

Entrepreneurial Bar Association – Continuing Legal Education
The Trump Effect: Get Your Entrepreneurial Client Prepared for the New Reality
April 6, 2017

Technology/Intellectual Property Issues
Brian A. Hall¹

I. Introduction

The new President Trump administration raises new questions surrounding the impact on technology and intellectual property. Without predicting the unpredictable, this article summarizes the likely effect of the Trump administration based upon Trump’s previous actions and statements related to the policies and laws involving technology and intellectual property.

II. Trump’s Statements and Actions Related to Technology and IP Thus Far

President Trump is relatively unique in that his personal business endeavors provide some insights beyond what would otherwise be reliance upon a political record. Trump’s own statements and actions throughout his business career, presidential campaign and first days in office may indicate how technology and intellectual property, oftentimes the bedrock of entrepreneurship, innovation and business, will be treated (or mistreated). Attorneys representing entrepreneurial clients should take notice.

A. Focused on Protecting U.S. Business

1. Trump Seeks to Punish Unfair Trade.

“To date, the Trump campaign has focused its intellectual property law reforms on protecting U.S. IP holders from Chinese-based piracy. The IP-related reforms are part of Trump’s larger position statement on Reforming the U.S.-China Trade Relationship. Trump’s position statement says, ‘China’s government ignores this rampant cybercrime and, in other cases, actively encourages or even sponsors it – without any real consequences. China’s cyber lawlessness threatens our prosperity, privacy and national security. We will enforce stronger protections against Chinese hackers and counterfeit goods and our responses to Chinese theft will be swift, robust, and unequivocal.’” *Clinton vs. Trump: How the U.S. Presidential Election Could Impact IP Law*, Jack Hicks, WOMBLE CARLYLE

¹ Brian A. Hall is the managing partner the Austin, Texas office of Traverse Legal, PLC d/b/a Hall Law. This article was prepared with the help of Associate Attorney Mallory Donick. The views in this Article are ours and do not represent those of the law firm, www.traverselegal.com.

(Sept. 26, 2016), <http://www.wcsr.com/Insights/Articles/2016/September/Clinton-vs-Trump-How-the-US-Presidential-Election-Could-Impact-IP-Law>.

2. Trump Wants More Manufacturing in the U.S.

“During his campaign, Trump was never clear about his IP beliefs, meaning there’s been a lot of guesswork. What we do know is Trump’s strong stance on bringing manufacturing back to the U.S.” *IP under Trump: Cautious Optimism for Now*, WORLD INTELLECTUAL PROPERTY REVIEW (Jan./Feb. 2017), p. 19, http://www.emagcloud.com/NewtonMedia/WIPR_Jan_Feb_2017/index.html?utm_source=World+IP+Review&utm_campaign=b87e156de9-EMAIL_CAMPAIGN_2017_02_24&utm_medium=email&utm_term=0_d76dca01-b87e156de9-27273533#/18/.

B. Trump Openly Bashed Tech Giants Apple & Amazon During His Campaign

“During the campaign, Trump said he would call for a boycott of Apple products if the company didn’t reverse its strong pro-encryption stance. He also criticized the company for not making more of its products in the U.S.” *Candidate Donald Trump had tough words for Apple. What will President Trump do?*, Ina Fried, RECODE (Nov. 9, 2016), <http://www.recode.net/2016/11/9/13574214/can-apple-president-trump-get-along>. “Donald Trump said Thursday that Amazon, the world’s biggest online retailer, has ‘a huge antitrust problem.’” Trump “also said Amazon Chief Executive Jeff Bezos, who owns The Washington Post, is using the newspaper to influence politicians in Washington to help Amazon on taxes.” “‘This (Washington Post) is owned as a toy by Jeff Bezos, who controls Amazon. Amazon is getting away with murder tax-wise. He’s using the Washington Post for power so that the politicians in Washington don’t tax Amazon like they should be taxed,’” Trump said.” *Trump Says Amazon Has ‘A Huge Antitrust Problem’*, CNBC (May 13, 2016) <http://www.cnbc.com/2016/05/13/trump-says-amazon-has-a-huge-antitrust-problem.html>.

