

Tips for Avoiding IP Pitfalls & Technology Traps

Association of Corporate Counsel, National Capital Region
Small Law Department and General Counsel Primer (September 12, 2019)

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IP Protection Regimes

Copyrights

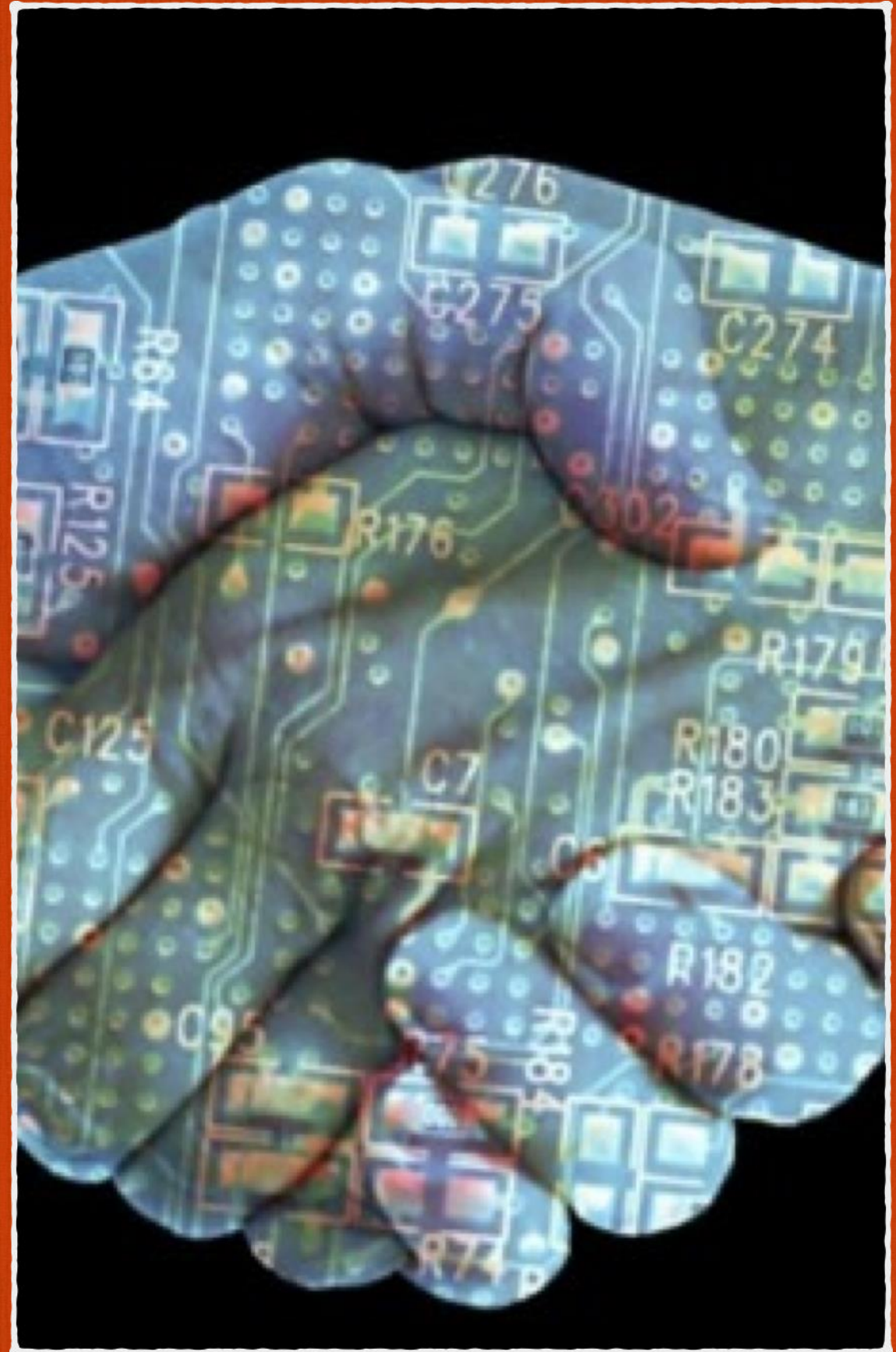
Trademarks

Patents

Trade Secrets

Right of Publicity, Plant Patents, Unfair
Competition, etc.

*Don't forget contracts



Geographic Restrictions on IP Protection

Territorial scope
Copyright treaties
Tight timelines
Lots of Fees
Some harmonization efforts



Build an International IP Protection & Enforcement Strategy

- Consider operational centers, manufacturing, major end markets (current and future)
- Different protection regimes, different plan
- Weigh protection costs vs. value
- Docket management
- Evaluate practical enforcement issues



