

SOCIAL ENTREPRENEURS AND INTELLECTUAL PROPERTY MANAGEMENT

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Background

- Entrepreneurship = Innovation in Business
- Social enterprise = Innovation in the Social Sector
- The strategic value of intellectual property (IP) in industry
- IP, Innovation, and the firm: increasing use of mixed management strategies (Henkel, et al, 2012; Roijakkers, et al, 2013; Phelps & Kline 2009; WIPO, 2011); IP represents a large portion of firm value and market capitalization (Johnson, et al, 2001 Phelps & Kline 2009)

The Goal of the Survey

- Gather basic information from social entrepreneurs/social enterprises (SE) on their management of intellectual property
- Such data would provide insight into SE strategy & philosophy for managing critical assets used in growth, scaling or replication: governance and stakeholder implications

Overarching Questions

- Do SEs recognize the intellectual property within their organization?
- If so, how do they protect it?
 - Written policies?
 - Origination of the policies?
 - Policy enforcement?
- What are the consequences, if any?
 - Revenue generation, business expansion (i.e. scaling/replication), or niche protection?

Intellectual Property Literature

- No existing survey data found
- No literature related to nonprofit strategic management of IP
- Started with texts for a variety of perspectives on IP in industry: the continuum of strong to weak/open
 - Phelps & Kline,
 - Chesborough; Bingham & Spradlin
 - Lessig; Landes & Posner
 - Gosseries, Marciano & Strowel

IP Literature Continued

- Lack of peer reviewed and professional literature on IP in the social sector
 - Focused on basic legal rights in copyright and trademark in the US.
- Economic and social justice impacts: pharmaceutical and global health
- Adjacent literature in intellectual capital references nonprofit IP strategy as part of knowledge management (Kong 2003, 2007)
- Discussions, interviews, and blogs of practitioners: Jewell, Tripp, Strickland, Lenkowsky.

Survey Development

- Scanned available IP surveys
- Four were useful in early stage question development & relevance assessment
 - UK IPO, 2010
 - Canada NSERC, 2008
 - Australian CRC, 2000
 - IPOA, 2003

Survey Sample

- Wanted executive level respondents
- Convenience sample: original process and the S&I 100 Index
- Social Impact Exchange*
 - Vetted organizations: impact, growth, and evidence criteria
 - US-based and –operating, only
 - Access to CEO emails
 - 107 (in 2014) listed organizations were included

*Partnership between Growth Philanthropy Network and Duke University's Center for Strategic Philanthropy and Civil Society.