C. Trump Has Aggressively Protected His Own Trademarks

1. The Trump Brand Has Always Been A Priority

“‘Much of his personal wealth is tied to the value of his various trademarks and the value of his own likeness, which he licenses and commercializes[.]’” *IP under Trump: Cautious Optimism for Now*, WORLD INTELLECTUAL PROPERTY REVIEW (Jan./Feb. 2017), p. 3, http://www.emagcloud.com/NewtonMedia/WIPR_Jan_Feb_2017/index.html?utm_source=World+IP+Review&utm_campaign=b87e156de9-

EMAIL_CAMPAIGN_2017_02_24&utm_medium=email&utm_term=0_d76dca_dc01-b87e156de9-27273533#/2/.

2. Trump Has Numerous Registered Trademarks Incorporating His Name.

Trump has registered trademarks to TRUMP (reg. nos. 4874427, 4859780, 4813593, 4890050, 4087954, etc.); TRUMP HOTEL COLLECTION (reg. no. 4025492); TRUMP GOLF LINKS (reg. no. 4858415); SUCCESS BY TRUMP (reg. no. 4518084); DONALD J. TRUMP SIGNATURE COLLECTION (3574186); TRUMP PLACE (reg. no. 3079805); TRUMP PLAZA (reg. no. 3231060); TRUMP HOLLYWOOD (reg. no. 3345687); TRUMP MODEL MANAGEMENT (reg. no. 2991841); and TRUMP ICE (reg. no. 2898321), among several others. “In all, there are probably in excess of one hundred current, existing federal registrations to Donald Trump and/or his companies.” *Examining Trump’s History: The New President And Trademark Rights*, Jess Collen, FORBES (Nov. 10, 2016), <https://www.forbes.com/sites/jesscollen/2016/11/10/examining-trumps-history-the-new-president-and-trademark-rights/#33c13b13252e>.

3. Trump Does Not Appear To Be Letting Up On His Branding.

He has filed a trademark application with the USPTO for KEEP AMERICA GREAT, signaling his intent to continue brand utilization in his bid for the 2020 Presidential election. See KEEP AMERICA GREAT, Serial No. 87305551, http://tsdr.uspto.gov/#caseNumber=87305551&caseType=SERIAL_NO&searchType=statusSearch (last visited Mar. 6, 2017).

4. Trump Has Been Extremely Aggressive In Defending The Rights To His Numerous TRUMP Trademarks.

“Mr. Trump has been a diligent trademark owner. Federal court records show that Donald J. Trump or some Trump company or organization has been involved in a half dozen federal trademark lawsuits over the past ten years.” See, e.g., *Holiday Inns, Inc. v. Trump*, 617 F. Supp. 1443 (D.N.J. 1985); *D.N.J. 1986. Trump v. Caesars World, Inc.*, 645 F. Supp. 1015 (D.N.J. 1986); *Taj Mahal Enterprises, Ltd. v. Trump*, 745 F. Supp. 240, 243 (D.N.J. 1990); *Web-adviso v. Trump*, 927 F. Supp. 2d 32 (E.D.N.Y. 2013); *Stephens v. Trump Org. LLC*, No. 15CIV2217ENVLB, 2016 WL 4702437 (E.D.N.Y. Sept. 7, 2016).

III. What Others Are Saying About Trump’s Effect On Technology And IP

In the wake of President Trump’s election, there seems to be a technology sector faction that believes he will be detrimental to innovation. Any attorney representing an entrepreneurial

client, especially one with any connection to Silicon Valley, should understand the differing views and potential impact on the technology industry or those businesses reliant upon intellectual property.

