

Proposal for an Innovation Law Service at MIT

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Executive Summary:

We propose the creation of an **MIT Innovation Law Service(ILS)**, which provides a single point of contact for legal assistance relating to innovation and academic freedom. The service will also offer educational support throughout the MIT community, in collaboration with stakeholders across the institute.

This report includes 13 guiding points for the mission and operation of an Innovation Law Service at MIT, a list of stakeholders, and a set of attached documents reviewing related work at MIT and a similar office at another university.

Innovation Law Service at MIT

Mission of the Innovation Law Service:

The ILS should serve as a triage system and clearinghouse for MIT students and staff seeking legal assistance, as well as an educational outreach program. It will respond to legal issues that community members may encounter in the pursuit of innovative projects and matters of academic freedom, including contract and license drafting, corporate formation, intellectual property rights, law relating to research methods, litigation defense, and general legal risk management.

The ILS, with assistance from the Office of the General Counsel (OGC) will assess whether the appropriate client for the matter is MIT or the individual. When the client is MIT, the ILS will help the student work with the OGC in resolving the matter. When the client is the individual, the ILS will work with licensed attorneys outside the Institute to ensure the student has adequate representation.

Single Point of Contact & Ongoing Support:

The burden of effort for finding legal support is currently on MIT community members. This can be especially challenging for students, who likely have limited experience with the law.

We propose a single point of contact for innovation and academic freedom related legal services at MIT, with staff who offer ongoing, active support throughout the duration of the legal issue. While community members are still welcome to approach specific MIT services on their own behalf, ILS will proactively seek out the advice or representation needed to support each enquiry.

Support will not end at referrals. Once a client and a referred attorney agree to work together, the ILS may consider the matter inactive, but should follow up after a period to ensure that the client has received adequate support.

Eligibility for Services:

Since the ILS is intended to support informal innovation at MIT, it should be prepared to intake enquiries from anyone in the MIT community, including faculty, post-docs, research staff, and

visiting researchers. The main emphasis of the ILS, particularly its educational outreach, should be towards students.

Fee Structure:

Depending on their financial need, clients should be referred either on a pro bono, reduced fee, or full fee basis-- with a strong preference for pro bono.

Attorney Client Privilege:

The ILS should be capable of offering attorney client privilege in a manner similar to other legal referral clinics. A balance must be struck between ensuring adequate protection for the content of discussions with the ILS, as well as the flexibility to take on any matter coming from the MIT community, even when such a matter may present a conflict with a prior consultation.

Conflictedness:

The ILS should be structured to ensure that clients interests are pursued, even in cases where there is a risk of conflict with MIT. We understand that this may be difficult for the General Counsel's office to carry out and encourage the establishment of an entity that is able to support clients in an unconflicted manner. We also suggest that any established entity coordinate closely with the General Counsel's office and other stakeholders.

Pro-Innovation Stance:

ILS staff should take a pro-innovation stance. Before risks are taken, this can be done by advising clients on risks and helping them take on the risks they are comfortable with. If clients are facing existing legal challenges, this is achieved by carrying out the scope of legal services included in this proposal.

Attention to Mental Health:

More than one MIT student facing litigation challenges has experienced serious mental health difficulties. The ILS should be attentive to these issues and be prepared to encourage clients toward mental health support.

Notifying Administration and Community of High Risk Cases and Issues Potentially Concerning MIT as a whole:

Some legal support issues may have an impact on the MIT community in areas including but not limited to academic freedom. The MIT administration and MIT community are encouraged to work together to weigh the importance of a given legal issue and to judge whether members of MIT or even the MIT administration should take action. For that to occur, the ILS is strongly encouraged to bring matters that have implications for the university community, or the broader scholarly community to the provost's office, with consent of the clients involved.

Close Collaborators:

The ILS should operate in close collaboration with the General Counsel's office. Furthermore, since parts of MIT already offer substantial advice and support for company formation and questions of copyright and intellectual property, we expect that the ILS may be able to handle a large number of enquiries electronically, and likely within MIT.

Staff and Student Leader Training:

The ILS should offer strategically selected trainings to staff and student leaders who are most in a position to learn about community legal issues.

Educational Outreach Into Existing Structures and Cultures:

Because many of the most creative, entrepreneurial, and socially beneficial projects at MIT are “side projects” developed among friends, at hackathons, and for prize competitions, we propose the creation of structures that help MIT clients understand the legal risks of their work both inside and outside the classroom, and learn where to find legal support where appropriate in each case.

