

Bird & Bird & Legal Rights in Data

UK Perspective

Toby Bond, Bird & Bird

Annual meeting of German Association for the Protection of Intellectual Property

GRUR

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Data, Information, Knowledge

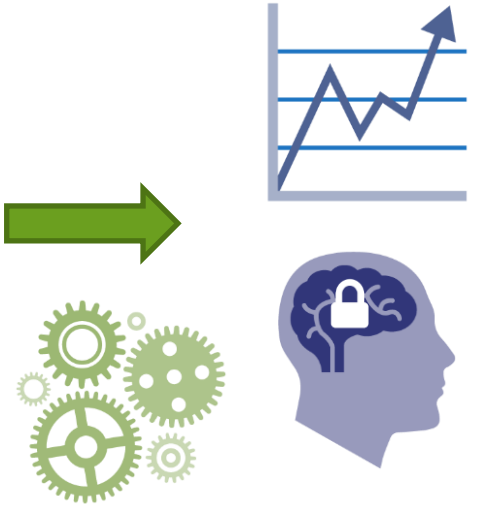
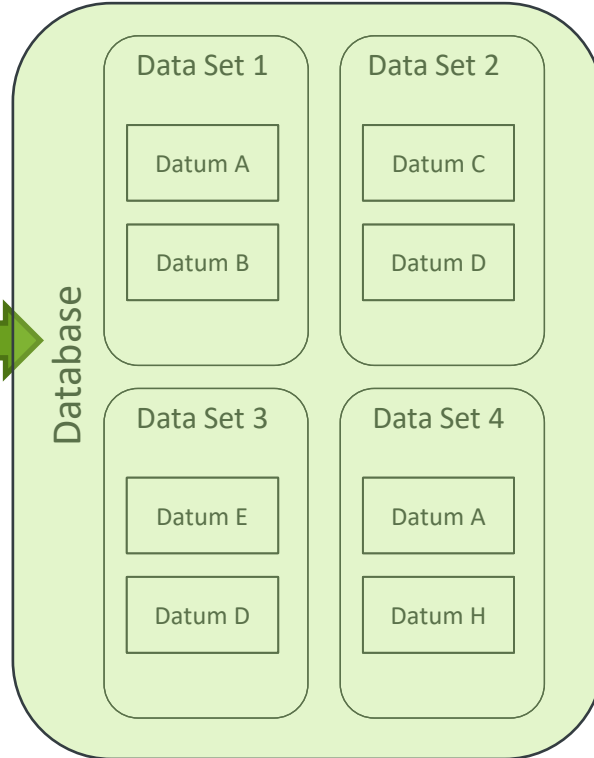
Data



