

Compliance & Intellectual Property

Paul Dagger & Kris Bubendorfer

ENGR 401 Professional Practice

Class Announcement || 2024 Tech Careers Expo

2024 Tech Careers Expo | Alan MacDiarmid Foyer | [Wed 1 MAY](#) 12p to 2pm

Amongst the organisations currently booked to attend (more expected to confirm):

Accenture, Atlassian, Aurecon, Booster Financial Services, Contact Energy, Datacom, Deloitte, Eagle Technology, EY, Faster Enterprises, Grant Thornton, IMC Trading, Jane Street, KiwiRail, KPMG, New Zealand Defence Force, NZTA – Waka Kotahi, OpenStar Technologies, Sharesies, Stantec New Zealand, Summer of Tech, Te Herenga Waka – Victoria University of Wellington, Tik Tok, Transpower NZ Ltd, Trimble, Tui Technology

These organisations will be offering internships and graduate programmes as well as broader professional insights and looking to connect with students.

Disclaimer

- *Neither Kris or Paul are lawyers*
- *This is not legal advice*
- *If either of us were lawyers, we couldn't give you legal advice anyway as we wouldn't be your lawyers.*
- That's "Get out of jail free & collect \$200 Monopoly Card" clever.

(Full credit to Dr Stephen Marshall's ENGR401 Intellectual Property lecture 2021 – the monopoly joke is Paul's though)

Compliance & Intellectual Property || Overview

- Compliance
 - All the peoples, all the times, all the places
 - Different sources of compliance information
 - Juul case study & discussion
 - Costs of non-compliance
- Intellectual Property
 - Copyright
 - Academia versus Corporations – Intellectual Property as a competitive advantage

Compliance || All the peoples, all the times, all the places



Compliance || All the peoples, all the times, all the places

- Compliance is at the core of community
 - *Any size or type (family unit, village, town, city, country, company/corporation, affiliation)*
 - *True in distant history or current society*
 - *Any country or culture*
- *You have probably been understanding and managing compliance as far back as you can remember*
 - *Rules and expectations set down by parents*
 - *School & University rules*
 - *Process for getting official documents such as driver's license, passport, etc*

Compliance || Major Common External Sources by Sector

- Organisations will normally be a mix of at least two sector requirements
- Public Sector Compliance
 - *“All of Government” (AoG) regulations & procedures, Government Chief Information Office Strategies, Office of the Auditor General, etc*
- Private Sector Compliance
 - *Applicable laws (Privacy Act, Consumer Guarantees Act, Passenger Vehicle Regulations)*
- Industry Sector Compliance
 - *PCI/SOX Financial Regulations, Engineering NZ Regulations, Electricity Authority Regulations*

Compliance || Major Common Internal Sources

- Compliance requirements don't only come from outside the organisation
- Human Resource Policies & Procedures
 - *Recruitment, anti-bullying, whistleblower, employment disputes, etc*
- Finance
 - *Probity, antifraud, expense claims procedures, corporate travel policy, etc*
- Information Management
 - *Privacy awareness & protection policy, Information Archive & Retention, etc*

Compliance || Major Common Internal Sources

- Corporate Risk Management
 - *Risk capture, risk escalation, risk management and reporting, etc*
- Communications
 - *Press communications policy, brand usage guidelines, etc*
- Workplace Health & Safety
 - *Hazard identification & communication, etc*
- Operational Service Management
 - *Service availability frameworks, Disaster Recovery & Business Continuity standards, etc*

