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…

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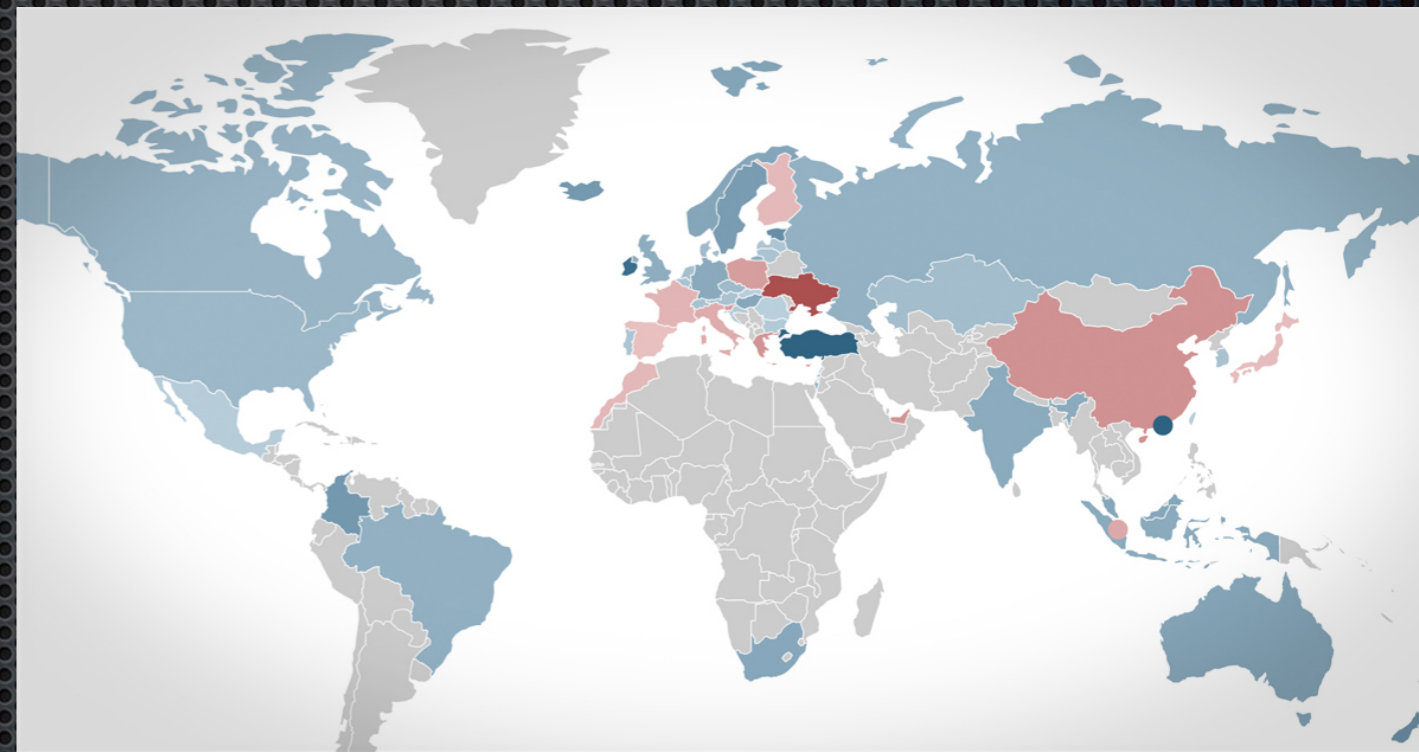(Because if it was, it would be followed with a bill.)

