

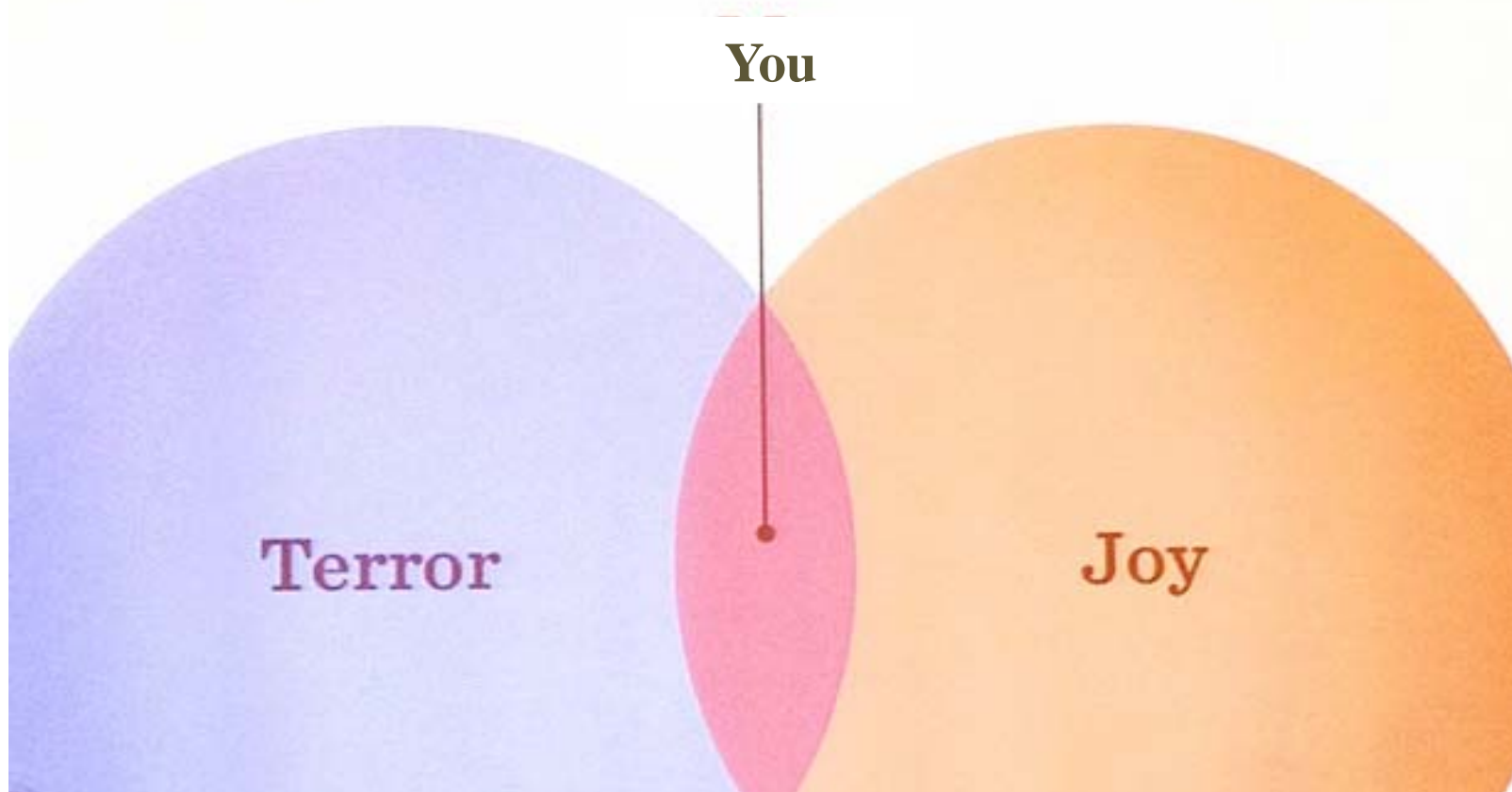
Q2012 Entrepreneur's Panel: Starting Strong

How to Build Your Business on a Solid Legal
Foundation

Presented By
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MCDONOUGH | LAW, PLLC

The emotional conflict of a business owner.



