A Primer in Entrepreneurship

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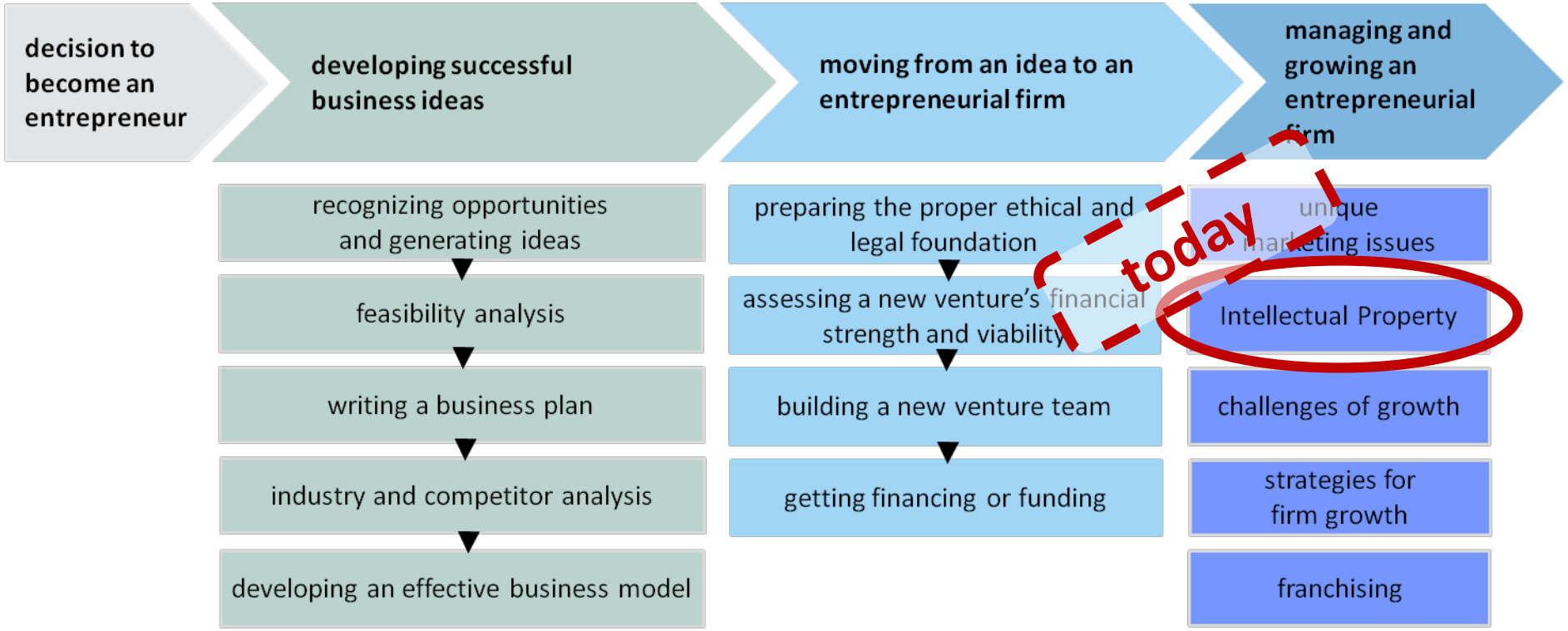
Universität Zürich

Fall 2016

Content



Universität Zürich[UZH]

Department of Business Administration - Chair for Entrepreneurship

A Primer in Entrepreneurship

Part IV Managing and Growing an Entrepreneurial Firm

Lecture 12
The Importance of Intellectual Property

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Agenda

1. Intellectual Property

1.1 Patents

1.2 Trademarks

1.3 Copyrights

1.4 Trade Secrets

2. Intellectual Property Audit

Questions

? What is intellectual property?

? What are the four key forms of intellectual property exist?

? And what is the difference between the four key forms of intellectual property?

…to be answered in today‘s lecture.

1 Intellectual Property

Increasingly a company's intellectual assets are the most important.

INTELLECTUAL PROPERTY

product of human imagination, creativity, and inventiveness that is intangible but has value in the marketplace.

