



PROGRAM MATERIALS

Program #2976

June 12, 2019

The Importance of Intellectual Property Protection in Crowdfunding/Crowd financing

**Copyright ©2019 by David Postolski, Esq. - Gearhart Law.
All Rights Reserved.**

Licensed to Celesq®, Inc.

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 180, Boca Raton, FL 33487
Phone 561-241-1919 Fax 561-241-1969



GEARHART LAW

The Importance of Intellectual Property Protection in Crowdfunding/Crowdfinancing

David Postolski
June 2019



Definition of *crowdfunding* in English:

- **noun**
- The practice of funding a project or venture by raising many small amounts of money from a large number of people, typically via the Internet: musicians, filmmakers, and artists have successfully raised funds and fostered awareness through crowdfunding



GEARHART LAW

- 1884- Statue's pedestal.
Pulitzer- New York World.
\$100,000 in six months.
125,000 -\$1 or less.



- **Crowd Sourcing-** Engagement process by which organizations seek input from people, to contribute ideas, solutions or support which are reinforced through social media.



GEARHART LAW



Intel- used Poptent to develop a :30 to :60 second video that will build awareness and excitement around the ultra-thin laptops.

LG- used Poptent to help create comedic short videos focused on Mobile Phone Misuse, such as “sexting” or text bullying.



Host a design contest and our community of talented designers will compete to create a professional logo you love, or your money back!

You describe your exact logo requirements
Dozens of designers submit logo concepts for review

You only pay for the logo you want to keep!



GEARHART LAW



Practice of obtaining needed services, ideas, or content by soliciting contributions from a large group of people, and especially from an online community

By Submitting your Idea to Quirky, you grant a license in all IP to Quirky

If Quirky and the Crowd Accepts your idea and commercializes you assign ownership in the IP

Quirky devotes significant resources and exposure to legal risks

A contributing user receives a perpetual royalty depending on the degree of contribution

Ever contributing user can be considered an inventor and will be listed on the patent.
Regardless all inventors assign all interest to Quirky

Process- Submit an idea for \$10. Good for 30 days. Must be selected by Quirky for consideration. Can resubmit

Quirky shares 30% of quirky.com sales and 10% of retail sales with the Crowd depending on your contribution. **Of this amount**, the original Inventor gets approximately gets 42%



GEARHART LAW



Pivot Power Invented by Jake Zien and 855 people

279,000 units sold at \$30 each-
\$8.9 million

Jake Zien has made \$300,000 to date!



GEARHART LAW

- **Crowdfunding/crowd financing:**

- Collective effort of individuals who network and pool their money to support efforts initiated by other people or organizations.

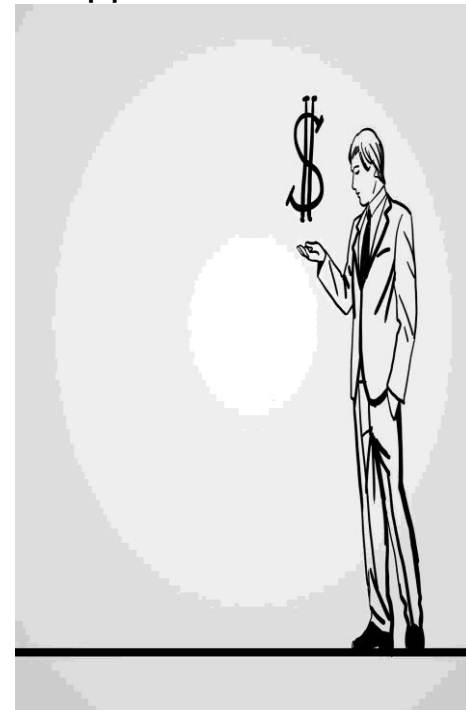
- **Equity crowdfunding:**

- Enables broad groups of investors to fund startup companies and small businesses in return for equity.
- Investors give money to a business and receive ownership of a small piece of that business (equity and/or debt).
- If the business succeeds, the value of that share of that business goes up. The converse is also true.

- **Debt-Based Crowdfunding**

- **Peer to Peer:**

- Individuals may approach other professionals for a loan in return for interest.
- Traditional loans not feasible





GEARHART LAW

HISTORY of Reward Based Crowdfunding

2000- ArtistShare- **“Where the fans make it happen”**

connects creative artists with fans in order to share the creative process and fund the creation of new artistic works

2008- IndieGoGo- **“The world's funding platform. Go fund yourself”**

people who want to raise money can create fundraising campaigns to tell their story and get the word out

2009- Kickstarter- **“No Fund my Life Projects”**

Everything on Kickstarter must be a project

Clear goals!

