



WIPO Conversation on IP & Frontier Technologies: Panel 4.

Data Types, Data
Management and Data
Commodification from
Intellectual Property
Perspective.

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What is data?

- The word 'data' has varied meanings.
- Data is defined as “facts and statistics used for reference or analysis”. *Oxford Paperback Dictionary & Thesaurus*, (2009).
- “Data is the physical representation of information in a manner suitable for communication, interpretation, or processing by human beings or by automatic means.” *OECD Glossary of Statistical Terms*.
<https://stats.oecd.org/glossary/detail.asp?ID=532>.
- In its most elemental form, data transcends knowledge, and is no more than information. Tuomi, Ilkka, "Data is more than knowledge“, *Journal of Management Information Systems*, 6 (3) (2000), 103–117.

What is data?

- In the context of the knowledge economy, data has been framed as “the new oil of the digital economy”. Joris Toonders, “Data is the New Oil of the Digital Economy”, *WIRED*, (July 23, 2014). <https://www.wired.com/insights/2014/07/data-new-oil-digital-economy/>
- This presentation adopts the broad concept of data as “information”.

Data as Information.

- In law, there are two types of informational data: proprietary and non-proprietary.
- Proprietary and non-proprietary informational data are generally protectable in law, but not all informational data are protectable, i.e., at common law, title-tattle or gossip is not protectable as confidential information. Megarry J, obiter, in *Coco v AN Clark (Engineers)*, [1968].
- In *R v Department of Health, ex parte Source Informatics*, (1999), the Court of Appeals of England & Wales categorised information into four main classes: (a) trade secrets; (b) personal confidences; (c) government information; and (d) artistic and literary confidences.

Intellectual property and informational data.

- Intellectual property rights are generally defined as intangible national rights that range from patent, copyright, trademarks, trade secrets, to confidential information.
- Proprietary informational data could be protected as an intellectual property right, provided the necessary requirements are met. For example, Article 2 (1), (a), (b) & (c) of DIRECTIVE (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, defines 'trade secret' as information, which is secret, has commercial value due to its secrecy, and the person in lawful control of the information has taken reasonable steps to keep it secret.

Different types of data.

- Personal data/data privacy.
- Factual data.
- Commercial data /business data/ trade secrets.
- Technical data/computer-generated data.

Intellectual property protection for data: personal data/data privacy.

- **Personal Data/Data Privacy:** this involves personal information that range from letters, diaries, names, biometric data, etc.
- Letters, emails and diaries could be protected by copyright as literary work provided originality requirement is met. HRH The Prince of Wales v Associated Newspapers, [2007] 2 All ER 139; Ashdown v Telegraph Group Ltd, [2001] 4 All ER 666.
- Copyright will not protect factual information like biometric data, names, etc. because they lack originality. However, factual personal information could be protected as confidential information at common law, provided the information is confidential, there is an obligation of confidence, and there is an unauthorised use of the information. Naomi Campbell v Mirror Group Newspapers Limited, [2004] EMLR 247; Michael Douglas v Hello Limited, [2005] EWCA Civ. 595.

Intellectual property protection for data: rights of personality.

- **Rights of Personality:** These comprise right of publicity, and right to privacy.
- The right of publicity involves the right to keep one's image and likeness from being commercially exploited without permission or contractual compensation.
- The right to privacy involves the right to be left alone, and not have one's personality represented publicly without permission.
- Rights of personality is rooted in common law, and is closely associated with the tort of passing off, which is a variant of intellectual property right designed to prevent commercial exploitation of tradename or trademark without consent. *Henderson v Radio Corp Pty Ltd, (1960) 60 SR(NSW) 576, [1969] RPC 218.*

Intellectual
property
protection for
data: factual data.

Copyright does not protect facts or ideas *per se*. However, copyright would protect original expression of ideas that emanate from the author as a literary, dramatic, musical, or artistic work. (Section 1(1)(a) Copyright, Designs and Patents Act 1988); *Navitaire Inc v. Easyjet Airline Co Ltd*, [2006] RPC 3; *Creation Records Ltd v News Group Newspaper Ltd* [1997] EMLR 444.

However, it is possible to protect factual compilation or a database with *sui generis* right, under Article 7(1), Database Directive 96/9/EC. *Case-C 203/02 British Horseracing Board v. William Hill Organization Ltd* Case [2004] ECR I-10415; *Case C-338/02 Fixture Marketing Ltd v. Svenska Spel AB* [2004] ECR I-110497.

Intellectual property protection for data: technical information.

- Technical information could be protected as a trade secret, industrial secret or business secret under Article 2 (1), (a), (b) & (c) of DIRECTIVE (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure; Article 39 (1) & (2) TRIPS Agreement 1994.
- Technical information could also be protected at common law as confidential information or trade secret. *Coco v AN Clark (Engineers)*, [1968].
- Also, technical information in patent specifications and claims are protectable for the duration of the patent. *Catnic Components Ltd v. Hill and Smith Ltd [1982] RPC 183 (HL)*; *Improver Corporation v. Remington Consumer Products Ltd. [1990] FSR 181*.

Intellectual
property rights
management, big
data, and data
commodification.

Data has been framed as “the new oil of the digital economy”. Joris Toonders, “Data is the New Oil of the Digital Economy”, *WIRED*, (July 23, 2014).

Intellectual property rights management of protectable data invariably involves regulating access to commercial use of informational data.

For example social media platforms have evolved a business model that monetises or commodifies personal data in exchange for free access to digital communication tools like Facebook, Twitter, etc.

In this context, users’ personal data are the critical mass for the flourishing business model of social media platforms.

Conclusions.

- The presentation examines the nexus between informational data and intellectual property rights.
- The presentation highlights different types of data, and the categories of data that could be protected by intellectual property rights.
- It is noted that data are the critical mass for the knowledge economy, and are susceptible to intellectual property rights management and control, which regulate access to commercial use of data, and could undermine data commodification, if access is denied.
- Thanks for listening.