

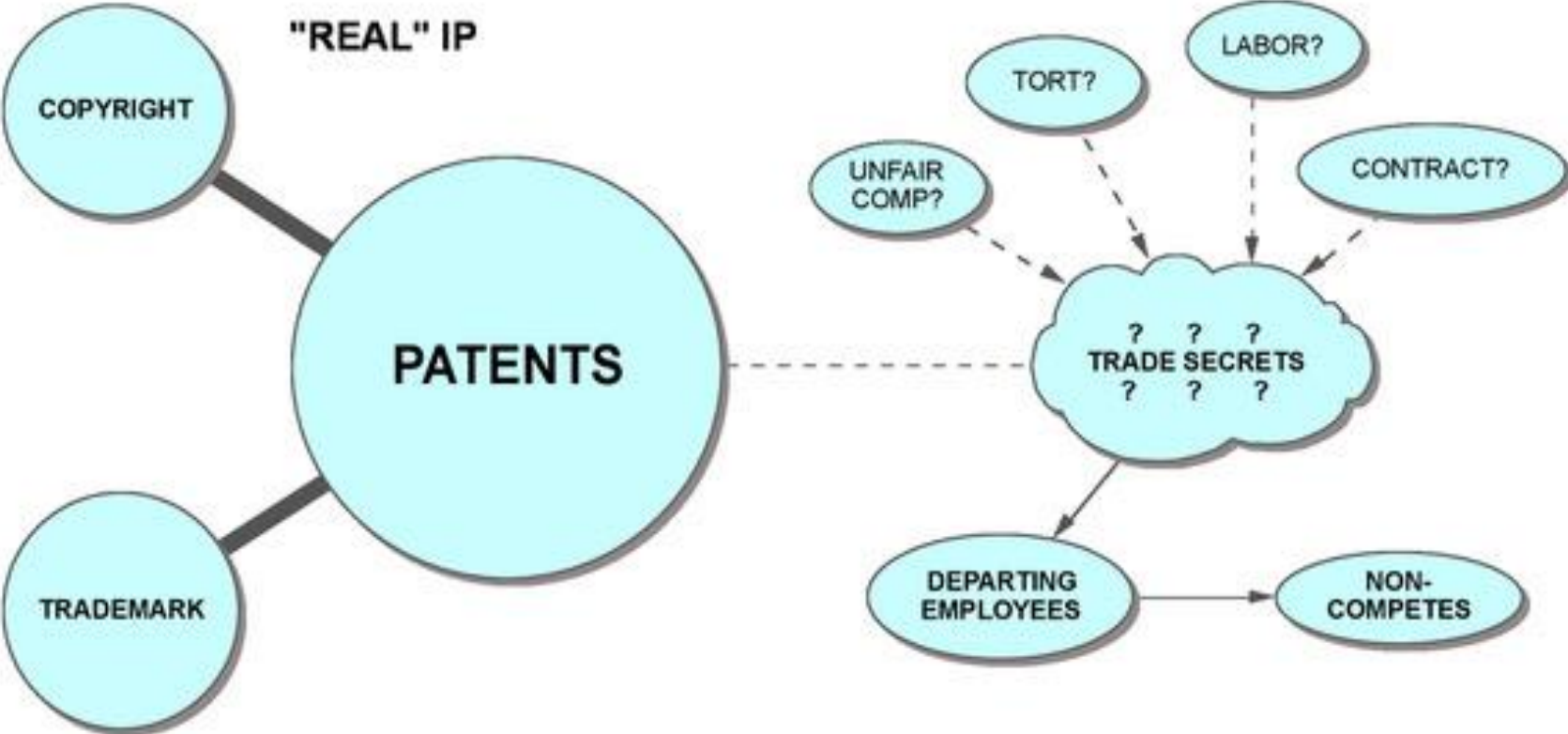
TRADE SECRETS: A NEW OPPORTUNITY FOR IP PROFESSIONALS

JAMES POOLEY

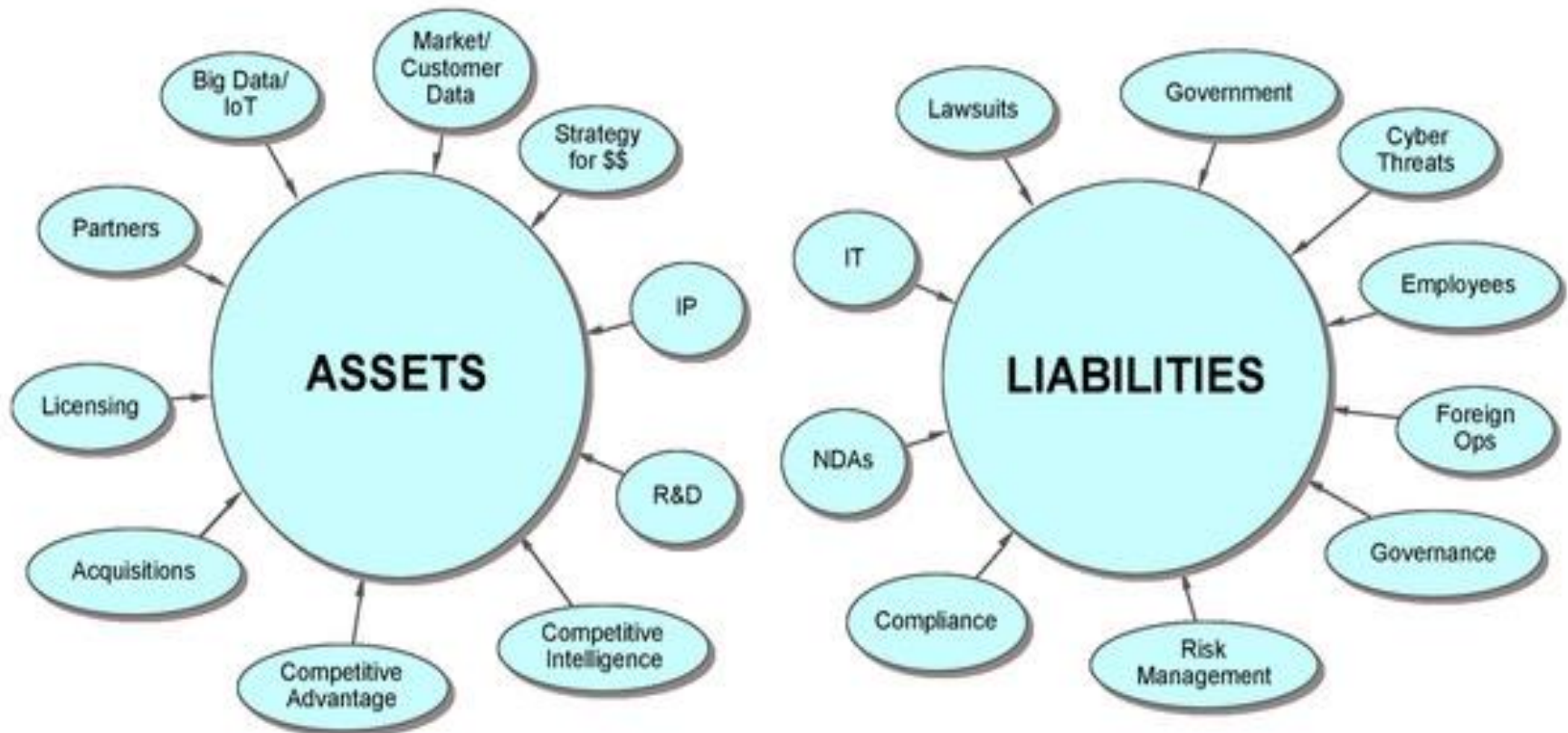