A. Tech Giants Were Heavily Invested in Defeating Donald Trump

1. Engine Candidate Scorecard Gave Trump an F

“Donald Trump came in last with an overall grade of ‘F.’ Trump has yet to announce clear policy agendas or offer public comments on a number of issues examined, including patent reform and access to broadband. Trump recently called for a boycott of Apple and has attacked net neutrality as an attempt by President Obama to control conservative media.” *Press Release: The 2016 Candidate Report Card*, ENGINE (Mar. 14, 2016),

<http://www.engine.is/news/2016-election/the-2016-candidate-report-card/6553>.

“Donald Trump’s campaign has largely avoided policy discussions, and since he has never held political office, he predictably received the most ‘incompletes’ of any candidate in our scorecard, failing to offer any policy agenda related to patent reform, STEM education, or broadband access. When he has talked about Tech issues, he has done so in the only way he knows how: brashly and inaccurately.”

Grading the Candidates on Tech: Are the 2016 Presidential Candidates Passing or Failing on the Most Critical Issues for Startups and Tech?, ENGINE,

<http://static1.squarespace.com/static/571681753c44d835a440c8b5/57323e0ad9fd5607a3d9f66b/57323e14d9fd5607a3d9fba9/1462910484683/2016-Candidate-Report-Card.pdf?format=original> (last visited Feb. 26, 2017).

2. Tech Leaders Wrote Open Letter Against Donald Trump

In summer 2016, tech leaders issued an open letter to Donald Trump, suggesting that he would be a “disaster for innovation.” “We stand against Donald Trump’s divisive candidacy and want a candidate who embraces the ideals that built America’s technology industry: freedom of expression, openness to newcomers, equality of opportunity, public investments in research and infrastructure, and respect for the rule of law. We embrace an optimistic vision for a more inclusive country, where American innovation continues to fuel opportunity, prosperity and leadership.” *An Open Letter From Tech Leaders on Donald Trump’s Presidential Bid*, Katie Jacobs Stanton, WIRED (Jul. 14, 2016),

<https://www.wired.com/2016/07/open-letter-tech-leaders-donald-trumps-presidential-bid/>.

3. Trump Victory Supported Some Calls In Silicon Valley For A Cal-Exit

After Trump's election, "some high-profile technologists were already calling for California to secede from the United States." Silicon Valley Investors Call for California to Secede From the US After Trump Win, Olivia Solon, The Guardian (Nov. 9, 2016), <https://www.theguardian.com/technology/2016/nov/09/trump-win-california-secede-caexit-silicon-valley>. "The proposal illustrates the technology industry's frustration with Trump over his repeated criticisms of Silicon Valley companies. The Republican leader wants Apple to stop making phones in China, thinks Jeff Bezos bought the Washington Post to exert political power and avoid paying taxes, and claimed that Mark Zuckerberg's push for specialist immigration would actually decrease opportunities for American women and minorities." *Id.* "The campaign to secede, organized by the Yes California Independence movement and dubbed #Calexit, now has the approval of the California Secretary of State to begin gathering signatures to put the matter before voters in November 2018. If 585,407 valid signatures are collected, voters will get to weigh in on secession at the polls." *California's Attempt to Exit Trump's America is Official Here*, Dennis Romero, LA WEEKLY (Jan. 30, 2017), <http://www.laweekly.com/news/californias-attempt-to-exit-trumps-america-is-officially-here-7870678>.

4. Tech Roundtable

Trump hosted a technology roundtable at Trump Towers on December 14, 2016, the "full list of attendees included Apple CEO Tim Cook, Amazon CEO Jeff Bezos, Facebook (FB) COO Sheryl Sandberg, Alphabet's (GOOGL) CEO Larry Page and Chairman Eric Schmidt, Microsoft's (MSFT) CEO Satya Nadella and President and Chief Legal Officer Brad Smith, Oracle (ORCL) co-CEO Safra Catz, Intel (INTC) CEO Brian Krzanich, Cisco Systems (CSCO) CEO Chuck Robbins, Tesla Motors (TSLA) CEO Elon Musk, IBM (IBM) CEO Ginni Rometty, as well as Palantir Technologies CEO Alex Katz." *Trump Tells Tech Leaders He'll Do 'Anything to Help' at Roundtable*, Annie Palmer, THE STREET (Dec. 16, 2016), <https://www.thestreet.com/story/13925771/1/trump-tells-tech-leaders-he-ll-do-anything-to-help-at-roundtable.html>.