Overview

Overview

- Jurisdiction & Incorporation

- Trademarks

- Copyrights

- Patents

- Trade Secrets

- Software Licensing

- E-Commerce

- Computer Security & Privacy
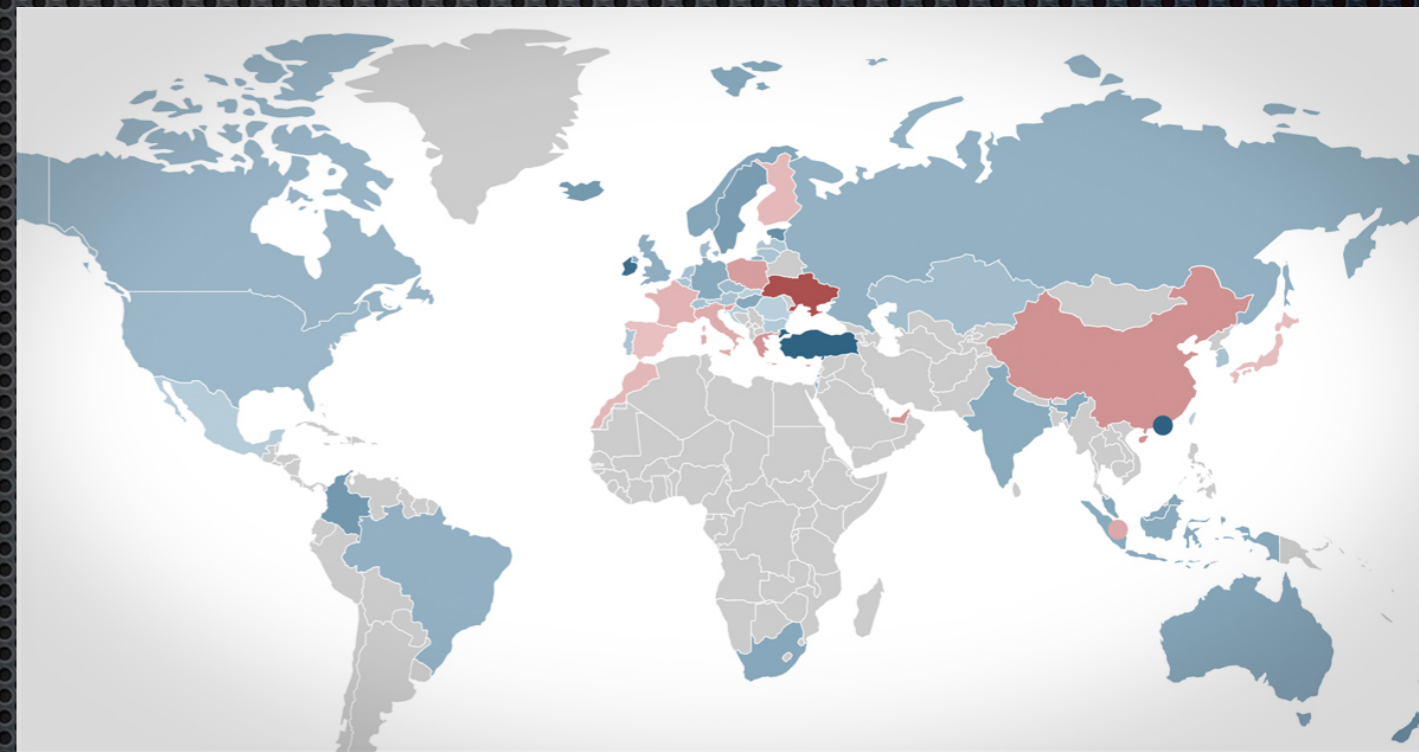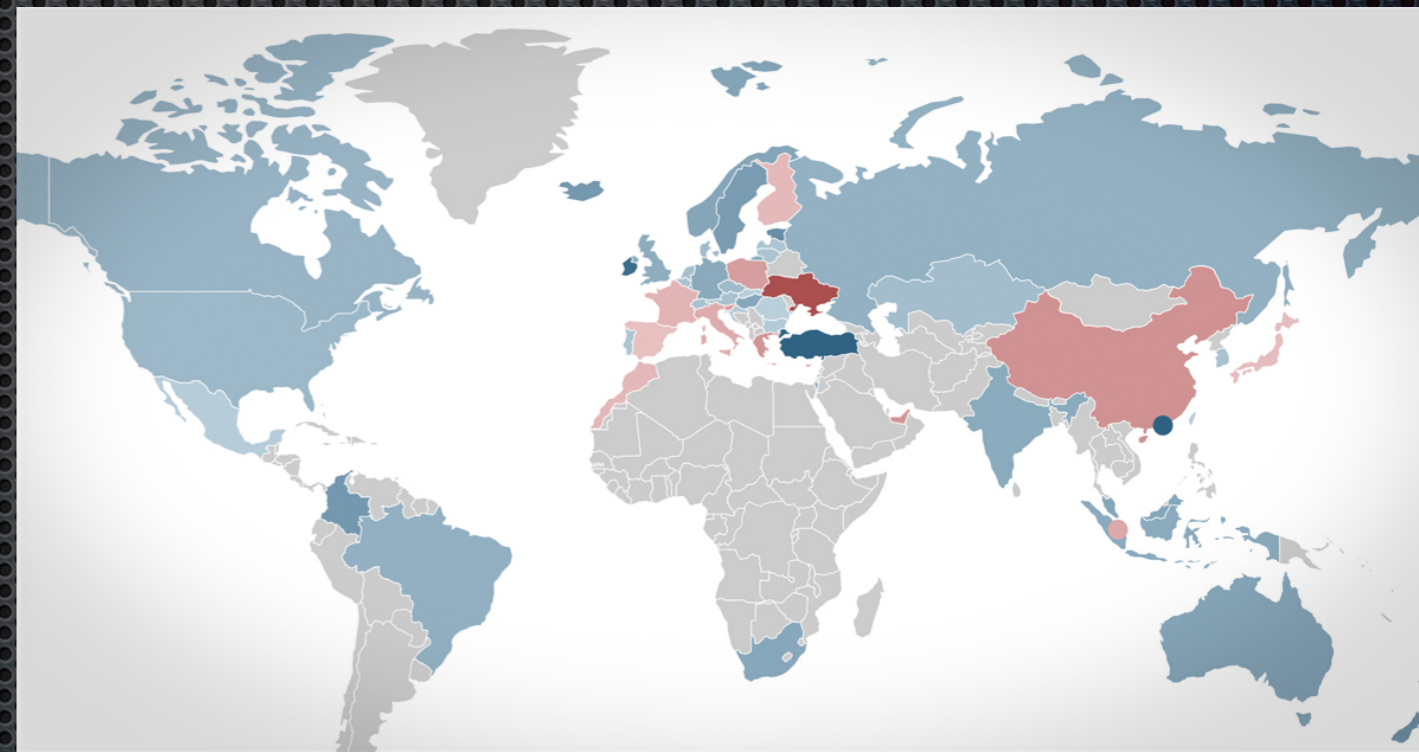
- Putting it All Together

