

Know the Legal Issues Vital to a Successful Startup

Ronald L. Chichester, Esq.

Ronald Chichester, P.C.

Presented to the Plano Software Entrepreneurs

December 4, 2019

Disclaimer

I am a lawyer...

I am a lawyer...

...but I'm not *your* lawyer...

I am a lawyer...

...but I'm not *your* lawyer...

.... so this is *not* legal advice

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...but I'm not *your* lawyer...
.... so this is *not* legal advice

(Because if it was, it would be followed with a bill.)

Overview

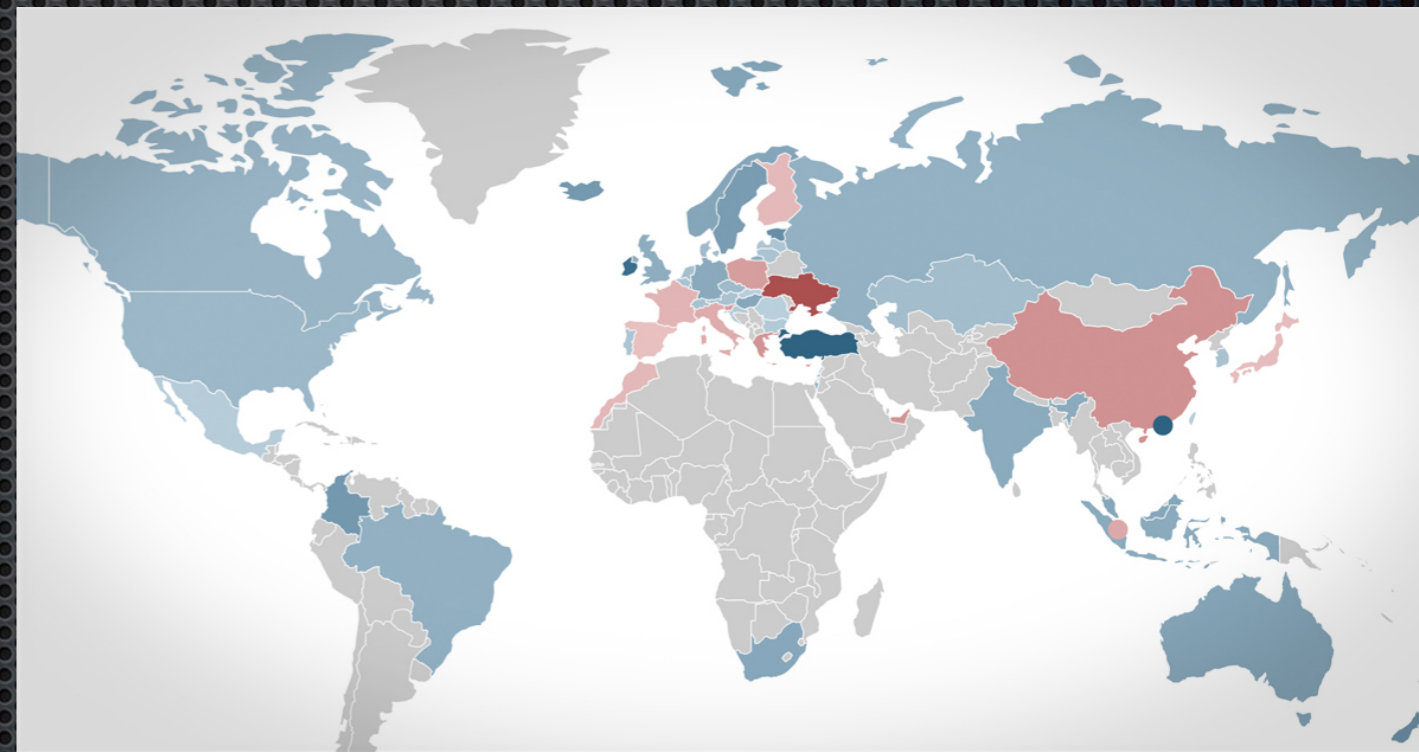


Overview

- Jurisdiction & Incorporation
- Trademarks
- Copyrights
- Patents
- Trade Secrets
- Software Licensing
- E-Commerce
- Computer Security & Privacy
- Putting it All Together

