



# IP: Protecting Your Organization's Products and Innovations

Presented by Jason Blackstone | May 2019

# Introduction

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The background of the slide is an abstract composition. It features a grid of squares in various shades of orange and blue, some of which are semi-transparent. Overlaid on this grid are numerous thin, parallel diagonal lines in a light beige or cream color, creating a sense of depth and movement. The overall color palette is warm and modern.

**A Copyright is...**






**“When words become unclear,  
I shall focus with photographs.  
When images become  
inadequate, I shall be content  
with silence.”**

**— Ansel Adams**



# What is a Copyright?

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- Copyright protects original works of authorship including literary, dramatic, musical, audiovisual and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.
  - It is essentially the expression of an idea, not the idea itself
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# What can be Copyrighted by a Business?

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- Almost anything tangible produced by a Business
  - Advertising and Marketing
  - Product Descriptions
  - Manuals
  - Terms and Conditions
  - Product Photos
  - Product Boxes

# How to Obtain Copyright Protection?

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**Put down your chainsaw...**



# Registration is Key...



# Registration unlocks the Power of Copyright

- Must be Registered for...
  - Litigation
  - Administrative actions
  - DMCA actions



# Litigation

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- Copyright must be **registered** not merely **applied** for
- It can take 7 months to get a copyright registered





**Why does it Matter???**



# You Can Ban Importation of Infringing Products

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- Companies that copy directly tend to be lazy and copy entire manuals or marketing documents
- Without a trial or litigation, Administrative bodies will stop copyright infringement
- Foreign Governments will help enforce your copyrighted work
- Criminal penalties may apply



# DMCA & Marketplaces

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- DMCA allows for takedown notices based on a letter
- Amazon has an infringement program which will suspend sales of infringing products
- Other marketplaces have similar programs







**A Trademark is...**

# What is a Trademark?

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A trademark typically protects names, words, slogans and symbols that identify a business or brand and distinguishes it from others.



# Chinese Trademark Flood of 2018

- Trademark filings from Chinese companies flooded the USPTO last year
- This was largely fueled by a subsidy for registering foreign trademarks
- Most of the filings were fraudulent
- Hidden in the flood was a large uptick in legitimate Chinese manufacturers that maybe signals a large move into the U.S. Market

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## Flood of Trademark Applications From China Alarms U.S. Officials

Most of the Chinese filers are tiny merchants hawking goods like pocketbooks, binoculars and phone chargers

By [Jacob Gershman](#)  
May 5, 2018 8:00 a.m. ET

Huge numbers of Chinese citizens are seeking trademarks in the U.S., flooding the U.S. Patent and Trademark Office with applications that officials say appear to be rife with false information.

The surge of filings from China has surprised the patent office. Officials say it could be fueled by cash subsidies that Chinese municipal governments are offering to citizens who register a trademark in a foreign country.

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2. What We Know About the Easter Attacks in Sri Lanka 
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**Patents**

**Idea  
Disclosure**

**Trade Secrets**

**Idea  
Concealment**



**A Patent is...**

# What is a Patent?


- A 20 year government monopoly for a claimed invention in return for public disclosure
- Granted by the USPTO
- 3 Parts:
  - Description
  - Drawings
  - Claims





# How to get a Patent?

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- Submit specification, drawing, and claims to USPTO
  - The specification is what describes your idea and needs to be complete during initial filing
  - Claims are the legal description what the invention is claimed to be
  - Multiple sets of claims can be linked to a single specification
- 

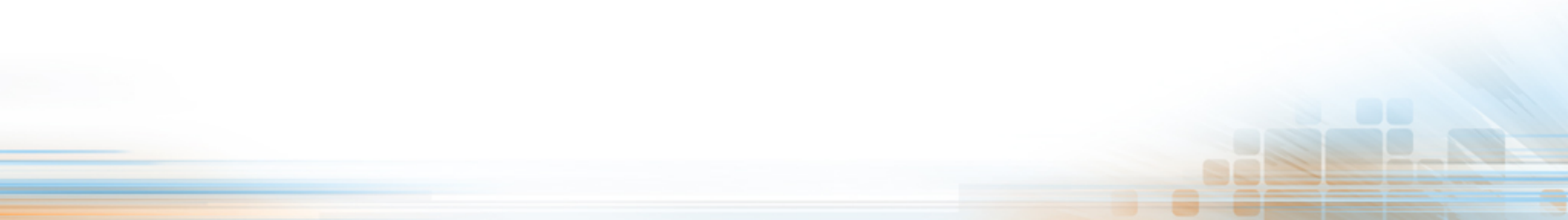
# How to use a Patent?

