



DICKINSONLAW

STARTUP SEMINAR

March 5, 2020 | Gravitare Coworking Downtown

*This material is property of Dickinson Law and is not intended to be shared with anyone other than the intended recipient.

PRESENTERS



Ben Milne
Founder & Chairman of Dwolla



Emily McGovern
Attorney



Dr. Martin Gross
CEO Gross-Wen Technologies



Andrea Rastelli
Attorney



Andy Snook
CEO Fastpath



Melissa Schilling
Attorney



Terry Dooley
Executive VP/COO SHAZAM, Inc.



INTRODUCTION

Emily McGovern & Andrea Rastelli
Attorneys





INTERNET ENABLED

Ben Milne
Founder & Chairman of Dwolla



FORMATION & FINANCING

Emily McGovern
Attorney



Corporate Formation/Conversion

	C Corporation	S Corporation	Limited Liability Company (LLC)
Limited Liability	Yes	Yes	Yes
Pass-through Taxation	No ¹	Yes	Yes
Limitations on Capital Structure	No	Yes	No
Favorable EE Incentives	Yes	No ²	No ²

¹ C Corporations are subject to double taxation

² Complications in issue of Incentive Stock Options (ISO's)

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

Founders' Agreements

- Equity Ownership
 - Assignment of initial company ownership to reflect the founders' past, present and future contributions.
 - This is also the stage where founder roles and responsibilities are decided and memorialized and mutual protections established.
 - This will impact decision-making – whether unanimity should be required for significant decisions, or whether a single founder has veto power.
- Vesting – subject to Company Repurchase Right
- IP Assignment
- Transfer Restrictions
 - Rule 144
 - Right of First Refusal

Corporate Hygiene

- Corporate recordkeeping and accounting
 - Funds not commingled.
- Maintain record of contractual relationships
- Corporate governance – institute and follow
 - Bylaws
 - Board resolutions/minutes documenting significant business decisions
- Anyone can have a good idea! Investors are interested as much in the management team potential as in the concept itself.



Case Studies

1. Case of the Disappearing Founder
2. Independent Contractor – Where's my equity?
3. Great Uncle Tim



Debt versus Equity Financing

Debt

- Debt will eventually mature and need to be paid back.
- For pre-revenue, pre-profit startups, debt can be a company killer. After revenues and profits emerge, judicious use of debt can be an attractive alternative.
- Given that startups have little to operating history or revenue, debt may not be available.
- Typically lesser cost, depending on interest rate. Cost of debt will be higher for a leveraged company.

Equity

- Cost of equity is typically higher (risk premium).
- Equity includes transfer of proportional control to Purchaser.



Valuable Iowa Funding Resources

In the state of Iowa, there are also valuable grant/state programs available:

Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR)

Iowa Innovation Acceleration Fund [royalty arrangements]

Angel Investor Tax Credit



The Seed Gradient

Stage	Pre-Seed	Seed	Seed Plus	Series A
Traction	Pre-product or pre-launch up to early customers/adopter who can serve as references.	Early evidence of Product-Market fit	Scaling, have hit an inflection point, but not yet at Series A	Team growing to support scaling
Funding sources	Dedicated pre-seed funds Angels Friend, Family & Founders Accelerators	Seed funds Accelerators Angels	Seed funds	Series A funds

Dilution

Company XYZ – Initial Capitalization

		Shares	Percentage
Common stock			
	Founder 1	24,500	49%
	Founder 2	25,500	51%
Total		50,000	100%

Company XYZ – Post Series A

			Percentage (pre-Series A)	Percentage (post-Series A)
Common Stock				
	Founder 1	24,500	46.67%	40.83%
	Founder 2	25,500	48.57%	42.5%
	Investor 1	2,500	4.76%	4.17%
Seed Stage				
	Investor 1	6,000		10%
	Investor 2	1,500		2.5%
Total		60,000	100%	

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



Common Stock versus Preferred Stock

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

COMMON

- **Voting**
- Elect the board of directors (or balance thereof)

PREFERRED

- Liquidation Preference
- Convertible
- **Voting**
 - Protective Provisions
 - Dedicated Director - elected by Series X shareholders
- Right of Co-Sale/Registration Rights





THANK YOU.

