LICENSING OF DATA

LES BENELUX 18 November 2020
AGENDA

Can you really “license” data?

Protecting of Data
• Copyrights
• Database Rights
• Know-How
• Contracts

Data Licensing Agreement
Your Presenters

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• European Patent Office 1987-1990
• IBM Patent Group 1990-1996
• Gore-Tex IP Counsel 1996-2001
• Founding Partner Sonnenberg Harrison Partnership mbB
• European, French and German IP Attorney
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• Admitted to the bar in Germany
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• Specialising in Data, Copyright and Trade Marks
PROTECTION OF DATA

- Intellectual Property Rights
- Open Data Initiatives
- Research Data
- Horizon 2020 Principles
# DATA AND IPRs

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COPYRIGHT

- Protects authorship when certain level of creativity is reached

- Data itself might lack necessary level of creativity

- Compilation of data protected in some countries
  - USA: Compilation is protected when materials in compilation are selected, coordinated or arranged creatively such that a new work is produced
  - Protection only for the compilation not for the individual data in the compilation

- Data Base Protection in the EU
KNOW-HOW

• Non-patented practical information resulting from experience and testing, which is secret, substantial and identifiable
  o Technical information
  o Commercial information
  o Administrative information
  o Financial information
  o Etc.

• Can include closely held databases (e.g. databases that are only accessible through internal networks)
• Can include databases where access is restricted
DATABASE PROTECTION
Directive 96/9/EC

• Directive concerns legal protection of databases in any form
  • Art 3: Selection of contents constitute intellectual creation
  • Art 4: Exclusive rights: reproduction, alteration, distribution
RESEARCH DATA

- Includes all data collected, observed, generated or created during the research process
UPDATED COPYRIGHT
Directive 2019/790

• Harmonise EU copyright law in the framework of internal market

• Rules on exceptions and limitations to copyright and related rights

• Research organisation may make copies of databases with appropriate level of security and retain for scientific research.
Public Service Information (PSI)

• Open Data Directive replaces PSI Directive
• EU Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 July 2021
• Open Data Directive governs documents held by public sector bodies of the Member States and by certain public undertakings
• Also governs research data
• Important limitations and exemptions, e.g. documents falling outside of scope of “public service task” and documents for which third parties hold intellectual property rights
Public Service Information (PSI)  

- General Principle (Article 3): Member States shall ensure that documents to which this Directive applies in accordance with Article 1 shall be re-usable for commercial or non-commercial purposes free of charge
- Exceptions apply
- Access to Research data shall always be free of charge for the user
- Concerns relating to intellectual property rights, personal data protection and confidentiality, security and legitimate commercial interests, shall be taken into account in accordance with the principle of ‘as open as possible, as closed as necessary’
- Specific High-Value Datasets shall always be granted free of charge □ Commission needs to adopt implementing acts laying down a list of specific high-value datasets
- So far, no case law available
- Implementation in Member States by July 2021 (national laws)
Aims to enhance free movement of non-personal data across Member States and IT systems in Europe.

Regulatory control of Member states even if data is located in another Member State.

Easier portability of data from one cloud service provider to another.
“Traditional” Questions

- Who
- Why
- What
- When
- Where
- How
WHO IS BEING LICENSED

License will be to access the data

• Individuals?
• Devices?

• Compilation of Data from different sources?
WHY IS BEING LICENSED

What can the licensor do with the data?

And what about use for other purposes?
WHAT IS BEING LICENSED?

• Static
• Dynamic

• Compilation of Data from different sources?

• Rarely exclusive
WHERE IS BEING LICENSED?

- Where is data being used?
- Where is data stored?

- Transfer of Data
HOW IS BEING LICENSED

Maintaining security of data

Maintaining integrity of data

Creation of derivatives

And what about inventions created by the data?
THANK YOU

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