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- Discourage Competition from entering field
  - Assert against Competitors via Lawsuits
  - An asset to attract Investment or serve as Collateral
  - Marketing Differentiation
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# What a Patent isn't...

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- A license to make or sell an invention
  - A way to copy a product on the market
  - Linked to a specific product
  - A way to conceal a technology from a competitor
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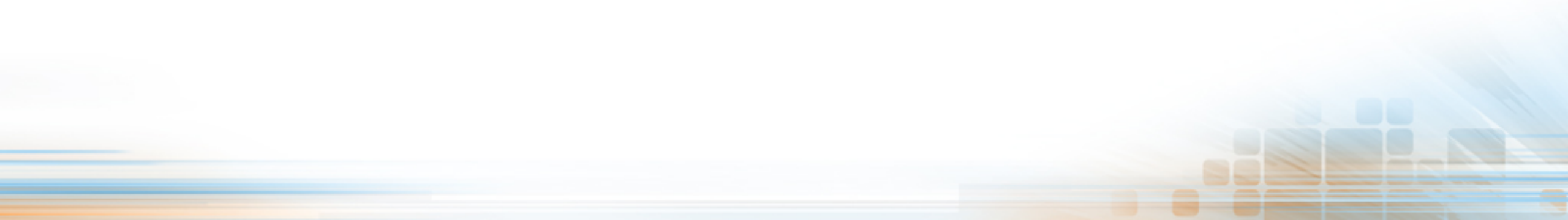


**A Trade Secret is...**



# What is a Trade Secret?

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- Financial, business, economic, technical, scientific and engineering **information**
  - Is kept **secret**
  - Is **not** reasonably **ascertainable**
  - Has **economic value** from not being known
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# Trade Secret Issues

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- How: License Agreements, Encryption
  - Problem: Theft Detection Difficult
  - Risks: Leaks
  - What are Trade Secrets:
    - Source Code, Algorithms, Data
    - Manufacturing Information
    - Vendor and Supplier information
    - Market Research
    - Customer Lists
    - Marketing Strategies
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# Trade Secrets v. Patents

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- Question 1: Can someone reverse engineer your invention easily?
- Question 2: Will you be able to keep it secret?
- Question 3: Cost?





TESLA

Tesla

# Tesla Dedicates Patents to Public

- Tesla famously dedicated their Patents to the Public
- Elon Musk:
  - “will not initiate patent lawsuits against anyone who, in good faith, wants to use our technology.”
  - “Tesla Motors was created to accelerate the advent of sustainable transport. If we clear a path to the creation of compelling electric vehicles, but then lay intellectual property landmines behind us to inhibit others, we are acting in a manner contrary to that goal?”

## Billionaire Musk releases all Tesla patents to help save the Earth

Agence France-Presse

Posted at Feb 01 2019 07:55 AM



# Tesla Prosecutes Trade Secrets

Tesla has vigorously pursued use of their Trade Secrets

ALL YOUR DATA IS BELONG TO US —

After subpoenaing Apple in trade secrets case, Tesla goes after Facebook

If not, Tesla tells judge: "Critical evidence...will forever be lost."