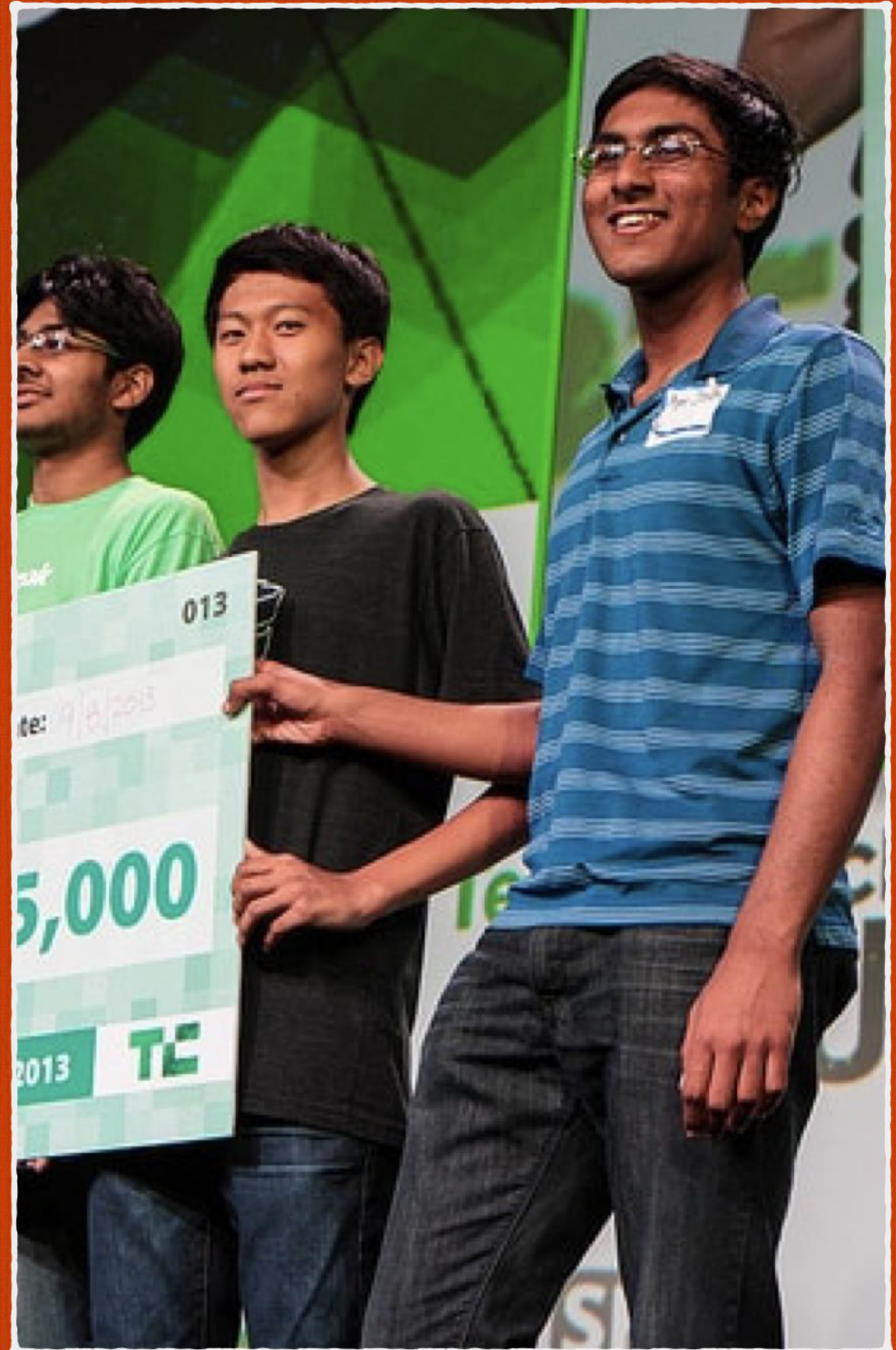
Get that Copyright “Right” in Writing

-employees, contractors, service providers

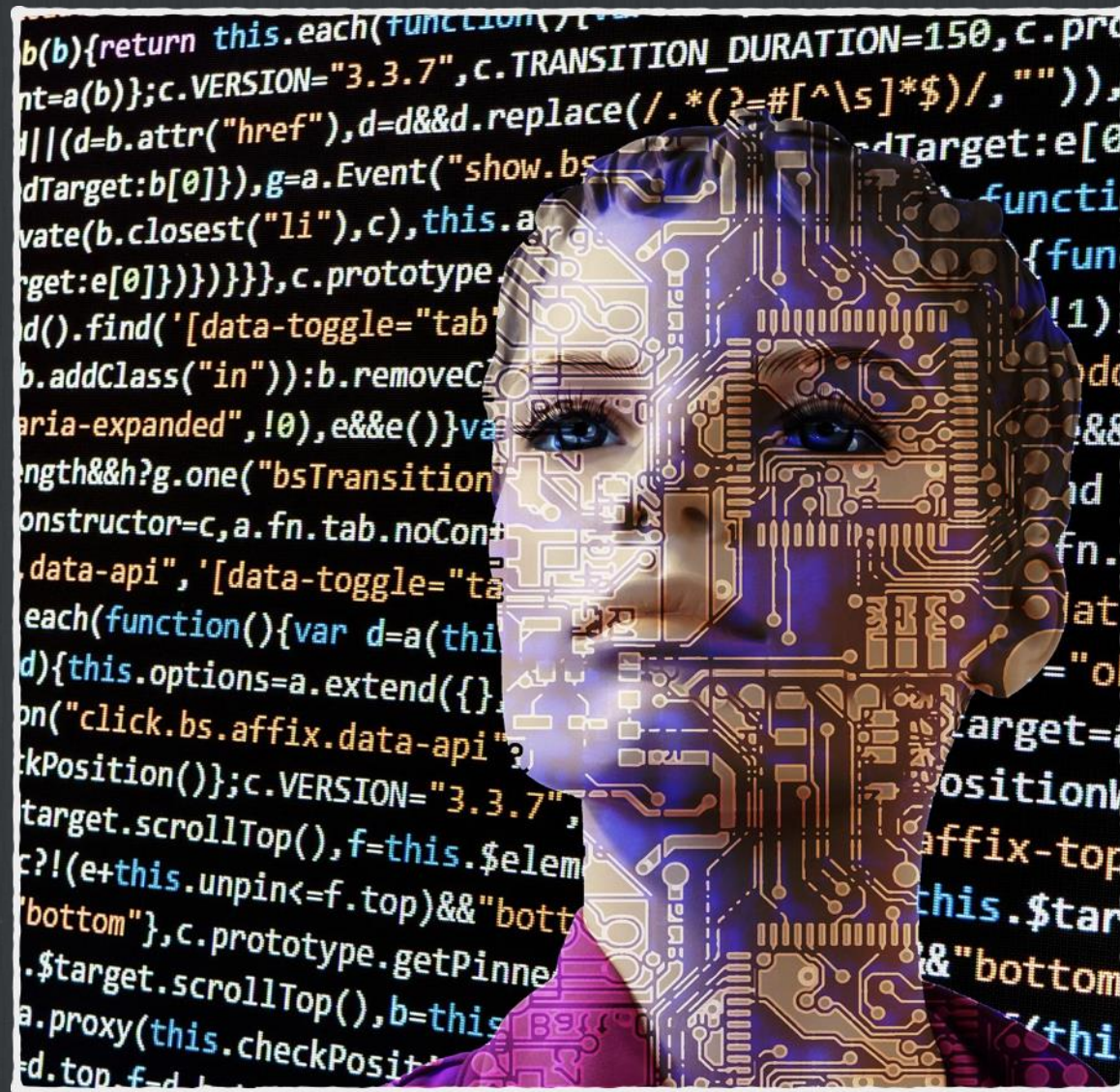
Image by [Pete Linforth](#) from [Pixabay](#)