Findings

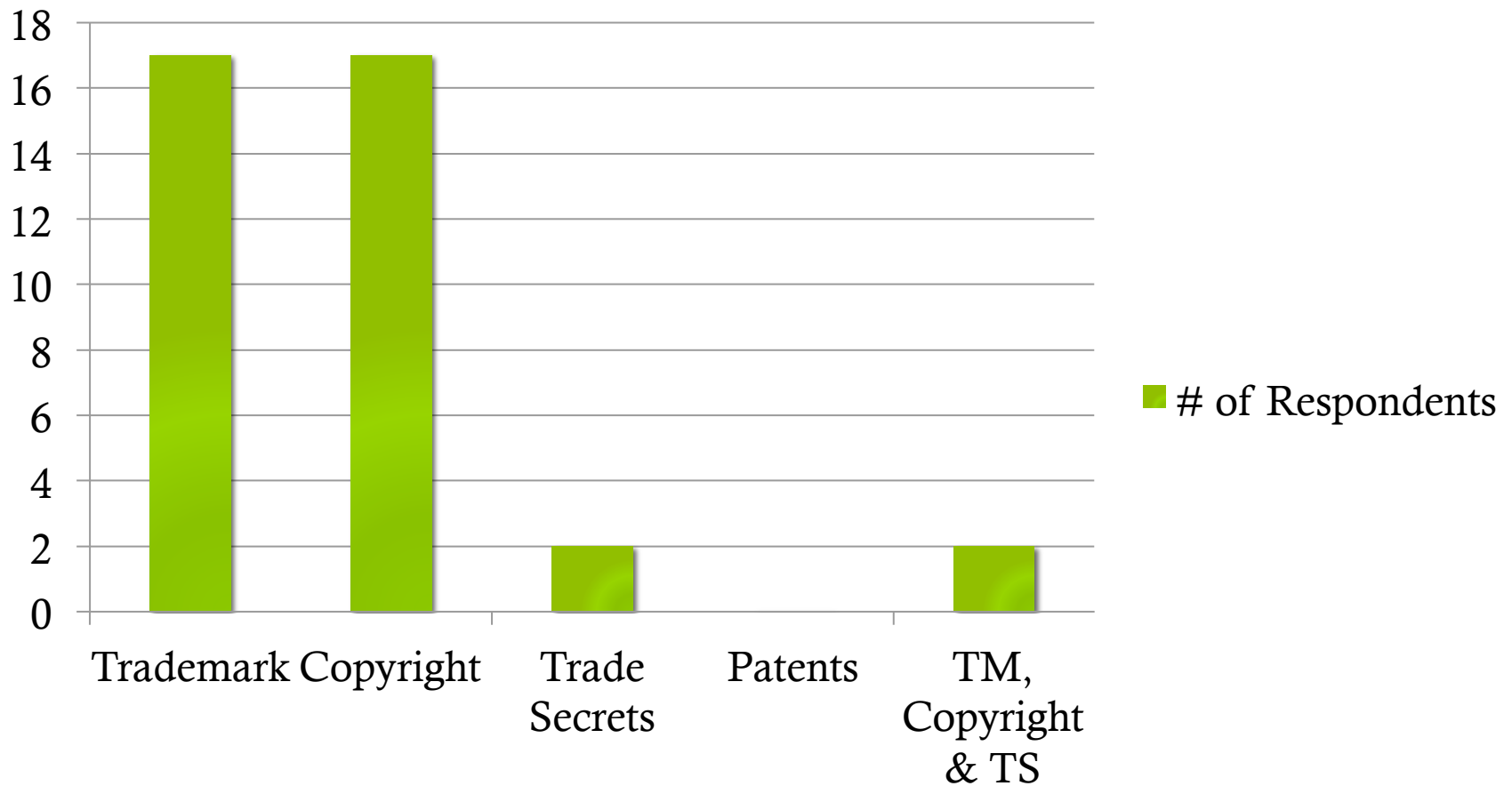
- 21 organizations registered and completed the survey anonymously – 20% participation rate
- All respondents met the executive leadership requirement
 - 15 CEO/Executive Director
 - 2 COO
 - 1 Chairman of the Board or similar
 - 3 write in responses: 2 “legal counsel”; 1 “general counsel”
- First question: which forms of IP does the org have?
 - 2 respondents selected “none of the above” and were taken to the end of the survey

Findings Continued

- The remaining 19 (90.47%) respondents identified as having one or more forms of IP as part of the organization's assets
- High percentage, but reasonable
 - Sample is all social enterprises, who are innovative by definition
 - Likely more aware of IP as a tool and product of the innovation process
 - Identifying is not the same as actively managing