"It's unclear whether they found common ground on characteristically divisive issues like immigration or encryption, but Trump did hint at a surprisingly flexible stance on international trade, saying he would secure fair trade deals and that there would be greater access to 'trade across borders.' That's a marked difference from his prior claims of possibly imposing a 45% tariff on Chinese imports. Trump has also expressed his opposition in the past to trade deals such as the Trans Pacific Partnership and NAFTA." *Id.* "According to the Trump press release, the group discussed the following topics at the roundtable: Creating more

jobs for American workers; Eliminating barriers preventing American companies from doing business in other countries; America's competitive trade dynamic and market access with China; Cutting taxes; Repatriation of American profits kept overseas by prohibitive tax rates; Improving our physical and digital infrastructures; Protecting our intellectual property rights; Improving America's cybersecurity; Updating our government software systems; Technology in schools; The need for greater vocational education opportunities; Reducing bureaucracy; & Introducing greater accountability in the government procurement process." *Id.* "Tensions that once flared between Trump and Amazon's Bezos appear to have simmered as a result of the meeting. The e-commerce chief, who Trump once threatened would have 'problems' if he became president, said the discussions were 'productive' and rallied around calls of fostering innovation." *Id.*

a. Peter Thiel

PayPal co-founder and billionaire venture capitalist gave \$1.25 million to the GOP campaign and helped organize the Tech Roundtable as Trump's transition team advisor. "Thiel's donation could have an impact on his many relationships in Silicon Valley. For instance, as TechCrunch points out, Thiel recently became an advisor to Y Combinator, whose founder, Paul Graham, is vocally anti-Trump. Thiel also sits on the board of Facebook, whose CEO, Mark Zuckerberg, has publicly criticized Trump's policy and rhetoric. Facebook took pains to distance itself from Thiel's GOP convention speech." *Peter Thiel Pledges \$1.25 Million to Support Donald Trump*, David Z. Morris, FORTUNE (Oct. 16, 2016), <http://fortune.com/2016/10/16/peter-thiel-donald-trump-support/>.

IV. The Potential Impact of Cabinet and Supreme Court Justice Appointments

President Trump's selections tend to provide some insight into his policy and the resulting impact on both technology and intellectual property, not only from a legal standpoint but also from a business viability standpoint. Whether a transactional attorney or litigator, entrepreneurial clients will undoubtedly be looking to you for reasoned advice.

A. Attorney General Jeff Sessions

Previously a prosecutor and judge, Jeff Sessions is a conservative, strict constructionist. Jeff Session's staunch conservative beliefs could hinder the development of technology and intellectual property in controversial fields such as medical and recreational marijuana. "If Senator Sessions goes after the regulated cannabis industry, he will destroy tens of thousands of jobs, shut down hundreds of small businesses and take away millions of dollars from our schools. Hopefully the Trump Administration supports

states' rights on cannabis legalization, despite Senator Sessions' personal views,' commented Isaac Dietrich, CEO of MassRoots, a social platform for the Marijuana community." *Marijuana Industry Reacts to Trump Attorney General Appointment*, Shubhomita Bose, SMALL BUSINESS TRENDS (Jan. 17, 2017), <https://smallbiztrends.com/2017/01/jeff-sessions-and-the-marijuana-industry.html>.

In addition to potentially stunting the growth of a lucrative marijuana entrepreneurial industry, Jeff Sessions could also jeopardize the privacy of internet users. Notably, Jeff Sessions proposed an amendment to the Electronic Communications Privacy Act ("ECPA"), which would "have required phone and Internet service providers to hand over data with no judicial process if a government representative says it's an emergency – amount to a significant expansion of power for local, state, and federal law enforcement." *Trump's Pick for Attorney General Could Be Bad News for Silicon Valley*, Andrea Peterson, THE WASHINGTON POST (Nov. 21, 2016), https://www.washingtonpost.com/news/the-switch/wp/2016/11/21/trumps-pick-for-attorney-general-could-be-bad-news-for-silicon-valley/?utm_term=.908cef44b898.