In practice, this could involve offering to lead a single class session for a wide range of relevant classes. It could also involve attending hackathons and entrepreneurship events to offer how-tos on what to do and who to talk to when legal questions arise. Given the large number of relevant classes and high volume of hacking events, an effective education outreach effort could well take 2-3 days a week for a staff member.

Review Process

To ensure that the ILS at MIT meets the needs of the MIT community and the institution, we encourage a semesterly review in the first year and an annual review, alongside collaborative relationships with key stakeholders. A review process will empower the ILS staff, the MIT administration, and the MIT community to shape its direction in parallel with the needs it discovers.

Our research has yielded many ideas that we have omitted, since we believe that the operation of the ILS should ultimately evolve through practice. For example, the Digital Media Law Project has streamlined their referral process with an online match-making system that brokers relationships between clients and attorneys. While such a system could become a powerful support for an ILS at MIT, it's premature to propose such a system.

Stakeholders

We suggest that the ILS work in collaboration with the following groups at MIT directly concerned with legal issues of innovation at MIT:

- **SIPB** has long history of supporting student research on computer security, tested on the MIT network, in collaboration with IS&T. They are compiling a series of case studies to support education for students doing infosec research
- **Venture Mentoring** has a network of advisors and has a referral service for paid legal representation, but they cannot offer attorney client privilege. After conversation with them, I have attached a summary of their legal services
- **MIT Libraries**, whose roles for **department liaisons** and **program manager for scholarly publishing, copyright, and licensing** inspired and advised our earlier proposal for a legal triage advisor
- Parts of MIT with a history of attracting legal challenges and a high probability of legal challenges to innovation and academic freedom:
 - The **MIT Media Lab and MIT CSAIL** face similar legal risks around startups, edgy innovation, and information security

- **CMS/W**, where media production and socially motivated work have a history of legal challenges
- **MIT Sloan**, where the culture of business innovation has fundamental legal components
 - Any other department with this profile
- Offices throughout the Institute that address legal issues, including the **Industrial Liaison Program** and the **Technology Licensing Office**.
- The **MIT Innovation Initiative**, who may be able to include learning on legal issues into their minor, and who will likely have input into the functions of student legal support. We were unable to speak with them before authoring this document
- The **MIT Public Service Center**, who routinely support socially-motivated student work in the US and other countries, could refer their students to the ILS
- The **MIT COUHES** office could direct researchers to the ILS in cases where ethical questions are in fact legal ones, and where legal documents like privacy policies and terms of service need to be drafted
- **MIT faculty** who are legal scholars or who have offered courses on technology and the law should be invited to offer advice and support for legal education at MIT, as well as collaborate with the ILS on emerging areas of legal understanding
- High profile **MIT Innovation Prizes, Fellowships, and Awards**, such as the \$100k, the Ideas Challenge, the Legatum Fellowship, and others

APPENDIX: Attached Documents

The following documents represent our prior work and reports that will be of interest

- i. Our previous proposal for a Legal Triage Officer at MIT, before the Tidbit case arose.
- ii. A report on our "Coders Know Your Rights" course during IAP
- iii. A summary, drafted by Nathan in collaboration with Venture Mentoring, that describes their current structure and services
- iv. The Digital Media Law Project's report on a similar network, after handling their first 500 referrals (available also at <http://www.dmlp.org/omln500/>)

APPENDIX 1: Proposal for Legal Triage Advisor for Student Innovation at MIT

Submitted to the provost's office as part of community engagement about MIT's involvement in the Aaron Swartz case, January 2013

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Executive Summary

Legal risks for student innovation are growing, and MIT undergraduate and graduate students frequently find themselves at the very frontier of legal issues, without any formal structure to access legal information and services. We have found overwhelming student demand and needs for such a structure, which cannot be adequately satisfied through classes alone.

To support innovation at MIT and manage risk arising from a strong, growing ecosystem of informal, entrepreneurial creativity, we propose the creation of a legal triage advisor for student innovation.

A legal triage advisor would not represent students directly. Instead, the advisor would assess student needs, referring them to further information and appropriate legal resources, including the Office of the General Counsel (OGC) and attorneys outside of MIT. This person, working closely with the OGC, would take an active, pro-innovation stance to support MIT's informal innovation cultures.

Legal Risks for Student Innovation at MIT

Considerable legal risks to MIT students are growing as the result of two very positive trends for innovation at MIT: online media attention and a strong, growing ecosystem of informal innovation. Student weekend projects now routinely attract international attention online, dramatically expanding students' potential for entrepreneurship and social impact.

In an increasingly litigious environment, greater attention attracts greater legal risks for student entrepreneurship, security research, online platform design, and public service projects. In some cases, weekend creative projects have received legal challenges that could carry penalties including career-destroying fines and many years in prison.