Findings Continued

Types of IP in the SEs Responding

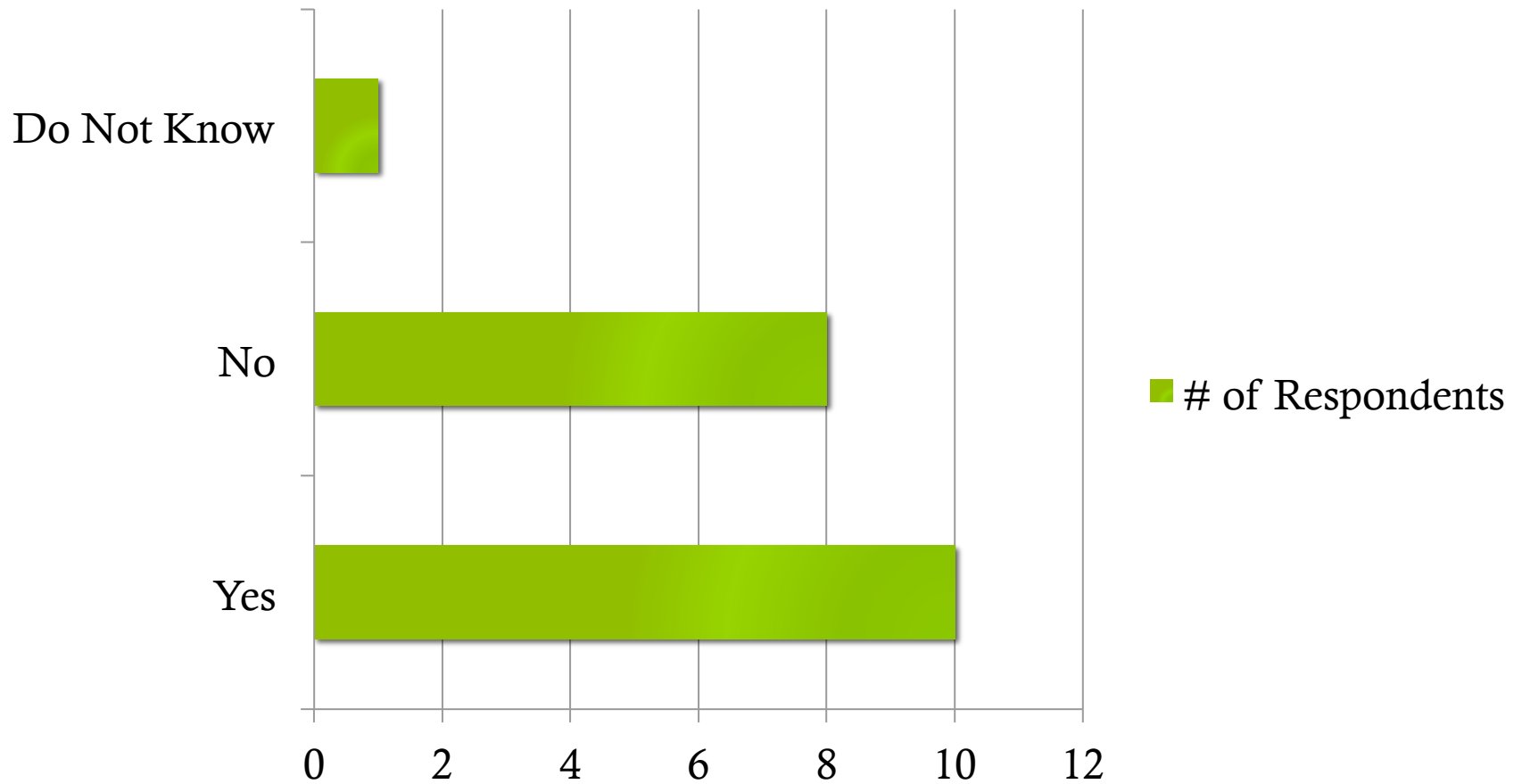


Findings Continued

- The 19 respondents with IP (hereafter referred to as “the respondents”) were asked about IP registration with the US Copyright Office and/or the US Patent and Trademark Office
 - 3 (15.79%) SEs indicated no registration with either office
 - 1 (5.26%) SE indicated that copyright is registered
 - 5 (26.32%) SEs indicated that trademark is registered
 - 10 (52.63%) SEs indicated that both are registered
- Copyright need not be registered to be enforced
- Trademark does; 17 have trademark, but only 15 have it registered