CYRUS FARIVAR - 6/27/2018, 1:25 PM


Tesla Sues Former Employees and Startup Zoox for Stealing Trade Secrets

**Tesla sues former employee for \$1 million over trade secret theft**



# Tesla's Trade Secrets

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- Source Code
  - Data from Vehicles
  - Inventory Tracking System
  - Warehouse Management System
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# Patent Litigation

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- Three Trends:
  - Shift from EDTex to Delaware and California
  - Resumption of NPE Litigation due to reduced patent costs
  - Continued trouble with subject matter eligibility

# Future Proof Patents

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- Patents have a 20 year term from filing
- Patent Law 20 years in the Future cannot be Predicted
- Patents need to be Future Proofed
  - Patent Claims Drafted to Match Changes in Patent Law



# Patent Drafting Strategy

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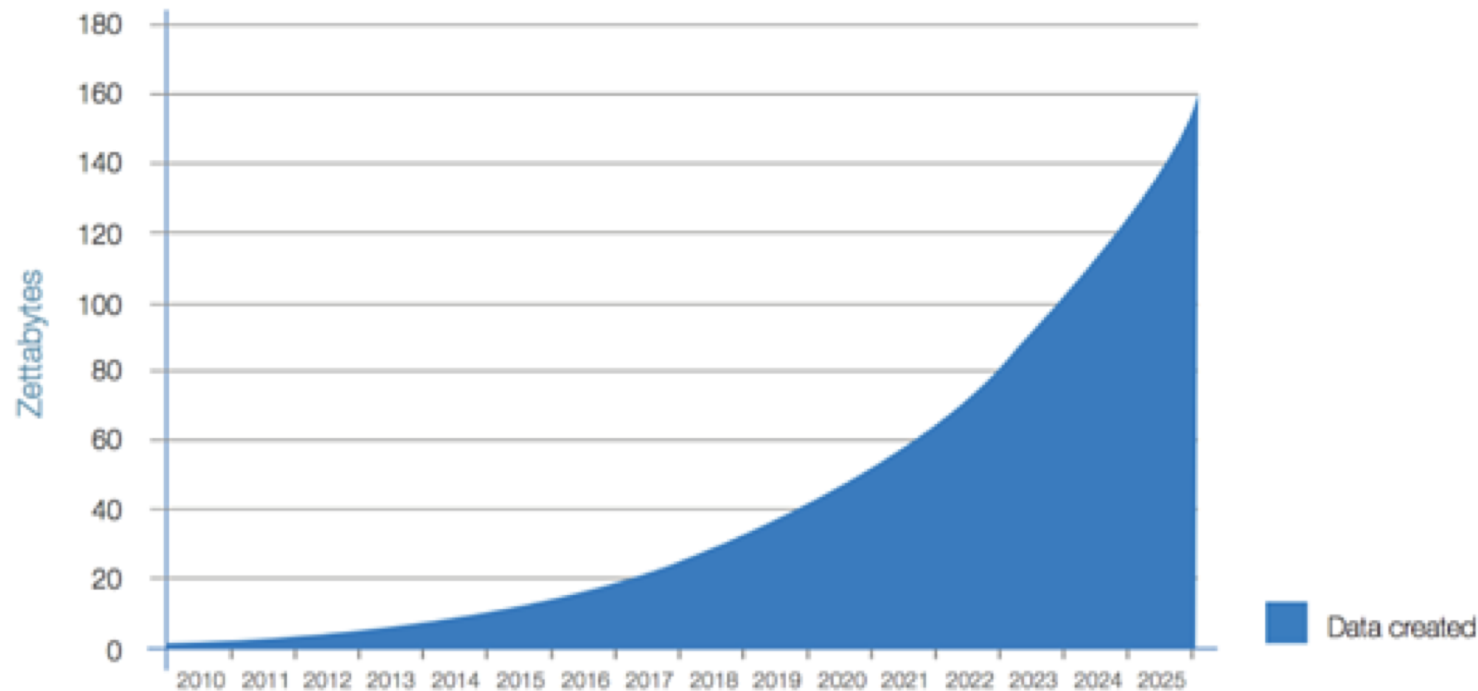
- Freeze Patent In Time at Filing
  - Maximize Patent Disclosure
  - Draft Narrow Initial Claims
- Keep Patent Family Active
  - Draft Follow-on Claims to Match Competitors' Products or Changes in Claim Interpretation



