are of failing to protect it, you should speak with an attorney and begin the process of getting it protected. Speak with your coach and the IDEA Legal Officer about using some of your allotted time with one of our legal service providers. If you are having trouble deciding which areas of IP may apply to your company, try using the USPTO's IP Self-Assessment (http://www.uspto.gov/inventors/assessment/), or talking to the IDEA Legal Officer.

Remember, if your copyrightable or patentable innovation was developed with the use of Northeastern University resources, consult the University's Patent & Copyright Policy (found in "Additional Resources") for information on disclosure and ownership rights to that innovation. If your IP was developed at another university, consult the appropriate Student Handbook. Remember also that IDEA itself does not make any claim to IP associated with the ventures.

Legal Agreements

GENERAL INFORMATION ON LEGAL AGREEMENTS

Legal agreements specify what is expected of all the parties to an agreement, and can therefore make doing business safer and more efficient. In general, an agreement can be anything from a word and a handshake to a piece of paper with the word "contract"

emblazoned at the top. Although some contracts are required in writing in order to be enforceable, remember that even verbal commitments can establish a contractual duty to do something. With this in mind, it's necessary to be prudent even when making informal agreements because someone might hold you to it someday.

For a contract to be recognized as legally binding, it must include a description of the parties involved, consent from each party, a sufficient description of what is being agreed to, and adequate consideration. Certain parties are legally unable to consent to a contract, such as minors or persons of unsound mind. Additionally, consent is not valid if obtained through fraud, undue influence, duress, or mistake. Obviously if you get someone to sign a contract through trickery or force, it will not be upheld in court. Aside from the parties involved, an agreement will not be enforced if the subject of that agreement is illegal or extraordinarily unfair. Lastly, any valid agreement requires sufficient consideration. Essentially, this means that each party to a contract must gain something. The topic of what constitutes adequate consideration is very extensive and can be quite complicated, but the general idea is that you cannot enforce a contract against somebody who didn't stand to gain anything in the first place.

WHO IS BOUND BY A CONTRACT?

FOUNDERS vs. VENTURE

One thing IDEA ventures should ask themselves is who will be bound by the contracts entered into on behalf of their business: the founders or the venture? As previously discussed in the "Entity Formation" section, sole proprietors and general partnerships are not separate legal entities, and thus the founders behind those businesses will be personally bound to any business contracts. However, forming as an LLC or Corporation results in the creation of a separate legal entity, providing limited liability to its founders and shareholders. As a result, the members or shareholders behind LLCs or Corporations generally are not held personally liable for the contracts entered into on behalf of the

company. However, there are several exceptions to this rule that IDEA ventures should be aware of.

The uncommon decision to hold shareholders liable for the debts of a company is referred to as "piercing the corporate veil." When deciding whether or not to pierce the corporate veil, courts tend to look at a list of factors, including: (1) whether the company was a façade for personal dealings, (2) whether the company's actions were fraudulent or unjust, (3) whether creditors suffered an unfair cost, or (4) whether the company was unreasonably underfunded by its founders and shareholders. Although the default rule is to protect shareholders' personal assets and enforce the limited liability nature of corporations, start-up companies should be especially careful to follow corporate formalities and avoid using company resources for personal reasons.

REAL & APPARENT AUTHORITY

In law, the terms "real authority" or "actual authority" mean that you have been expressly or implicitly granted the power to act on behalf of your company. For instance, as a founder of an IDEA venture, you would have actual authority to represent your venture and enter contracts on its behalf. "Apparent authority" is a slightly different concept. Under contract law, if a company or its principals allows an agent or employee to *appear* to have authority, then that agent or employee may be able to contract on behalf of the company. You will want to be mindful of who may have apparent authority, because you or your company may be liable for their actions, including contracts entered into on the company's behalf. For example, don't give someone the title of "manager" or "vice-president" if you really don't want them to be able to act on behalf of the company.

EXPLANATION OF SPECIFIC LEGAL AGREEMENTS

Below are some of the legal agreements that start-ups will likely encounter. Although this list covers a number of agreements you may need, it is certainly not exhaustive. In fact, you can create agreements for virtually any situation.

NON-DISCLOSURE AGREEMENT

Non-Disclosure Agreements (NDA), also referred to as Confidentiality Agreements, are used where proprietary information, such as trade secrets, are being disclosed from one party to another. For example, if you are giving your employee secret information, you would want to agree to limitations on how that information may be used. Some of the common issues addressed in an NDA are a description of the parties, what is to be kept confidential, the time period during which disclosures are to be kept confidential, and available recourse in case of disclosure.