(Slightly modified) Graphic by Ben of @Pinterest, image via @imDarrian

1. WHAT IS AN ENTITY?

Barrier

You & Your
Personal
Assets



Everyone
Else

1. WHAT IS AN ENTITY?

THE GOOD: LLC or Corporation

THE BAD: Sole Proprietorship

THE UGLY: Partnership (Limited or General)

2. WHY FORM AN ENTITY?

Tax Flexibility

Legitimacy

Asset
Protection
& Limitation
of Liability

Attract
Investors

Ease of
Transition or
Sale

3. FORMATION TERMINOLOGY

	Limited Liability Company	Corporation
Submit to State Corporation Commission (SCC) to Register Entity	Articles of Organization	Articles of Incorporation
Owners of the Entity	Members	Shareholders
Receive from SCC to Confirm Registration	Certificate of Organization	Certificate of Incorporation
Internal Governing Document	Operating Agreement	Bylaws

4. OTHER PRELIMINARY MATTERS

- EIN/TIN
- State Tax ID
- Business License
- VEC
- Fictitious Name Certificate
- Lease
- Shareholder Agreements
- Subchapter S Election

5. INTELLECTUAL PROPERTY

Creations of the mind.



5. INTELLECTUAL PROPERTY

Why is protection so important?

Once your trade secrets and intellectual property are out of your hands, it's very hard to get back.



6. PROTECTING YOUR IP

Always: Non-Disclosure Agreement

Possibly: Trademark/Copyright/Patent
Registration

6. PROTECTING YOUR IP

Non-Disclosure Agreement

Contract between parties prior to disclosure of proprietary information

Define proprietary information and agree not to disclose

Does not need to be limited in duration

Can be combined with non-competition/non-solicitation where appropriate

6. PROTECTING YOUR IP

Registration: Copyright

Appropriate for: original creative work (music, photography, movies, writing, computer software, architecture).

Like a trademark, does not have to be registered to be given copyright protection. A CREATIVE WORK IS PROTECTED BY COPYRIGHT THE MOMENT IT IS FIXED IN A TANGIBLE MEDIUM OF EXPRESSION. To increase copyright protection, creator can place copyright (©) notice on the work with the year of publication and owner's name. Registration with the U.S. Copyright Office within 3 months of publication (or before infringement) makes enforcement easier by creating legal presumption that copyright is valid and provides for statutory damages.

6. PROTECTING YOUR IP

Registration: Patents

Appropriate for: items which are manufactured, composition, process, machine, or improvement on any of these items. Must be new, non-obvious, and useful.

U.S. Patent and Trademark Office grants an inventor the exclusive right to make, use, and sell the patented article for a specific term (usually 20 years) in exchange for public disclosure of the patented item at the end of the term.

6. PROTECTING YOUR IP

Registration: Trademarks

Appropriate for: symbols, words, names, sounds, colors, logos, trade dress that indicate the source of goods or services and distinguishes those goods or services from those made or sold by others.



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6. PROTECTING YOUR IP

Registration: Trademarks

Unregistered trademarks or service marks (TM or SM) are still protected. Generally, a mark is owned by the entity that is first to use it commercially, or first to associate it with a product or service. However, registering a trademark or service mark ([®]) with the U.S. Patent and Trademark Office gives the holder several benefits, including making it easier for the owner to protect the mark by creating a legal presumption of ownership, and putting the rest of the country on notice that the mark is taken.

7. NON-COMPETITION AGREEMENTS

For use with employees and, where appropriate, independent contractors.

Can be combined with a non-disclosure agreement.

Where used with employees, Agreement should specify that it is not changing the nature of the employment to contract employment, and the employee shall remain an employee AT WILL.

7. NON-COMPETITION AGREEMENTS

Unlike Non-Disclosure Agreements, Non-Competition Agreements must be limited in duration and geographic region, and must specify that the prohibited work is work that is substantially the same as the work the employee is doing for you.

THANK YOU