



## **Start Me Up: Challenges, Tips, and Tools for Startup Lawyers**

**Career Development**





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## CHEAT SHEET

- **Keep it in perspective.** Try to remember that the founders of many successful startup companies are not lawyers. It's your job to look out for them.
- **Hone the focus.** Startup companies tend to “drum to their own beat” and reject protocols and traditional procedures. Don't get swept up by the casual and entrepreneurial spirit of the company.
- **Build it yourself.** In-house counsel for startup companies are generally hired early in the company's evolution, and have the opportunity to help carve out the legal department.
- **Embrace the opportunity.** You should embrace the opportunity to work for a startup, as it could be a large multinational organization in the future.

From Airbnb to Uber, young technology companies are taking over verticals and completely redefining industries. Young executives, who disdain suits and boardrooms, lead the companies. The executives opt to walk to a coffee shop if they want to hold a meeting. For an attorney, the informal nature of the business and the office can be a shocking change.

This article offers practical tips and tools to a general counsel about to embark on the adventure that is a startup — allowing one to adapt to the culture and add value.

Since 2008, I have worked for a group of tech entrepreneurs that have conceptualized and developed various companies in the online vertical. For the past few years, our latest venture is becoming a large player in the online publishing world. Given our uncustomary “cycles,” we are often in “startup mode.” As such, I have become accustomed to the inner workings of the startup world.

The model, culture, and general principles in a startup company are the antithesis of a law firm — be it a boutique firm or national firm, where I began my own career. Being creative and thinking outside the box are not always encouraged in more traditional law firm setting; however, in a startup, these tools are necessary to survive.

Despite size, and at times budget restraints, it is not uncommon for startups to hire their own in-house lawyer early-on, rather than later in the process. This is unlike the traditional brick and mortar businesses that tend to outsource legal work until they reach a certain size and begin acquiring specialists. Hiring in-house counsel early means having a lawyer that will understand the company's business model, goals, and larger culture. The non-traditional approach of startup management could clash with a conformist and an institutionalized attorney who could be viewed as the “no” guy without compromise.

After many years of working in technology, I will often get “tongue-in-cheek” questions from fellow lawyers wondering how much of my day is spent playing foosball or working in a bean bag chair. There are some unique perks, but the legal needs and responsibilities are quite far reaching. Moreover, as technology businesses grow, so do their exposure: be it market, consumer base, or cross-border issues. Yet, mandates and projects do not arrive through memos weeks in advance with a kickoff meeting and “working” agenda.



office in Montreal.

Felicissimo's

Any career move from private practice to in-house is a substantial one — even more so when it involves a new company. The following outlines a list of recommendations, or “tools,” worth considering when joining a startup.

In order to gain greater insight into the startup vertical, vis-à-vis general counsel, I spoke to Chris Sacca. Sacca is a former associate at Fenwick & West, general counsel at various startups such as Speedera Networks, and worked in-house at Google for five years. In 2007 he founded Lowercase Capital — one of the most successful venture capital funds with investments in early-stage technology companies such as Twitter, Uber, and Instagram. He has also appeared as a “Guest Shark” on ABC’s hit TV series, *Shark Tank*.

In addition, I talked to fellow ACC member Colin Sullivan, whom I met at the 2016 ACC Annual Meeting in San Francisco. Sullivan serves as in-house counsel for Patreon, a crowd-funding platform popular with YouTube content creators allowing artists to obtain funding from their fans or patrons.

## **Stop saying “No!” and “Why?!”: think about “Yes!” and “How?”**

Lawyers are trained to be risk averse, analyzing every risk, and raising flags that create obstacles to moving forward. Startups are generally run by younger, outside-the-box thinkers that are moving hundreds of miles an hour: They are not legally trained and like to create their own “rules” — be it in M&A transactions, licensing agreements, or restructurings. The knee-jerk reaction of a lawyer will always be to assess risk factors and to determine potential issues — the primary responsibility of any general counsel.

However, when a problem is encountered or a proposed transaction is completely incompatible with

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legislation, rather than allocating time to outline why it cannot work, allocate an equal amount of time to outline possible alternatives. For Sullivan, this includes trying to deal with the entire issue rather than the matter at hand. “Both as a lawyer and problem solver, my instinct is to create solutions for the entire problem,” he says.

Simply outlining the legal risk without providing possible solutions will, in-time, lead to decreased involvement by management early on — as they will only include counsel when absolutely necessary or with hesitation. This will lead to an unhealthy relationship with management and the company at large. By being pragmatic and finding solutions to myriad legal issues, management will be more likely to seek your counsel and advice — developing trust in the long term.

Sacca best described this from a lawyer’s point of view: “It’s about seeing everything through a lens tinted ‘no’ and transitioning to a worldview that starts with ‘yes,’ even if the next question is, ‘how?’”