Eventually be completed

Something will be produced by it

Art, Comics, Dance, Design, Fashion, Film, Food, Games, Music, Photography, Publishing, Technology, and Theater



GEARHART LAW



ENROLL: Artist get 85% of Funds Raised

REFUNDS: Funds held in escrow; If project Cancelled and if Funds are available, they will be returned

REWARDS:

What You Get:

\$10,000.00

Receive prominent ArtistShare® Executive Producer *credit listing on the new recording*

Follow the creative process behind the creation of this historic recording

Attend a performance at Carnegie Hall as Maria's guest

Receive signed original handwritten score pages from the recording

Receive personal phone calls from Maria as the project progresses

Limited Edition Chamber Works CD

\$12.95

The Chamber Works recording via 320 kbps MP3 download (Delivery Date Mar 1 2013 12:00AM)

Downloadable cover art and liner notes

The ArtistShare Project Experience





GEARHART LAW

Sundance Film Festival

Flexible- you get paid every time there is a pledge minus 9%; If you reach your goal you get 5% back!

Fixed- Only get paid if you reach your Goal

Indiegogo

ENROLL: free to sign up and contribute to a campaign.

Fewer Projects- easier to get featured!!

Only USD, CAD, EUROS, POUNDS- all other fees get bank fees

In Flexible, if you don't reach your goal you still take the pledge money!



KICKSTARTER

ENROLL:- If a project is successfully funded, Kickstarter applies a 5% fee to the funds collected

REFUNDS: Successfully funded- required to fulfill all rewards or refund any backer whose reward you do not or cannot fulfill. A failure to do so could result in damage to your reputation or even legal action by your backers.

Don't Meet your Goal- Return Funds

- Difficult to get Featured!
- Most successful project is under \$10,00
- Can limit your rewards!



GEARHART LAW

WHY BE A FUNDING PORTAL

807,733 backed more than 1 project

81,090 backed more than 10 projects

975 backed more than 100 projects

214 countries – 7 Continents

19,911 Projects Funded



2014:

Dollars pledged to projects: \$112,038,158

Average pledged per day: \$1,244,868

Successfully funded projects: 4,497

Total backers: 887,848

New backers: 679,413



GEARHART LAW



2,945% funded
\$2,945,885
pledged
Funded Oct 26,
2012

FORM 1: An
affordable,
professional 3D
printer by Formlabs

An affordable, high-resolution 3D printer for professional creators.



974% funded
\$2,437,429
pledged
Funded Sep
01, 2012

Oculus Rift: Step Into
the Game by Oculus

Developer kit for the Oculus Rift - the first truly immersive virtual reality headset . for video games



1,314% funded
\$1,314,542
pledged
Funded Nov 14,
2012

LIFX: The Light Bulb
Reinvented by Phil Bosua

LIFX is a WiFi enabled, multi-color, energy efficient LED light bulb that you control with your iPhone or Android.



GEARHART LAW

Reward Based Crowdfunding PROS

- Unconventional Financing of Good Ideas
- Validation of Good ideas
- Public Traction = Even More Funding
- Originator of Idea/Project retains operation control
- Establish Personal Relationships with your Crowd/Customers
- Making Change in your community/Support causes where you live



GEARHART LAW

LESSONS LEARNED Kickstarter Litigations

- Quest v. Singh
- Quest: Inventor of Hanfree- IPAD stand; raised \$35,004 from 440 backers
- Singh- Lawyer one of the 440 backers
- 11/28/12- Quest cancelled production of Hanfree- no Hanfree; money to be returned
- Singh brought suit. Ticked Off! “Why he became a lawyer”
- Quest- bankrupt from lawsuit; Public Failure!
- **Kickstarter is not to blame if a product fails to deliver if someone isn't qualified to create the product**





GEARHART LAW

LESSONS LEARNED- ??????

FORM 1: An affordable, professional 3D printer by Formlabs

An affordable, high-resolution 3D printer for professional creators.