Emily McGovern - Attorney

(515)246-4522

emcgovern@dickinsonlaw.com

www.dickinsonlaw.com





RAISING NON-DILUTIVE FUNDING THROUGH SBIR PROGRAM

Dr. Martin Gross
CEO of Gross-Wen Technologies



SBIR Program Overview

MARTIN GROSS – GROSS-WEN TECHNOLOGIES

SBIR Basics: Program Descriptions

3.2% - SBIR (Small Business Innovation Research): set-aside program for small businesses to participate in federal research and development—with potential for commercialization

0.45% - STTR (Small Business Technology Transfer): set-aside program to facilitate cooperative research and development between small businesses and non-profit research institutions—with potential for commercialization

SBIR Basics: Three Phase Program

Phase I

- Proof-of-concept/feasibility study
- Up to \$250,000 for 6-12 month project

Phase II

- Full Research/R&D effort
- Up to \$1.25 Million for 2 year project
- Agencies can't make awards that exceed guidelines by more than 50%

Phase III

- Commercialization phase
- Requires the use of non-SBIR/STTR funds

SBIR Basics: Program Objectives

Use small businesses to:

- Stimulate technological innovation
- Meet Federal Research/Research & Development needs
- Increase commercialization of innovations developed through Federal SBIR R&D

Foster and encourage participation in innovation and entrepreneurship by socially and economically disadvantaged persons

SBIR Basics: Eligibility

- Small business must have fewer than 500 employees, including affiliates
- Must be organized for profit
- Must be >51% US-owned by individuals and individually operated
- All work must be performed in the US

SBIR Basics: Eligibility

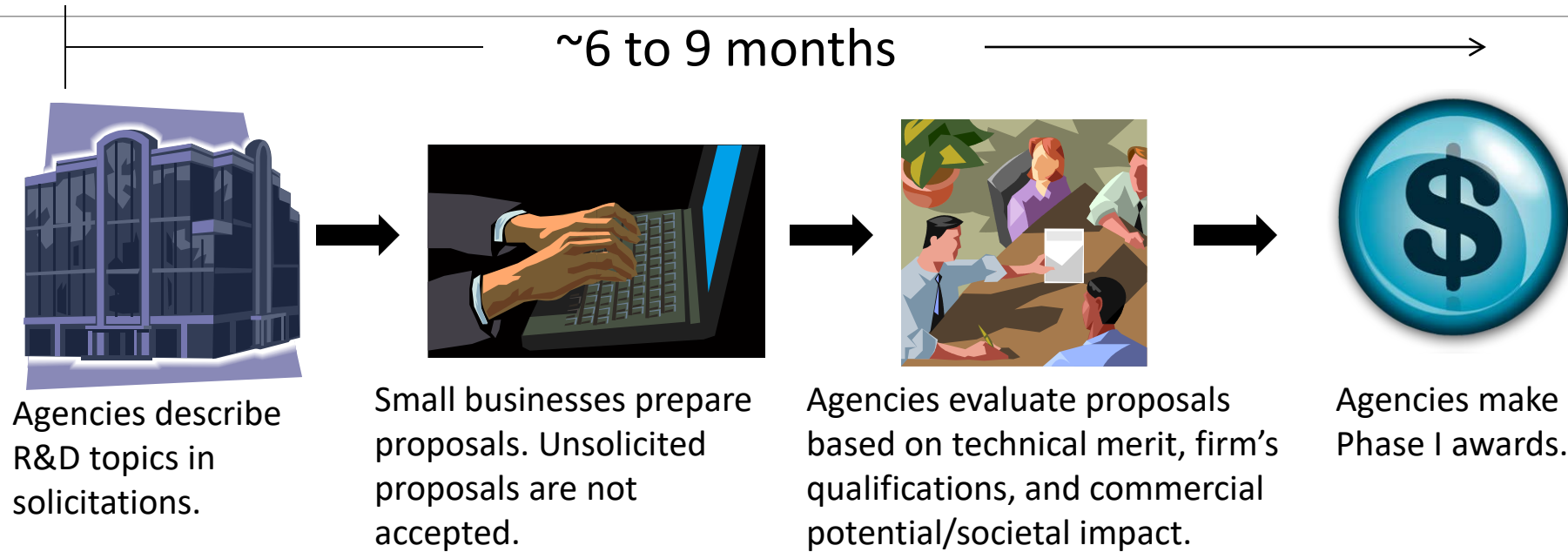
- Principal Investigator must be primarily employed (>50%) by the small business for SBIR
- SBIR company must perform at least 2/3 of effort for Phase I projects and at least 1/2 of Phase II
- Small business must perform at least 40% of the effort for an STTR project (non-profit research partner must perform at least 30%)
- Requirements apply at the time of the award and for the duration of the project

