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Why startups need to start by protecting their company

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A recent CIBC report predicts that, in the coming decade, Canadians are expected to become their own bosses at an accelerated pace. Interestingly, the report names British Columbia as the start-up company hub of Canada with 3.7% of the working population being part of a startup.

Startup companies are often built around a big idea. In order to avoid thorny legal issues, startups should consider how to protect their business, and their ideas, from the outset.

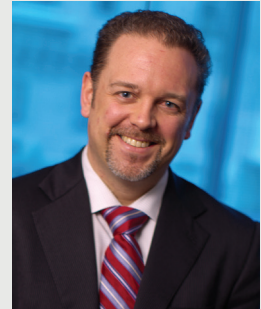
Be careful who you tell

Counterintuitive as it may sound, there is no property in an idea. This is a fundamental, but common, misunderstanding that many start-ups have. Until an idea has taken a form of intellectual property (IP) capable of protection, if voluntarily shared, it may be used by anyone. Sharing an idea too soon can render it worthless or, worse, valuable to opportunists who did not think of it themselves.

Some ideas are only valuable as long as they stay secret, classic examples being the recipes for Coca Cola or KFC. There is no protection for these beyond the companies' efforts to keep them secret. It may be necessary to share confidential business information as a startup; however, make sure that the person with whom you are sharing the information knows it is secret, preferably by signing a confidentiality agreement. Otherwise, that person may be able to use the confidential information – and what was confidential may now be public.

Know who owns what

An idea, and IP, originates with people. In a startup, make sure you know who owns what, and that the company owns the IP that it needs to. Many start-ups forget to transfer the intellectual property from the creator to the company itself, which can leave the company vulnerable. As a worst-case, but not uncommon, scenario, if the transfer is not made and the creator leaves the company, they may take the IP with them. If the IP is crucial – such as a patent at the heart of a product – the loss could be devastating.



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Know how to protect what is yours

Different types of IP need to be protected differently. Copyright arises as soon as a work is "fixed," such as a computer program being written. Trademark rights arise at common law through a mark being distinctive, being used, and becoming known. Patents, however, are a different species altogether, and registering and protecting them is a highly technical process.

Well-written patent applications do not just protect specific inventions themselves, but can create a wide zone of protection against potential imitators. For example, while the ongoing patent cases between Apple and Samsung are seen by some as patent law run amok, it is a testament to the breadth of the patents that they can extend to fighting over an ornamental design of an electronic device.

It's never too early to write your will or plan a divorce

In the initial enthusiasm of a startup, it may be difficult to conceive of a day when a founder may leave, co-founders may not be able to work together, or the business may run its course. Having mechanisms in place to resolve shareholder or management disputes, to provide for buyouts, or for the winding up of the business, is essential. Businesses can be left paralyzed by management or shareholder disagreements, or by having no agreed-upon way to divide up the assets, such as the IP, if the company closes.

Once a dispute has arisen, it is often too late to discuss reasonable mechanisms to resolve it.

Final Word

Be careful who you tell about the big idea that will power your startup, or it may power someone else's. Ensure early on that it is the company that owns the IP it is using, or someone may take it when they leave. Know what species of IP you have, and seek legal advice to make sure that it is properly protected. Lastly, plan for how to resolve disputes at a time when everyone is still on good terms.

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