Protecting data in an ever-growing data-economy

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Data as a Valuable Asset in the Technology Domain

For almost every business, especially within the technology domain, data is one of the most valuable assets. Data protection is an essential part of corporate responsibility.

The data economy is on the rise, with significant potential for Belgian companies. An excessive amount of data is produced, processed and exchanged, such as sensor-collected industry data, data from scientific research or commercial data. Already today, over 60% of the leading Belgian tech industry1 companies are involved in the data economy. By 2025, the Belgian local data economy alone is valued at 21 billion euros.

Typically, intangible assets are protected by intellectual property rights. But how does this work for your data? And how do you balance sharing and protecting your valuable data?

Letting you in on a (trade) secret

Intellectual property laws typically protect creative works, inventions, and distinctive signs, rather than raw, unprocessed data. Protecting those *raw unprocessed data* by intellectual property rights (IPR) such as patents, copyright or trademarks is impossible.
However, there is a viable option for protecting your data: *a trade secret.* To be considered a trade secret, the data in question must:

1. have commercial value;
2. be secret;
3. be subject to reasonable measures ensuring the data's secrecy.

As long as a trade secret remains secret, the protection stands. Companies should be particularly careful in publishing or otherwise disclosing data and/or datasets. This might lift the protection, because obviously, the secret is no longer a secret.

Keep in mind, while data itself can't be protected by patents or copyrights, the methods used to acquire, (pre) process or use those data may be safeguarded through those intellectual property rights.

Intellectual protection for databases

If you have created *a(n) (electronic) database* you can protect its structure and its content.

- ***Protecting its structure, via copyright***: if your database is an original intellectual creation, you can protect it through copyright. This grants you the exclusive right to reproduce, adapt, distribute the database structure or any variation of it.
- ***Protecting the content, via a sui generis right***: If the structure of your database is not an original creation, you can still protect its content under the 'sui generis' right.

To do so, you need to prove:

A) that you have made a substantial financial, material or human investment
B) in either, obtaining, the verifying or presenting the database content.

There's still a lot of debate around databases containing data generated by connected products and related services. Keep in mind that the Data Act proposal refines the application of the sui generis database rights in Europe by carving out those databases.

Balancing data sharing and data protection

Some types of data are more valuable when shared, while others give you an edge if you keep them under to yourself. The key is striking the right balance. On the one hand, you need to protect your data, for example, through trade secrets . Further, you can protect and use data with third parties at the same time by setting up contracts that include confidentiality obligations regarding the data you've safeguarded.

For example, data license or sharing agreements allow businesses to share valuable data with other parties while retaining a comfortable level of control. When e.g. licensing your data, consider the following:

- Usage rights: where can the data be used?
- Ownership: who owns the data?
- Restrictions: what the data can and cannot be used for?
- Accessibility: can anybody else use the data?
- Modifications: can the data be altered?
- Confidentiality and security: obligations to keep the data confidential and for data security;
- Representations and warranties: ensuring data is accurate and free from viruses;
- Delivery: how and in what form will the data be delivered?
- Derivative data: how will derivative data be treated?

By carefully crafting these agreements, businesses it can maximise the value of the data while protecting their proprietary information.

Conclusion

A strong data strategy is essential to protect valuable data assets while maximising their potential. Businesses can manage their data effectively by understanding the various forms of intellectual property protection available and using a mix of legal, IPR and organisational measures.

This approach not only safeguards the data, but also enhances its value through strategic sharing and collaboration, ultimately driving innovation and competitive advantage. It is essential to closely monitor the implementation of the **EU Data Act** and other evolving EU regulations related to data, as these will establish a framework that presents both opportunities and restrictions for managing and leveraging data effectively.

Want to know more on this topic?

The Sirris Patent Cell, founded with the support of FOD Economy, is your contact point for all your questions related to this issue. Katrien Meuwis is Sirris' expert on this matter. She combines a scientific background with an extensive knowledge on intellectual property. You can contact her to set up an IP strategy or getting the right answers to your questions on IP asset management, valuation of IP, licensing, technology transfers, and collaboration contracts.

Get in touch with our expert Katrien

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