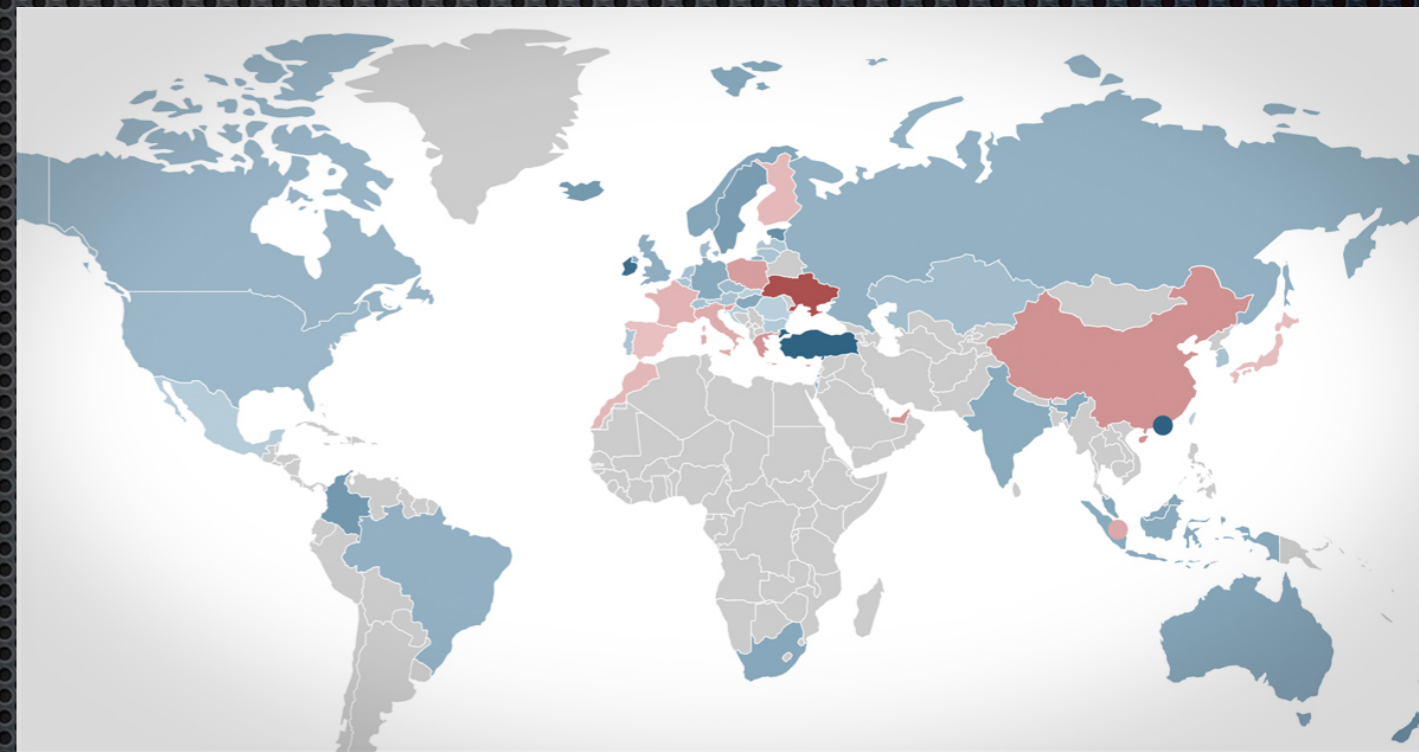


Jurisdiction