SBIR Basics: Participating Agencies

• DoD	~\$1Billion (SBIR)	\$138 Million (STTR)
• HHS (NIH/CDC/FDA)	\$694.2 Million (SBIR)	\$102.8 Million (STTR)
• Energy	\$180.5 Million (SBIR)	\$25.6 Million (STTR)
• NASA	\$156.9 Million (SBIR)	\$23.2 Million (STTR)
• NSF	\$153.3 Million (SBIR)	\$22.7 Million (STTR)
• Agriculture	\$20.3 Million (SBIR)	
• Homeland Security	\$17.7 Million (SBIR)	
• Commerce (NOAA/NIST)	\$8.4 Million (SBIR)	
• Transportation	\$7.9 Million (SBIR)	
• Education	\$7.5 Million (SBIR)	
• EPA	\$4.2 Million (SBIR)	

\$2.5 Billion in FY15

SBIR Basics: Typical Phase I Process



Agencies are to make funding decisions within 90 days (except NIH and NSF)

Phase I awards range \$100-250k

Success Rate (8%)

SBIR Basics: Typical Phase II Process

- Only Phase I winners are eligible to apply to Phase II
- ~7 years to apply to Phase II after winning Phase I
- Only can apply to one Phase II per Phase I project

Phase II awards range \$500-1,250k

Success Rate (50%)

State of Iowa SBIR/STTR Outreach Program

Concept review

Third party proposal preparation assistance

Matching Financial Assistance

Contact: Anne Price, anne@iicorp.com; 515-421-4389;
<https://iicorp.com/programs/sbir-sttr/>

Resources: Useful Links

<http://www.sbir.gov/> (Official Government portal)

<http://www.sam.gov> (SAM site)

<http://www.grants.gov> (Grants.gov site)

<http://www.dnb.com/> (Dun & Bradstreet)

<http://www.iowaeconomicdevelopment.com/BusinessDev/Entrepreneurial>
(IEDA entrepreneurial/small business assistance)

<http://iicorp.com/> (Iowa Innovation Corporation)

Questions?



INTELLECTUAL PROPERTY BASICS

Andrea Rastelli
Attorney



Introduction

- Provide you with an overview of the main types of IP.
- What are the best practices for protecting your IP rights

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

What is Intellectual Property

- Information, technologies, formulas, brands, recipes, logos, designs, photos, music, books....



*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

Different Types of Intellectual Property

- **There are four main types:**
 - **Patents:** Protects your rights in useful inventions and discoveries. They last 20 years.
 - **Copyrights:** Protects your expressive works like music, art, dance, and literature. Software can also be protected by copyrights.
 - **Trademark:** Protects your products, services, and company identifiers, like brands, logos, and package designs.
 - **Trade Secrets:** Protects your commercially valuable confidential information, like business and financial plans, formulas, recipes, and customer information.

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

Why are IP Rights Important?