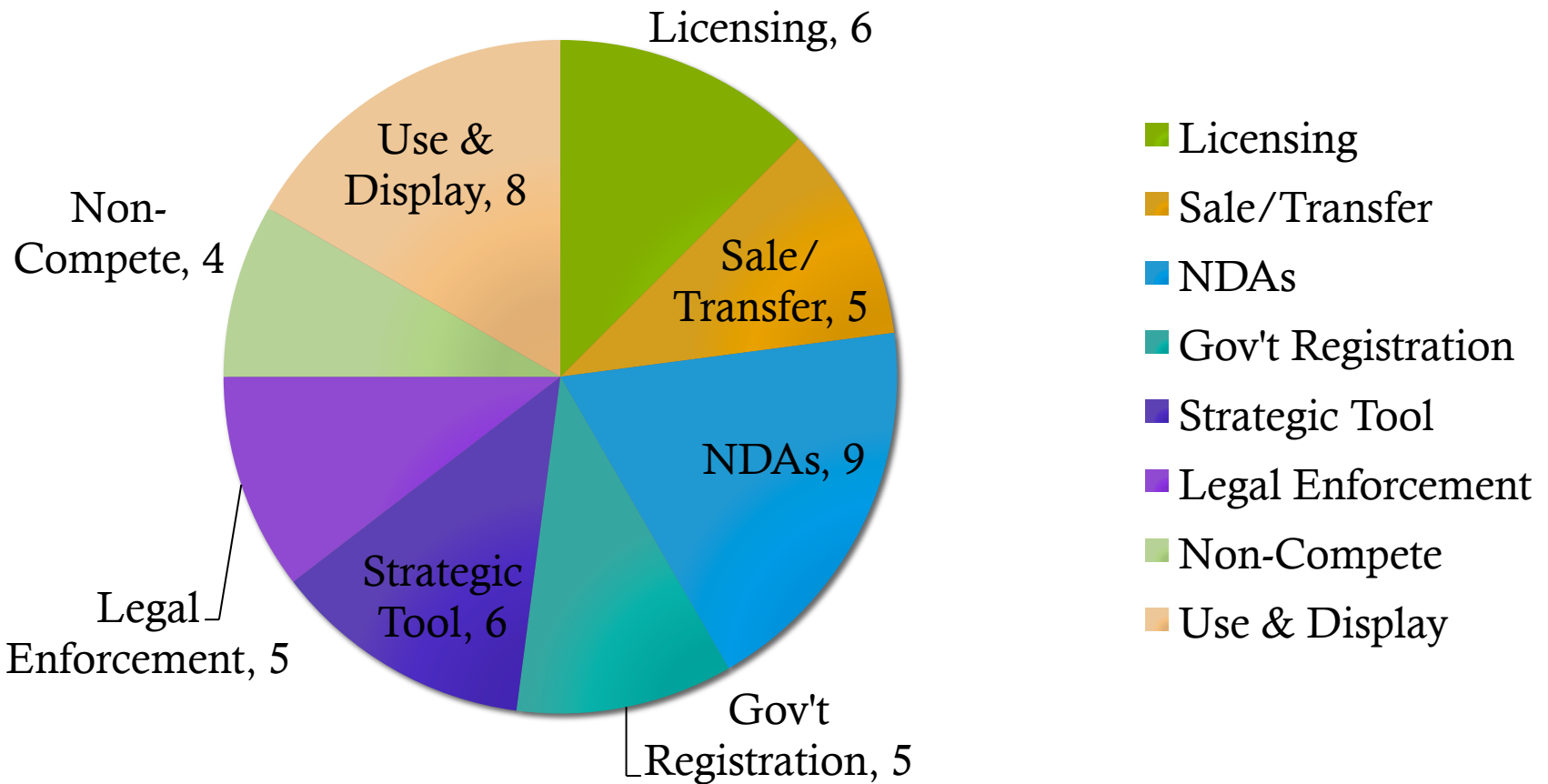
Findings Continued

Written IP Policies



Findings Continued

Written Policies



Findings Continued

- Who suggested written policies?
- 2 (20.00%) indicated Board of Directors
- 5 (50.00%) selected management
- 2 (20.00%) had policies suggested by outside legal counsel
- 1 (10.00%) wrote in “internal legal counsel”
- Internal legal counsel can be classified as management;
60/40 internal to external.