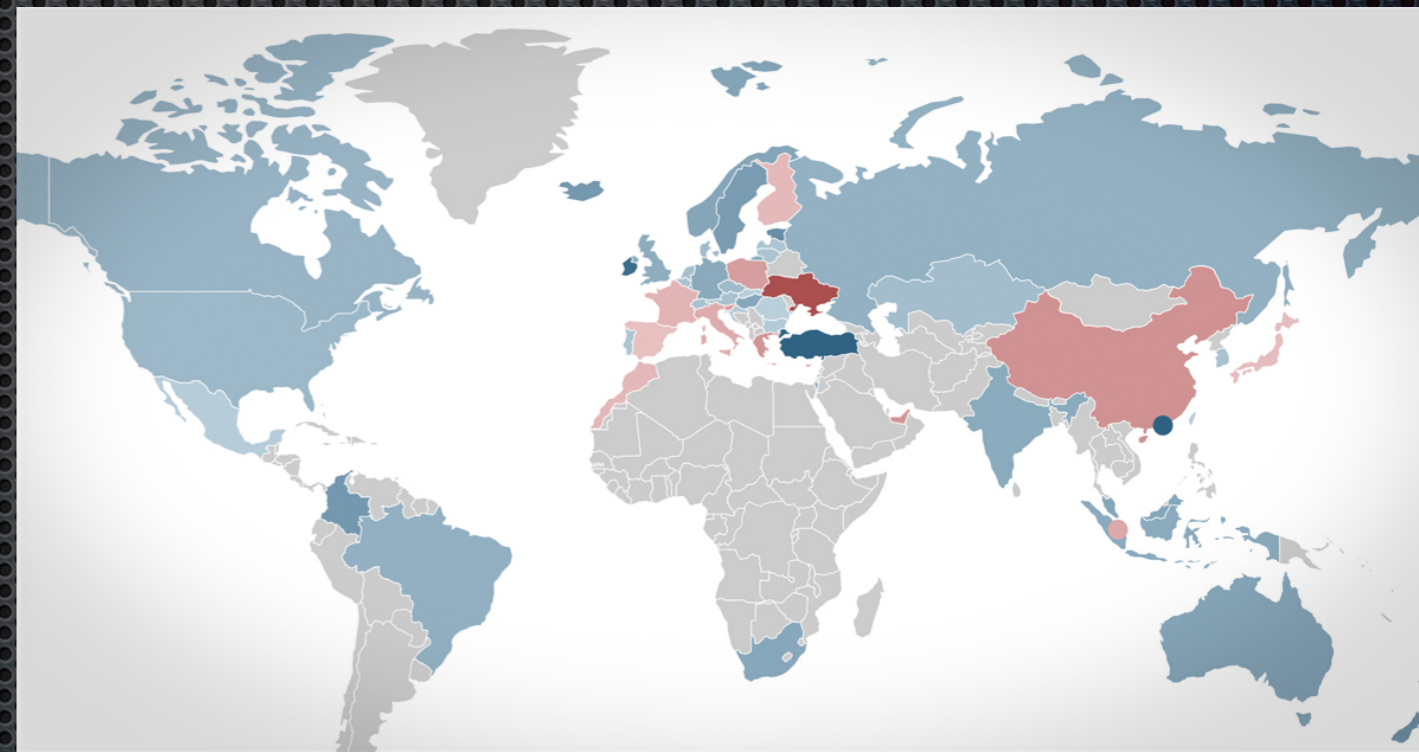
Jurisdiction

- You can be sued where:



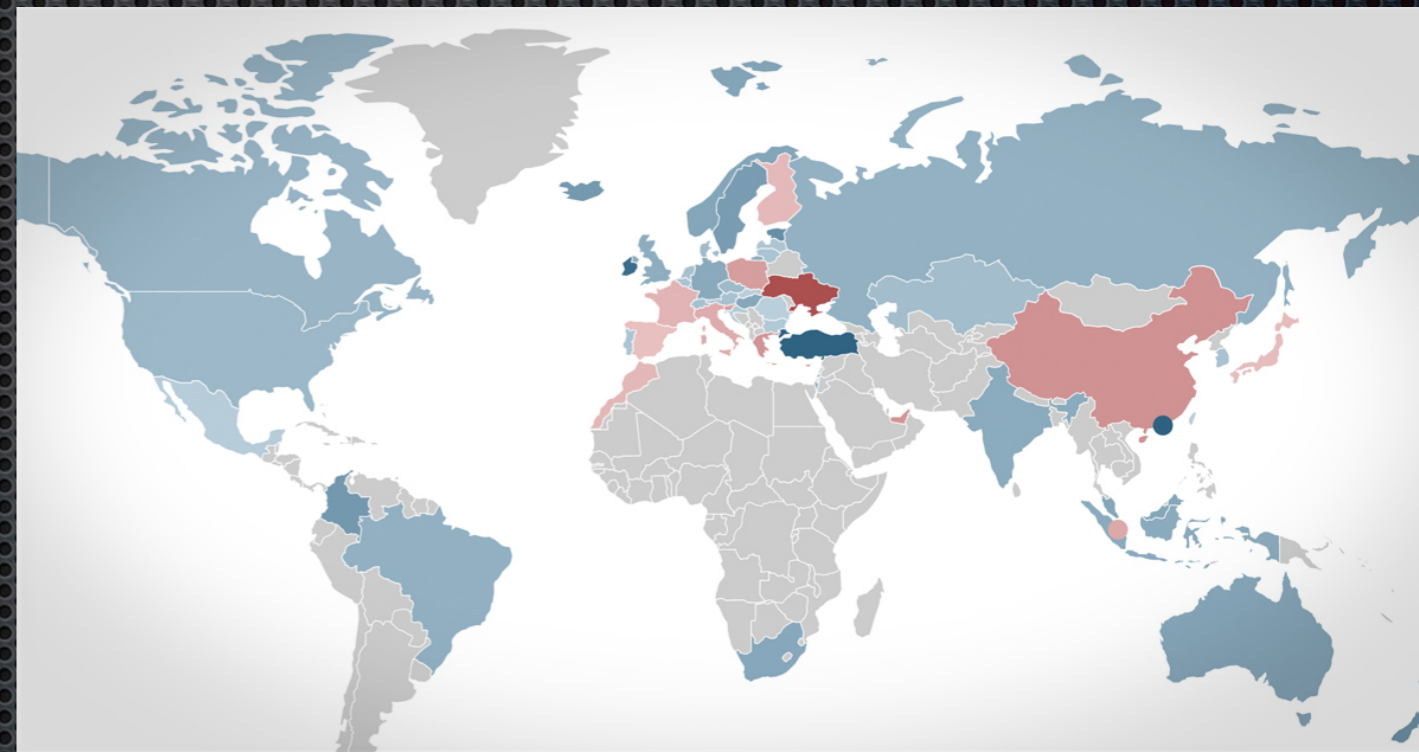
Jurisdiction

- You can be sued where:
 - You're incorporated



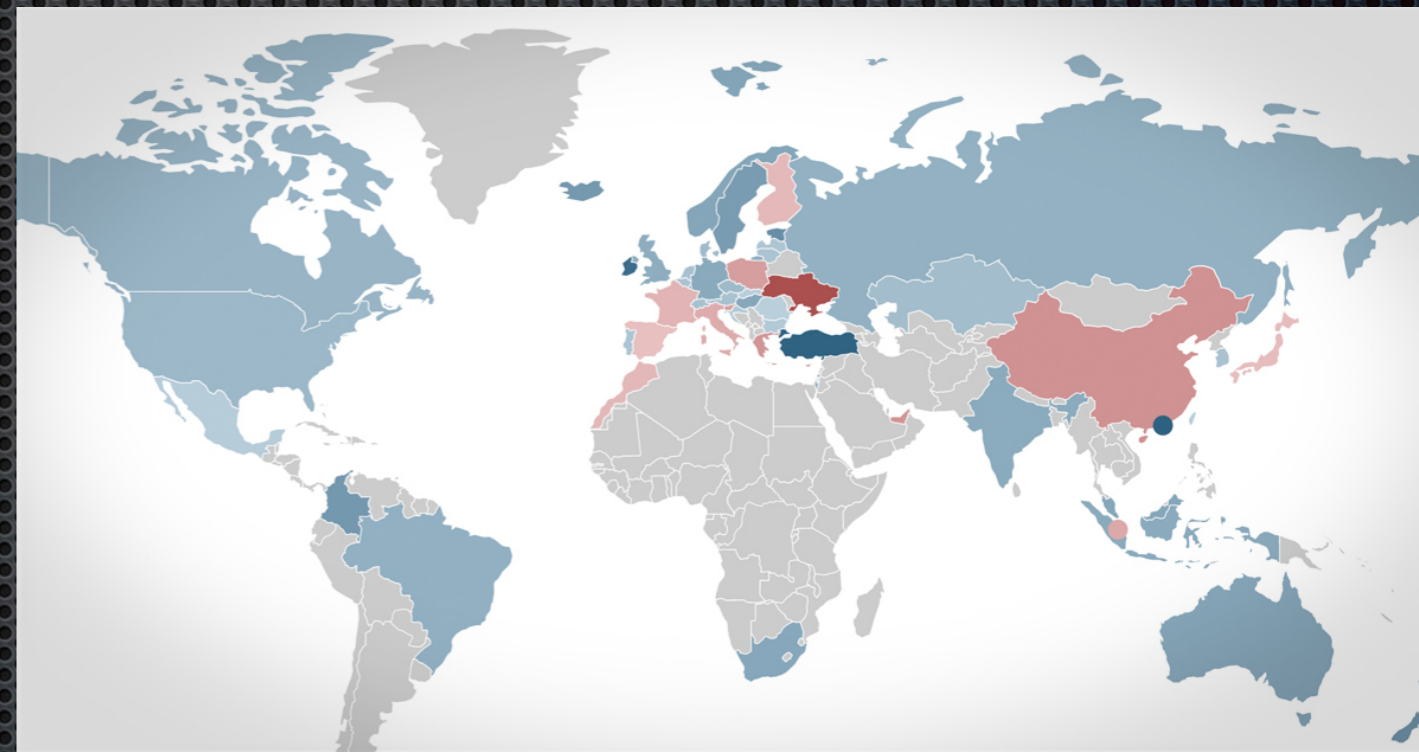
Jurisdiction

- You can be sued where:
 - You're incorporated
 - Your servers are located



Jurisdiction

- You can be sued where:
 - You're incorporated
 - Your servers are located
- Your customers transact the business



Corporations



Corporations

- Tax issues



Corporations

- Tax issues
- Liability issues



Corporations

- Tax issues
- Liability issues
- Where to incorporate?



Corporations

- Tax issues
- Liability issues
- Where to incorporate?
- What to incorporate as?



Corporations

- Tax issues
- Liability issues
- Where to incorporate?
- What to incorporate as?
- Careful: Default may be a partnership



This part is about
intellectual property

So let's have a few words about
intellectual property rights...

There are five types...

There are five types...

- ✦ Trademarks
- ✦ Copyrights
- ✦ Patents
- ✦ Trade Secrets
- ✦ Right of Publicity

There are five types...

- ✦ **Trademarks**
- ✦ **Copyrights**
- ✦ **Patents**
- ✦ **Trade Secrets**
- ✦ Right of Publicity

IP rights are *not* positive rights

IP rights are ***exclusionary***

You can have IP rights to data
and code on your server...

...Your *customers* may have IP rights to data on your server

(In some cases...)