Compliance & Entrepreneurship || Juul Case Study Discussion



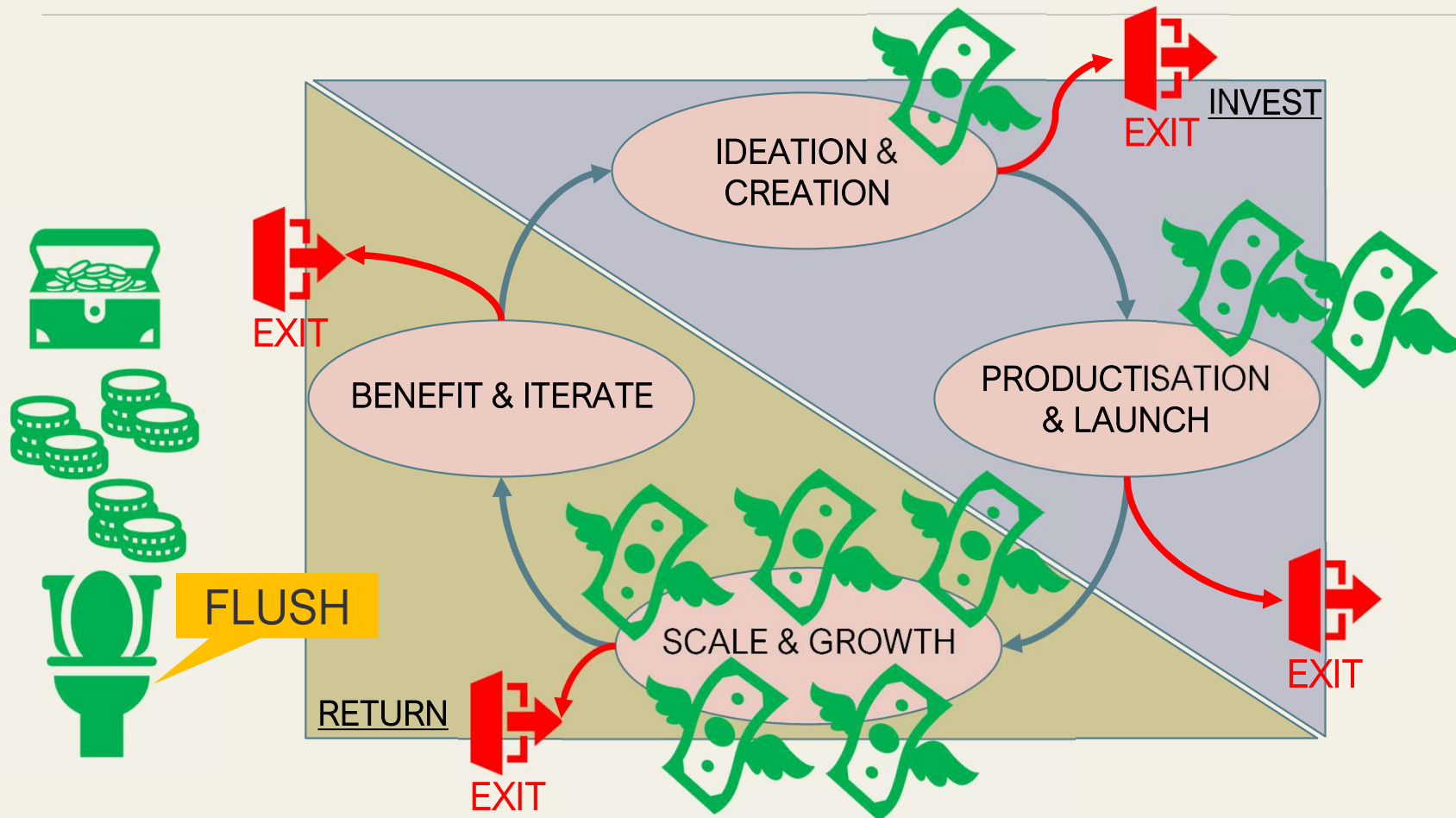
Compliance & Entrepreneurship || Juul Case Study Discussion

- Juul – Made ‘vaping’ products
 - *Initially set out to provide a less harmful alternative to cigarettes, targeting adult smokers not non-smokers or youth*
 - *Still had nicotine in the products*
- Lost the message along the way
 - *Social media influencer driven viral marketing campaign, bright colours, attractive product design*
 - *Children and teens were adopting their products, and questions whether Juul responded enough*
- Marketing and sales Investigated by US FDA including surprise inspection, and 39 states
 - *Legal settlement put in place to govern their marketing*
 - *Stopped marketing in the US and selling most ‘flavoured pods’, but continued sales outside of US*

Compliance & Entrepreneurship || Juul Case Study Discussion

- Do you think their product design & product marketing aligned with their stated market segment and mission?
- Do you think there is a difference between Juul's legal and ethical obligations regarding not selling to children?
 - *E.g. – Juul Stated Mission – Healthy cigarette alternative*
 - *E.g. – US Government Legal Requirement – Don't sell to under 18yo*
- Do you think there is evidence they changed their target market between the “Launch” stage (pre-viral marketing) and the “Scaling” (post viral marketing) stage?
- Did they attempt to fix the problems or elect to exit the original “safer than smoking” market?