**Data is the 5<sup>th</sup> IP Category...**

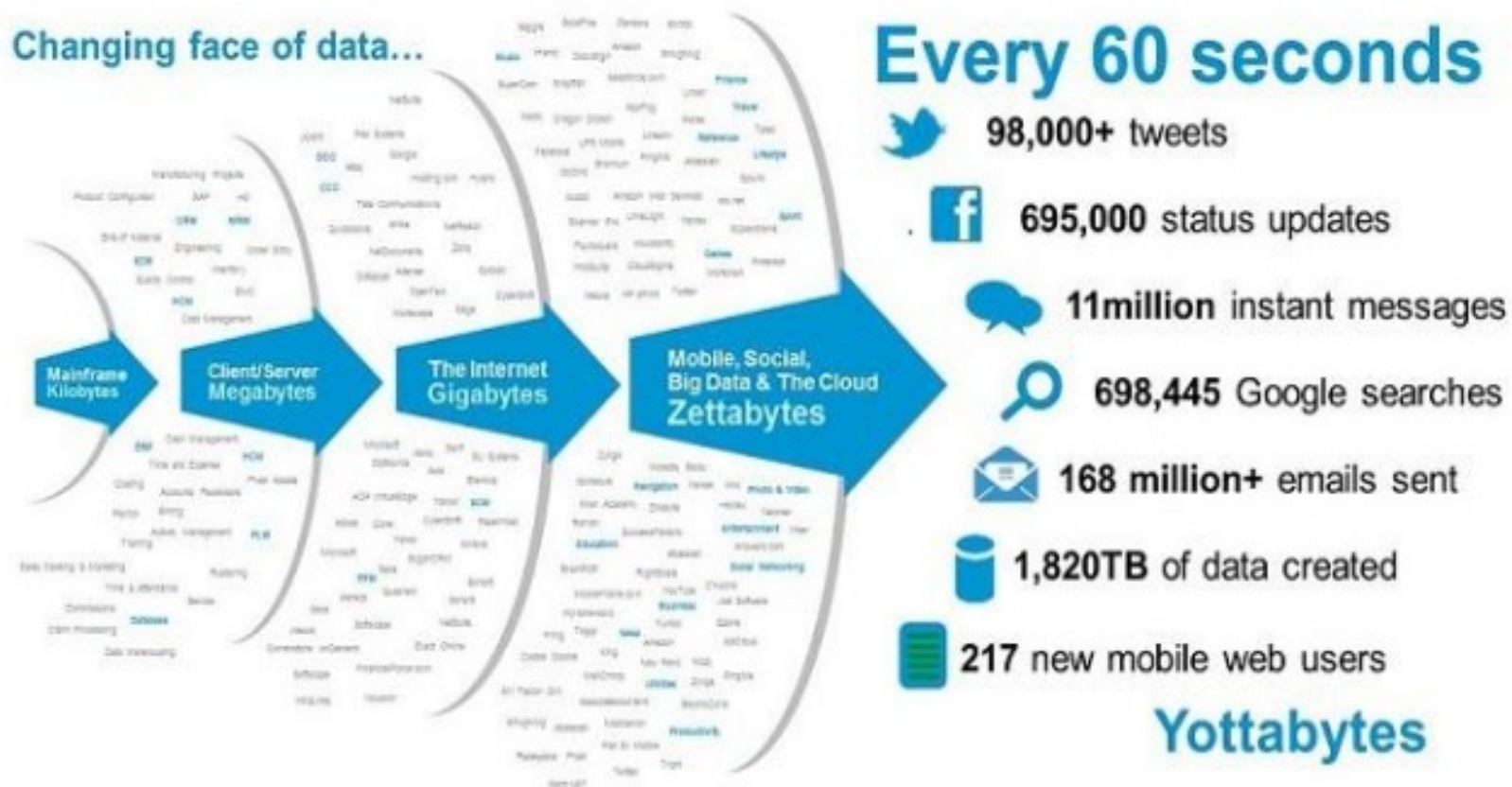
# Data Production is Increasing Exponentially