## **Founders are not lawyers**

I vividly remember dropping my jaw after reading certain emails from founders — brushing off real legal issues as “legal mumbo jumbo.” It can be discouraging and frustrating, but remember that startup founders are dealing with a tremendous amount of pressure to stay ahead of the competition. They will often treat legal issues as something that can be solved to avoid getting off track. This does not mean they do not care or they do not respect you — they are not lawyers. But you are. It is your job to look out for them — and to not take their responses as personal slights.

## **You will be more than “just” a lawyer**

As many can attest, being general counsel is much more than purely being a lawyer. A general counsel is the trusted, go-to advisor to whom the heads of departments and shareholders can confide. In a startup, this is amplified tenfold. Founders and management will look to you to “translate” and “navigate” a complex legal issue in a manner they can understand.

Over time, they will also look to you for more than counsel on legal matters, such as management issues, employee complaints, HR issues, and other decisions that can impact the company. In addition to strong communication skills, this added workload will require a balance of both confidence and empathy. The “elder statesman,” a key role, is extremely valuable and should be taken seriously. This opportunity to add value and help the business grow is not readily available anywhere else.



View of the ping pong table at Felicissimo's office.

## Keep focus

Startups are generally owned and operated by younger entrepreneurs that tend to “drum to their own beat” and reject protocols and traditional procedures. Since the first dotcom bubble, these men and women have reinvented the workplace. Today, foosball tables, flexible hours, and open-office policies are part of corporate America.

While the unique culture of a startup can be refreshing, it can also be a balancing act for a general counsel to make sure corporate bylaws are respected and decisions are feasible from a legal standpoint. While the suit and tie is no longer necessary, the responsibility of a lawyer remains the same — and it is important to keep focus. It is easy to get swept up by the casual and entrepreneurial spirit but critically important to remember why we are there.

At times, when founders hit upon a grand idea and the entire office is abuzz, you will still be the “no” person. In instances like these, there will be a fine-line between risk tolerance and standing firm on issues that can have severe legal ramifications. In these moments, it is time to drop that entrepreneurial hat and put on the legal one.

## Managing outside counsel

Another challenge, which is often overlooked, is working with outside counsel from within such a company. Law firms are still built around institutional clients that have more rigid forms. Startups like to reinvent everything — including deal structure. Oftentimes, general counsel become the proverbial translator between the company and outside counsel. A startup benefits from coordinating with

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external counsel, with the in-house attorney quarterbacking a project to avoid draining limited time and financial resources.

Understand that while your external firm is trying to protect its client, the environment they work in is different from yours. Startup lawyers will naturally become generalists — and outside counsel are often used for more specialized matters. The role of general counsel is to balance the needs of the company with associated legal risks and to determine which can be managed and which must be addressed.

Lastly, be prepared to justify the need to outsource specific legal matters and to reply to questions such as: “Why do we need to pay another lawyer if we have one here?” Founders love to think in terms of ROI and I have found this approach to be useful when outlining the need to outsource legal work (e.g., outlining the legal fees associated vis-à-vis the time saved/long-term issues it will solve).

## **Don't wait: Build it**

Apart from pressing legal issues, the last thing on a founder's mind is an IP portfolio, contract management, external counsel oversight, or the annual contract review. Do not wait for a mandate; take initiative by treating the company as one large ship being steered in unison. There will never be a lack of work in this area because startups are built from the ground up. Once these projects are in development, it is a good idea to let management know — ensuring smooth workflow and, in the long term, demonstrating the value that internal counsel brings to the company.

As the company grows in both revenue and employees, so does the need for an organized legal department — a department that you get to help build.

## **Know the product inside and out**

Startups typically push a unique product or service — which is not always easily understood. Counsel will never be able to completely anticipate potential issues, or properly advise, if they do not understand the product at all stages from development to market. To a general counsel of a large multinational organization, it becomes extremely difficult, if not impossible, to understand the company's entire ecosystem from an operations point of view. This is not the case with a startup: Be proactive early.

I have always maintained that I should be able to pitch our products and services to an outsider in the same manner as anyone else in the company — meaning that I must understand everything from IT infrastructures to advertising models to traffic statistics. Effective methods include reading all onboarding and training documents that various departments provide to new hires and sit in on department meetings.

Further, make an active effort to understand the market, the landscape, and the relevant competitors. While friends and family will sometimes make light of all the social media apps on my phone (from Snapchat to Rex), these applications are critical in our company's vertical to understand new and innovative ways that content is being distributed.



Open floor plan of Felicissimo's startup office.

## Be part of the team

From the outset, management and employees might have a natural instinct to fear the lawyer in the office (even among creatives, like developers and web designers, much less the management team). It's a stigma that general counsel must help to break. When I was still new, I noticed that eyes followed me as I walked around the office, with employees wondering whom I was coming to speak to next (i.e., who might be in trouble). Breaking this preconceived notion will be beneficial both in the short and long term — as departments will begin to trust you more, making it easier to work together, and encouraging team leads in the office to keep you abreast of new projects.

