

Boston Bar Association
Computer & Internet Law Committee:

Legal Triage for Internet Start-
Ups

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Jorge L. Contreras

Hale and Dorr LLP

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Overview

- Corporate
 - Formation
 - Capitalization
 - Employees
- Intellectual Property
 - Technology Ownership
 - Trademark/Domain Name
- E-Commerce
 - Web Site essentials

Corporate Matters

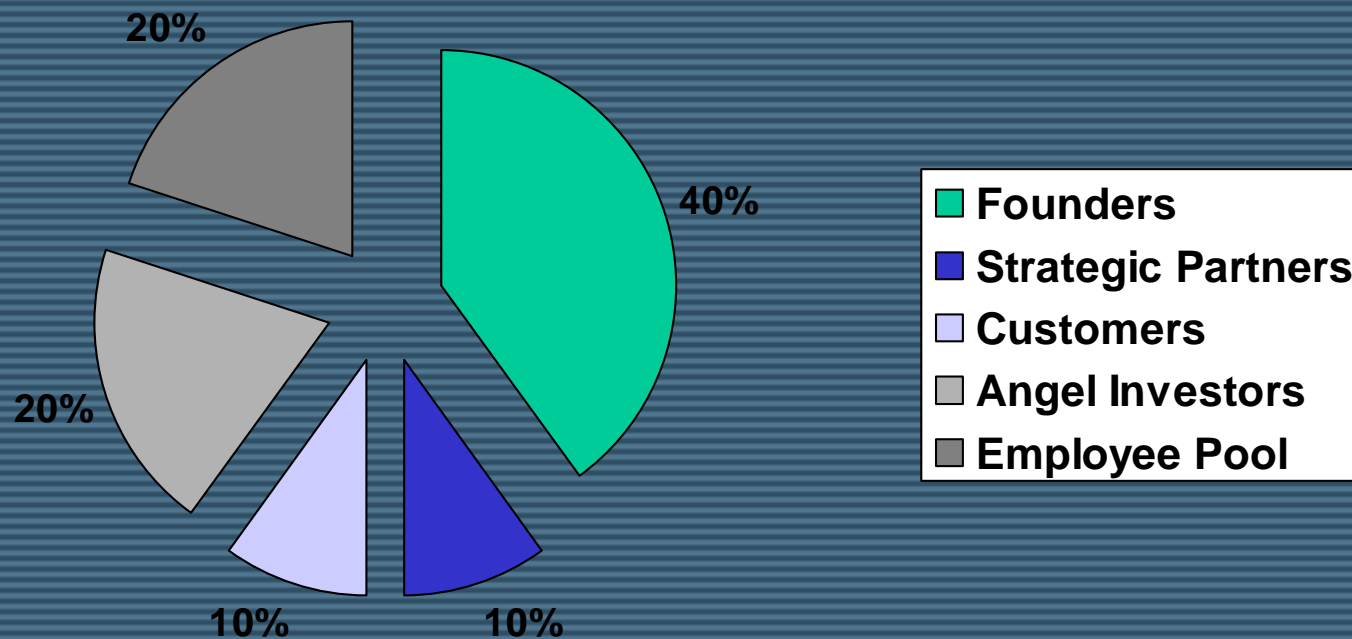
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Corporate Formation

- Choice of Entity
 - C-corporation
 - S-corporation
 - limited liability company (LLC)
- Jurisdiction
 - Delaware
 - Site of Business

Initial Capitalization

Sample



Founder Capitalization

- Cash, Debt and Sweat Equity
 - Common v. Preferred
- Repurchase Rights
 - Don't forget the 83(b) election!
- Transfer Restrictions/Refusal Rights

Employee Equity Plans

- Types of Awards
 - Stock Options
 - Restricted Stock
- How much to Allocate?
- Acceleration

Board of Directors

- Fiduciary Duties (loyalty and care)
- Size/Membership
 - Founder(s)/CEO (but not other senior officers)
 - Industry leaders and other “independents”
 - Not your accountants or lawyers
 - Save space for the VCs!
- Committees
- Advisory Board

Officers

- Officers are appointed (and dismissed) by the Board
- Statutory officers (pres., treas., sec'y)
- “At will” employment v. contract
- Titles (“Chief Yahoo”?)

Employees

- Establish rational option tiers
- Everybody must sign:
 - Non-disclosure and Inventions Agreements
 - Company policies (securities, harassment, etc.)
- Non-competition?
 - Duration
 - Scope

Fundraising

- Stock giveaways?
- Approach only “accredited” investors?
- Do NOT put general solicitations on the Web site.

Intellectual Property

Ownership of Technology

- Founder technology transfers
- Assignments from Contractors (especially Web developers)
- Employee disclosures

Trademarks

- Clear trademarks FIRST
 - US registration and application search
 - “Full” search (US and/or foreign)
- Register in US and other significant jurisdictions
- Register
 - Company name
 - Principal products and services

Domain Names

- If available, register:
 - .com
 - .net, .org
 - country code domains, if important
- If taken:
 - buy the relevant names
 - change name

Patents

- “Business Methods” patents are now available in the US (but not in Europe)
 - *State Street v. Signature Financial* (mutual fund hub and spoke management method)
 - *Amazon.com v. Barnesandnoble.com* (one-click ordering)
 - *Priceline.com v. MS Expedia* (name your price service)
- List your ideas, talk with a patent lawyer!

Web Site IP Pitfalls

- Content lifting
- Linking
- Framing
- Meta-searching
- Metatags

E-commerce

Privacy Policy

- What uses of data are desired by company and its “partners”?
- Develop a privacy policy (consider EU Data Privacy Directive).
- Post it on the Web site and comply with it.
- Privacy Policy Certification Groups
 - TRUSTe
 - BBBOnline

Terms of Use

- Copyright restrictions (internal, non-commercial use) and notice
- Disclaimers of warranties (may be difficult to enforce in consumer context)
- Required payments, etc.: maybe unenforceable

Clickwrap Agreements

- Show Terms
- Click to Accept *Before* Using
- Remind User that Terms Apply Each Time They Use
- Reject Competing Terms

Other Notices

- Copyright
- Trademark
- Required 3rd party notices
- On every page of Web site

International Issues

- US Export Compliance
- EU Directives
 - Data Privacy
 - Distance Selling
 - E-commerce
- Content Regulation

Further Information

- www.haledorr.com/internet_law