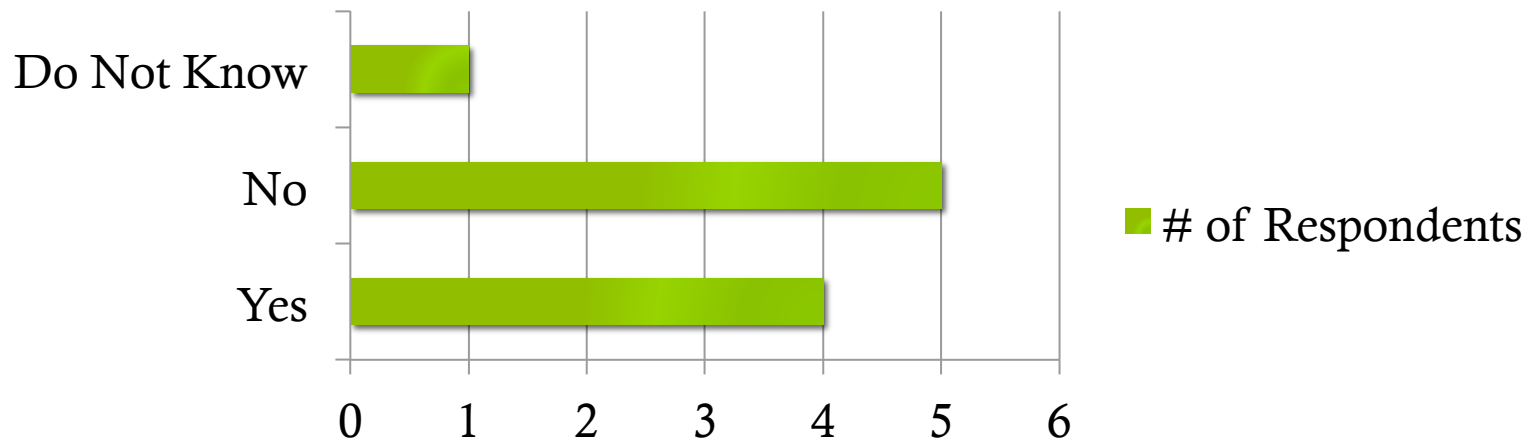
Findings Continued

- Day-to-day responsibility for IP management?
- Responses indicate as much about organizational structure as it does the IP management
- 5 of the 10 respondents indicate that the CEO/Exec Dir or COO are responsible for day-to-day management
- 5 of 10 were write in responses indicating shared duties across staff and board

Findings Continued

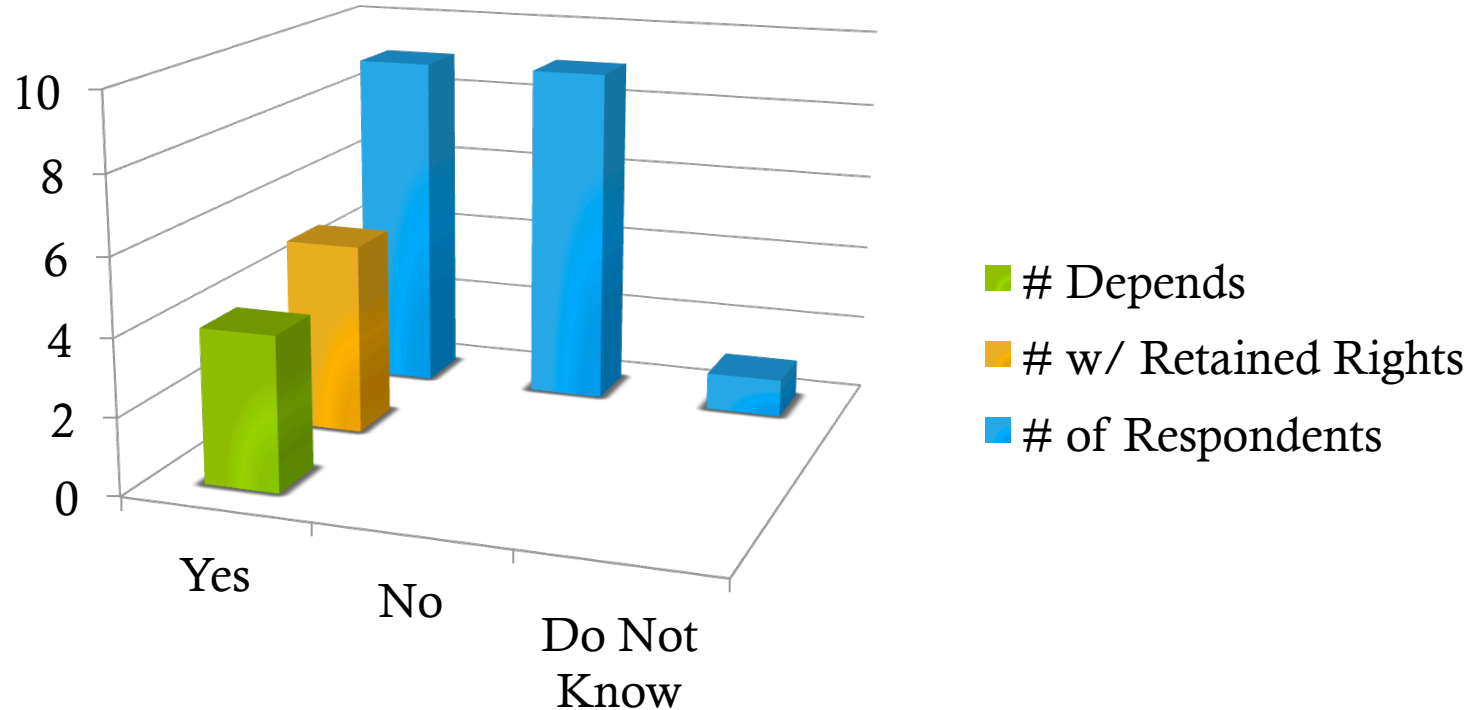
- Only 10 (52.63%) answered a question about legal enforcement of IP rights.