NON-COMPETE AGREEMENT

Non-Compete Agreements are used where there is a risk that one of your employees might leave to begin or join a competing enterprise. A non-compete agreement protects your venture from this possibility for a limited time – perhaps one or two years after the employee leaves. One thing to remember is that non-compete agreements may be held invalid if they are overly restrictive, limiting an employee's ability to work in his or her chosen field.

CONTRACTOR AGREEMENT

Contractor agreements are used to specify the terms of your venture's relationship with an independent contractor. In any case where you are hiring someone to develop material for your venture, the agreement should transfer ownership of the finished work to the venture. This is discussed further in the "Works for Hire" section below.

WORK FOR HIRE AGREEMENT

In general, the law recognizes the owner of a piece of work as the person who created it. However, occasionally you may need to hire others to create work for you, called 'works for hire', in which case you will want to make sure ownership passes to you afterwards. According to U.S. Copyright law, an employee's work is considered a work for hire if it is (1) prepared within the scope of that employee's employment, or

(2) specially commissioned and expressly agreed upon in writing that the work shall be considered work for hire. Similarly, a contractor's work constitutes a work for hire if it is specially commissioned and expressly agreed upon in writing, and falls within one of several categories of work, including but not limited to: (1) contribution to a collective work, (2) part of a motion picture, (3) supplementary work, (4) compilation, or (5) instructional text.

CORPORATE SHAREHOLDERS' AGREEMENT

A shareholders' agreement is an agreement created in order to specify the duties and rights of shareholders, and typically supplements a company's founding documents. The shareholders' agreement may be desirable for a number of reasons: it remains private to anyone outside of the business, and is easier to amend than constitutional documents, allowing for flexibility. Also, creating a shareholders' agreement will allow you to shape your company policies and practices to your specific needs. For instance, many shareholders' agreements include clauses discussing dispute resolution processes, voting rights, restrictions of share transfers, powers of certain shareholders, and initial contribution requirements.

LLC OPERATING AGREEMENT

An LLC operating agreement is very similar to a corporation's bylaws or a shareholders' agreement. In addition to specifying the company's structure, it will often include a description of certain member's rights and responsibilities, as well as operating procedures, such as dispute resolution processes and restrictions on ownership transfers.

TERMS OF SERVICE

Terms of service lay out the policies that users must agree to in order to use a service. For IDEA ventures, terms of service will generally be used with websites in order to provide the rules of use and disclaimers. Typically, the terms of service will include

sections addressing privacy policies regarding any personal information collected, user responsibility and accountability, payment details, and proper website usage. These agreements provide transparency for users, and may be subject to change at the discretion of the company.

OTHER LEGAL OBLIGATIONS

Before beginning your IDEA venture, chances are that you or your partners all had some kind of previous employment. It is critically important to consider any ongoing obligations you may have to those employers. For example, did you work with someone to develop a new technology that plays some role in your venture? Did you agree not to compete with your previous employer? These are issues that you need to understand thoroughly before you go into the market and begin doing business. Additionally, if you or anyone else participating in your venture is a current student at Northeastern University, you may have certain obligations simply by being an enrolled student. IDEA takes no ownership of your IP, but Northeastern may have a claim to some or all of it if it was developed using University resources. For more information on this subject, see the University Patent and Copyright policy.

Additional Resources

- Starting a Business in Massachusetts
  http://www.lawlib.state.ma.us/subject/about/smallbusiness.html
- Choosing the Correct Business Structure
  http://www.foundersworkbench.com/forming-your-start-up-hold/
- Secretary of the Commonwealth of MA: Corporations Division
  http://www.sec.state.ma.us/cor/coridx.htm
- Internal Revenue Service Guide to Starting a Business
  http://www.irs.gov/businesses/small/article/0,,id=99336,00.html
- Why Corporations Choose Delaware
  http://corp.delaware.gov/whycorporations_web.pdf
- Delaware's Small Business Guide
  http://delaware.gov/topics/startassmallbusiness
- U.S. Patent and Trademark Office IP Assessment
  http://www.uspto.gov/inventors/assessment/
- U.S. Patent and Trademark Office
  http://www.uspto.gov/
- Northeastern University's Patent & Copyright Policies
  http://www.northeastern.edu/facultyhandbook/pdfs/patent-copyright.pdf
- Google Patents
  http://www.google.com/patents/
- U.S. Copyright Office
  http://www.copyright.gov
- Greenhorn Connect– Boston's Entrepreneur Hub
  http://greenhornconnect.com/resources/learning