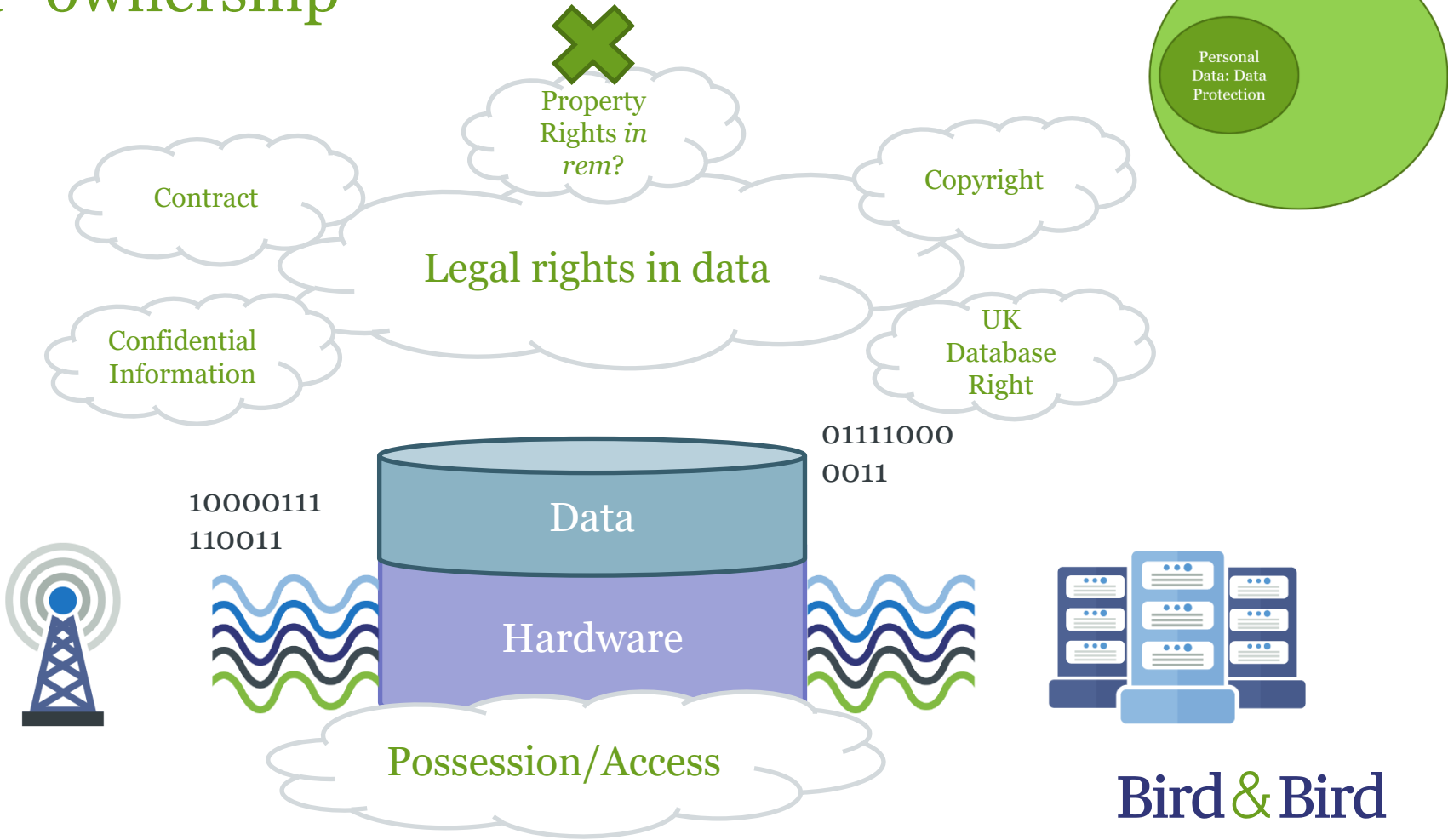
Information



Knowledge



Data "ownership"



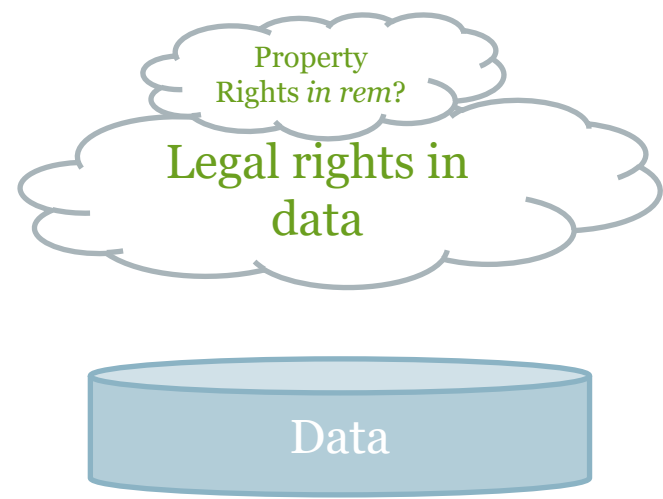
Property Rights *in rem*?