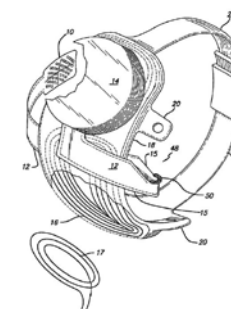
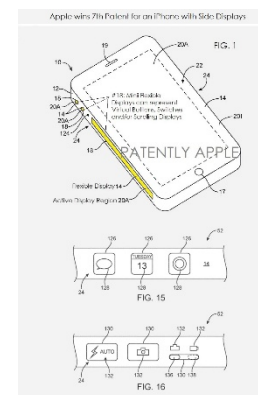
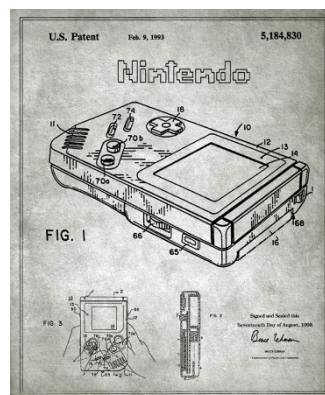
- Brand Awareness
- Establishes protectable legal interest
- Adds value to your company



*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

Patents

- A patent is a right granted by the US government to an inventor for a limited time to exclude others from:
 - Making, using, offering for sale, or selling the invention in the US.
- Utility patents are the most common types of patents. You can also get design patents and business method patents
- Your company can protect your invention by filing an application for patent protection in the US Patent and Trademark office.



Trademarks

- A trademark identifies which person or company is the source or origin of goods and services and distinguishes the trademarked goods and services from those made or sold by others.
- CALVIN KLEIN® apparel and GEORGE FOREMAN® grills
- Nike Swoosh
- Slogans: A Diamond is Forever
- Sounds: NBC Universal Media's Chimes
- Less common and harder to protect Trade Dress:
 - Store designs, colors, product design



*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



Trademark Registration

- In the US, trademark rights arise from use.
- If you register the trademark with the Federal Government you have benefits in addition to your common law rights
 - The exclusive right to use the mark nationwide in connection with the goods or services covered by the registration
 - The right to use the registered trademark symbol ® to discourage infringement.
- Trademarks can also be registered in your state.
- You have to renew every ten years. If you do not, it does not mean you will lose your rights. It does make it harder to show that you are still using the trademark if you have to defend in court.

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

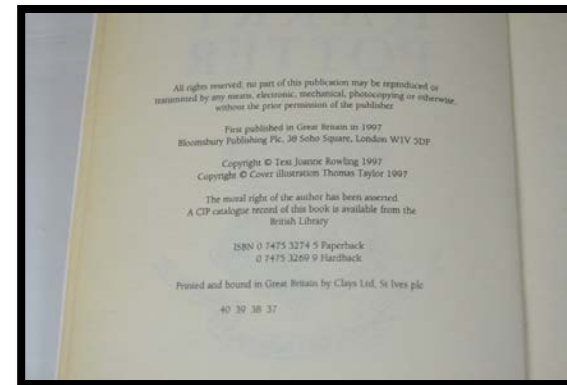


*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

Copyrights

Copyright protects works of authorship that are:

- Fixed in any tangible form or medium of expression.
- Original in the sense that they are:
 - Independently created by the author (or authors).
 - At least minimally creative.
- There can be more than one copyright owner
- Works made for hire: The employer owns the copyright unless agreed otherwise



What is and What is not Copyrightable Subject Matter

Copyrightable

- Drawing from a book
- Literary Works
- Musical Works
- Dramatic Works
- Movies
- Sound recordings
- Architectural works

Not Copyrightable

- Ideas, system, methods, process
- US government works



*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



DICKINSONLAW

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.

Copyright Registration

- Registration is not required to establish Federal Copyright ownership
- However, if you do register with the US copyright office, you will have added protections
 - The ability to bring an action for copyright infringement
 - Recovery of attorneys' fees and damages not otherwise available in an infringement action
 - Registration is very easy and is always recommended.
 - Even photos can be copyrighted
 - Or Presentations



Trade Secrets

- **What are they:**
 - Just about anything
- **Standard:**
 - You have to keep confidential through reasonable efforts
- **Keep inventions a trade secret for as long as you can**
 - When you file a patent your invention becomes public and a clock starts ticking
- Famous examples are Coca Cola's soda formula, KFC's fried chicken recipe, source code for famous software



Trade Secrets

- **How to Protect:**

- Password protection of all files
- Reasonable Cybersecurity protections
- Hard copies in locked files, sometimes the old fashioned way is better
- Non Disclosure Agreements if you have to share any of the information
- Employees should also sign Non Disclosure Agreements



Protection

- Always use markings when appropriate
- Keep an eye on the market for competitors to defend against infringers
 - Cease and Desist Letters
- Developing best practices in protection and training your employees
- Making sure that all founders and employees sign IP Assignment Agreements



Questions?