1 Intellectual Property

There are two primary rules of thumb for determining whether intellectual property protection should be pursued for a particular intellectual asset.

Is the intellectual property in question directly related to its competitive advantage?

Does the intellectual property have value in the marketplace?

1 Intellectual Property

There are four common mistakes firms make in regard to protecting their intellectual property.

NOT properly identifying all of their intellectual property

NOT legally protecting the intellectual property that needs protecting

NOT fully recognizing the value of their intellectual property

NOT using their intellectual property as part of their overall plan for success

1 Intellectual Property

Intellectual property laws exist to encourage creativity and innovation by granting to individuals who risk their time and money in creative endeavors exclusive rights to the fruits of their labors for a period of time.

PATENTS

TRADEMARKS

COPYRIGHTS

TRADE SECRETS

1.1 Patents

A patent is a grant from the federal government conferring the rights to exclude others from making, selling, or using an invention for the term of the patent.

A patent does not give its owner the right to make, use, or sell an invention: rather, the right granted is **only to exclude others** from doing so.

- If an inventor obtains a patent for a new kind of computer chip, and the chip would infringe on a prior patent owned by Intel, the inventor has no right to make, use, or sell the chip.

- The inventor would need to obtain permission from Intel. Intel may refuse permission, or ask that a licensing fee be paid for the rights to infringe on its patent.

1.1 Patents

While this system may seem odd, it is really the only way the system could work.

Many inventions are improvements on existing inventions, and the system allows the improvements to be (patented) and sold, but only with the permission of the original inventors, who usually benefit by obtaining licensing income in exchange for their consent.

1.1 Patents

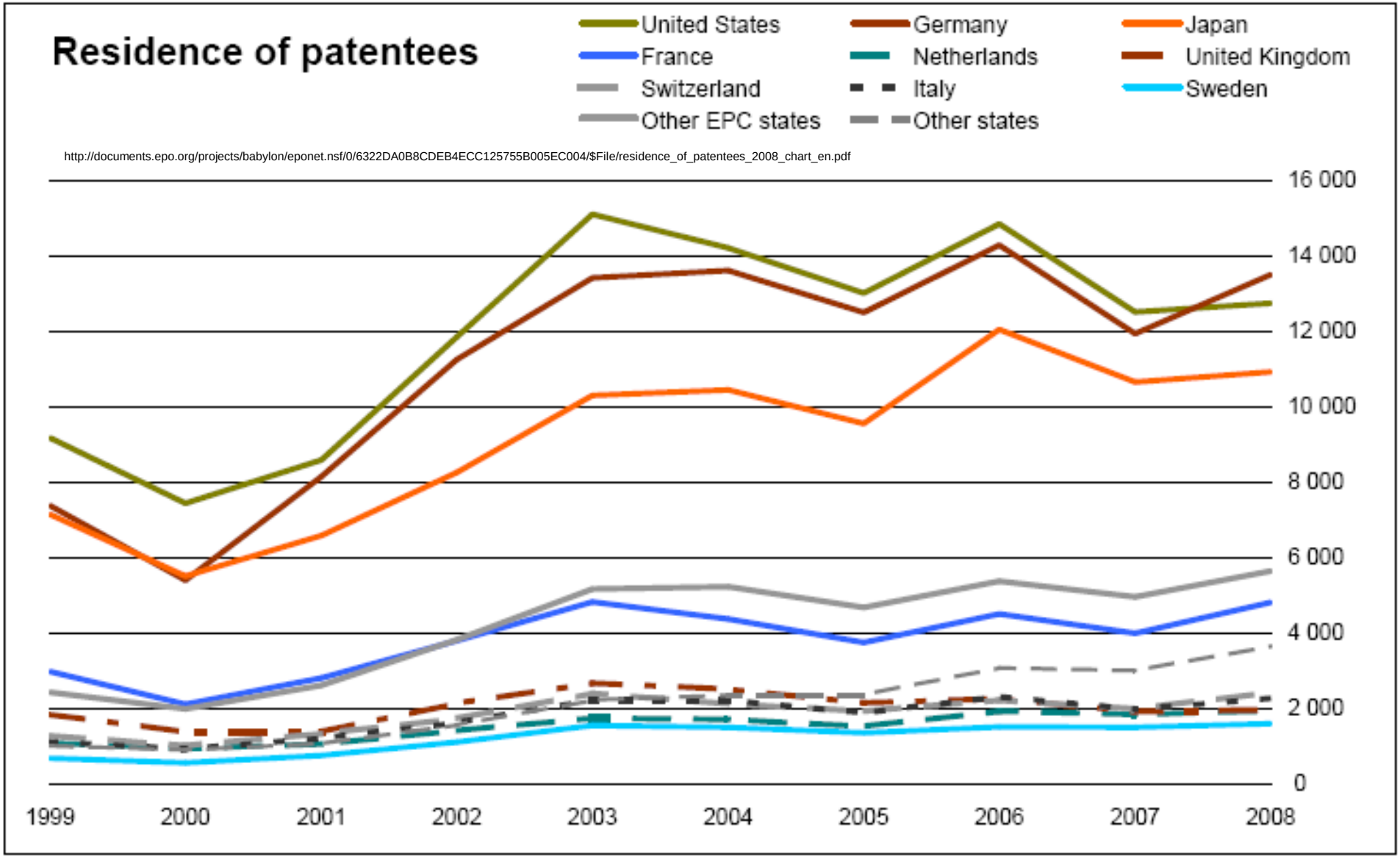
Since Patent #1 was granted in 1790, the U.S. Patent and Trade-mark Office has granted over six million patents.