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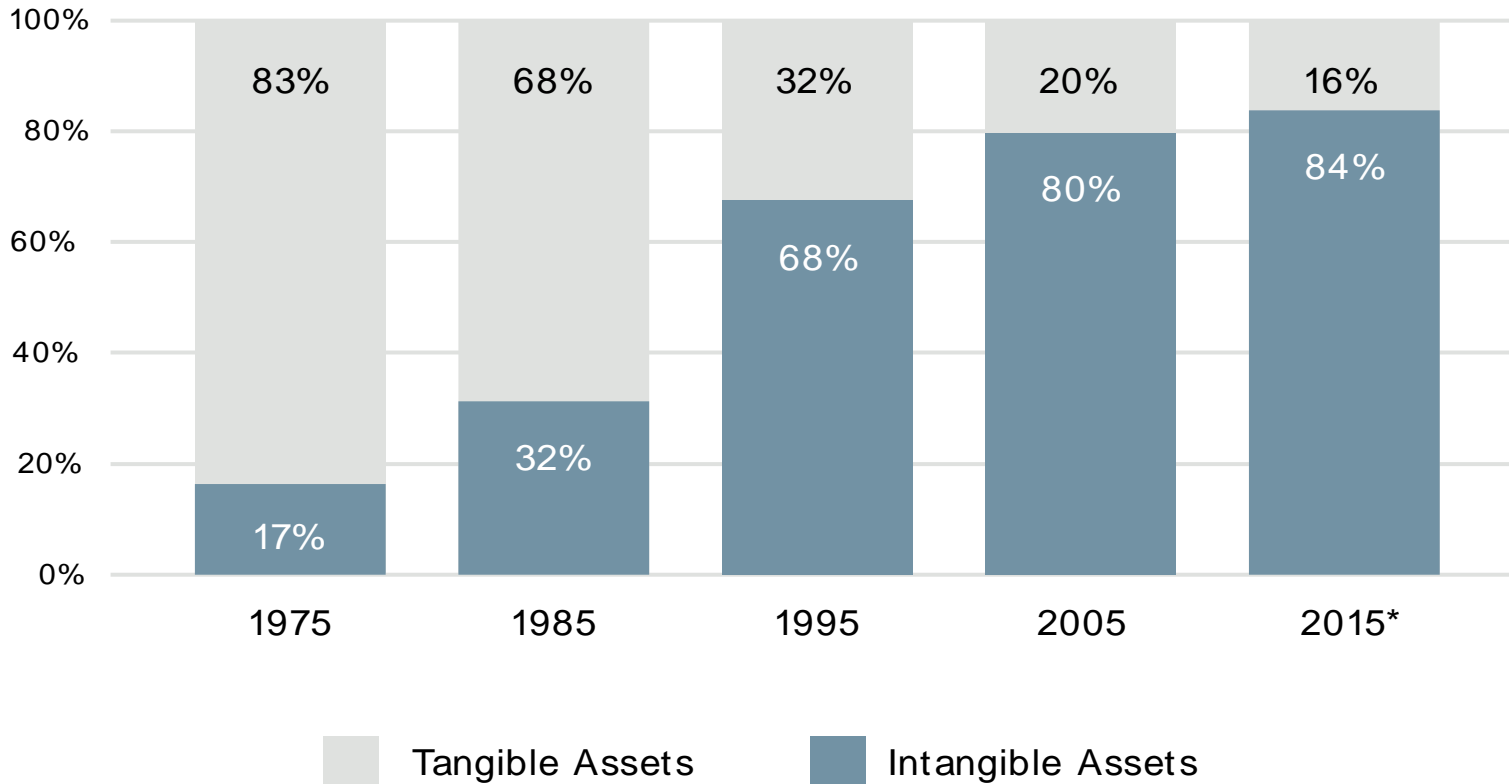
HOW LAWYERS SEE TRADE SECRETS