THANK YOU.

Andrea Rastelli, Attorney

(515)246-4511

arastelli@dickinsonlaw.com

www.dickinsonlaw.com



NAVIGATING EULAs, SSAs, and DPAs

Andy Snook
CEO of Fastpath





FASTPATH

Security, Audit & Compliance

About Me

- President – Founder Fastpath
- Founded 2004
- Headquarters in Des Moines, IA
- 1,200+ Customers
- 30+ Countries

Our Customers





EULA and SSA

- Protect your company – Limitation of liability
- Protect your IP – Rights and Transferability
- Protect your development and support – Warranties and Remedies

EULA and SSA

- Be fair and reasonable in standard terms
 - Click wraps and redlines
- Impact on pricing
- Impact on insurance
- Impact on support response
- Impact the SLA and DPA

Final Thoughts

- Proactive not reactive
- Be fair and reasonable in standard agreements
- Diligent record keeping
- Impact on valuation and exits

EMPLOYMENT LAW

Melissa A. Schilling
Attorney



Top 5 Employment Issues Impacting Startups

1. The more you grow, the more laws that apply
2. Iowa is an At-Will Employment State
3. Dangers of Misclassifying Employees
4. Use Restrictive Covenants
5. Hiring Issues

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



Growth = Legal Risk

- Iowa Civil Rights Act (2 or more ees)
- FLSA (annual sales of \$500,000 or more)
- NLRA (ERs impacting interstate commerce)
- USERRA (virtually all ERs)
- Title VII (15 or more ees)
- ADA (15 or more ees)
- ADEA (20 or more ees)
- FMLA (50 or more ees)



At-Will Employment

Employers can terminate employee relationships at any time, with or without notice, for any lawful reason.



Pay (and Classify) Employees Correctly

Exempt vs. Non-Exempt Employees

Independent Contractors vs. Employees



Restrictive Covenants

Nondisclosures

Nonsolicitation agreements

Noncompete agreements





Hiring Issues

- *Questions You Should Not Ask;*
- *Use of Background Checks;*
- *Drug Testing;*
- *Employment Related Filings;*
- *Form I-9 Compliance;*
- *Insurance Requirements*





THANK YOU.

Melissa Schilling, Attorney

(515)246-4530

mschilling@dickinsonlaw.com

www.dickinsonlaw.com





THINGS TO CONSIDER

Terry Dooley
Executive VP, Chief Operating Officer
SHAZAM





DMTH START UP SEMINAR THINGS TO CONSIDER

TERRY DOOLEY / EVP, CHIEF OPERATING OFFICER

THINGS TO CONSIDER

- Service delivery
 - Cloud
 - SaaS
 - Hybrid
 - Customer premise
- Cost of each
 - Cheaper?
 - More reliable?
 - More scalable?

THINGS TO CONSIDER

- Happy path
 - Is this a market entrance approach?
 - Can this generate excitement?
 - Could this be the nail in the coffin?
- Security
 - How important is it?
 - What are you protecting?
 - Is security a fundamental expectation and to what level?
 - Have you planned for the “what if”?

THINGS TO CONSIDER

- Operational controls
 - Do you build it before they come?
 - Risk of building it after they come?
 - Value of building it before they come?
- Customer service
 - Strategy on serving the customer?
 - Email?
 - Artificial intelligence (AI)
 - Old fashioned customer service

THINGS TO CONSIDER

- Regulatory
 - What and how will your business be impacted?
 - Volume and success bring scrutiny
 - How will you respond to success and the scrutiny?
- Structure
 - Structure to get started will be different to grow
 - Structure is a key consideration to security, operational controls, and customer service
 - Is it a go-to-market and sell or go-to-market and build?



THANK YOU.

SHAZAM[®]

HAPPY HOUR

Please join us!

*This material is property of Dickinson Law and is not intended, nor should it be construed or relied upon, as legal advice.



DICKINSONLAW

*This material is property of Dickinson Law and is not intended,