Hackathons are for IP Hacks

For more info: <https://buff.ly/31lbAdm>



Software Protection Options



- ❑ Patents-challenging in US
- ❑ Copyright-text and visual representation, maybe GUI/UI
- ❑ Trade secret
- ❑ Practical measures to protect
 - ❑ watermarks, obfuscate code
 - ❑ compartmentalize

Architectural Copyright Protection Issues

- ❑ Different than technical drawings
- ❑ Contract terms are IMPORTANT
- ❑ What about future projects, use parts of design?
- ❑ Standardization of architectural elements common in retail setting (brand consistency)
- ❑ Understanding what's protectable vs. code or standard driven

Companies & Their Influencers



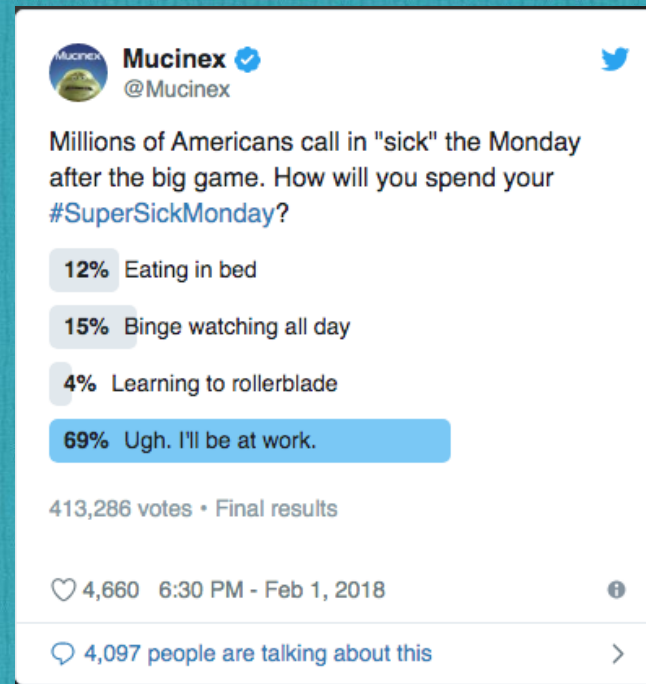
Just Say “No” to Bad Brand Names



- The Distinctiveness Spectrum
 - Fanciful-Exxon, Tylenol, Kodak
 - Arbitrary-Apple, Camel, Oracle
 - Suggestive-AirBNB, Office Depot, Chicken of the Sea
 - Descriptive-International Computer Integrators
 - Generic-Aspirin, Dry ice, Escalator

Clear the Brand Before You Fall in Love

- ❑ Business should choose at least 3-5 potential names
- ❑ Perform a knockout or more detailed search
- ❑ Understand the TM Register situation + common law issues
- ❑ Protection strategy should navigate the use/filing issues involving other marks



Question: Are #Hashtags Trademarks?

