



CS 428

Legal Issues for
IT Practitioners

FALL 2020, WEEK #13

BRUCE F. WEBSTER

Obligatory Disclaimer

- ▶ I am *not* a lawyer
- ▶ This is *not* legal advice
- ▶ BUT
 - ▶ I have worked in IT for nearly 45 years
 - ▶ I have spent the last 20 years serving as an expert witness in IT-related litigation
 - ▶ These are the cautions I would give any colleague (and frequently have)

Six areas of caution

- ▶ Unauthorized access
- ▶ Intellectual property
- ▶ Private “independent” projects
- ▶ Non-compete restrictions
- ▶ Trouble/failed IT projects
- ▶ Preservation and discovery of files

Unauthorized access

- ▶ Computer Fraud and Abuse Act (CFAA)
 - ▶ Repeatedly modified since passing in 1986
 - ▶ Expanded scope, abolished statutory limits
 - ▶ Very broad, very vague: does not define “without authorization”
 - ▶ Offers harsh penalties (cf. Aaron Swartz)
- ▶ Be careful where you go and what you do

- ▶ Four key areas:
 - ▶ Licensing
 - ▶ Copyright
 - ▶ Trade secret
 - ▶ Patent
- ▶ Trillions of dollars at stake
- ▶ Companies and industry associations love to litigate and to seek major damages
- ▶ Be careful what you copy and how
 - ▶ This goes for your company's deliverables (source code, documentation, etc.) as well
 - ▶ **Never walk away with anything**