Figure 2. Annual Size of the Global Datasphere



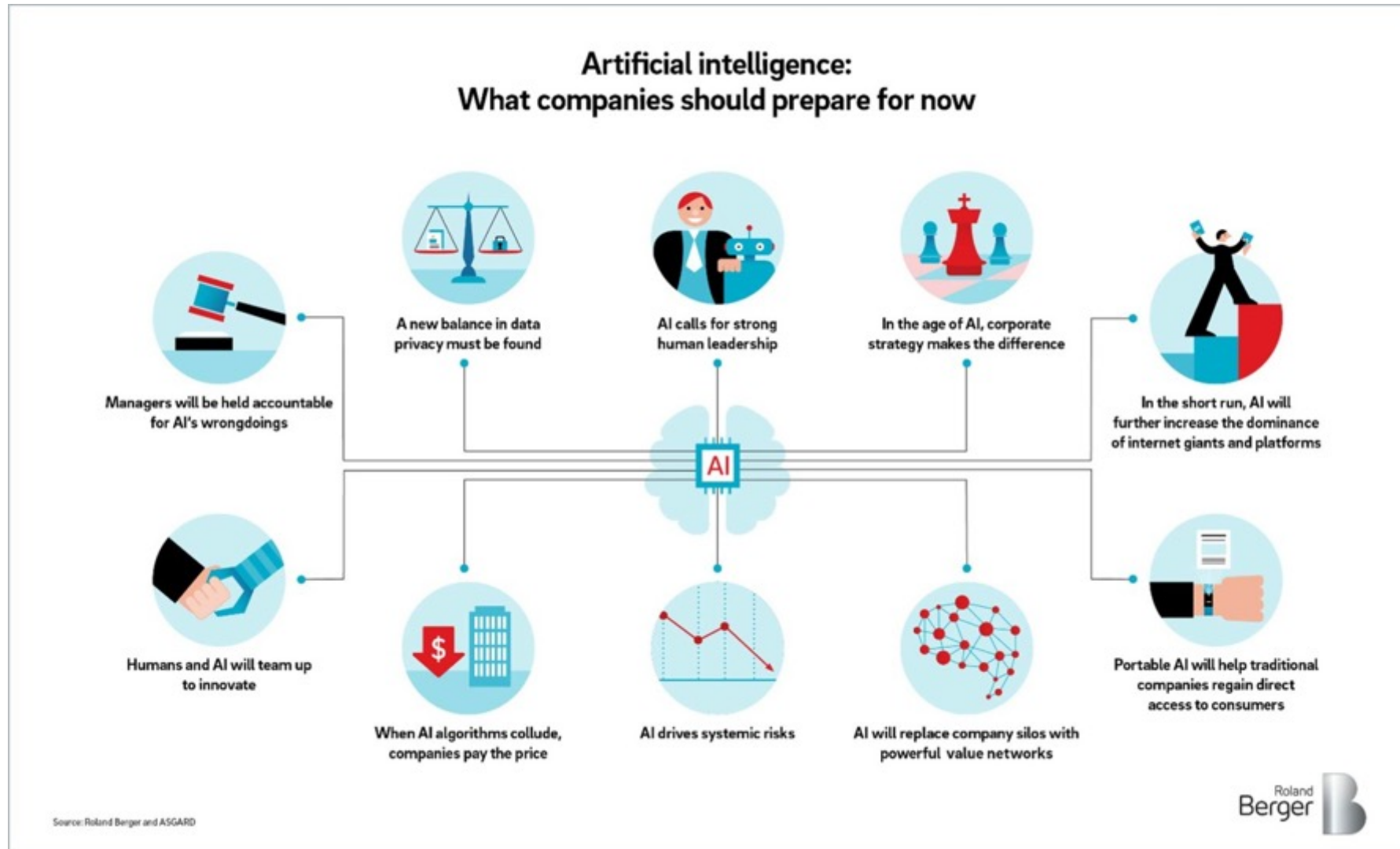
Source: IDC's Data Age 2025 study, sponsored by Seagate, April 2017