You *can* be held responsible
for *their* data on *your* server

Trademarks



Trademarks

- Trademarks identify the source of the software



Trademarks

- Trademarks identify the source of the software
- Can be a word, logo, design, or expression



Trademarks

- Trademarks identify the source of the software
- Can be a word, logo, design, or expression
- Must be distinguishable from other vendors



Trademarks



Trademarks

- Trademarks are *never* a *noun* or a *verb*



Trademarks

- Trademarks are *never* a *noun* or a *verb*
- Must be used as an *adjective* or *adverb*



Trademarks

- Trademarks are *never* a *noun* or a *verb*
- Must be used as an *adjective* or *adverb*
- ... lest they go generic



Trademarks



Trademarks

- Descriptive marks are a problem



Trademarks

- Descriptive marks are a problem
- Arbitrary marks are better but require more marketing



Trademarks

- Descriptive marks are a problem
- Arbitrary marks are better but require more marketing
- You might want the “trademark two-step”



Copyrights



Copyrights

- Copyrights protect the **expression** of an idea that is fixed in a tangible media by an author



Copyrights

- Copyrights protect the **expression** of an idea that is fixed in a tangible media by an author
- Most common IP right for software



Copyrights

- Copyrights protect the **expression** of an idea that is fixed in a tangible media by an author
- Most common IP right for software
- Registration is inexpensive, but ideas are not protected



Copyrights



Copyrights

- Four types of copyrights:



Copyrights

- Four types of copyrights:
 - Original work



Copyrights

- Four types of copyrights:
 - Original work
 - Derivative work



Copyrights

- Four types of copyrights:
 - Original work
 - Derivative work
 - Collective work



Copyrights

- Four types of copyrights:
 - Original work
 - Derivative work
 - Collective work
- Compilation



Copyrights



Copyrights

- Standard for infringement is “substantial similarity”



Copyrights

- Standard for infringement is “substantial similarity”
- Often requires access to source code



Copyrights

- Standard for infringement is “substantial similarity”
- Often requires access to source code
- Hard to know opponent has your code until *after* a lawsuit is filed



Copyrights



Copyrights

- Use of copyright requires permission from owner



Copyrights

- Use of copyright requires permission from owner
- Requirements for permission can adversely impact your exit strategy



Copyrights

- Use of copyright requires permission from owner
- Requirements for permission can adversely impact your exit strategy
- Common problem for startups



Patents



US007139740B2

12) **United States Patent**
Ayala

(10) **Patent No.:** **US 7,139,740 B2**
(45) **Date of Patent:** **Nov. 21, 2006**

54) **SYSTEM AND METHOD FOR DEVELOPING ARTIFICIAL INTELLIGENCE**

5,428,710 A 6/1995 Toomarian et al.
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51) **Int. Cl.**
G06F 15/18 (2006.01)

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52) **U.S. Cl.** **706/26; 706/13**

58) **Field of Classification Search** **706/26, 706/13**

See application file for complete search history.


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Patents

- ✦ A patent is a grant by a government conferring a temporary monopoly on the making, using, selling (or offering to sell) an invention described in a valid claim



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✦ A patent is a grant by a government conferring a temporary monopoly on the making, using, selling (or offering to sell) an invention described in a valid claim

✦ The “patent bargain”


 US007139740B2

12) **United States Patent** (10) **Patent No.:** **US 7,139,740 B2**
Ayala (45) **Date of Patent:** **Nov. 21, 2006**

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US007139740B2

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Patents

- Useful disclosure of the technology is **mandatory**



US007139740B2

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Patents

- Useful disclosure of the technology is **mandatory**
- After the Supreme Court's decision in *Alice*, patents for software are harder to get, but still possible



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Patents

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- After the Supreme Court's decision in *Alice*, patents for software are harder to get, but still possible
- Extent of claims known only **after** disclosure of the technology to the public



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Primary Examiner—George Davis
(74) Attorney, Agent, or Firm—Gardere Wynne Sewell LLP

(57) **ABSTRACT**

In a method and system for developing a neural system adapted to perform a specified task, a population of neural systems is selected, each neural system comprising an array of interconnected neurons, and each neural system is encoded into a representative genome. For a given genome, a processing gene encodes a neural output function for each neuron, and the connections from each neuron are encoded by one or more connection genes, each connection gene including a weight function. The given neural system is operated to perform the specified task during a trial period, and performance is continually monitored during the trial period. Reinforcement signals determined from the continually monitored performance are applied as inputs to the functions respectively associated with each of the processing genes and connection genes of the given neural system. At the conclusion of the trial period, the fitness of the given neural system for performing the specified task is determined, usefully as a function of the reinforcement signals applied during the trial period. A set of genomes, respectively representing the neural systems of the population that have been determined to have the highest fitness values, are selected for use in forming a new generation of neural systems.