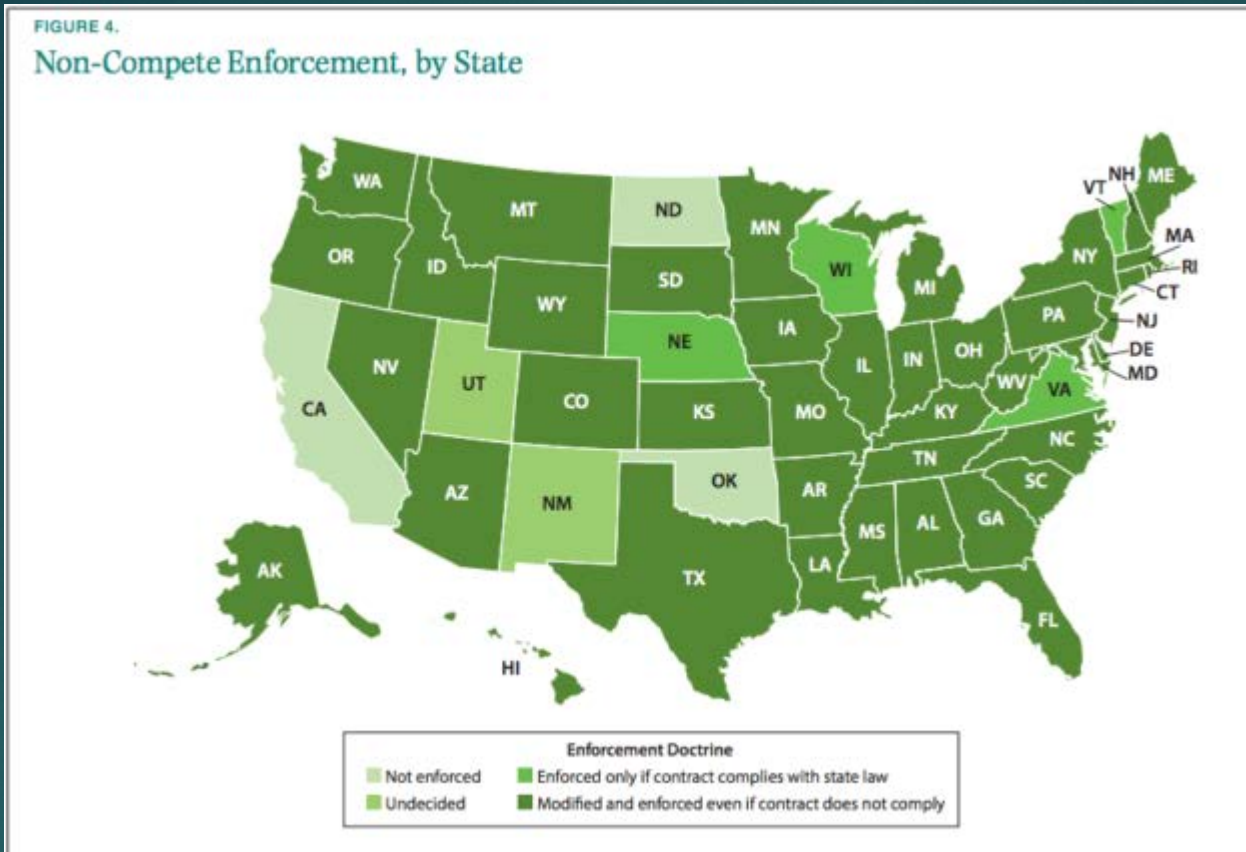
Intellectual Property

“Non-work” projects

- ▶ Many of you may have “at-home” or “proto-startup” projects that you work on
- ▶ Your employer may (try to) claim ownership of any IT work you do, even when outside of work hours and on your own equipment
- ▶ Disclose all existing private projects, in progress or planned, and make your exclusive ownership of that work part of your employment agreement
- ▶ Never, never, **never** work on a private project using company equipment and/or at company offices and/or on company time
- ▶ Again: never, ever leave with company source code, documentation, or other materials, even if you were sole author, without express written (and signed) consent

Non-compete restrictions

- ▶ Most states allow “non-compete” clauses that prohibit you from working for a direct competitor
- ▶ Even if you move to another state, that state may uphold in court a more-strict non-compete clause than your state allows
- ▶ *Always* ask about and resolve non-compete requirements *before* accepting a job
- ▶ *Always* get details in writing (vs. verbal reassurances)
- ▶ Ask about using a non-disclosure agreement (NDA) instead of a non-compete
- ▶ If the company insists on a non-compete, require an explicit list of excluded companies (vs. a general “anyone doing X”)



Source: https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf

Non-compete variations

- ▶ High rate of failure proportional to size
- ▶ Many reasons why (all of which you now know)
 - ▶ Unrealistic/mismatched expectations
 - ▶ High-risk approach to project
 - ▶ Diverging or conflicting goals
 - ▶ Course changes (“inflection points”)
 - ▶ Problems with communications
 - ▶ Poor performance by one or both sides
 - ▶ Changes in key personnel
 - ▶ “In architecting a new program [or system], all the serious mistakes are made in the first day.” – Spinrad, 1988
- ▶ Raise issues early and often

Trouble/failed IT projects

- ▶ Preservation of relevant files is mandated once just the *possibility* of litigation arises
- ▶ Discovery allows opposing side to request production of relevant files
- ▶ Failure to preserve and produce relevant files can result in civil and even criminal sanctions
- ▶ Make sure employer has retention policies
- ▶ Be careful in face of litigation/investigation

Preservation/discovery of files

Summary

- ▶ Working in IT, you will deal with pervasive and often cutting-edge legal issues and complications
- ▶ Ongoing technology development will continue to blur lines and create new concerns
- ▶ Be wise and cautious when you find yourself dealing with these issues
- ▶ Get everything in writing; do not rely on verbal declarations or assurances
- ▶ Do your own research on these subjects: plenty of online resources

- ▶ Code Review (Deliverable #7) due by Saturday, April 4th
- ▶ By Wednesday, April 15th
 - ▶ Deliverable #10 (via LS): lessons learned (individual)
 - ▶ Last day to finish and report all makeup work (lectures, etc.)
 - ▶ Last day to post project videos for extra credit
 - ▶ Last day to report extra credit reading
- ▶ NO FINAL EXAM

COMING SCHEDULE