B. Supreme Court Justice Nominee Neil Gorsuch

Similar to Jeff Sessions, Supreme Court Justice Nominee Neil Gorsuch is a strict constructionist, meaning that he interprets the Constitution literally. "According to the Law Theories blog, Gorsuch has decided seven trademark, four copyright and three trade secret cases." "IP cases have been of particular interest to the court over the last few years and, with some issues still in development, Gorsuch could tilt the balance of the court, one way or another." *IP under Trump: Cautious Optimism for Now*, WORLD INTELLECTUAL PROPERTY REVIEW (Jan./Feb. 2017), p. 20, http://www.emagcloud.com/NewtonMedia/WIPR_Jan_Feb_2017/index.html?utm_source=World+IP+Review&utm_campaign=b87e156de9-EMAIL_CAMPAIGN_2017_02_24&utm_medium=email&utm_term=0_d76dcadc01-b87e156de9-27273533#/20/.

In one trade secret decision, Gorsuch "upheld a \$3 million trade secret award for a Utah company despite a former employee's defense that he only disclosed it for spite, not profit," writing in the opinion that "When someone steals a trade secret and discloses it to a competitor he effectively assumes for himself an unrestricted license in the trade secret. And that bears its cost." *What to Expect From Neil Gorsuch on IP, Patents, and Trade Secrets*, Scott Graham, THE NATIONAL LAW JOURNAL (Feb. 13, 2017), <http://www.nationallawjournal.com/id=1202779049527/What-to-Expect-From-Neil-Gorsuch-on-IP-Patents-and-Trade-Secrets?slreturn=20170206141421>, quoting *Storagecraft Tech. Corp. v. Kirby*, 744 F.3d 1183, 1185 (10th Cir. 2014).

C. Michelle Lee, Head of US Patent Office

There still seems to be some lingering questions as to whether Michelle Lee will remain the director of the USPTO. There seems to be support for her in the technology sector. “Michelle Lee has started a number of programs to enhance patent quality, and it’s important that those programs be allowed to continue,” said Matt Levy, chief patent counsel for the Computer and Communications Industry Association. “With Director Lee continuing on, those programs will have the chance to produce real improvements in the patents the USPTO issues.” “Abusive, meritless litigation brought by patent trolls has been a job killer for literally thousands of American businesses over the last decade,” Beth Provenzano, co-chair of the United for Patent Reform coalition, said in an e-mailed statement. “Director Lee has worked to improve the tools that allow innovative business to defend themselves against truly frivolous litigation.”” *Head of US Patent Office Michelle Lee will remain under President Trump*, ARSTECHNICA (January 20, 2017), <https://arstechnica.com/tech-policy/2017/01/head-of-us-patent-office-michelle-lee-will-remain-under-president-trump/>.

V. What Trump’s Impact Might Be

Predictions abound, but President Trump will undoubtedly have an impact on technology and intellectual property. Attorneys

A. The Future of Patents, Trademarks, Copyrights, and Trade Secrets

1. Trump More Of A Wildcard Than Clinton Would Have Been

Clinton supported the America Invents Act, along with the Patent Trial and Appeals Board and was anti-patent troll (no forum shopping, specific allegations in demand letters and pleadings, and more disclosure for patent litigants). “Throughout his campaign, Trump has thrived on being an unconventional, ‘wildcard’ candidate, and his position statement isn’t as detailed and specific as those of previous Republican nominees or his Democratic rival. What President Trump would do regarding intellectual property protections remains a mystery in large part, but his comments and policy views in other areas suggest that he will continue to favor a strong territorial view that is resistant to harmonization. Whether he will take the positions of US favoritism on intellectual property issues to the extreme of becoming anti-global is yet to be seen.” *Clinton vs. Trump: How the U.S. Presidential Election Could Impact IP Law*, Jack Hicks, WOMBLE CARLYLE (Sept. 26, 2016), <http://www.wcsr.com/Insights/Articles/2016/September/Clinton-vs-Trump-How-the-US-Presidential-Election-Could-Impact-IP-Law>.

