

IPS Commentary 2025

The world is currently in the midst of its fourth industrial revolution, which is characterized by emerging technology breakthroughs in diverse areas including robotics, drones, artificial intelligence, nanotechnology, quantum computing, machine learning, biotechnology, the Internet of Things, wireless technology, neural networks, 3D printing, and self-driving vehicles. This year, the combined market worth of the top five technology companies (Apple, Alphabet, Microsoft, Amazon and Meta) is almost \$7 trillion, representing more than a quarter of the entire U.S. gross domestic product. On October 2, 2024, OpenAI completed a \$6.6 billion fund-raising deal that values the company at \$157 billion, nearly twice its valuation just nine months ago. Microsoft plans to resurrect Pennsylvania's disused Three Mile Island nuclear power plant and purchase every bit of power it generates for twenty years to support the ongoing boom in artificial intelligence. Technology is reworking our global economy, as well as our daily lives. Using generative AI tools, a single person is able to flood the market with art or writing in the style of well-known artists with distinctive voices. High school students are able to create deepfake nudes of their classmates. The Screen Actors Guild went on strike for longer than it ever had, in part, to negotiate protections for its members against AI, which can be used to clone a person's voice as well as their likeness. The impact of these changes is evident in the way companies strategize, leverage, develop, and grow. This impact is strikingly evident in the IP sphere. Our current laws are not equipped to deal with this moment. The Copyright Office has called for a new federal law to address digital replicas. President Biden issued an executive order requiring that AI companies provide the government with information concerning the risk that their new tools might be used by adversaries to make weapons of mass destruction, by scam artists to commit fraud, or by unscrupulous parties to manipulate elections. Whatever the risks, generative AI is only getting smarter and it is not going away. More than two years ago, President Biden signed the CHIPS Act, which led to roughly \$450 billion in private investments to increase domestic semiconductor manufacturing capacity. On October 2, 2024, President Biden signed legislation that exempts semiconductor manufacturing facilities from environmental reviews. Most of the chips that are critical for AI are, as of this writing, produced in Taiwan. Developing a robust supply of advanced semiconductors in the United States is viewed by the current administration as, at least in part, a matter of national security.

Companies are experiencing rapid innovation, generating more trade secrets, and falling victim to more issues involving ownership, data privacy, security, employee mobility, and the rapid shelf-life of inventions than ever before. The global outbreak of COVID-19 in 2020 has not only accelerated many of these trends, it has reshaped the workplace in myriad ways, and we can only guess at the long-term ramifications. As reported by *The Wall Street Journal* on September 2, 2020, "[t]he coronavirus recession has been financially devastating for many Americans . . . [but i]t has been a boon for others." Two days later, *The Wall Street Journal* noted that remote-work technology had fueled unexpected M&A activity during the pandemic. As workers spent months last year sheltering in place throughout the world, their increased reliance on technology became instrumental in the continuing evolution of intellectual property as a vital asset class. Increasingly, patents, trademarks, copyrights, and trade secrets are being integrated into business strategies from the start by entrepreneurs and new ventures. The recent flurry of tech industry mergers demonstrates that IP is also being leveraged by mature companies.

Technology is also changing the way that lawyers represent and provide value to clients. Clients are capable of accessing contract forms, templates, legal cases, and guidance from the Internet or chatGPT with a simple click. Some attorneys began using generative AI tools

without understanding the limitations of those tools, which led to a rash of filings containing citations to cases that did not exist. Certain tasks that traditionally required an attorney can now be performed by apps, crowdsourced, or automated by technology, and attorneys must develop and maintain some competence with new tools as they become available. While bespoke services are still desired in some areas of law, in other areas, practitioners are expected to understand and use technology to streamline their services, and pass those efficiencies on to their clients. Ironically, the increasing reliance on generic forms often creates inefficiencies when deals sour and attorneys are not asked to do the small amount of preventative work that could have avoided the enormous expense of muddled litigation years later. Understanding clients' needs and providing them with the most efficient and cost effective solution using the tools of a modern law practice is an essential requirement for a modern attorney.

Recognizing these sea changes in the way we do business, this edition of IP Strategy provides new tech-based resources, references, guidelines, and examples. We have also added eleven valuable new sample form documents for use as guides in practice, including three new client worksheets and eight new template contracts for representation of transactional IP and business clients. Our goal is to empower practitioners to embrace the revolution, while preserving the traditional skills, knowledge, and expertise that are the tenets of the legal profession.

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