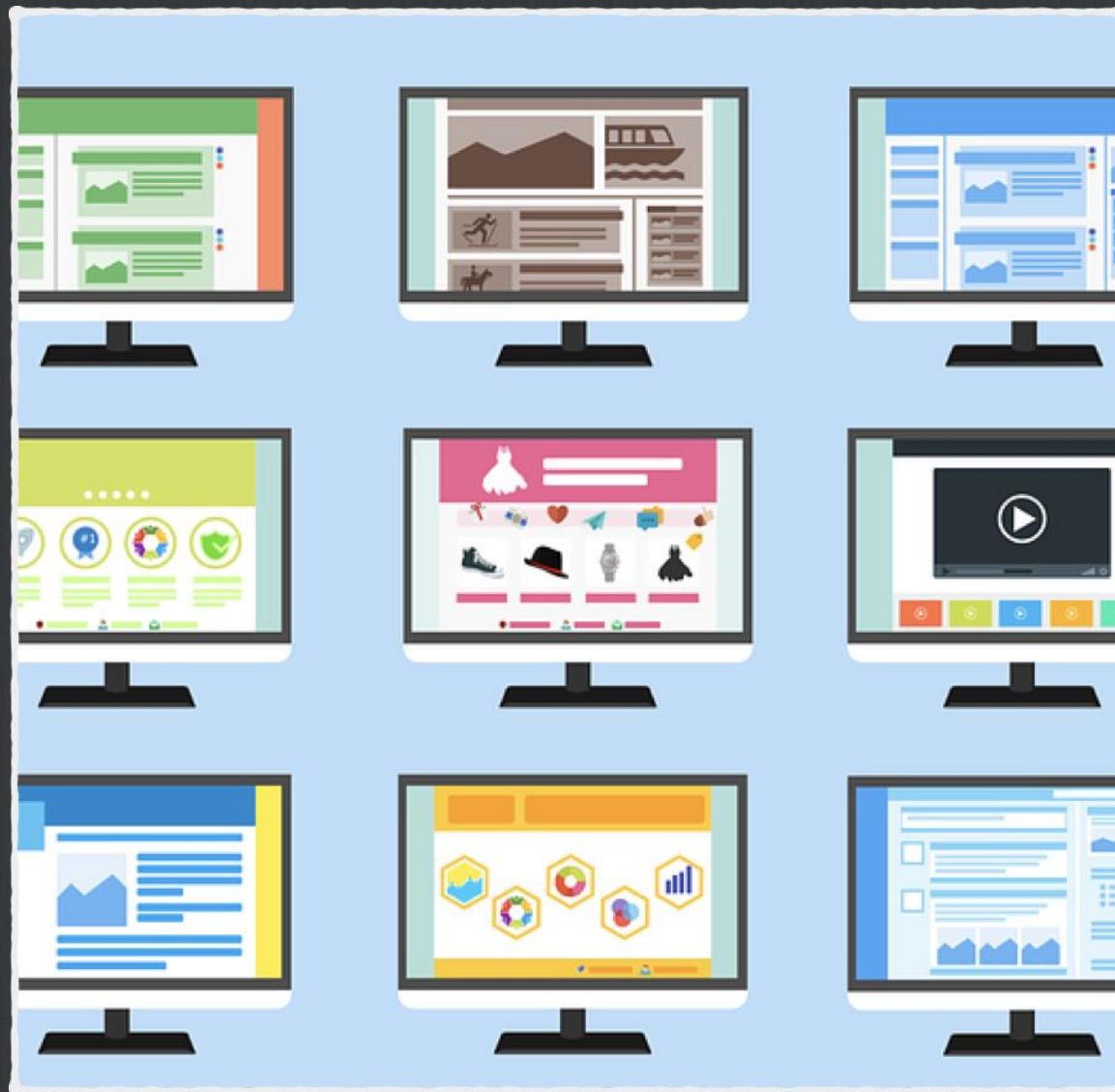


More info: <https://buff.ly/32yeCeB>

IP in the Cloud

- Layers of cloud providers, sub providers, different deployment models
- Loss/breach liability complications
- Non-traditional possession, custody, and control concepts
- Privacy, unknown cross border transfers, jurisdictional issues, difficult to detect infringement, divided infringement issues

Website IP Issues



- ❑ Images
- ❑ Content
- ❑ Data rights
- ❑ IP Notice Pages
- ❑ Fonts
- ❑ Platform licensing issues
- ❑ Contractual assignment of rights

Open Source & Standard Licensing Issues

- Rights and obligation frameworks applied on a large scale
- changes the default copyright protection using standard terms
- “copyleft”, sharing improvements, simple and permissive, collaboration focused
- choosealicense.com

IP Considerations in Contracts

- Preexisting, jointly-created, and paid for IP buckets
- Defense and indemnification for third party infringement accusations/judgements; limitations of liability carveouts for IP infringement
- Failure to commercialize options
- Payment obligations
- Assignments (work product & IP) and tech improvements; data ownership and rights
- What's the "split up" plan?
- Different approaches/rights in government contracts

Send Employees Back to School for IP and Contract Training

Early and Often....

Legal's Role in Technology Procurement

- ❑ Insertion in the workflow, when and how often?
- ❑ Privacy and data security concerns
- ❑ Understand connection between terms and expected product/services received
- ❑ Approval for insertion in company assets
- ❑ Update the data map!

The Convenience vs. Security Conundrum

Ready access to data
Prevent sensitive data leaks
Short attention span
Maintain efficiency + security
When important, go to the mat



Have an IP or Data Breach Issue?