2. Trademark Impacts Expected to be Great Given Trump’s Commercialization of Trademark/Name/Likeness

As articulated above, Trump has cultivated a fortune from trademarking his name and has been aggressive to defend those rights. This suggest that Trump will be in favor of continued robust intellectual property rights.

3. Patent Impacts May Be Equally A Great

Following the Supreme Court’s 2014 decision in *Alice Corp. v. CLS Bank*, “about 70% of challenges for failure to claim a patent-eligible subject matter have succeeded.” *The Supreme Court’s Decision in Alice Corp. v. CLS Bank Has Taken a Heavy Toll on Patents for Computer-Related Inventions*, Steven M. Amundson, HAUG PARTNERS LLP (Feb. 16, 2016), <http://www.lexology.com/library/detail.aspx?g=300e6862-012d-49dd-bed4-ba8ae4477397>. In *Alice Corp. v. CLS Bank*, business method patents

4. Infringers Beware

“Trump believes that the US needs to do more to protect against such theft, whether it comes through cybercrime, or patent, trademark, or copyright infringement. [A]lthough Trump doesn’t seem to have any direct experience with patents, his campaign was built on protectionist ideas. This suggests that he would ‘strongly support’ injunctive relief and large awards against imported goods found to infringe US parents owned by US-based companies.” *IP under Trump: Cautious Optimism for Now*, WORLD INTELLECTUAL PROPERTY REVIEW (Jan./Feb. 2017), p. 19, http://www.emagcloud.com/NewtonMedia/WIPR_Jan_Feb_2017/index.html?utm_source=World+IP+Review&utm_campaign=b87e156de9-EMAIL_CAMPAIGN_2017_02_24&utm_medium=email&utm_term=0_d76dcadc01-b87e156de9-27273533#/18/

5. Trade Agreements Will Impact Scope of Protection and Need For Different Filings

If trade agreements go away, protections to IP may be compromised and new filings may be required internationally. You need look no further than the Trans Pacific Partnership (“TPP”). Moreover, what about renegotiating NAFTA, which generally is viewed as having increased intellectual property protection. “Certain features of NAFTA address trademark rights. If Mr. Trump goes after NAFTA as he has promised, there could be an impact on trademark laws. But the impact likely would be very minor. NAFTA certainly has not created any NAFTA-wide trademark rights. Trademark owners still must file separate applications to register marks here, in Canada, and Mexico. Even an evisceration of the NAFTA deal would not change much.” *Examining Trump’s History: The New President And Trademark Rights*, Jess Collen, FORBES (Nov. 10, 2016), <https://www.forbes.com/sites/jesscollen/2016/11/10/examining-trumps-history-the->

[new-president-and-trademark-rights/#33c13b13252e](#). “We will have a President who is hyper-sensitive to the value of brand names. Efforts by the courts, legislature or government agencies to lessen those protections will not find a receptive audience in the White House. The incoming President may even argue that his success is built entirely on the fame of his marks. Will that matter?” *Id.*

6. Appointees May Change The Legal Landscape

Trump’s appointment of Jeff Sessions as Attorney General can have major impact on legislation. Supreme Court nominee could alter precedent. Other appointments/replacements may modify USPTO’s operation. See references above.