High profile legal challenges to MIT student projects are becoming more frequent. We propose immediate action to keep students informed and manage this growing risk.

Current Legal Support Structures at MIT

Students whose work could arouse legal challenges currently have two courses of action. They could speak with official MIT legal staff, including the OGC or the library's copyright advisor.

Students sometimes ask for support from local technology law clinics at Boston-area law schools, staffed by law students working under the supervision of licensed attorney.

Neither service is designed to offer support for the full range of legal challenges faced by student innovators, particularly full-scale litigation or criminal prosecution, and students are at times unsure of when an issue is significant enough to warrant legal attention. For the most part, students are on their own.

In IAP 2014, some of the proposers held a class called “Coders Know Your Rights: An Introduction to Technology and the Law.” Our findings from the class, detailed in the attached document, illustrate overwhelming demand across departments for information about legal implications of student work, and an accompanying lack of knowledge among MIT students. We conclude that classes are necessary but insufficient to meet student needs and manage the legal risks of student innovation.

Legal Triage Advisor For Student Innovation

We propose the creation of a legal triage advisor for student innovation. This role would:

- Route students to legal information and resources within or outside MIT, on a case-by-case basis
- Coordinate closely with the OGC, faculty, and relevant student organizations
- Identify areas of legal ambiguity and provide scholarly research to inform entities at MIT of the various interpretations and policy concerns
- Participate in informal innovation cultures, including hack days, innovation challenges, and other creative cultures
- Visibly participate in and be accessible to students in high risk departments, potentially including CSAIL, Sloan, the MIT Media Lab, Comparative Media Studies, the Legatum Center, and the Public Service Center
- Offer trainings for student leaders and contribute to law and technology classes for students

We look for guidance on the right place within the MIT organizational structure for this position, though we note that in order to ensure students find this person as readily accessible, their physical office should be in close proximity to student workspaces, to foster an “open door” culture.

Inspiration for this position comes from other similar resources within MIT and elsewhere:

- The **MIT Media Lab intellectual property specialist position**, currently held by a legal researcher, by convention has become a student-accessible resource for Media Lab students on IP questions
- The **MIT Library Department Liaisons**. This is a successful case where a core MIT service has taken the initiative to participate in student culture and join department meetings to look for ways to support research rather than wait for students to approach the library
- The **MIT Library Program Manager for Scholarly Publishing, Copyright, and Licensing** offers advice and support to MIT students and staff on copyright in their scholarly work
- The **Harvard Digital Media Law Project** is a service that offers free legal advice and services on a wide range of media law, intellectual property, and business law issues. It routes queries to Harvard Law students and to a network of pro bono lawyers in 50 US

states. Several MIT students have made use of their services when their work concerns digital journalism.

Timeline

Since the risks are so great, we propose that a one-year trial position be created and hired as soon as possible, ideally in time to begin work in the Fall semester of 2014.

APPENDIX 2: REPORT ON "CODERS KNOW YOUR RIGHTS: A PRACTICAL INTRODUCTION TO TECHNOLOGY AND THE LAW" IAP CLASS

Submitted to the provost's office as part of community engagement about MIT's involvement in the Aaron Swartz case, January 2013

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Executive Summary

We held a 3-hour IAP class on technology and the law, in response to the need for legal education identified in the report entitled "MIT and the Prosecution of Aaron Swartz." Our goal was to discover student interest and current knowledge. We find that:

- Demand is high among students for information on legal issues relating to their work
- Graduate and undergraduate students across MIT lack knowledge about high risk legal issues and do not know where to turn
- Classes are necessary but not sufficient to address this need

We propose a combination of classes, training, and active engagement with students by MIT

Motivations & Goals for the Course

Given that MIT currently offers limited training or support to students on legal questions pertaining to research and technology innovation, our course set out to:

- Gauge MIT student interest in issues of technology and law
- Discover student awareness of legal issues that affect their work
- Offer a basic introduction to technology and the law
- Make students aware of organizations and resources that can help them further
- Develop a pro-learning and pro-innovation approach to teaching technology and law at MIT

Course Structure

- Collect topic interests and questions via post-its and an online discussion tool
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- **Information Access: Law**
 - Query student norms regarding use of computer systems in ways not foreseen or approved of by their owners
 - Teach laws such as the CFAA and outline the arguments on both sides of ambiguities that have yet to be tested in court, drawing upon the normative discussion

