Bird & Bird & Legal Rights in Data

UK Perspective

Toby Bond, Bird & Bird
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Data, Information, Knowledge

Data

Information

Knowledge

Database

Data Set 1
- Datum A
- Datum B

Data Set 2
- Datum C
- Datum D

Data Set 3
- Datum E
- Datum D

Data Set 4
- Datum A
- Datum H

Slide 2
Data "ownership"

- **Property Rights in rem?**
- **Legal rights in data**
- **Contract**
- **Confidential Information**
- **Copyright**
- **UK Database Right**

Data: **Data Ownership**

- **Personal Data: Data Protection**

**Possession/Access**

**Data**

- 10000111
- 110011

**Hardware**

- 01111000
- 0011

**Slide 3**

*Bird & Bird*
Property Rights in rem?

Property under English law

• No (comprehensive) statutory definition of "property".
• Personal property traditionally divided into "things in possession" and "things in action".
• A new category of "intangible property" is being developed by the courts to cover e.g. crypto-currencies.
• Physical media storing data are property as things in possession.

Can data or information per se be property?

• Questions answers by the courts thus far:
  • Can information be unlawfully taken? No – Oxford v Moss, OBG v Allen
  • Is confidential information a form of property? No – Senior v Celgard
  • Is electronic information a form of property? No – Your Response v Datateam
Confidential information

Applies to:

• **English law of confidence**: Information which is (1) confidential in nature; and (2) disclosed in circumstances which give rise to an obligation of confidence (contract, relationship other circumstances).

• **Trade Secrets Directive**: Information which is (1) secret (not generally known); (2) has commercial value due to secrecy; and (3) reasonable steps taken to preserve secrecy.

Confers:

• Protection against misuse of the information by its acquisition, use or disclosure.

• What constitutes "misuse" depends on (i) the relationship between the parties; and (ii) the circumstances in which the information is provided.
**Contract**

**Applies to:**
- Any category of data (or a database).
- Data doesn't need to be protected by IP (*Attheraces v BHB*).

**Confers:**
- Contracts can:
  - 1. restrict **use and dissemination** of data or a database.
  - 2. impose **conditions** on use and dissemination.
- **BUT** only enforceable **against the counterparty** to the contract and **not against third parties**.
- Some **policy based** restrictions on contractual terms, e.g. competition law, common law restraint of trade.
Copyright

Potentially applies to:

• Data or a database.

But only if

• The data is an original work (or a film/sound recording); and/or
• The selection or arrangement of the contents of the database is original.

Confers:

• Broad protection against copying and disseminating data.
• Narrow protection against copying and disseminating the structure of a protected database.
UK Database Right

Applies to:

• Databases which have been subject to substantial investment in obtaining, verifying or presenting their contents.

BUT:

• At least one maker of the database must be connected with the UK (post 31 December 2020).

Confers:

• Protection against extraction or re-utilisation of all or a substantial part of the contents of the database.

• Protection against repeated and systematic extraction and/or re-utilization of insubstantial parts of the database (which goes beyond normal exploitation or prejudices the owner).