The patent office is strained. It now takes an average of 35.3 months from the date of first filing to issuance of a patent.

Source: United States Patent and Trademark Office, Performance and Accountability Report 2010

Patent Examining Activity	2006	2007	2008	2009	2010
Applications filed, total[1,2]	445,613	468,330	496,886	486,499	509,367
Patents issued[2,6]	183,187	184,376	182,556	190,122	233,127
Pendency time of average patent application[7]	31.1	31.9	32.2	34.6	35.3

1 *FY 2010 data are preliminary and will be finalized in the FY 2011 PAR.*
2 *FY 2009 application data has been updated with final end of year numbers.*
6 *Excludes withdrawn numbers. Past years' data may have been revised from prior year reports.*
7 *Average time (in months) between filing and issuance or abandonment of utility, plant, and reissue applications. This average does not include design patents.*


Residence of patentees
United States
Germany
Japan
France
Netherlands
United Kingdom
Switzerland
Italy
Sweden
Other EPC states
Other states
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1.1 Patents

The subject of a patent application may be an invention, design, or business method.

A business method patent is a patent that protects an invention that is or facilitates a method of doing business.

The most notable business method patents that have been awarded:

- Amazon.com's one-click ordering system.
- Priceline.com's "name-your-price" business model.
- Netflix's method for allowing customers to set up a rental list of movies to be mailed to them.

1.1 Patents

There are three types of patents.

UTILITY	New or useful process, machine, manufacture, or composition of material or any new and useful improvement thereof	20 years from the date of the original application
DESIGN	Invention of new, original, and ornamental designs for manufactured products	14 years from the date of the original application
PLANT	Any new varieties of plants that can be reproduced asexually	20 years from the date of the original application

1.1 Patents

The subject of a patent application must be useful, novel and not obvious.

USEFUL	NOVEL	NOT OBVIOUS
It must have utility.	It must be different from what has come before (i.e., not in the" prior art")	It must be not obvious to a person of ordinary skill in the field.

Softwarepatent skader dansk økonomi

Danske virksomheder risikerer at blive overhalet indenom i EU, hvis det kommende direktiv om patenter på

FOTO: JEANNE KORNUM

Professor Ulrich Kaiser (tv) og lektor Thomas Rønde forudser, at EU's softwarepatent kommer til at ramme Danmark på pengepungen,

1.1 Patents

Only the inventor of a product can apply for a patent. If two or more people make an invention jointly, they must apply for the patent together.