# Interaction with Clients, Suppliers and Internally Generates Incrementally More Data for Decisions



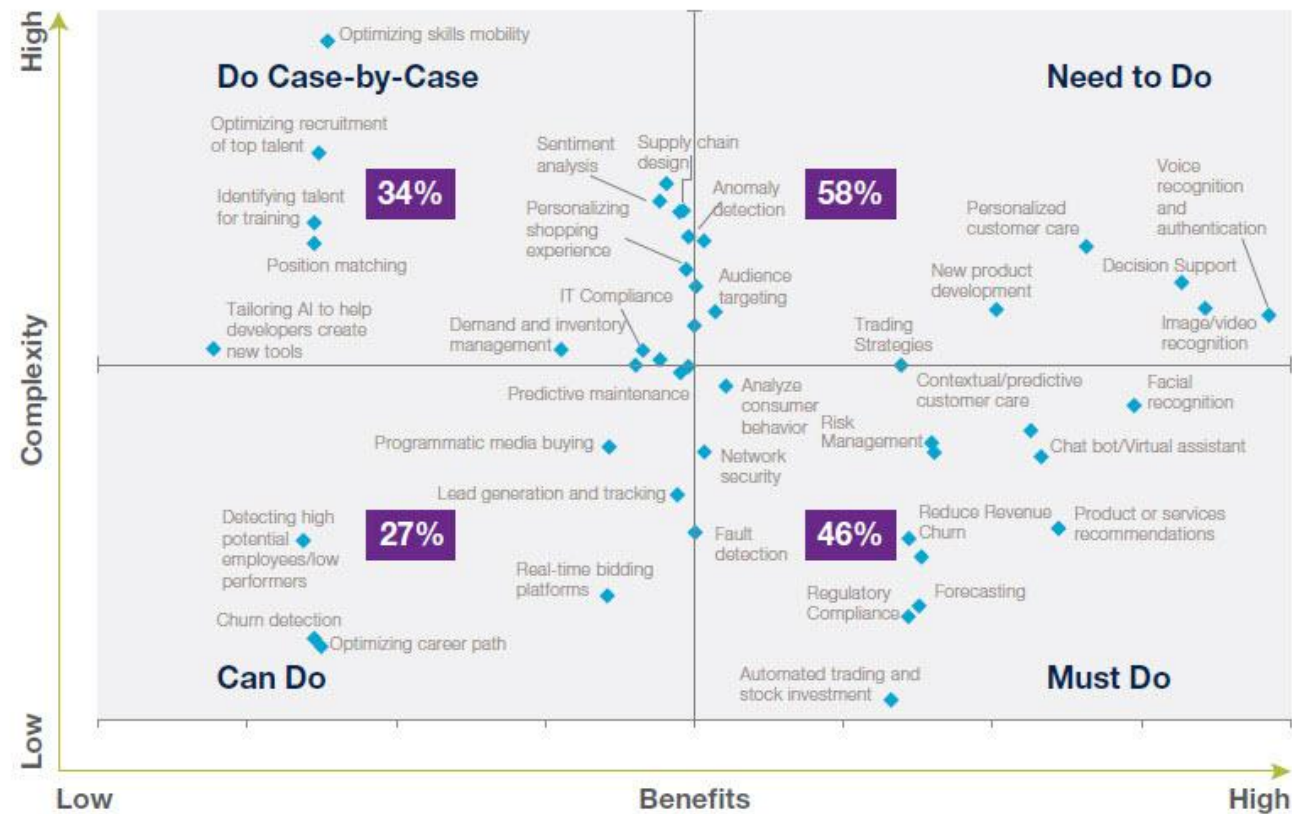


# Increasing Reliance on Machine Learning



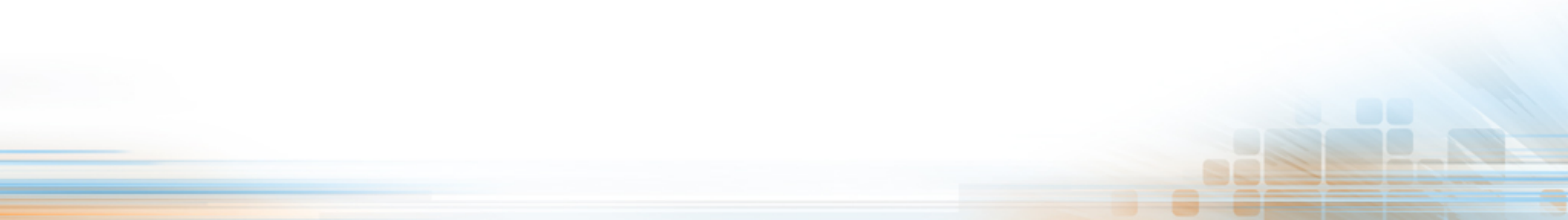
# Drives the Need for both More Data & More Accurate Data