-Check Your Contracts & Insurance Policies

**I'm not going to jail for you
people . . .**



Wearables in the
Workplace

Location Tracking

Granular geolocation information

Fleet tracking

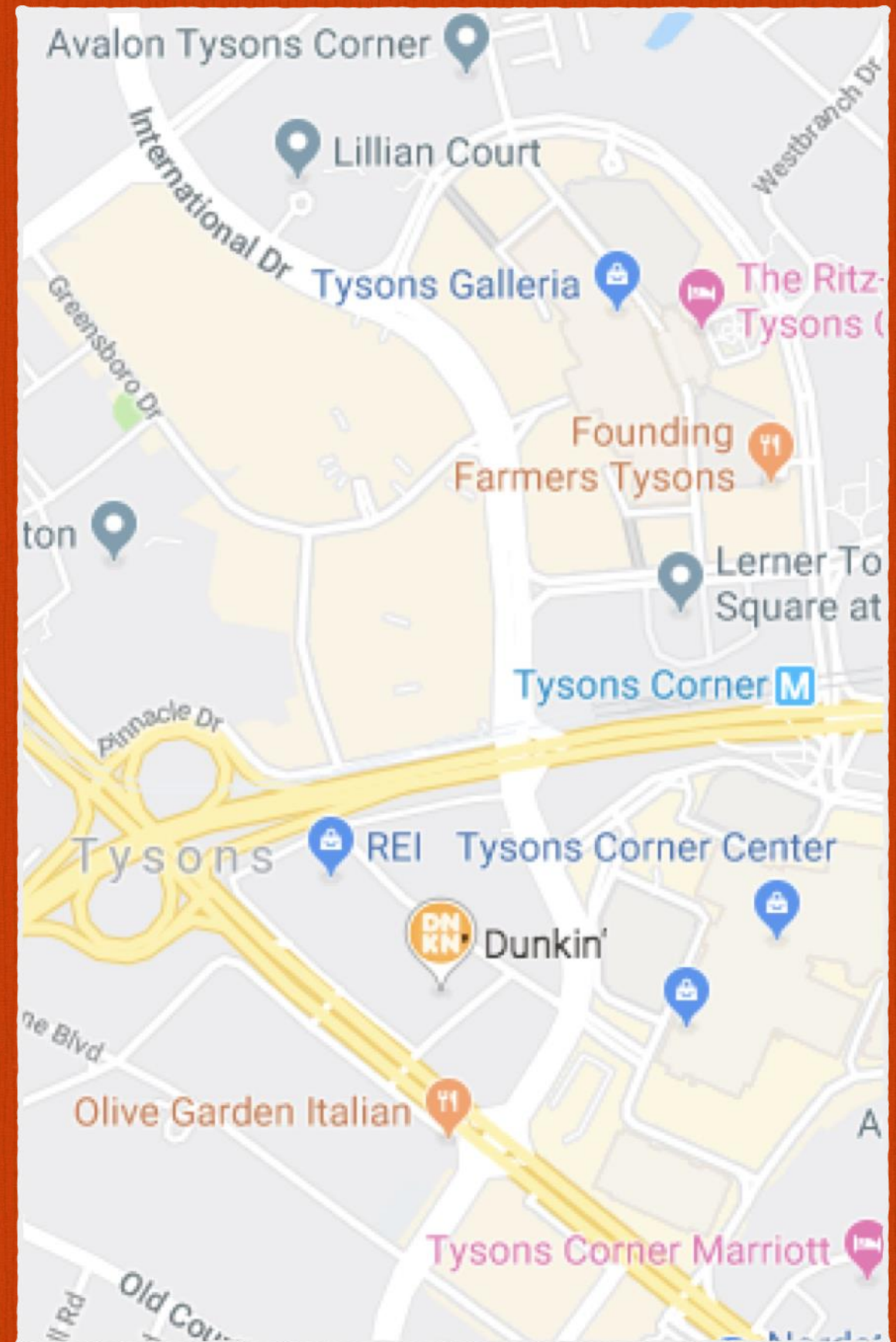
Passive employee tracking

Location tracking through apps

Offensive and defensive discovery

Comparison with other employee data

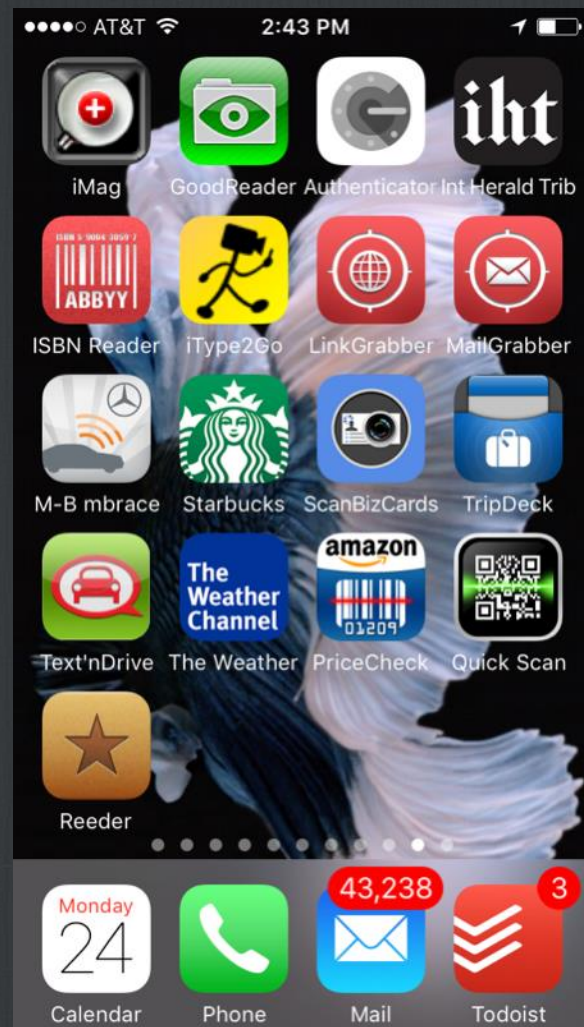
Regularly used in employment disputes



Biometric Information Collection

- III-BIPA (2008), now WA and TX
- Guards against unlawful collection and storage
- Six Flags case-Illinois private lawsuits-standing based on violation not showing of identify fraud or physical harm (not Spokeo standard)