Property under English law

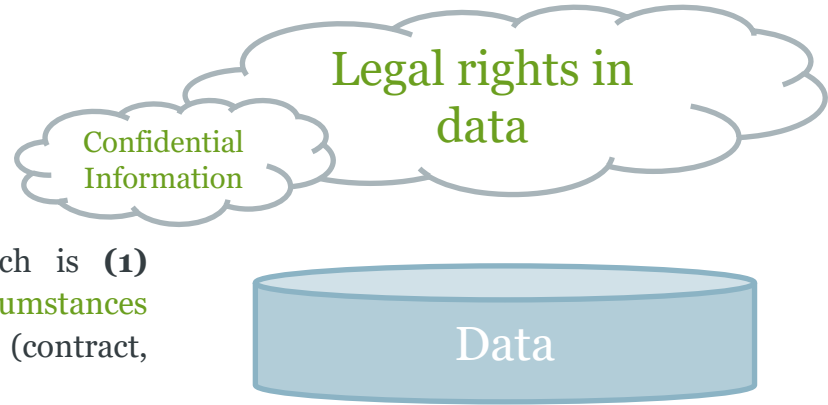
- No (comprehensive) statutory definition of "property".
- Personal property traditionally divided into "things in possession" and "things in action".
- A new category of "intangible property" is being developed by the courts to cover e.g. crypto-currencies.
- Physical media storing data are property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



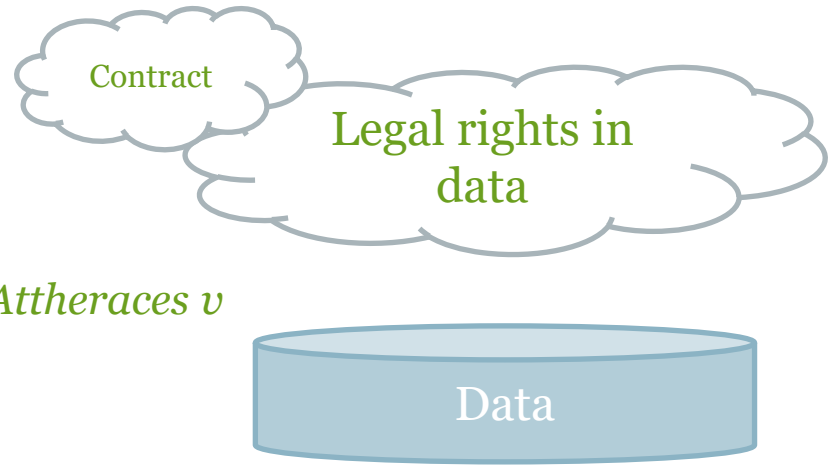
Contract

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:

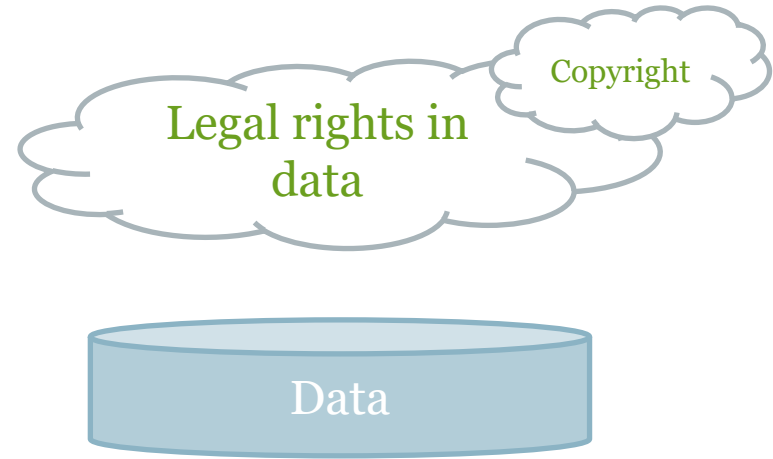
- Data or a database.

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).