Jurisdiction

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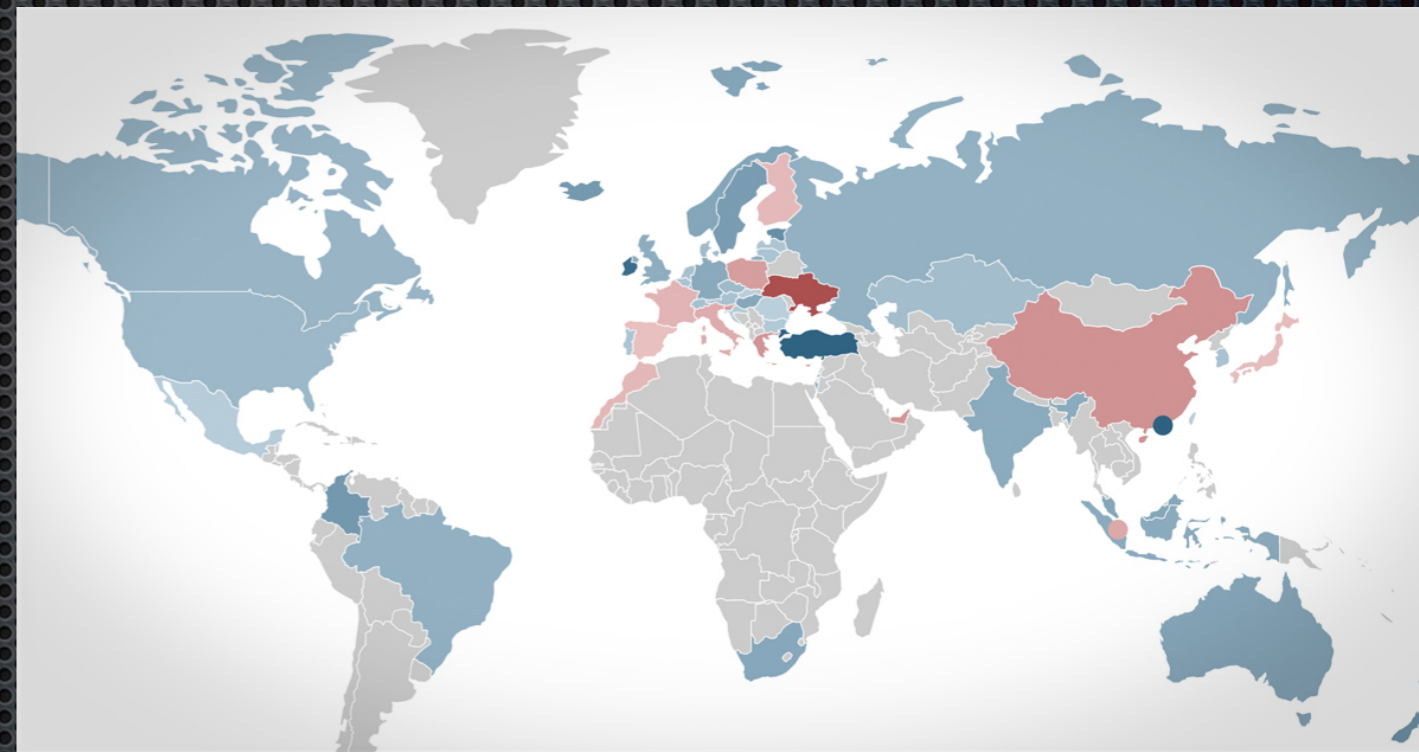
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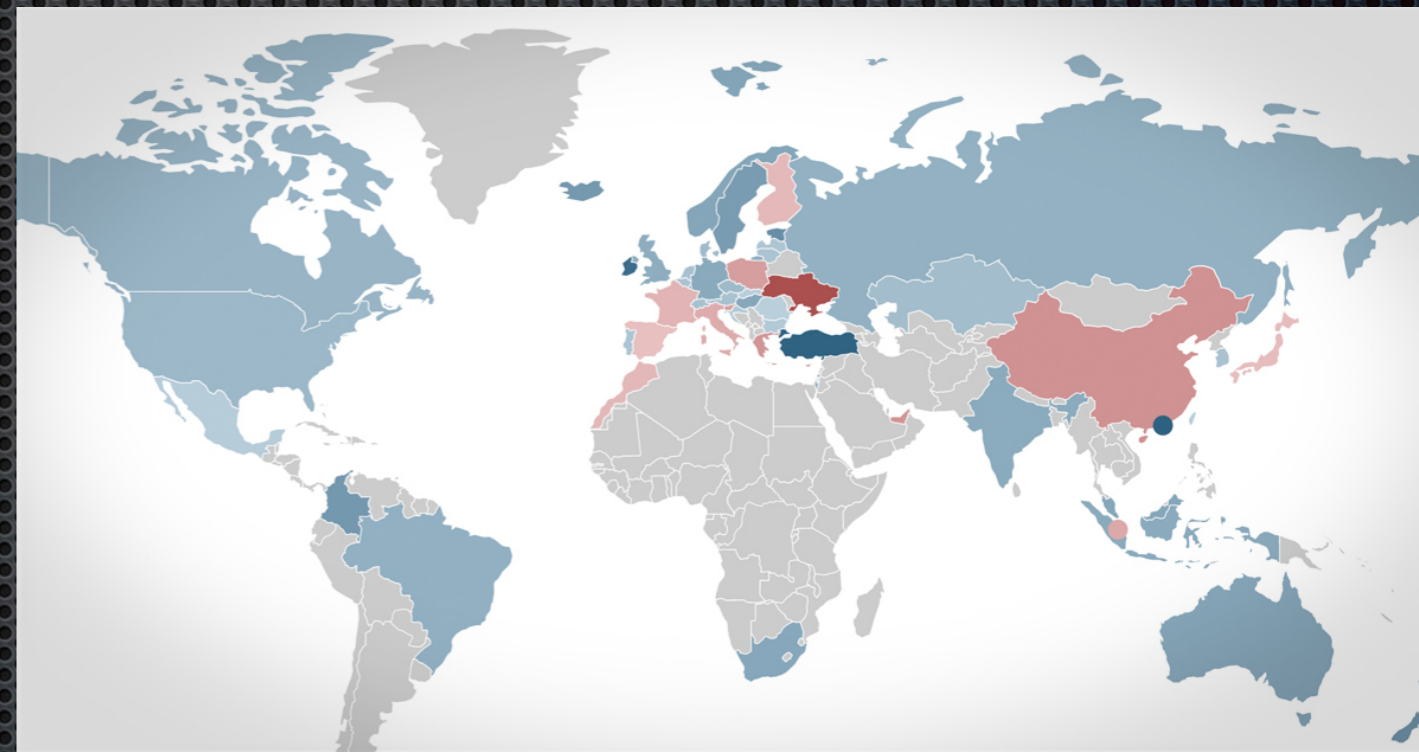
  - You're incorporated