Constant Accessibility to Work=Wage and Hour Woes



- Increased access and efficiency
- A BYOD culture
- Challenges tracking work hours
- Compensable work performed off the clock?
- Reflect rules of the road in policies

For More Information: <https://buff.ly/2t1DoVd>

Meet My Assistant, Alexa



- Workplace Assistant

- Tali

- Case.one

2. How do I know when Amazon Echo, Echo Plus, or Echo Dot are streaming my voice to the Cloud?

When Amazon Echo, Echo Plus, or Echo Dot detect the wake word, when you press the action button on top of the devices, or when you press and hold your remote's microphone button, the light ring around the top of your device turns blue, to indicate that the device is streaming audio to the Cloud. When you use the wake word, the audio stream includes a fraction of a second of audio before the wake word, and closes once your question or request has been processed. You can turn on Follow-Up Mode to enable Alexa to respond to a series of requests without repeating the wake word. [Learn more](#). Within Sounds settings in the Alexa App (Settings > [Your Device Name] > Sounds), you can enable a 'start of request sound,' a short audible tone that plays after the wake word is recognized to indicate that the device is streaming audio. You can also enable an 'end of request sound' that will play a short audible tone at the end of your request, to indicate that the connection has closed and the device is no longer streaming audio.

Meet My Assistant, Amy @x.ai

Hi Andrew,

How about Friday, Sep 15 at 12:00 PM EDT (Eastern Daylight Time)? Antigone is also available on Monday, Sep 18 at 12:00 PM EDT or Wednesday, Sep 20 at 12:00 PM.

If these times don't work, please feel free to let me know what might work better for you.

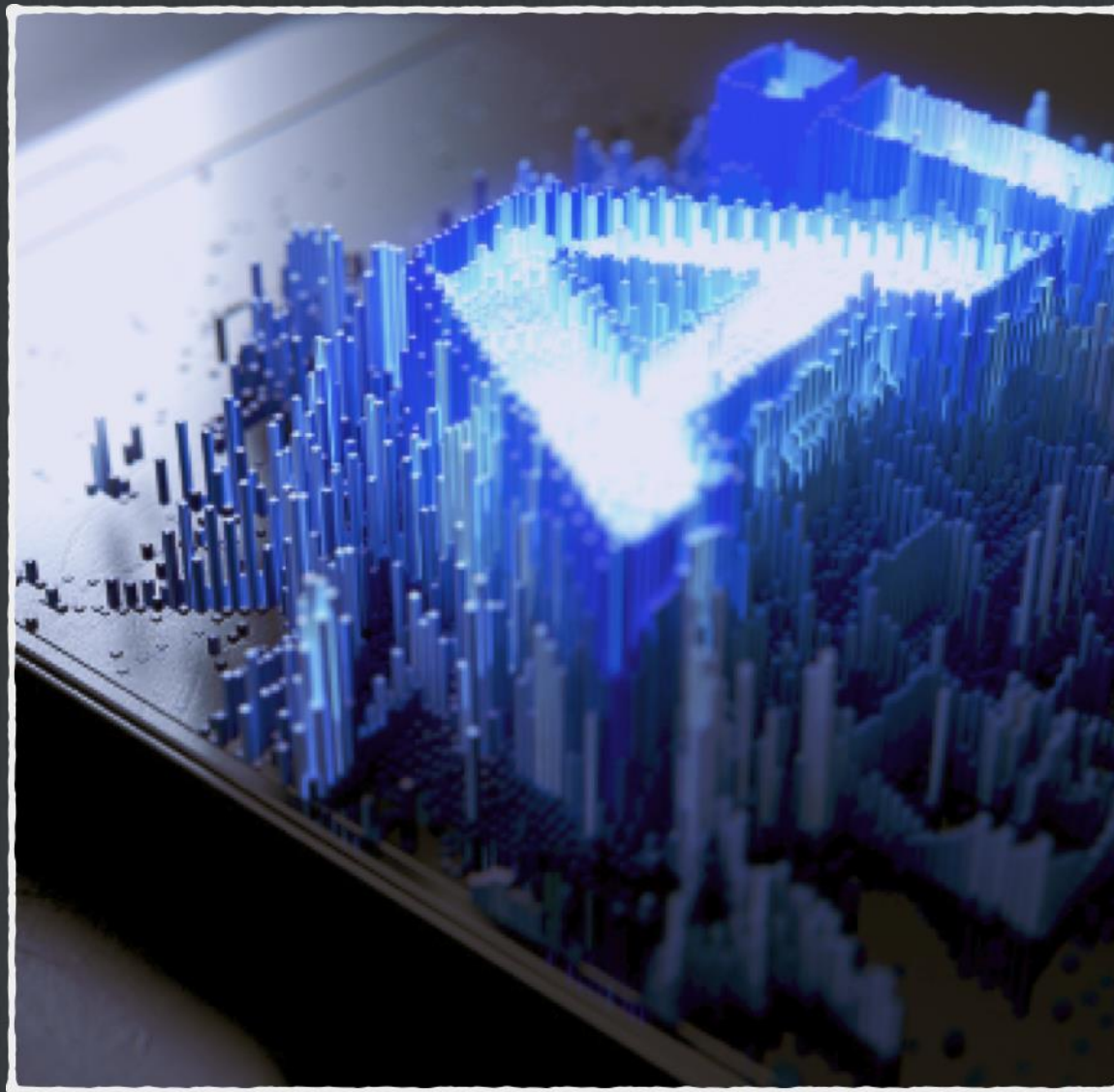
To make sure that you and Antigone don't miss each other, can you give me an exact address for "Old Ebbitt Grille"?

