

Intellectual Property Protection for Startups: A Law and Economics Perspective

Abstract

This thesis examines the appropriability methods used by startups to appropriate returns from their innovation. The theoretical part of this work delves into the classical law and economics theory of intellectual property, scrutinizing the intricate balance between incentivizing innovation and enabling broader access to knowledge. It also examines critiques of the intellectual property system and explores alternative incentive mechanisms. Additionally, an analysis of the fundamental attributes of selected intellectual property rights is provided. This evaluation considers the legal frameworks of both the United States and the European Union, along with the corresponding theories in the field of law and economics. The subsequent literature review presents a comprehensive analysis of the existing body of knowledge based on empirical studies of appropriability methods used by startups.

In the empirical part of this thesis, the results obtained from research conducted on the importance of appropriability strategies utilized by seventeen Czech software startups are presented. It becomes evident that these startups place significant emphasis on informal appropriability methods, notably leveraging complementary assets and first mover advantage to capture competitive advantage from their technological innovations. A noteworthy revelation of this research is the role attributed to copyright, rated as the most important formal appropriability method. This is linked to the widespread adoption of intellectual property assignment clauses in contracts with employees and suppliers. Additionally, investors also routinely require startups to include such assignment clauses in contracts. The interviews conducted reveal that copyright primarily serves as a mechanism for internal protection, especially to safeguard the startup's ability to exercise exclusive rights over the works created by employees and contractors.

Conversely, other formal appropriability methods, such as patents, are considered significantly less important. Patents received the lowest overall rating in terms of importance, not even regarded as "slightly important". It is important to highlight that despite this, a few Czech software startups do pursue patents in the United States. Nevertheless, the respondents suggest that the possession of patents does not significantly influence investors' decisions to invest. Finally, this thesis offers insights into various other topics, including patent trolling, the

costs associated with enforcing intellectual property rights, and the diverse commercial strategies adopted by software startups.

Key words: startup; intellectual property; appropriability method; innovation protection; software; law & economics