Like every acting man, the entrepreneur is always a speculator. He deals with the uncertain conditions of the future. His success or failure depends on the correctness of his anticipation of uncertain events. If he fails in his understanding of things to come, he is doomed. The only source from which an entrepreneur’s profits stem is his ability to anticipate better than other people the future demand of the consumers.

Production is not something physical, material, and external; it is a spiritual and intellectual phenomenon. Its essential requisites are not human labor and external natural forces and things, but the decision of the mind to use these factors as means for the attainment of ends. What produces the product are not toil and trouble in themselves, but the fact that the toiling is guided by reason.

—Ludwig von Mises, Human Action

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<table>
<thead>
<tr>
<th>TYPES OF INTELLECTUAL PROPERTY</th>
<th>Copyright</th>
<th>Chip Act</th>
<th>Patent</th>
<th>Trade Secret</th>
<th>Trademark</th>
<th>Database Act (proposed)</th>
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</thead>
<tbody>
<tr>
<td><strong>Relevant Law</strong></td>
<td>Federal</td>
<td>Federal</td>
<td>Federal</td>
<td>Federal &amp; State</td>
<td>Federal &amp; State</td>
<td>Federal</td>
</tr>
<tr>
<td><strong>Duration</strong></td>
<td>work for hire: MIN(95 years from pub or 120 from creation)/life of author + 70 (new—Sonny Bono Copyright Term Extension Act 1998)</td>
<td>10 years</td>
<td>20 years from date of filing</td>
<td>while secret lasts—could be forever</td>
<td>forever, unless mark becomes generic like &quot;aspirin&quot;</td>
<td>15 years</td>
</tr>
</tbody>
</table>

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1Mr. Kinsella is General Counsel and VP-Intellectual Property with Applied Optoelectronics, Inc. www.ao-inc.com, in Sugar Land, Texas. Until October 2000, he was a partner in the Intellectual Property Department of Duane Morris LLP www.duanemorris.com. Email: kinsella@swbell.net or nskinsella@ao-inc.com.

ESTABLISH INTELLECTUAL PROPERTY PROGRAM

- Intellectual Property Committee
- Ownership and Employment Agreements
- Familiarize Employees with Importance of IP
- Protect Trade Secrets with Policies and Procedures
- Invention Disclosure Program
- Outside Attorney Guidelines
- Patents, Trade Secrets, and Licenses
- Monitor for Infringement by Others
- Avoid Infringement of Others’ Patents

FURTHER INFORMATION ON INTELLECTUAL PROPERTY

General
http://www.uspto.gov
http://www.uspto.gov/patft/index.html
http://www.patents.ibm.com/
http://www.nyipla.org/public/10_faq.html
http://lcweb.loc.gov/copyright
http://www.bustpatents.com/
http://www.buildfreedom.com/ft/intellectual_property.htm
http://www.aipla.com/overview.html
http://www.kmlaw.com/pract.htm#Intellectual
http://www.ipo.org/

<table>
<thead>
<tr>
<th>Scope of Protection</th>
<th>Copyright</th>
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<th>Database Act (proposed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership and Employment Agreements</td>
<td>Protects expression not idea</td>
<td>Protects against direct copying of maskworks</td>
<td>Protects idea embodied in invention</td>
<td>Protects idea and expression, as long as secret</td>
<td>Protects identity of source of goods/services</td>
<td>Protects extraction or use of “substantial part” of collections of information</td>
</tr>
<tr>
<td>Example</td>
<td>Books; movies; songs; manuals; all types of software (microcode, source code, operating system software, code embodied in ROM)</td>
<td>Complex computer chip masks such as microprocessors</td>
<td>New devices; business methods; process control; operating system software; software with novel methods or techniques</td>
<td>Secret information that gives competitive advantage; e.g., object code for expensive, limited market software; almost all source code</td>
<td>Company name, product lines</td>
<td>Compiled data, databases, maps, telephone book listings, 3-D seismic data</td>
</tr>
</tbody>
</table>

Example
- Copyright: Protects expression not idea
  - Books; movies; songs; manuals; all types of software (microcode, source code, operating system software, code embodied in ROM)
- Chip Act: Protects against direct copying of maskworks
  - Complex computer chip masks such as microprocessors
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- Trade Secret: Protects idea and expression, as long as secret
  - Secret information that gives competitive advantage; e.g., object code for expensive, limited market software; almost all source code
- Trademark: Protects identity of source of goods/services
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- Database Act (proposed): Protects extraction or use of “substantial part” of collections of information
  - Compiled data, databases, maps, telephone book listings, 3-D seismic data
Ownership of Employee Inventions

http://www.lawsch.uga.edu/~jipl/vol3/hershovi.html
http://www.law.washington.edu/casrip/newsletter/news_v3i3owner.html
http://cyber.law.harvard.edu/metaschool/fisher/joint/links/articles/patel.html
http://www.patent-ideas.com/Xpatents.htm

Domain Names
Uniform Domain Name Dispute Resolution Policy (UDRP), www.icann.org/udrp/udrp.htm

Trade Secrets
Restatement (Third) Unfair Competition, §§ 39-45 (ALI 1995),
http://execpc.com/~mhalligan/unfair.html
Uniform Trade Secrets Act (UTSA), http://nsi.org/Library/Espionage/usta.htm;

Miscellaneous
N. Stephan Kinsella, “In Defense of Napster and Against the Second Homesteading Rule,”