Figure 9. Distribution of use cases by benefits and complexity



# Your Data Is Worth More Than the Rest of Your IP

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- The advent of Machine Learning and Big Data is upon us
  - Even if your organization is not a “technology company,” the competitive advantages of machine learning systems will force their adoption
  - A key to maintaining your company’s competitiveness is maintaining your data secrecy and your data flow
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# Data Regulation & Liability


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- Facing increasing regulation and liability from Data Use and Dissemination
  - Consumer pushback
  - Liability for Data Leaks
  - Looming Privacy Laws and Regulations
  - Potential Data Usage Laws
  - Rampant Cyber Espionage



# Data Regulation & Liability

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- Know your Data
    - Whose data do you have, who has your data
  - Know where your data is stored
    - Where is third party data stored, where is your data stored by others
  - Know how your data is used
    - How do you use third party data, how do others use your data
    - Know if you sending any third party data to others, how do they use it
  - Know how your data is protected?
    - Encrypted? Two factor protection? Intrusion or Usage Detection?
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# What Protects Your Data

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- Trade Secret law controls and protects the use of Data
- Contracts and other agreements provide the legal framework for protection
- Technology provides the means to implement data protections

# Data Plan & Pipeline for Any Relationship

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- Build a Data Plan for your enterprise, and for any relationship
- Should show:
  - Data Sources
  - Usages and Permissions
  - Manipulations or Modifications
  - Storage and Protections
  - Distributions
- Capture and describe system in inception instead of ad hoc

# Takeaways



# Where is the Horse?





# Retired on the Beach....

A photograph of a brown horse with a white blaze on its face, standing on a sandy beach. The horse is facing the camera and has a saddle on its back. In the background, the ocean is visible with gentle waves, and the sun is setting, creating a warm, golden glow. There are beach umbrellas and lounge chairs scattered across the sand.

Using your ideas

# Once the Horse Is out of the Barn, IP Issues Are Hard to Correct

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- Trade Secrets: If your Idea is no longer a secret, or if you have not taken steps to keep them secret
- Patents: Disclosure is frozen on filing date, any additions will cause a later filing date
- Copyrights: Once copied it can take months to establish registration and effectively block continued use
- Data:
  - As protection is based on trade secret, if those protections are not in effect, there is little legal protection
  - Cyber protection is so important to minimize intrusion and distribution risk

# Patents: Best Practices

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- File Early
- Prioritize Most Important Ideas
- File Well, with a Comprehensive Specification
- Keep your Patent Family alive
- Have a Strategy from first filing over which Claims to Seek
- File Useful Claims that can be Asserted
- Two Points on Timing:
  - First To File System
  - Public Use, Sales and Disclosures can prevent Patent Granting




# Trade Secrets: Best Practices

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- Non-Disclosure Agreements
  - Confidentiality Policies & Training
  - Labeling
  - Passwords/Logins
  - Need to Know Access
  - Physical Barriers
  - Controlled Devices
  - Alarm Systems
- 

# Data: Best Practices

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- Know Data Sources and Processing
  - Create a Data Strategy in cooperation with IT Dept
  - Ensure Data Security Strategy is updated to stay state of the art
  - Additional Data Regulations are coming, when implementing compliance with GDPR or CCA, attempt to create a structure that can be used in a more general case to ease compliance in additional future regulations
  - Be explicit in transactional documents, set forth permissions and security requirements
  - Penetrations will occur, encrypt all sensitive data in all instances
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# Copyrights: Best Practices

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- File Early
- File Comprehensively on Applicable Products
- Maximize Use of Administrative Processes

# Trademark: Best Practices

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- File Early
- Avoid conflicts where possible, conduct comprehensive search
- Keep processes Administrative for as long as possible





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