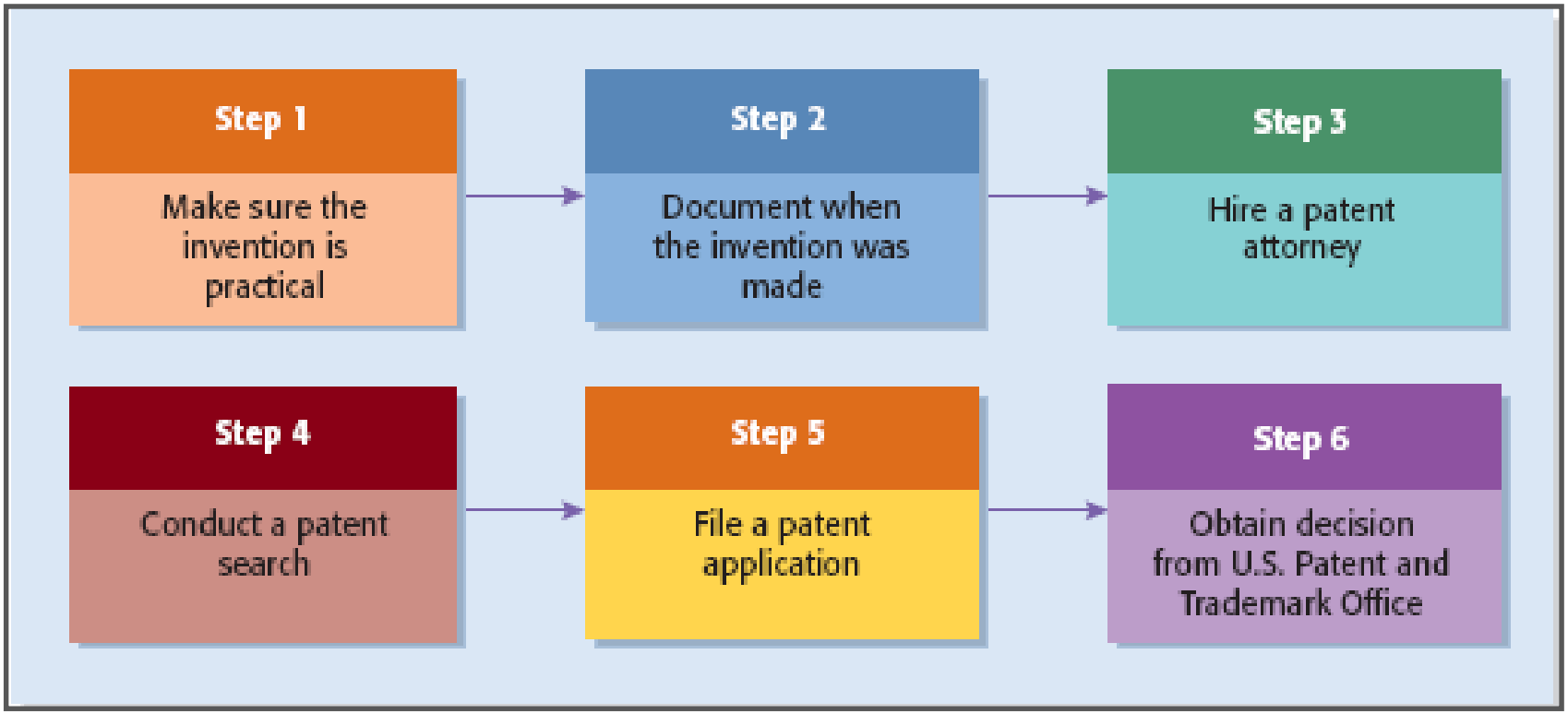
There are notable exceptions to this rule.

1. If an invention is made during the course of the inventor's employment, the employer typically is assigned the right to apply for the patent through an assignment of agreement.

2. The second exception is the right to apply for an invention can be sold.

1.1 Patents

The process of obtaining a patent



1.1 Patents

Patent infringement takes place when one party engages in the unauthorized use of another party's patent.

The tough part (particularly from a small entrepreneurial firm's point of view) is that patent infringement cases are costly to litigate.

A typical patent infringement case costs each side at least $500,000 to litigate.