HOW CLIENTS SEE TRADE SECRETS



Industry's primary asset is data



Source: Ocean Tomo, LLC
*January 1, 2015

Broader than other forms of IP

Patent protects specific new technological solutions

Copyright protects form of expression

Trademark protects goodwill in brand

Design protects exterior appearance of product

Trade secret law protects INFORMATION

What qualifies as a trade secret?

Any information that is

- secret (not generally known)
- has competitive value
- is protected by “reasonable steps”

Skill and general knowledge not covered

Potentially permanent, but not exclusive

Examples of protectable secrets

- **Raw data, extracted analytics, AI algorithms**
- **R&D, including failures and dead ends**
- **Strategic, marketing and financial plans**
- **Unannounced products**
- **Information about your customers and suppliers**
- **Information entrusted to you by your customers**

Increasing damage awards

- ***Miller v. Caterpillar* (E.D. Ill.) \$74 million**
- ***Epic v. Tata* (W.D. Wisc.) \$940 million**
- ***Move v. Zillow* (Wash.) \$130 million (settlement)**
- ***CardiAQ v. Neoasc* (D. Mass) \$112 million**
- ***Title Source v. Housecanary* (Tex.) \$706 million**

Management of trade secret assets

“Three may keep a secret, if two of them are dead.” (Benjamin Franklin)

Strategic objectives of management

- **Prevent loss of critical advantage**
- **Avoid contamination**
- **Comply with emerging standards**
- **Demonstrate “reasonable steps”**

Three factors for “reasonable steps”

Value of the information

- Focus on what is most important to keep from the competition
- Almost all secrets will eventually become known
- Many secrets, especially business data, degrade over time

Risk of loss or contamination

- What are the threat vectors?
- What is the likelihood that they will come to pass?

Consider mitigation measures

- What mitigation measures might reduce risk?
- What do they cost (money, administration and friction)?

Creating a plan fit for purpose

“Audit” and “inventory” are not required

- Just know the categories of data and threats faced
- Manage to the risk, not to the rules

Central authority with distributed responsibility

- Business unit leaders perform initial assessments
- Central management must assure compliance and reviews

Regular reviews

- Threat environments are dynamic; plans need adjustment

Thank you!

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