

## Data and IP

Intellectual property rights are rights that grants the holder of a creation a monopoly on the use thereof for a (un)limited period, subject to exceptions. The underlying aim of granting such (temporary) monopoly, is to encourage creators to share their work with the public, and to achieve the social and economic benefits of increased creative activity.

In light of the above, it should not be ruled out that individual pieces of data or entire datasets, fall within the scope of protection of various intellectual property rights. How to balance your protection of business data while sharing this data?

This news edition will touch base on intellectual property rights that may be relevant when it pertains to data (protection).

### Copyright

Copyright ensures protection of various types of works, which can offer protection to individual data if the work is original and is expressed in a tangible concrete form.

Original compilations are often those where some degree of skill and judgement is involved when compiling the data in question, as opposed to merely re-arranging the data chronologically. A good understanding of the protection requirements could facilitate extending protection to different types of works e.g., protection of data.

Copyright holders also hold “moral rights” in such works which protect the author’s association with a creative work and allow the author to preserve its integrity and intent. Though such rights, unlike copyright, can only be waived and are not assignable.

Copyrights on Sint Maarten are valid for the lifetime of the creator and end 50 years after their death.

### Patents

Patents apply to an actual invention, therefore data is normally not protected through patents. In a few infringements cases, patents have been awarded to methods pertaining to compilations of data. For example, a US patent was awarded in respect of how a compilation of data was physically stored, since the way it was stored allowed data to be accessed much quicker.<sup>1</sup>

### Trade secrets

Data could also be protected by being characterized as a trade secret. In view of data projects, trade secret protection may provide a safeguard as it allows for protection of individual pieces of information regardless of their originality. It also does not differentiate between the types of data that might be protected.

Characteristics of trade secrets are:

- The data is secret;
- It has commercial value, and;
- It is subject to reasonable measures ensuring the data’s secrecy.<sup>2</sup>

Trade secret protection includes civil and criminal remedies and is unlimited in time, as long as the information has not been disclosed. Corporate bodies/businesses should be alert when disclosing data, as trade secret protection may no longer be claimed.

Copyright and patent rights provide measures enabling control over the diffusion and use of works, contrary to the objective of trade secret protection which is to keep commercially valuable information secret or confidential.

## Data and licensing

It should be clear by now that data is a valuable business asset. Data is shared, used and exploited on a daily basis. This business asset should be protected through licensing to third parties.

Before considering a data license, it should be determined which IP rights are involved as data may be protected by multiple IP rights.

Data licenses present several licensing issues concerning for example, data use and ownership but also how to tend to original, usage and/or derived data.

The abovementioned could be applicable in the event that a party, for e.g., receives, collects and compiles data from another party or generates data from the other party’s data on its own or on its behalf.

In any data licensing transaction, a key negotiated point is accounting for the licensor’s ownership of and the licensee’s permitted use of the data. The party licensing out the data, should ensure that the agreement accurately addresses its ownership of or other rights in the data. This can be done by obtaining acknowledgements of its rights in the data from the licensee and to include a properly tailored definition of the licensed data set.

In the event that the licensor owns the data, it should seek specific acknowledgement from the licensee that the data provided under the agreement belongs to the licensor and is the licensor’s sole and exclusive property. The licensor could seek for additional acknowledgments to achieve the maximum scope of protection for its data.

In some circumstances, a narrow definition of licensed data will suffice. This could be the case in a data feed agreement where the licensee is not permitted to generate any derived data.

This ensures not only that the licensed data is limited in scope but also that the licensor reserves the right to obtain additional fees for the usage of additional data or for additional manners of usage.

As the scope of this subject is broad, we will dedicate a future newsletter to data license agreements which will discuss certain elements of such agreements more in depth.

<sup>1</sup> Toronto Real Estate Board v. Commissioner of Competition, 2017 FCA 236

<sup>2</sup> Directive (EU) 2016/943 of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure [2016] OJ L 157/1

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## Disclaimer

*The Bureau is not a regulatory body and therefore does not have any law enforcing authorities. By law, the Bureau can only carry out tasks pertaining to the registrations of trademarks, provide information to the public regarding intellectual property, and thereto related matters. The Bureau’s position is neutral. Given the fact that the Bureau must serve all entrepreneurs, it cannot take the side of one party in a conflict, since this would automatically result in no longer being able to serve all. The Bureau cannot act against any infringement of intellectual property rights or the suspicion thereof. Furthermore, the law does not provide for any instruments for the Bureau to conduct any procedures in relation to infringement or dispute settlement. In the event of any (suspected) infringement, a lawsuit should be filed with the civil court by the owner of the intellectual property rights.*

📅 IP Events Calendar	📍 Location	🌐 Website
07/04 ECTA: The Never-Ending Challenge of Shape Protection: Design, Trade Mark and Copyright	Milan, Italy	www.ecta.org
30/04 04/05 INTA: Annual Meeting 2022	Virtual	www.inta.org
02/05 INTA: PAC 2022 Annual Meeting LIVE + Reception	Virtual	www.inta.org
08/05 10/06 Venice Lesi: LES International Annual Conference 2022	Venice, Italy	www.lesi2022.org
11/05 Npower workshop: Why is IP necessary for non-profit organizations  Facilitator: BIP SXM Director, Mrs. Vincentia Rosen-Sandiford	R4CR office (former WIB Bank ATH Illidge road)	
12/05 WIPO: Mediation and Arbitration for IT and Franchising Disputes	Virtual	www.wipo.int
11/05 12/05 LSPN: LSPN North America 2022	Boston, Massachusetts	www.lspnorthamerica.com
19/05 Virtual IP workshop by BIP SXM IP & Business: From start up to scale up  Facilitator: Dr. Marsha Simone Cadogan, Bsc. LLB. LL.M. PhD (Intellectual Property Rights)	Virtual (MS Team)	
26/05 27/05 WIPO: Patents in Telecoms & the Internet of Things	Virtual	www.wipo.int
15/06 18/06 ECTA: ECTA 40th Annual Conference ‘Designing the Future’	Copenhagen, Denmark	www.ecta.org

