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# Rights in Data

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## a U.S. Perspective

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**“Wisdom is not a product  
of schooling but of the  
lifelong attempt to  
acquire it.”**

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- Albert Einstein



# What is data?

- Information, such as facts, generated info, statistics
- Scientific, health, financial, consumer, personal, AI
- Unstructured or structured

# Data | Categorized

- **Unstructured Data**

- information that is not organized in a defined manner.

- **Structured Data**

- an assembly of information organized in a defined manner.

- **Subject-matter specific data**

- *E.g.*, personally identifiable information (PII), health information

**Can IP protect data?**



# IP Rights

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**Patents** | protect products, methods, processes, compositions of matter

**Copyrights** | protect expression of idea – does not protect idea itself

# IP Rights & Data – in context

## Patents

- data, alone, is not eligible for patent protection
  - *Digitech Image Techs. v. Electronics for Imaging* (not tangible product)
- may protect use of data or manner of generating data (process)

## Copyrights

- may protect data (generally), but rights are narrow and limited

# Protecting Data Copyrights

- **Structured data** may be protectable as a compilation (*e.g.*, a database)
  - a “**compilation**” is “a work formed by the collection and assembling of preexisting materials or of data that are **selected, coordinated, or arranged** in such a way that the resulting work as a whole constitutes an original work of authorship.”
  - the U.S. Supreme Court in *Feist* rejected the “**sweat of the brow**” doctrine that otherwise rewarded authors with copyright protection solely for their hard work
  - **the compilation**, and not necessarily the data contained therein, is copyrightable
  - **material or data** contained in a compilation may be original and separately copyrightable so long as it alone meets all requirements for copyright protection
  - **facts**, individual numbers, letters, words, short phrases and sequences of numbers are **not copyrightable**
- **Unstructured data** as a compilation is not protectable



# Protecting Data Copyrights

## Limitations

- copyright protection available for “original **works of authorship** fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”
- **Authorship.** A work must have been created by a human being *Burrow-Giles Lithographic Co. v. Sarony*
  - **Copyright Office will not register** works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author

# Protecting Data Confidential Information

## as Confidential Information

- as a **trade secret (TS)**; structured or not
  - under federal, state, and common laws
- TS is information maintained in secrecy:
  - **not generally known** to the public;
  - **that confers economic benefit** because information is not publicly known; and
  - **for which the holder makes efforts** to maintain its secrecy.
- via **contract law** - control access, use, dissemination

# In Sum Protecting Data

- **Unstructured Data**
  - No registrable right
  - Protectable as confidential information or trade secret
- **Structured Data**
  - Protectable via copyright
  - Protectable as confidential information or trade secret
- **No *Sui generis* rights** | database protection is NOT protectable if only resulting from substantial investment

# Protecting Data Access, Use, Dissemination

- **Trade Secret Laws**
- **Unfair Competition**
- **Tortious Interference**
- **Antitrust (Competition) Laws**
  - **Monopolization**
    - **Essential Facilities Doctrine**
    - **Refusal to Deal**
    - **Leveraging**
- **FTC (data breaches, privacy policies)**

# Protecting Data Subject-Matter Specific

- **Public Information (FOIA)**
- **Personally identifiable information (PII)**
  - State laws (*e.g.*, CCPA, CDRA, CDPA)
  - Federal laws (*e.g.*, the Privacy Act of 1974)
- **Healthcare**
- **Banking & Financial**
- **Student Records**
- **Driver Records**

# So what's next?

“Logic will get you from A to B.  
Imagination will take you everywhere.”

- Albert Einstein



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# Thank You

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