Jurisdiction

- You can be sued where:

  - You're incorporated

  - Your servers are located

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  - Your servers are located

- **Your customers transact the business**

Corporations

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- Tax issues

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- Liability issues

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- Where to incorporate?

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- Where to incorporate?

- What to incorporate as?

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- 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

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  - Can be a word, logo, design, or expression

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- Must be distinguishable from other vendors

Trademarks

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  - Must be used as an *adjective* or *adverb*

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  - Must be used as an *adjective* or *adverb*

- … lest they go generic

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- Arbitrary marks are better but require more marketing

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- You might want the "trademark two-step"

Copyrights

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- Most common IP right for software

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- 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

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* Four types of copyrights:

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- Four types of copyrights:

  - Original work

Copyrights

- Four types of copyrights:

- Original work

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  - Collective work

  - Compilation

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  - Often requires access to source code

- Hard to know opponent has your code until *after* a lawsuit is filed

Copyrights

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- Requirements for permission can adversely impact your exit strategy

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- Use of copyright requires permission from owner

- Requirements for permission can adversely impact your exit strategy

  - Common problem for startups

Patents

United States Patent — US 7,139,740 B2 — Ayala — Nov. 21, 2006 — SYSTEM AND METHOD FOR DEVELOPING ARTIFICIAL INTELLIGENCE

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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- The "patent bargain"

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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

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.

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- Cheap to keep but *some* effort is required

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- Need employee agreements

Software Licensing

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- Closed Source

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- Open Source

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- Closed Source

- Open Source

- Mixed Open/Closed

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- Architect the Business Model

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- Closed Source

- Open Source

- Mixed Open/Closed

- Architect the Business Model

- **Architect the Functional Model**

E-Commerce

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- Website design essential

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  - Flashy UI ($$$$)

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- Integrated Database

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- Customer Support

Computer Security & Privacy

Computer Security & Privacy

- Website + ToS + PP

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- Website + ToS + PP

- Development Servers

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- Website + ToS + PP

- Development Servers

- Employees + 3rd Parties

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- Development Servers

- Employees + 3rd Parties

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- Cyber-Insurance

Exit Strategy

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- Beware Sarbanes-Oxley

- SEC Filings Possible

Questions?

RONALD CHICHESTER, P.C.

Practice Areas   Cybersecurity and Privacy   E-Discovery   Intellectual Property   Attorney Profile   Publications

Ronald Chichester, P.C.

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

Artificial Intelligence & Legal Engineering

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

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.

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.

Intellectual Property

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

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Home

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.

Artificial Intelligence

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

Patents, Trademarks, Copyrights, Trade Secrets and related Antitrust matters.

Ronald Chichester

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Presentations

These are downloadable copies of presentation slides and published papers on a variety of legal/technology subjects that Ron has published.

Know the Legal Issues Vital to a Successful Startup

This was a presentation to the Plano Software Entrepreneurs on December 4, 2019 in Plano, Texas and covered the key legal areas that software startups miss.

Read More…

Corporate | AI Personhood

This article was submitted for publication in the December, 2019 issue of "Circuits," the newsletter of the Computer & Technology Section of the Texas Bar.

Read More…

Understanding Bias, Privacy and Legality Associated with AI

This presentation was made to a group of Data Scientists and AI Engineers in Plano, Texas on October 7, 2019

Read More…

Facebook's Libra: What is all the Fuss About?

This article first appeared in the Summer issue of Circuits, the periodical of the Computer & Technology Section of the Texas Bar

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Artificial Intelligence and Robotics in Digital Forensics

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