

# GRUR meets Brussels Workshop 2016

## **Who owns non-personal data? Legal aspects and challenges related to the creation of new 'industrial data rights'**

**Prof. Dr. Andreas Wiebe, LL.M.**

Chair for Civil Law, Intellectual Property Law, Media Law and ICT Law,  
University of Goettingen

# Overview

- I. Introduction – from BIG DATA to Smart Factory
- II. Example: the networked car
- III. Protection of industrial data de lege lata
  1. Existing IP Schemes (Copyright, Databases)
  2. Relative Protection (Know how, Data protection law)
  3. Indirect Protection
  4. General civil law
- IV. Protection of industrial data de lege ferenda
  1. Procs and cons
  2. How could a data right look like?
  3. Main problems (allocation and specification)
- V. Perspectives: where to go?

# Introduction – from BIG DATA to „Smart Factory“

## Comm. Oettinger: „EU lacks a data strategy“

...The first step would be creation of a legal basis clarifying who owns the data. „We need a virtual and digital law of property that includes data“.

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# Example: the networked car

- today: many sensors and about 80 steering devices
- Internal and external networks

## R-Link connectivity



# Example: the networked car

- Data on state of the car, the behaviour of the driver, heartbeat, alcohol and traffic, conditions of the environment
- Interests in data ownership
  - Owner of the car
  - User of the car (data input)
  - Navigation and TC services
  - Insurances („pay as you drive“)
  - iSP (distribution channel, data collection for advertising, growth potential € 80 bln. 2015-20)
  - government (traffic control, eCall, toll system, crime prevention)
- Pertinent conflicts could include:
  - May the owner prohibit data collection in the car by producer?
  - May he allow third party access against the will of the producer?
  - May producer forward data to third parties?

# Protection of data under current framework

- Absolute Protection
  - Copyright: creativity needed, no protection of raw data
  - Database sui generis: Protection of data originating from the database involving some investment
    - Strict exclusion of data generation (CJEU) could be alleviated
    - Covers aggregation of data valuable for big data
    - Problems as to scope of protection
    - Limited to Europe
- Relative Protection
  - Know-how and trade secrets
    - Limited to factual secrecy
    - Preservation and allocation increasingly difficult
- Indirect protection
  - Property in data carrier
  - Legal protection of technical measures against circumvention

# Protection of data under current framework

- General Civil Law concepts
  - Tort law
    - Limited to destruction and modification
  - Civil law property
    - Transfer of criminal law protection against hacking
    - Analogy to physical property – no publicity of possession in data

**-> Do we need a new IP right in data and how could it look like?**

# A new IPR in industrial data?

## □ Pros

### □ Incentive function

- Evidence insufficient

### □ Disclosure function

- Not relevant

### □ Allocation function

- Ordering of markets
- Increase efficiency in data markets

## □ Cons

### □ Paradigm shift in information protection

### □ The problem of delineating other IPR

### □ The problem of specification and allocation

# Semiotic analysis: Data / Information

▣ Syntactical level

-> **DATA**

▣ Semantics

-> Work

-> Design

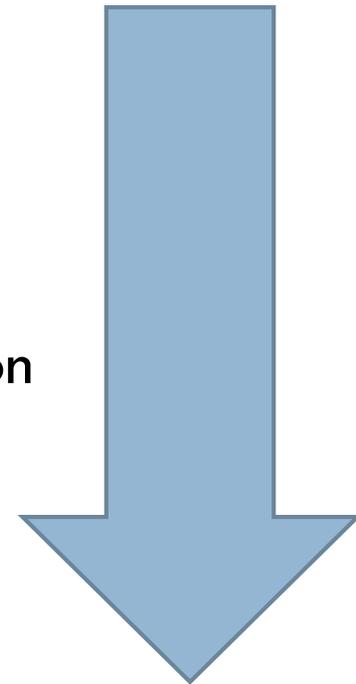
(-> data protection)

-> Know-how protection

▣ Pragmatics

-> Invention

-> Trademark



# How could it look like?

- A neighbouring right for data
  - „Coding“ (first storage or recording)
    - Limited to measurement data, excluding machine generated
  - Requirement of added value / novelty
  - Allocation to entrepreneur and consumer
  - Limited to copying, excluding independent creation
  - Duration 5 years, option to prolong
  - Registration over the Internet
  - Only commercial exploitation
  - Scientific use free

# Allocation Problem

□ Who is „encoding“?

□ Networked car:

- Producer (interest in product data)
- Owner of the car (costs of operation)
- Driver (data input)

*Who makes investment?*

□ Smart factory:

- Service provider
- Factory owner
- Other companies in network

*Who is the most efficient user?*

# Specification Problem

- Delineating subject matter
  - Unqualified indirect protection of information
- Data as abstract concept
  - ISO/IEC 2382-1 (1993): “a reinterpretable representation of information...in a formalized manner suitable for communication, interpretation, or processing”
- Virtualised infrastructures
  - Physical control impossible
  - End-to-end-encryption
  - Right of access to information?