- 3D Systems v. Formlabs and Kickstarter
- October 2012- 3D Systems seeking injunctive relief and damages for patent infringement of US Patent 5,597,520: Simultaneous multiple layer curing in stereolithography.
- Patent Damages: Suit alleges that Kickstarter's role as "facilitator of the record setting sales of the printer" is an aspect of the case.
- Kickstarter: specific intent to infringe, willful blindness of patent, encouraging infringement:

GUIDELINES: D.I.Y. We love projects from the hacker and maker communities (weekend experiments, 3D printers, CNC machines) and projects that are open source. Software projects should be run by the developers themselves.

Printers Formlabs contends the patents are expired.

Printers have been shipped to backers all over the world.

Maker faires; training classes

11/2013- Form 1 and 3d Systems in settlement; Kickstarter on standby;

2014: Case removed to District of NY- parties pursuing settlement



LESSONS LEARNED

- Aug 14, 2013- Ducotes d/b/a War Chest Publishing v. Kickstarter in NY Fed. Court
- Allegation: KS Breached its own Terms of Use; Implied Covenant of Good faith & Fair Dealing; Tortious Interference with Prospective Business relations Defamation.
- Kickstarter- F rating at BBB- 6 unresponded to Complaints.
- Kickstarter stopped their Campaign days after Approving it and days before a TV appearance.
- **Kickstarter Terms of Service: We reserve the right to change, suspend, discontinue at any time for any reason!**





GEARHART LAW

IDEA VS. INVENTION

**United States– Previously: FIRST TO INVENT
COUNTRY (since 1790)**

America Invents Act- September 16, 2011

- **AS OF MARCH 16, 2013, FIRST INVENTOR TO FILE-**
the patent will go to whoever filed the application (or published) first.

DO YOU THINK THIS IS FAIR?

- NO MORE INTERFERENCE PROCEEDINGS
- BUT SMALL INVENTORS HAVE A ONE YEAR GRACE PERIOD AFTER A PUBLIC DISCLOSURE
- Micro Entity Status Created





GEARHART LAW

BEFORE YOU LAUNCH YOUR Crowdfunding Campaign

- **DO NOT RUSH!**
- **NOVELTY/COMMERCIAL SEARCH**
- **File a Provisional Patent Application**
- **File a Trademark Application**
- **Make sure your images are not subject to Copyright**
- **File Copyright Applications**
- **Avoid disclosing technical details of your invention: TRADE SECRETS!**





GEARHART LAW

BEST PRACTICES in IP Strategies – What should a Portal be looking for from Campaigners who want to Launch?

- **NOVELTY and COMMERCIAL SEARCH**
- **File a provisional patent application**
- Provisional application
 - lower-cost (\$400/\$200/\$100)
 - inventor can simply describe the inventive concept in the application
 - file it at PTO- preserve patent rights and stake claim to the filing date
 - PTO will not examine the application unless the applicant subsequently files a full, non-provisional patent application within one year.
 - Gives applicant time to refine the invention, assess the viability of the market, and raise the necessary funds to pursue the invention further.
- Avoid disclosing technical details of your invention: **TRADE SECRETS!**
- **File a Trademark Application**
- **Make sure your images are not subject to Copyright-File Copyright Applications**





GEARHART LAW

WHAT SHOULD YOU LOOK FOR IN A PORTAL?

- Terms of Use! Indemnification, Representation, Warranties
- Does your IP need to be properly marked and attributed?
- Protection for Trademarks
- Protection for Copyright- photos, drawings, DMCA Takedown
- How does the Portal treat INTELLECTUAL PROPERTY!





GEARHART LAW

STRATEGIES- PLANNING YOUR CAMPAIGN

- Marketing Plan-Build Your Crowd on Social Media before you Launch!
- Business Plan- Plan Your Rewards!!
- Investment Plan- Equity; Corporate Structure
- Legal Plan: Who is your Competition? Their Legal History!
- Examine the Way the Portal treats PATENTS, TRADEMARKS AND COPYRIGHTS!
- Pick the Right Portal- Each has its own audience.





GEARHART LAW

STRATEGIES- For Your Campaign

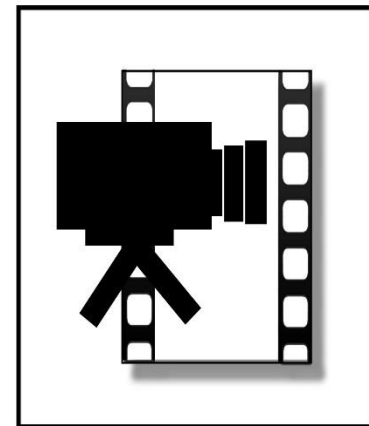
Make a cool Video- 3-4 min!