Apple To Pay $532.9 Million in Patent Infringement Case: Smartflash Leaves Court Smiling

By **Nicole Arce**, Tech Times | February 25, 10:43 AM

A Texas federal jury has awarded $532.9 million in damages to an obscure Tyler-based company accusing Apple of patent infringement for not paying the royalties to use DRM and data storage technologies in iTunes. (Photo : Kārlis Dambrāns)

Apple is ordered to pay more than $500 million to Smartflash, a Tyler, Texas-based company accusing Apple of willfully using its patented inventions in iTunes software without paying proper licensing fees.

A federal jury has decided to award $532.9 million to the obscure company, which claims that Apple infringed three of its seven patents involving digital rights management, data storage, and managing access to payment systems. The company asked for damages amounting to $852 million, but Apple said the technology was worth only $4.5 million at most.

Apple lawyer Eric Albritton said Smartflash cannot demand Apple to pay royalties on the price of its devices because the patents in question were related only to a single feature.

1.2 Trademarks

A trademark is any word, name, symbol, or device used to identify the source or origin of products or services, and to distinguish those products or services from others.

Archaeologists have found evidence that as far back as 3,500 years ago, potters made distinctive marks on their articles of pottery to distinguish their work from others.

Name is trademarked

Symbol is trademarked

Slogan is trademarked

1.2 Trademarks

There are four types of trademarks which all are renewable every 10 years, as long as the mark remains in use.

TRADEMARK	Any word, name, symbol, or device used to identify and distinguish one company's goods from another.
SERVICE MARK	Similar to trademarks; are used to identify the services or intangible activities of a business, rather than a business's physical products.
COLLECTIVE MARK	Trademarks or service marks used by the members of a cooperative, association, or other collective group.
CERTIFICATION MARK	Marks, words, names, symbols, or devices used by a person other than its owner to certify a particular quality about a good or service.

1.2 Trademarks

What is protected under trademark law ?

WORDS

NUMBERS + LETTERS

DESIGNS / LOGOS

SOUNDS

FRAGRANCES

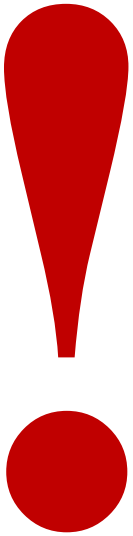
SHAPES

COLORS

TRADE DRESS

1.2 Trademarks

However, there are some exclusions from trademark protection



Immoral or scandalous matter

Deceptive matter; example: a food company couldn't register the name "Fresh Florida Oranges" if the oranges weren't from Florida.

Marks that are merely descriptive of a product or service cannot be trademarked. For example, if you develop a new type of golf ball, you can't get a trademark on the words "golf ball."

A trademark consisting primarily of a surname, such as Anderson or Smith, is typically not protectable.

1.2 Trademarks

Once a trademark has been used in interstate commerce, it can be registered with the U.S. Patent and Trademark Office for a renewable terms of 10 years and can theoretically remain registered forever, as long as the trademark stays in use.

There are three steps in selecting and registering a trademark.

Technically, a trademark does not need to be registered to receive protection. Once it is used, it is protected; there are many advantages, however, to registering a trademark with the U.S. Patent and Trademark Office.

Taylor Swift

Taylor Swift applies to trademark 'This Sick Beat'

Star protects a number of phrases from her 1989 album – so don't think about using them on non-medicated scalp preparations or wind chimes