Trade Secrets



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- Cheap to keep but *some* effort is required



Trade Secrets

- A trade secret is just about any kind of information that affords a competitive advantage
- Cheap to keep but *some* effort is required
- Need employee agreements



Software Licensing



Software Licensing

- ✦ Closed Source



Software Licensing

- Closed Source
- Open Source



Software Licensing

- Closed Source
- Open Source
- Mixed Open/Closed



Software Licensing

- Closed Source
- Open Source
- Mixed Open/Closed
- Architect the Business Model



Software Licensing

- Closed Source
- Open Source
- Mixed Open/Closed
- Architect the Business Model
- Architect the Functional Model



E-Commerce



E-Commerce

- Website design essential



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- Website design essential
 - Flashy UI (\$\$\$\$)



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 - Integrated Database



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 - ✦ PCI Compliance
- ✦ Customer Support



Computer Security & Privacy



Computer Security & Privacy

- Website + ToS + PP



Computer Security & Privacy

- Website + ToS + PP
- Development Servers



Computer Security & Privacy

- Website + ToS + PP
- Development Servers
- Employees + 3rd Parties



Computer Security & Privacy

- Website + ToS + PP
- Development Servers
- Employees + 3rd Parties
- Breach/Notification



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- Development Servers
- Employees + 3rd Parties
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- Ransomware



Computer Security & Privacy

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- Development Servers
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- Breach/Notification
- Ransomware
- Cyber-Insurance



Exit Strategy



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- Accumulate IP & Traction



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- Many types of acquisitions



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- Due Diligence



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- SEC Filings Possible



Questions?



Ronald Chichester, P.C.

A Texas-Based Law Firm Specializing in Technology-Related Legal Issues

Artificial Intelligence & Legal Engineering

Ownership of and protection for artificial intelligence. Regulation of artificial intelligence in the workplace and commerce. Litigation involving systems that incorporate machine learning and artificial agents. Development of legal models that incorporate artificial intelligence and natural language processing into software for integration into corporate IT systems.



Cybersecurity/Privacy

Matters involving computer/network security such as security breach and notification requirements, incident response, privacy issues, privacy policies, information technology system audits, corporate espionage, and computer crimes.



Blockchains / Smart Contracts

Blockchains for business and commerce, smart contracts, distributed autonomous organizations ("DAO's") (aka digital corporations), and business governance. Smart legal contracts, automated business processes that incorporate blockchains.



Intellectual Property

Patents, trademarks, copyrights, trade secrets, technology licensing, cloud contracts, software audits, SaaS agreements, terms of use agreements and terms of service agreements.



Ronald Chichester

A lawyer and legal engineer based in Frisco, Texas.



Blockchains

Blockchains for business and commerce, smart contracts, distributed autonomous organizations (digital corporations), business governance. Smart legal contracts, automated business processes, as well as regulatory and antitrust issues related thereto.



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Development and implementation of systems involving artificial intelligence and machine learning, particularly for workflow automation. Ownership of artificial intelligence and the regulation of artificial intelligence. Litigation involving devices that incorporate machine learning and artificial agents.



Cybersecurity & Privacy

Matters involving computer/network security such as cybersecurity measures, privacy policies, privacy regulations, security breach and notification requirements, incident response, privacy issues, privacy policies, information technology system audits, corporate espionage, identity theft, and computer crimes.



Intellectual Property

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Artificial Intelligence and Robotics in Digital Forensics

Ronald L. Chichester, Esq.

Ronald Chichester, P.C.

713-302-1679

ron@texascomputerlaw.com