Tell your Story!

Use Heartstrings if applicable!

UPDATE!! UPDATE!! Your
backers

MAKE SURE YOUR IP IS
PROPERLY MARKED AND
ATTRIBUTED!





GEARHART LAW

AFTER YOU LAUNCH

- If you didn't file a Patent Application: You must file or else!
- **Foreign Internet Trolls- Be wary!**
- **DISCOVERING YOUR PRODUCT IS BEING COPIED- Contact Portal ASAP!**
- **IF SOMEBODY CONTACTS YOU AND SAYS YOU ARE COPYING THEM- CALL ME!!**





GEARHART LAW

CURRENT RULES: Rule 501- Regulation D: (defined Accredited Investor)

- **Securities can be Offered to Accredited Investors Only!**
- a bank, insurance company, registered investment company, business development company, or small business investment company;
- a charitable organization, corporation, or partnership with assets exceeding \$5 million;
- GATED COMMUNITY!



WHO IS AN ACCREDITED INVESTOR?

Regulation D investments are generally only available to **accredited investors**.

For most investors this means:

Net Worth exceeds

\$1,000,000



Not including primary residence



Income exceeds



\$200K

Individual –

EACH of last 2 years



\$300K

Joint with spouse –

EACH of last 2 years



VISIT FINRA.ORG FOR MORE INFORMATION.



41 RIVER ROAD, SUMMIT, NJ 07901

WWW.GEARHARTLAW.COM

(908) 273 0700



GEARHART LAW



April 2012 Signed into Law

- TITLE I - REOPENING AMERICAN CAPITAL MARKETS TO EMERGING GROWTH COMPANIES
- TITLE II - ACCESS TO CAPITAL FOR JOB CREATORS
- TITLE III - CROWDFUNDING
- TITLE IV - SMALL COMPANY CAPITAL FORMATION
- TITLE V - PRIVATE COMPANY FLEXIBILITY AND GROWTH
- TITLE VI - CAPITAL EXPANSION
- TITLE VII - OUTREACH ON CHANGES TO THE LAW



GEARHART LAW

- **Title II:** Allowed for General Solicitation of **Accredited Investors** for unlimited amounts per business (went live in September 2013)- **What we know as Accredited Crowdfunding- Ban on Solicitation & Advertising was Lifted!**
- **Title III:** Allowed for General Solicitation of **Unaccredited Investors** up to \$1,000,000 per business per year; **Regulation CF. Adopted 10/2015, Taking effect 5/16/2016**
- **Title IV:** Allowed for General Solicitation of **Unaccredited Investors** up to \$50,000,000 per business (went live in June 2015) – **Regulation A+**
- **22 States**





GEARHART LAW

Types of Crowdfunding

	Accredited Crowdfunding	Retail Crowdfunding	Registered Crowdfunding
JOBS Act Title	Title II	Title III	Title IV
SEC Rule	Rule 506(c)	Regulation CF	Regulation A
Max Offering Amount	No Limit	\$1 Million	\$5 Million/\$50 Million
Type of Investor	Accredited	General Public	General Public
Disclosure Document	PPM	Form C	Form 1-A
Investor Limits	No	Yes	Yes



GEARHART LAW

SEC-PROPOSED RULES- REGULATION CROWDFUNDING- Title III



Individual Entity can only raise up to \$1M in 12 months

Investors can invest from \$2,000 up to \$100,000.

Investments must be made through a **registered Broker dealer** or a **Crowdfunding Portal as an intermediary!**

Issuers of Equity can do a limited kind of advertising, essentially a very short notice in print or electronic media that directs potential investors to the intermediary platform hosting the offering.

- **Disclosure Requirements.** Issuers will be required to provide certain information to both prospective investors and the intermediary that will be the conduit for their crowdfunding offering on a new filing form – Form C, which must be filed prior to the offering.
- **Ongoing Reporting.** Once the offering is completed, the issuer becomes subject to ongoing reporting requirements.

Investors may cancel within 48 hours.

Issuer Liable if made untrue or misleading statements



GEARHART LAW

- Campaigner= Issuer
- Backer= Investor
- Portal= Intermediary
- A **blue sky law** is a state **law** in the United States that regulates the offering and sale of securities to protect the public from fraud. Though the specific provisions of these **laws** vary among states, they all require the registration of all securities offerings and sales, as well as of stockbrokers and brokerage firms.