Legal Enforcement Taken



Findings Continued

- IP Developed with Foundation or Government Funds?



Findings Continued

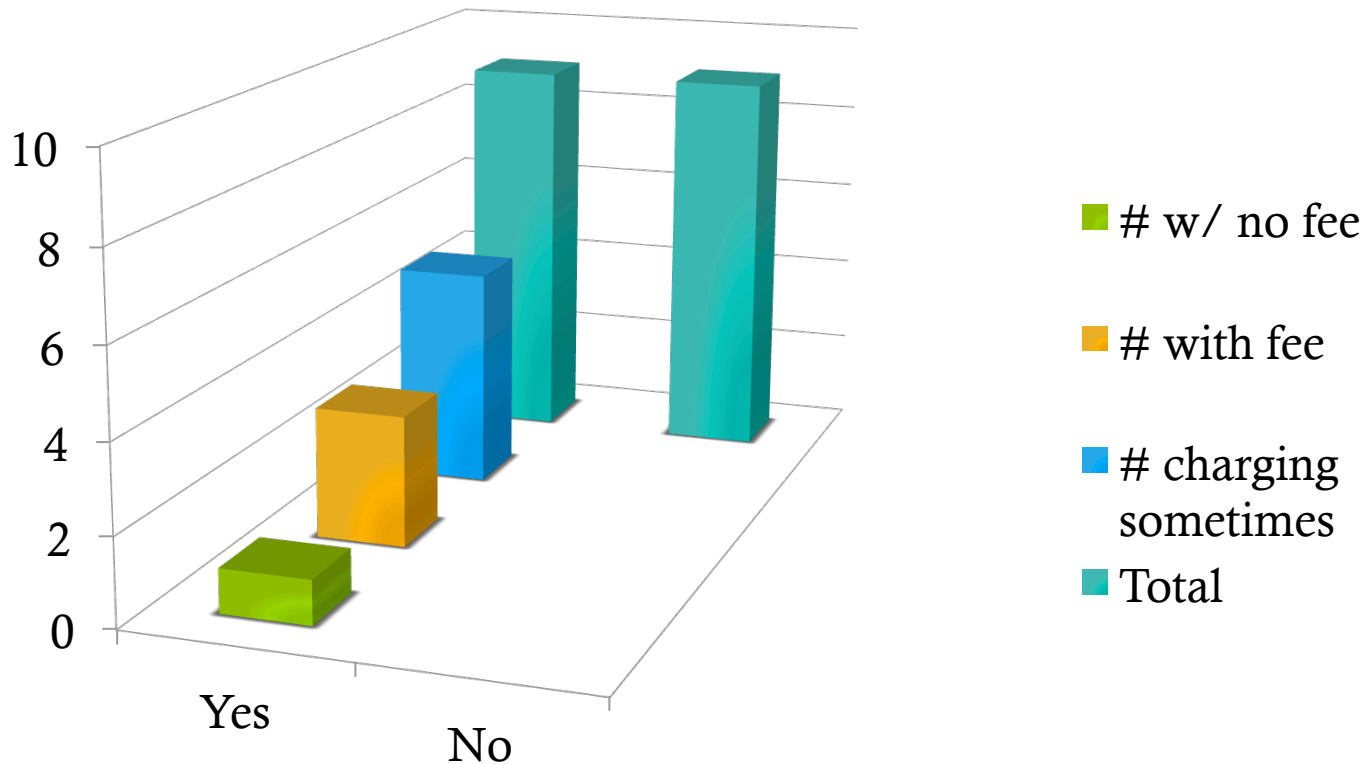
- All respondents indicated that no individuals retain the IP rights to IP developed while employed.
- Only 7 (36.84%) have a written policy to this effect.
- 9 (47.36%) indicated that there is no policy.
- 3 (15.79%) did not know.

Findings Continued

- Who has decision-making authority for the IP?
 - 10 (52.36%) selected CEO/Exec Dir
 - 1 (5.26%) indicated COO
 - 2 (10.53%) chose Chairman of the Board
 - 6 (31.58%) submitted write-in responses
- Compared to the earlier day-to-day IP management question, 2 (10.53%) respondents indicate that both d-2-d and strategic management reside with the same office.
- Only 3 (15.79%) say they have this strategic authority in a policy.