Compliance & Entrepreneurship || Cost of Non-Compliance Issues



Compliance || Costs of Remediating Non-Compliance

- It is simpler and cheaper to address non-compliance early
- The later you leave remediation the more complex (and perhaps expensive)
 - *Product redesign - New model with no sharp bits and all no spare screws in the box*
 - *Retooling the factory – Changing the assembly line and fabrication machinery*
 - *Global recall of your product and providing a new one to every customer*
 - *Cash Money Costs – Fines, lawyer invoices, paying bail*
 - *Lost Customer & market confidence / Lost ground to competitors*
- Best to start from a compliant position and grow slower than remediate after rushing growth

Compliance || Mandatory Compliance (*You can't opt out of*)

- Compliance with legislation
 - Laws created through acts of government or court decisions
 - Mandatory standards created by a delegated regulator (e.g. – NZTA for driver and vehicle licensing)
 - No choice but to be compliant if it applies to you
 - Civil and criminal penalties enforced by delegated agencies (Police, Courts, Councils, Regulators such as NZTA or Commerce Commission)
 - Larger organisations tend to create internal policies which aid staff remaining legally compliant

Compliance || Voluntary Compliance (*That you can maybe opt out of*)

- Standards and Policies created by recognised experts
 - *Industry specific – Engineering NZ membership standards*
 - *Common practice – Voluntary Cybersecurity Standards*
 - *Product Design – ANSI, ISO, etc*
- Voluntary standards compliance can assure interoperability, evidence of quality, & a safety net ahead of failing to achieve mandatory compliance
- Failure to meet may result in loss of market confidence or censure by professional body

Compliance || Mandatory Legal Compliance

- Legal compliance is not trivial
 - *We are engineers not lawyers*
- As professionals we need to;
 - *Be aware of the applicable legislation*
 - *Seek advice when uncertain*
 - *Be aware of our rights and responsibilities*
 - *Be aware of societal issues affecting professional practice*



Compliance || Relevant Legislation for Legal Compliance (examples)

- Privacy Act
- Bill of Rights Act
- Copyright Act
- Electrical Legislation, codes of practice, and standards
- Resource Management Act
- Health & Safety at Work Act
- Health & Safety at Work Regulations
- Companies Act
- Income Tax Act
- Employment Relations Act
- Crimes Act
- Building Act
- Local by-laws and town planning regulations

Useful site for understanding legislation <http://www.legislation.govt.nz>

Intellectual Property || Types

- “A category of property that includes intangible creations of the human intellect” – Wikipedia (https://en.wikipedia.org/wiki/Intellectual_property)
- “Registered” intellectual property examples
 - *Patents*
 - *Copyright*
- “Unregistered” but still protected intellectual property
 - *Trade Secrets*

Intellectual Property || Patents

- Complete monopoly on the intellectual property covered for 20 years
- Very expensive to obtain
- Must be an invention “manner of new manufacture”
 - *Algorithms don't count unless embedded in an invention*
- Must be commercially significant
- Must be novel/new
- Often said only have value if they are defended (which requires more cost in legal fees)

Intellectual Property || Copyright

- The ability of the owner of an original work to control its use
 - *Literary, dramatic, musical, or artistic works, sound records, films, communication works, and 'typographical arrangements of published editions'*
- The creation of a bundle of rights for the owner to use
 - *Copy the work, issue (including sell) copies to the public*
 - *Perform, play, or show the work in public, make an adaption of the work*
 - *Authorise another person to carry out any of these rights over the work*

Intellectual Property || Academia v Corporate - IP as an Asset

- The following are Paul's thoughts only
- Academia revolves around sharing research and knowledge
 - *Grow the body of knowledge, peer review & repetition of experimental results*
- Corporations see research and knowledge as an investment to build an asset
 - *The ability to do something 'better' than the 'other guy' distinguishes your product from your competitors*
 - *This represents a competitive advantage that a corporation will want to protect*
- Exercise care and consideration when sharing or posting publically information on work you are doing

A final bit of (not legal) “advice”

- Compliance can be complicated and multi-dimensional
- It's important to familiarise yourself with what you need to be compliant with
- Most employers and professional organisations will guide and educate you
- If in doubt at any time then;
 1. *Don't sign anything you are unsure about*
 2. *Don't speak, post, or write about topics you aren't sure are public info*
 3. *Seek out appropriate expert advice and get it in writing*
- Remember it's easier and cheaper to fix a problem early or even before it has happened.