Eamonn Forde on the legal implications of Taylor Swift's trademark

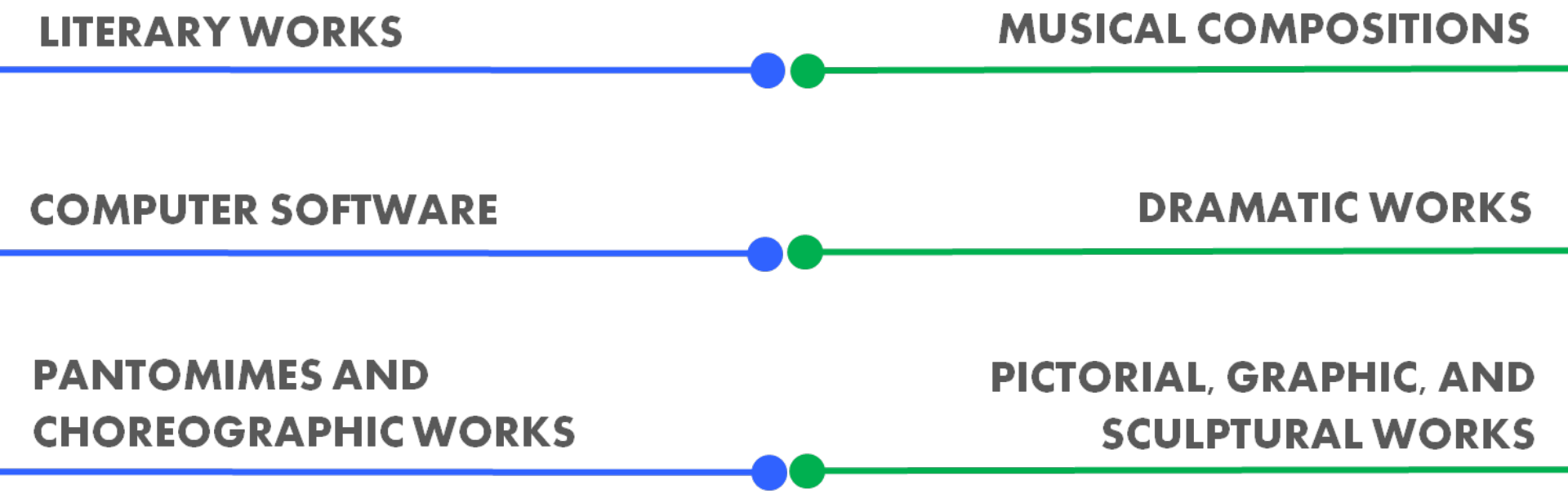
Guardian music

@guardianmusic

Thursday 29 January 2015 08.09 GMT

1.3 Copyrights

Copyright laws protect "original works of authorship" that are fixed in a tangible form of expression.



1.3 Copyrights

A copyright is a form of intellectual property protection that grants to the owner of a work of authorship the legal right to determine how the work is used and to obtain the economic benefits from the work.

A work does not have to have artistic merit to be eligible for copyright protection.

As a result, things such as operating manuals and sales brochures are eligible for copyright protection.

"Rowling has to defend her Harry Potter"

1.3 Copyrights

The main exclusion is that copyright laws cannot protect ideas.
An idea is not copyrightable, but the specific expression of an idea is.

IDEA-EXPRESSION DICHOTOMY

EXAMPLE

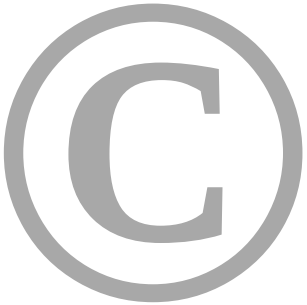
An entrepreneur may have the idea to open a soccer-themed restaurant. The idea itself is not eligible for copyright protection. However, if the entrepreneur writes down specifically what his or her soccer-themed restaurant will look like and how it will operate, that description is copyrightable.

1.3 Copyrights

Copyright law protects any work of authorship the moment it assumes a tangible form.

Technically, it is not necessary to provide a copyright notice or register work with the U.S. Copyright Office.

The following steps can be taken, however, to enhance copyright protection.



Copyright protection can be enhanced by attaching the copyright notice to something.

Further protection can be obtained by registering the work with the U.S. Copyright Office.

1.3 Copyrights

Copyright infringement occurs when one work derives from another or is an exact copy or shows substantial similarity to the original work.

To prove infringement, a copyright owner is required to show that the alleged infringer had prior access to the copyrighted work and that the work is substantially similar to his or her own.

One of the most famous copyright infringement cases involved Napster, the company that was launched by then 18-year-old Shawn Fanning and his partner, Sean Parker.

1.3 Copyrights

http://www.rayneer.tv/

1.3 Copyrights

Copyright laws, particularly as they apply to the Internet, are sometimes difficult to follow, and it is easy for people to dismiss them as contrary to common sense.