B. Federal Trade Commission

1. Pro-Data

““On the consumer protection side, there is at least a possibility that the new administration might potentially push for the FTC to win additional authority in relation to other federal agencies and maybe the states,” said David Turetsky, Akin Gump Strauss Hauer & Feld LLP’s cybersecurity, privacy and data protection practice co-leader. ‘There have been some in Congress, for example, who have pushed to consolidate more cyber and privacy enforcement in the FTC as compared to the FCC and even to have a national breach notification standard that preempts state law.’” *Trump’s FTC May Scale Back on Data Security Enforcement*, Allison Grande, LAW360 (Nov. 10, 2016), <https://www.law360.com/articles/861714/trump-s-ftc-may-scale-back-on-data-security-enforcement>. “While it’s still possible that the FTC may not change that much under a Trump administration — particularly given that there are still two Democrats to balance out the three Republicans, and attorneys expect that the commission’s focus on offering guidance and workshops to businesses will continue — much of how the commission proceeds from here will be determined by the appointment decisions that Trump makes.” *Id.*

2. Privacy

“[P]rivacy enforcement really has to continue to be an important part of the agency’s agenda. ‘One reason that’s true . . . is because it will be so important to the continued operation of Privacy Shield, which is important for U.S. companies and is not partisan at all. I would, however, expect privacy enforcement to reflect a greater emphasis on consumer harm.’” *What Does Trump Mean for the FTC?*, Angelique Carson, IAPP (Nov. 29, 2016), <https://iapp.org/news/a/what-does-trump-mean-for-the-ftc/>.

C. Federal Communications Commission

1. Net Neutrality limited.

“Trump has attacked net neutrality as an attempt by President Obama to control conservative media, even though the FCC (the body that actually passed net neutrality rules) has absolutely no authority under the Open Internet Order to regulate media content.” *Grading the Candidates on Tech: Are the 2016 Presidential Candidates Passing or Failing on the Most Critical Issues for Startups and Tech?*, ENGINE, <http://static1.squarespace.com/static/571681753c44d835a440c8b5/57323e0ad9fd5607a3d9f66b/57323e14d9fd5607a3d9fba9/1462910484683/2016-Candidate-Report-Card.pdf?format=original> (last visited Feb. 26, 2017). “Thanks to a series of moves set to weaken net neutrality, reduce regulation of phone carriers, and alter a program meant to subsidize internet and phone access for low-income consumers, [FCC Chairman Ajit] Pai, a former lawyer for Verizon, is well on his way toward implementing the GOP’s agenda at the FCC.” *Slamming ‘Sensationalized’ Media*, Noah Kulwin, Vice News (Feb. 8, 2017), <https://news.vice.com/story/trumps-fcc-chair-is-mad-the-media-called-out-his-plans-targeting-cheap-internet-for-poor-people>.

2. Less enforcement

Some sources have opined that they “expect the FCC’s Enforcement Bureau to be less active than it has been over the past 8 years.” *Predicting the FCC’s Path Forward Under President-Elect Donald Trump: 9 Areas of Communications Law Policy Likely to Undergo Material Changes under a Trump FCC*, Marashlian & Donahue, PLLC (Dec. 5, 2016), <http://www.commlawgroup.com/news/1113-predicting-fccs-path-forward-under-president-elect-donald-trump>. “While it would be unwise to predict a reduction in enforcement activity, the Republican manta has historically trumpeted the phrase: ‘We don’t need new regulations; we simply need to enforce the rules already on the books.’” *Id.*

3. Targeting Media

“The media industry arguably helped Trump enormously in the early presidential campaign with extensive coverage that drowned out his competitors and left little room for discussion of the substantive policy issues facing voters. Now it has a lot to gain if the FCC begins a new wave of ownership deregulation and relaxes certain limits that currently prevent media conglomerates from controlling a large swath of local television stations, and prevent firms from owning television stations and newspapers in the same media market.” *While War On Media Escalates, Cbs Chief Praises Trump’s Deregulatory Agenda*, Lee Fang, THE INTERCEPT (Feb. 24, 2017), <https://theintercept.com/2017/02/24/cbs-fcc-trump/>. “A former associate general counsel at Verizon and a consistent opponent of FCC rules intended to protect consumers, Pai fits the mold of other, higher-profile Trump appointees whose