- Offer case studies of CFAA prosecutions, including some MIT cases and others in which a court rejected the broad interpretation of the law offered by the Department of Justice
- **Information Access: Techniques**
 - Show academically significant research that involve scraping and big data analysis
 - Offer rules-of-thumb for obtaining authorization to data sources
 - Suggest negotiation strategies for obtaining authorization to third party data
 - Introduce the ethics of big data research, beyond IRB
- **Copyright Law**
 - Provide a basic understanding of the structure of US copyright law, including what is protected, who obtains ownership, the rights conveyed, and limits to those rights
 - Explain the application of copyright (and other regimes) to the use and dissemination of computer programs, including areas where the law is unsettled
 - Demonstrate ways in which permission can be obtained outside the scope of legal exceptions to copyright, including use of openly-licensed software and content
 - Explain the specific anti-circumvention provisions in the Digital Millennium Copyright Act, and how they relate to certain research applications
- **Running an Online Platform**
 - Teach basic legal issues around privacy and security in online platforms
 - Explain the specific protections under the DMCA and Section 230 of the Communications Decency Act for platforms handling user content
 - Review different normative policies around specific “troublesome” content, including hate speech, abuse, content concerning children, and content moderation

Outcomes

- We experienced overwhelming interest across MIT. 26 students registered. A much higher number attended, over-filling the Media Lab’s largest classroom, on the 5th floor of E15.
- Students participated from EECS, Political Science, CSAIL, the Engineering Systems Division, Sloan, and the Media Lab. Staff from the MIT Libraries and MIT system administrators attended, as did MIT affiliates
- It was clear from our discussions that students had never received training on this subject, and therefore were lacking critical legal background on even basic topics:
- Students held many urban myths and rules of thumb that weren’t necessarily in line with law
- Students indicated that our session was the first time that they encountered the personal legal consequences associated with the uncertain concept of having authorization from the owner of a computer

Proposals

Because the risk to students is great, students are poorly informed, and a class will never reach enough students with adequate information on these important issues, we propose:

- MIT should implement initiatives to make legal awareness more available and common

- Offer regular classes in technology and law to anyone at MIT
- Offer a technology & law unit in the student leadership training program, to spread knowledge among recognized student leaders

Because many of the most creative, entrepreneurial, and socially beneficial projects at MIT are “side projects” developed among friends, at hackathons, and for prize competitions, we propose the creation of structures that help MIT students understand the legal risks of their work both inside and outside the classroom, and learn where to find legal support where appropriate in each case.

We propose the creation of a legal triage advisor for student innovation, working closely with the Office of the General Counsel, who can actively engage with creative MIT communities, helping them identify legal risks and connecting students with appropriate legal assistance (See attached proposal)

APPENDIX 4: VENTURE MENTORING AT MIT

(by Nathan Matias in collaboration with Ariane Martins and MIT Venture Mentoring Service staff)

MIT Venture Mentoring (VMS) supports a large number of MIT ventures with confidential and objective/conflict-free advice from a substantial network of volunteer experienced/successful business people, including both alums and non-alums.

Many of the legal questions addressed by VMS are common issues to all new ventures, from founders' agreements and incorporation to IP. Mentors often spot these issues in advance and encourage first-time founders to get on a strong legal footing when they begin.

VMS also runs the Legal Office Hours Program, a recurring free service where VMS entrepreneurs can meet one-on-one with experienced attorneys who specialize in representing emerging technology ventures. The Office Hours Program will afford VMS entrepreneurs the opportunity to get business focused answers and practical advice related to legal topics such as:

- a. Initial organization and capital structure;
- b. Employment issues and equity incentive programs;
- c. Corporate finance matters;
- d. Seed capital and venture capital financings;
- e. Joint ventures and strategic alliances;
- f. Licensing relationships and sales and distribution arrangements.

VMS Legal Office Hours are staffed pro-bono by local attorneys. Participating in office hours does not commit a VMS entrepreneur to use the law firm.

Mentors in the VMS community might also refer entrepreneurs to lawyers with whom they are familiar and have had positive experience.

Venture Mentoring Service has a clear mission to offer business advice to MIT entrepreneurs enrolled in the program. MIT VMS does not provide legal advice — only advice on legal issues to students enrolled in VMS and as part of their overall mentoring process.

Although mentors do sign an NDA, no VMS activities fall under attorney-client privilege. There is also no network of pro-bono legal representation; referrals tend to be to paid professional services.

VMS is a valuable service at MIT, and an Innovation Law Service (ILS) program would do well to establish a strong working relationship with VMS. ILS would be a valuable resource for VMS to escalate particularly challenging legal issues. ILS staff could also do outreach among VMS participants to raise awareness on the legal risks of innovation.