Findings Continued

Does the Organization License the IP*



*indicator of scaling/replication

Findings Continued

- Of the 9 that do license:
 - All will license to other nonprofits
 - 4 (44.44%) will license to for-profits
 - 6 (66.67%) license to gov't agencies
 - 1 (11.11%) licenses to all three
- 3 of the 6 that said they only charge sometimes will only license to for-profits and non-profits. 1 of 6 only licenses to non-profits and gov't agencies.

Findings Continued

- **Niche protection:** weak or strong IP strategies
- The 9 that license were asked about permission to modify and resell the licensed IP.
- Modification
 - 3 will permit modifications to meet licensee needs
 - 8 consider modifications if licensees seek permission first
- Reselling
 - 1 allows reselling of the licensed IP
 - 3 permit licensees to give away the IP, but not to charge for it. 2 of those 3 indicated in the earlier question that they do not charge a licensing fee

Findings Continued

- **Revenue generation:** program fees, sales, contracts
 - 11 (57.89%) yes
 - 8 (42.11%) no
- Of the 11 who said yes, 7 utilize two of the options, and 4 rely either on sales or contracts to generate revenue.
- Using IP assets to **expand market opportunities**
 - 17 (89.47%) use it to develop partnerships and with the primary goals of that expanded market being: reach new constituents, advocate, generate revenue
 - 2 (10.53%) do not

Findings Continued

- IP used as a **recruitment/retention tool**?
 - 5 (26.32%) say they use it to recruit staff/board
- IP **leveraged** to secure grants, contracts, and/or PRIs?
 - 15 (78.95%) seek gov't funding with IP and 11 currently have gov't funding
 - 14 (73.68%) seek grants/PRIs from foundation and 10 currently have grants or PRIs.

Governance & Stakeholder Implications

- Defining governance is easier than *executing* or *ensuring* good governance. Three standards to ensure protect and ensure operations & assets:
- Care: directors must be informed, exercise independent judgment, and act in good faith (Brody, 2006); relates to the manner in which they undertake their responsibilities – can fail by not supervising or neglecting to be informed
- Loyalty: make decisions objectively (conflict of interest and no harm)
- Obedience: directors ensure that the organization carry out its stated purpose, i.e. mission & vision

Governance & Stakeholders

- Within the limits of the law, directors are free to use any methods and processes they feel are appropriate
- Work of the governing board is not confined to the actions before the board in a meeting agenda, rather it is high-level management decisions and actions to meet the fiduciary obligations
- In practical application, the adoption of the New Public Management framework has narrowed the focus of those actions to the management of financial assets in order to achieve mission & impact. Perhaps the financial management model limitations are the spur to the rise of new legal forms: L3C and B-Corps

Governance & Stakeholders

- Intellectual Capital management (Bontis, 2001; Kong 2003 & 2007)
 - Human
 - Network
 - Structural
- We see some evidence of this in the survey responses, but not in a formalized pattern of management.

Governance & Stakeholders

- Fictional scenario in paper highlights realistic conflicts that arise when a board does not actively manage IP assets.
 - SE Board decides to scale through licensing based on external evaluation reports and a desire to be more self-sustaining (obedience)
 - SE has IP developed with external and own earned revenue; funders have different IP policies (agency/management policies, gift acceptance policy, stakeholder/funder relationship conflict)
 - Key staff leaves and re-creates key content at new organization that becomes a competitor in the curriculum market (employee works policy, non-compete policy)
- Actual gaps based on the survey results.

Governance & Stakeholders

- There is no *right* way to manage IP assets – often a values-based decision in the social innovation sector (Walker, 2013)
- As the we see the increasing desire for innovation in the social sector, the desire for accelerated problem-solving, and the rise of new organizational forms, those in governance positions need to understand IP as an asset.

Future Research

- SEs with subsidized IP have fewer written policies. Why is this the case? Do they consider it to be more of a public good given the public-benefit origins of the capital? Is this driven by the funder/stakeholder?
- What does the IP management policy/preference look like at the funder level? Government vs. Foundation?
- Do SEs forgo written policies but still actively and strategically manage their IP?

Thank you!

Questions? Comments?

All materials available – just
connect with me!