Amy

Amy Ingram | Scheduling Assistant for Antigone Peyton
An artificially intelligent assistant that schedules meetings by [x.ai](#)

- Response: "Please stop contacting me."
- Additional Response: "Just to complete the record on this. Here's my no-nonsense email to Antigone's virtual AI assistant. It's not intended to be rude, just precise and understandable. I see also that I spelled "Grill" "Grille" to be all British about it; that's probably one of many mistakes I made in trying to communicate with "Amy."

AI in the Office



- ❑ Recruitment/hiring
- ❑ Justice system
- ❑ Healthcare access, benefits
- ❑ School choices
- ❑ Bias, denial of services access, liability for decision making, automated processing restrictions

Your AI is Not An Author

(aka The “Money Selfie” Problem)



For More Info: <https://buff.ly/2LpWKwP>

Patent Protection for AI...Future Unclear

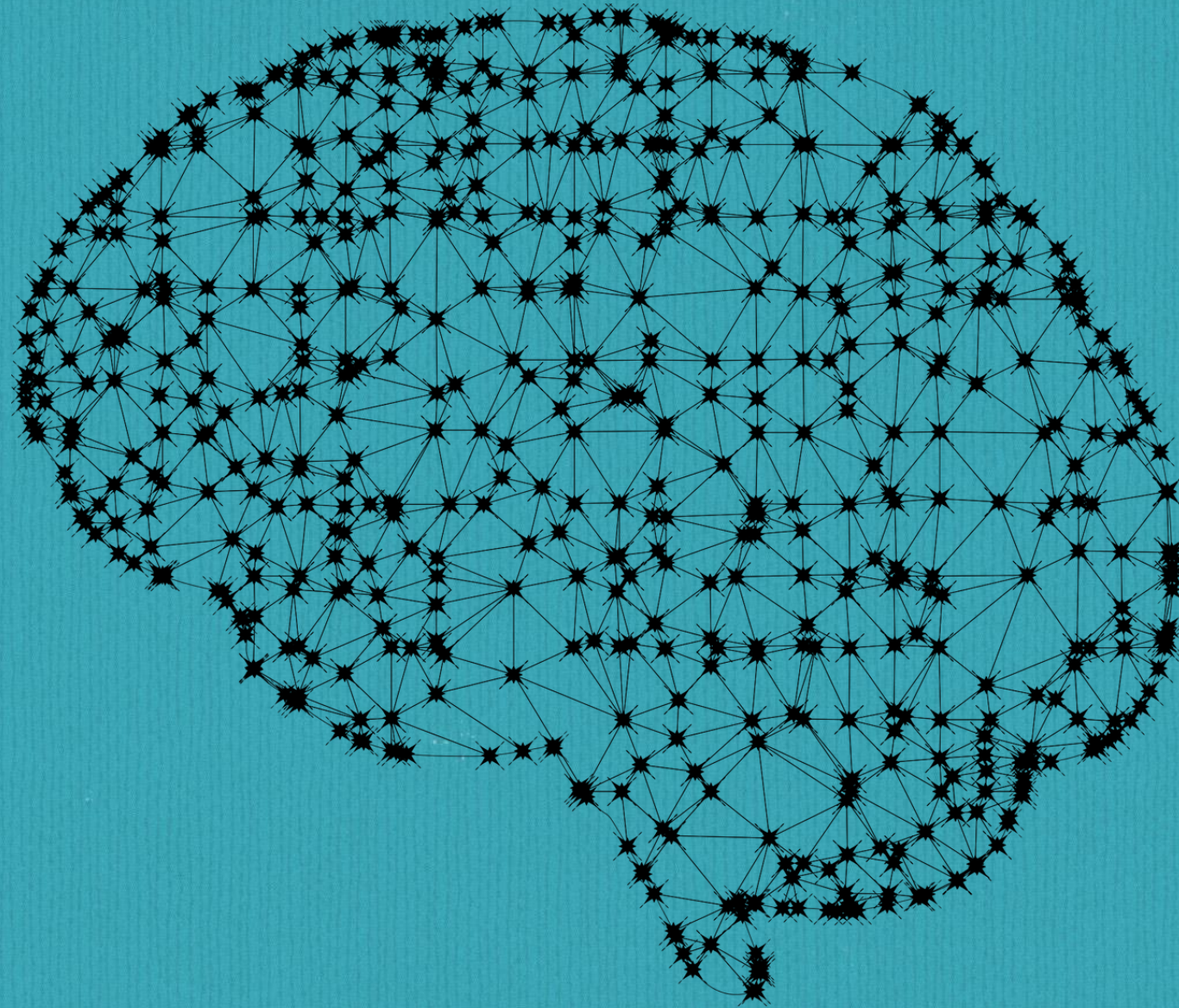
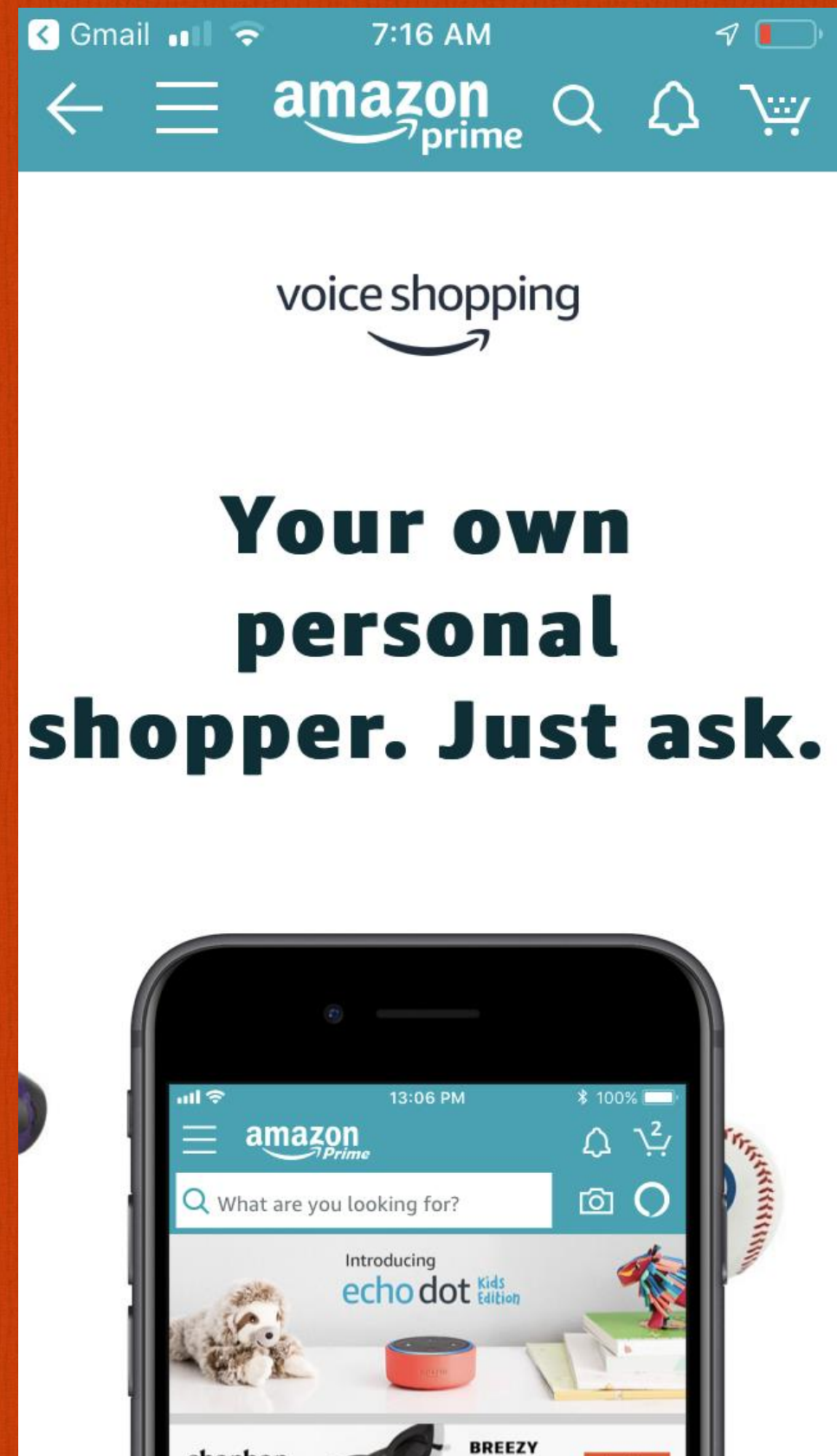


Image by [Gordon Johnson](#) from [Pixabay](#)

Snitches in Your Pocket

listening for wake word or action
response taken to requests
deeper integration into corporate &
personal data
what is recorded?
where is it stored?
where does it go?
who receives it?



Printer Protections



Why Care about Cryptocurrencies?



- ❑ Risk management/insurance coverage
- ❑ Tax and accounting
- ❑ Collections-Execution of judgements
- ❑ Business transactions tracking
- ❑ Regulatory
- ❑ Bankruptcy
- ❑ Litigation
- ❑ Cybersecurity

Blockchain Regulation

- ❑ Taxation-IRS, state & local taxing authorities (as property)
- ❑ Money Transmission-FinCEN (Dept. of Treasury), state regulators
- ❑ Commodities-CFTC
- ❑ Securities-SEC and state securities regulators
- ❑ Product-FTC and state regulators
- ❑ And more....
- ❑ (Some countries ban trading in cryptocurrencies, buying or selling products/services in return for them)

DAMN the Dispute!

Smart Contract Explained



Questions?