experience and ideology run counter to their roles in the administration. And since taking over the top job, Pai has already started transforming the FCC into an unofficial branch of the telecommunications industry. This month, Pai put his initial stamp on the agency with a series of orders that elicited harsh criticism from media reform and consumer advocacy groups, such as Free Press, which said they will “undercut affordable broadband, greenlight more media consolidation and endanger key protections for Internet users.” *The Trump Administration’s Other War On the Media*, Katrina Vanden Heuvel, THE WASHINGTON POST (Feb. 14, 2017), https://www.washingtonpost.com/opinions/the-trump-administrations-other-war-on-the-media/2017/02/14/c191b2b4-f215-11e6-8d72-263470bf0401_story.html?utm_term=.a5f097edcc9c.

D. Internet

Trump will likely continue to take issue with encryption and online sales tax, given his campaign criticism of both Apple and Amazon.

1. **Fights over encryption.** See references to issues w/ Apple’s encryption above.
2. **Trump favors state sales tax on line purchases.** “On Thursday, Trump bloviated, ‘Amazon doesn’t pay tax. ... And a lot of people think Amazon should be paying tax, and they’re not, and they’re destroying department stores and retailing all over the country...’” *Trump Wants You to Pay Taxes on Buying Stuff Off the Internet*, Hank Berrien, The Daily Wire (Jun. 24, 2016), <http://www.dailywire.com/news/6933/trump-wants-you-pay-taxes-buying-stuff-internet-hank-berrien#>.
3. Continued opportunity for crowd-funding

E. International Issues

1. Increased friction with EU over privacy

“An Executive Order signed by U.S. President Donald Trump in his first few days in office could jeopardize a six-month-old data transfer framework that enables EU citizens’ personal data to flow to the U.S. for processing — with the promise of ‘essentially equivalent’ privacy protection once it gets there.” *Trump Order Strips Privacy Rights From Non-U.S. Citizens*, Could Nix EU-US Data Flows, Natasha Lomas, TECH CRUNCH (Jan. 26, 2017), <https://techcrunch.com/2017/01/26/trump-order-strips-privacy-rights-from-non-u-s-citizens-could-nix-eu-us-data-flows/>.

2. Continued erosion of US cloud service providers sales in Europe

VI. How to Advise Clients Regarding the Trump Effect, If Any

Lawyers cannot predict the future, but they can advise regarding the potentialities of various courses of action. Entrepreneurs will have questions for legal counsel, and legal counsel should be prepared to advise not only regarding the existing state of affairs but ways to better position the client should the state of affairs change.

A. Know Your Industry

Some industries may be effected more than others (e.g. marijuana industry).

B. Keep On Keeping On

“Despite the initial surprise (or even shock) of Trump’s victory, many IP owners may simply take the view that it’s ‘business as usual’ in relation to core practices: applying for IP rights, filing lawsuits, negotiating licensing deals, etc. It seems unlikely that Trump will have the desire, or be able, to significantly shake up the IP system in the US, but then again it seemed unlikely that he would reach the summit of the country’s political system.” *IP under Trump: Cautious Optimism for Now*, WORLD INTELLECTUAL PROPERTY REVIEW (Jan./Feb. 2017), p. 3,

http://www.emagcloud.com/NewtonMedia/WIPR_Jan_Feb_2017/index.html?utm_source=World+IP+Review&utm_campaign=b87e156de9-EMAIL_CAMPAIGN_2017_02_24&utm_medium=email&utm_term=0_d76dcadc01-b87e156de9-27273533#/2/.

C. Follow The Trends And Be Prepared To Pivot

With the ability to track how Trump’s own business (albeit without him) pursues IP, protects and enforces it and monetizes it, you may be able to glean best practices for your client’s to model theirs, such as active filing of trademarks and patents.

VII. Conclusion

The oft-cited answer to a client inquiry of “it depends” will likely echo through the early part of President Trump’s term. Nonetheless, attorneys would be well-served to understand the Trump administration’s effect on technology and intellectual property.