Every day, vast quantities of material are posted on the Internet and can be downloaded or copied by anyone with a computer. Because this information is stored somewhere on a computer or Internet server, it is in tangible form and probably qualifies for copyright protection.

Entrepreneurs should guard themselves against taking too lax of attitude regarding copyright laws and the Internet.

1.4 Trade Secrets

A trade secret is any formula, pattern, physical device, idea, process, or other information that provides the owner of the information with a competitive advantage in the marketplace.

Trade secrets include marketing plans, product formulas, financial forecasts, employee rosters, logs of sales calls, and similar types of proprietary information.

The Federal Economic Espionage Act, passed in 1996, criminalizes the theft of trade secrets.

1.4 Trade Secrets

Not all information qualifies for trade secret protection.
In general, information that is known to the public or that competitors can discover through legal means doesn't qualify for trade secret protection.

The general philosophy of trade secret legislation is that the law will not protect a trade secret unless its owner protects it first by …

… restricting access to confidential material.

… labeling documents "proprietary," "restrictive," or "secret."

… password protecting confidential computer files.

… maintaining log books for visitors.

… maintaining log books for access to sensitive material.

… maintaining adequate overall security measures.

1.4 Trade Secrets

The strongest case for trade secret protection is information that is characterized by the following.

The information is **not known** outside the company.

The information is known inside the company on **a "need-to-know" basis** only.

The information is **safeguarded** by stringent efforts to keep the information secret.

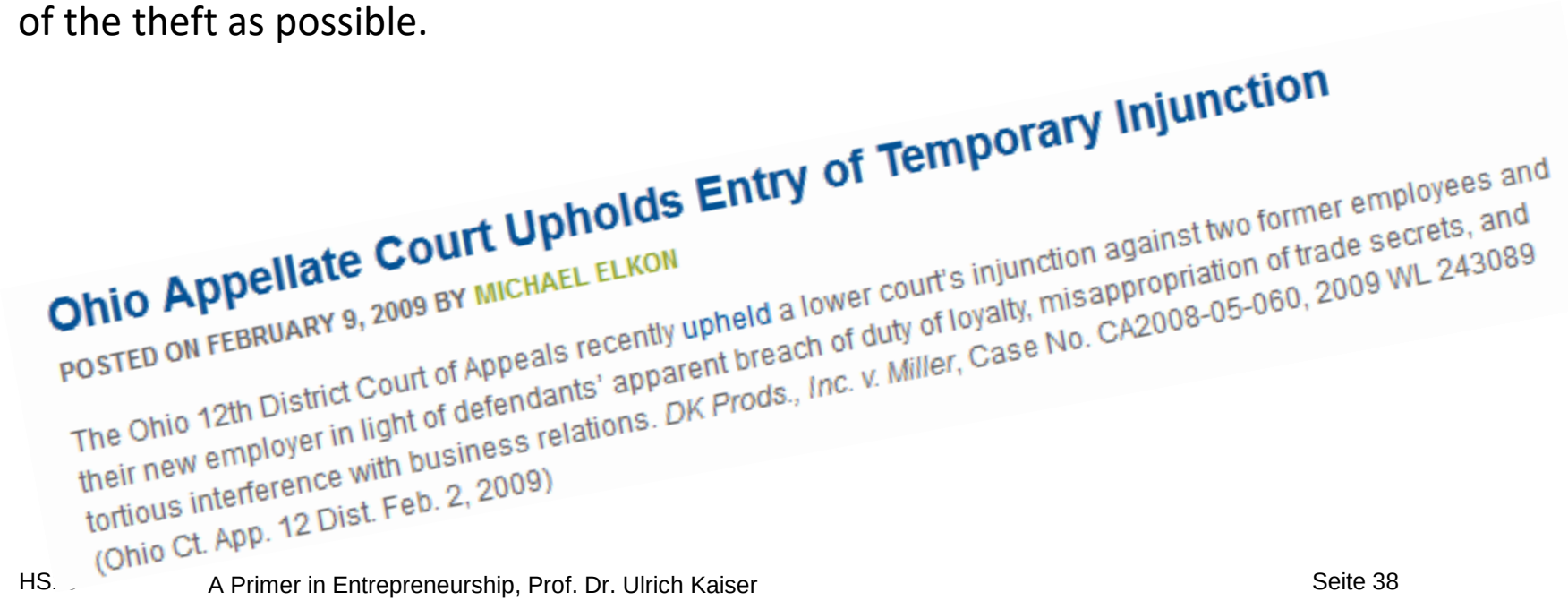
The information is **valuable** and provides the company a competitive edge.