GEARHART LAW

WHAT DOES AN ISSUER OF EQUITY (Campaign holder) LOOK FOR IN AN INTERMEDIARY/PORTAL?

SEC PROPOSED RULES:

- Intermediaries can take commissions based on funds raised for issuers (transaction-based compensation)
- Neither intermediary nor its directors, officers or partners may take a financial equity interest in the issuer





Lessons for Investors

- Investigate before you give
- Don't hesitate to request information
- No matter what, only give money that you can afford to lose
- Report Suspicious accounts
- Professional Investors know the value of IP
- Venture Capitalists don't like start-ups with many investors
- Copyright Law
- Trademark Law
- Trade Secret v. Decision to file a patent application

Not everything is patentable! Getting a patent is only the 1st step! Monetization comes 2nd- so it may be a long haul!





GEARHART LAW

Lessons for Issuers- Campaigners

Mandatory Disclosure Requirement v. Amount of Disclosure needed to ensure you will secure potential investors

- Inadvertent Public Disclosure - giving away your secret sauce
- Triggering One Year Bar Date

Accounting Requirement v. IP Filing Costs

- How much do you need to file for IP?
- Application on file before your Portal disclosure?
- If so, are you financially ready to file?



Reporting Requirement (Annual Reports, capital structure, business plans, use of proceeds, risks) v. IP procurement

- Assessing Risk may include discovery that your IP is not novel or distinct
- Crowdsourcing- obtaining information for the evaluation idea or business and providing ideas may drastically change your business plan and use of proceeds



GEARHART LAW

Lessons for Portals- Intermediaries

SEC requires the Portal to:

- Provide all disclosures required by Statute, or rules of the SEC to the investor
- Provide investor risks involved in investing in the crowd
- Provide investor education and ensure that the investors has read and understood the disclosures.

Intermediary must make sure that the investor has not invested more than the amount allowed in a 12 month period.

Reduce Risk of Fraud- based on reasonable belief

IS IT THE PORTAL'S RESPONSIBILITY????

- Investors will need to know the cost of a start-up company in patent process
- Advise Issuers against unsavory investors?
- Advise Investors against unsavory issuers?





GEARHART LAW

Regulation A+ framework is divided into two tiers:

Tier 1

- Allows for the sale of up to \$20M in securities within a 12-month window
- not subject to post-offering ongoing reporting or limits on the number of non-accredited investors involved in the offering.
- Comply with state “Blue Sky Laws” (security must be registered) but a new “coordinated review” will be tested to streamline the state approval process and eliminate some compliance costs

Tier 2

- allows issuers to sell up to \$50M in securities within a 12-month period
- Not subject to State “Blue Sky Laws” - BUT
- Requires audited financial statements- Audit Must Be Clean
- Post-offering ongoing reporting
- Limit on the amount of non-accredited investors
- **Allowance of unaccredited investors to be able to invest in “mini initial public offerings (IPO’s)” that previously only the wealthiest of investors had access to**





GEARHART LAW

SEEDRS

- 56 funded campaigns
- 29,143 users
- 24 days is the average length of days to fund
- £99,119 is the average amount raised (about \$161,000)
- The youngest investor has been 18 years old with the average age being 40
- Largest number of investors in a single portfolio is 37
- Smallest investment in a listing is \$15
- Largest investment is \$2.6 Million
- July 2012- 1st Equity crowdfunding platform to have regulatory approval anywhere in the world by UK's SEC equivalent- Financial Services Authority





GEARHART LAW



- **Influx of new crowdfunding platforms**
- **Emergence of niche platforms- “Graying” Population**
- **Foreign investment in the U.S. will continue- 7% of Residential Property owned by Foreign Investors**
- **More control from SEC and other global entities**
- **Investor Education**
- **Secondary Service Providers**
- **More Portals, More Due Diligence**
- **Early Adopters Always Prevail**



GEARHART LAW



David Postolski is a registered patent attorney and intellectual property attorney at Gearhart Law. He specializes in assisting inventors, creators, start ups, entrepreneurs, early stage companies and emerging companies with their U.S and international intellectual property strategy, protection, enforcement and monetization. David remains very involved in the creation of New York State's first federally approved patent pro bono program in conjunction with Volunteer Lawyers for the Arts. David is a frequent speaker and author on intellectual property issues surrounding reward and equity crowd funding.

david@gearhartlaw.com

41 RIVER ROAD, SUMMIT, NJ 07901
WWW.GEARHARTLAW.COM
(908) 273 0700