I learned to get around this stigma in several manners, but most importantly: Make it a point to get to know everyone by being present during all office events. Whether it is our new JavaScript hire, content editor, or ad operations associate, I always make it a point to strike up a conversation and find a common interest.

Over time, as employees will feel less intimidated by your presence, they'll drop the natural instinct of fear that they used to associate when they heard the word "lawyer." Recently, our company launched an internal three-month competition to promote exercise and healthy eating. I took it upon myself to join, follow a strict training guideline, and diet. In turn, a friendly spirit of competition has flourished with individuals whom I had little contact with otherwise.

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Sullivan is the first in-house counsel at Patreon. For him, being part of the team means believing in the company mission: “If you can connect with the rest of the team at the most basic level, you get a huge amount of trust, which is in short supply as the first lawyer at a startup.”

## Embrace the opportunity

The majority of general counsel you meet, including at ACC events, will not understand or relate even remotely to an in-house startup attorney. In 2010, I attended my first ACC Annual Meeting in San Antonio. While I found the sessions and overall experience to be beneficial, I struggled to relate to many of the speakers — especially when discussing the size and formality of their companies.

As a result of their successes, I attempted to install a formal and rigid routine in my own workplace for decision-making meetings that included boardroom discussions, circulating agendas, and lengthy emails. I was trying to turn the company into something it was not and struggled to adapt to the lack of formality.

In these issues, I felt myself constantly wrestling with my early training in law firms. In my conversation with Sacca, he put it best, saying:

“New, creative, unconventional approaches to things are not particularly relished in law firms. For example, as a first year lawyer, I came up with a new way to issue stock to employees that avoided variable accounting treatment. At first, I was told to know my place. Within a month, our biggest client was using my approach.”

Over time, I have learned the most important decisions were rarely made in predetermined meetings or the boardroom. Instead, the real work was done in breakaway discussions that would stretch to three hours waiting at an airport, leaning against a wall in our company kitchen, or taking a walk outside. I find it is the lack of formal guidelines and a rigid hierarchy that actually made us successful in building companies.

Nevertheless, this change can be quite a jolt for lawyers transitioning from firm life to startup life. Embrace the entrepreneurial, unconventional, and informal nature rather than trying to mold your startup into a traditional brick and mortar business.

As difficult as it may be, keep in mind that, one day, that startup company may become a large multinational organization. You are at the earliest stage and an integral part of the building process. According to Sacca, this is the perfect opportunity to develop skills that are not otherwise available: “I learned infinitely more at a small company than Google... I came away with this generalist knowledge that makes you lethal as a startup advisor.”

It is the individuals involved in this building process that will, later on, be sought by executives, lawyers, and aspiring entrepreneurs to share their experience and knowledge.

The majority of in-house attorneys at large companies will never work this close to a founder or CEO — much less be involved in high level decisions that will help shape the company moving forward. Sullivan agrees, describing this opportunity as “one that gives more junior lawyers a chance to be in the GC role and take on strategic legal issues.”

Not all lawyers will flourish in, or adapt well to, the culture and atmosphere of a startup. A lawyer with a low tolerance for risk or one who is not attracted to the fast-paced and casual setting will struggle

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from the outset. Those accustomed to advising multinationals or large corporations will quickly realize that startups are an entirely different animal — one that can be a challenge to tame.

On the other hand, over the past eight years, I have been involved first-hand in projects and decisions that would be out of my reach at any other type of company — and, in the process, I have acquired a unique skillset not easily attainable elsewhere.

## **Nine things to remember as a startup lawyer**

Tools for the first general counsel:

1. **Stop saying ‘No!’ and ‘Why?’: Think about ‘Yes!’ and ‘How?’** Rather than raising proverbial red flags and saying ‘no,’ begin adopting a different worldview to find solutions.
2. **Founders are not lawyers.** Startups are made of young entrepreneurs that you have not likely encountered in your legal career. Try not to take everything at face value and understand where they are coming from.
3. **You will be more than “just” a lawyer.** You will be expected to wear many hats. Rather than focus on legal tasks, consider embracing the opportunity to grow.
4. **Keep focus.** At times, it will be necessary to take a step back from the buzz and excitement and remember your primary role as legal counsel.
5. **Managing outside counsel.** The relationship with outside counsel is more than budgeting legal costs. It involves establishing a long term relationship with counsel that understands the business and will require a liason with the founders.
6. **Don’t wait : Build it.** Many mandates may not be on the mind’s of the founders. However, as the first general counsel, it should be on your mind either through an IP portfolio or a contract management system.
7. **Know the product inside and out.** In order to properly advise, startup general counsel should understand every facet of the product or service.
8. **Be part of the team.** Break the ice with colleagues that will give you nicknames such as the “Bad News Czar,” as is the case with Colin Sullivan of Patreon.
9. **Embrace the opportunity.** There is a unique opportunity in serving as the first general counsel for a startup. Be sure to appreciate and embrace the opportunity.

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