The information was developed **at great cost**, time, and effort.

1.4 Trade Secrets

Trade secret disputes arise most frequently when an employee leaves a firm to join a competitor and is accused of taking confidential information with him or her.

A company damaged by trade secret theft can initiate a civil action for damages in court. The action should be taken as soon after the discovery of the theft as possible.



Ohio Appellate Court Upholds Entry of Temporary Injunction

POSTED ON FEBRUARY 9, 2009 BY MICHAEL ELKON

The Ohio 12th District Court of Appeals recently upheld a lower court's injunction against two former employees and their new employer in light of defendants' apparent breach of duty of loyalty, misappropriation of trade secrets, and tortious interference with business relations. *DK Prods., Inc. v. Miller*, Case No. CA2008-05-060, 2009 WL 243089 (Ohio Ct. App. 12 Dist. Feb. 2, 2009)

www.nytimes.com/2001/06/20/business/spain-court-refuses-to-extradite-man-gm-says-took-its-secrets.html?ref=topics

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Spain Court Refuses to Extradite Man G.M. Says Took Its Secrets

By EMMA DALY
Published: June 20, 2001

MADRID, June 19— The Spanish High Court yesterday refused to extradite José Ignacio López de Arriortúa, the Spanish executive accused of misappropriating trade secrets when he left a senior post at General Motors in 1992 to join Volkswagen. The court ruled that the charges against Mr. López were not serious enough to justify handing a Spanish citizen over to the United States.

Mr. López, 60, nicknamed Super López for his prowess in cutting costs and streamlining production at G.M., was indicted by a Detroit grand jury in 1999 on charges including fraud and transportation of stolen documents.

In a written decision, the Spanish court criticized the United States for seeking Mr. López's extradition so long after the events involved in the indictment, and it noted that G.M. and Volkswagen had long since reached a civil settlement in the matter, in which Volkswagen agreed to pay G.M. $100 million and to buy $1 billion worth of parts from G.M.

VW AGREES TO PAY G.M. $100 MILLION IN ESPIONAGE SUIT

By ROBYN MEREDITH
Published: January 10, 1997

DETROIT, Jan. 9— Bringing to an end a four-year feud between two of the world's largest companies, Volkswagen A.G. agreed today to pay $100 million to the General Motors Corporation to settle accusations that VW stole trade secrets from G.M.

In the settlement, one of the largest in a corporate espionage case, Volkswagen also agreed to buy at least $1 billion worth of auto parts from the American company during the next seven years. Both companies also agreed to drop their civil suits against each other.

While not admitting any wrongdoing, VW said that it "acknowledges the possibility that illegal activities" by some executives who defected from G.M. to VW may have occurred.

2 Intellectual Property Audit

There are two primary reasons for conducting an intellectual property audit.

1. It is prudent for a company to periodically determine whether its intellectual property is being properly protected.

2. The second reason for a company to conduct an intellectual property audit is to remain prepared to justify its value in the event of a merger or acquisition.

Larger companies purchase many small, entrepreneurial firms primarily because the larger company wants the small firm's intellectual property.
The small firm should be ready to justify its valuation when a larger company comes calling.

2 Intellectual Property Audit

The process of conducting an intellectual property audit has two main steps.

FIRST Develop an inventory of a firm's existing intellectual property! The inventory should include the firm's present registrations of patents, trademarks, and copyrights.

SECOND Identify works in progress to ensure that they are being documented and protected in a systematic, orderly manner!

Do you know the answer ?

?! What is intellectual property?

?! What are the four key forms of intellectual property exist?

?! And what is the difference between the four key forms of intellectual property?

…test yourself.

References

Barringer, B. and D., Ireland (2008): Entrepreneurship - Successfully Launching New Ventures, Pearsons Prentice-Hall.