

IP, DATA USE AND DATA SHARING

Presented by

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What can you own and how?

- Copyright
- Patent
- Trade Secret/Contract

- Algorithm
- Computer program
- Data
 - Data bases
 - Processed data
- Output
- Artificial Intelligence

Trade Secret

Copyright

See Artificial Intelligence

Data

Data bases including processed data as a Data Base – training data, test data, verification data

- Trade Secret

Copyright: “Automated Databases”

“For purposes of copyright registration, a “database” is defined as a compilation of digital information ... arranged in a systematic manner, and it must be accessed solely by means of an integrated information retrieval program or system.

Compendium of U.S. Copyright Office Practices §§727.1

Copyrightable Authorship:

- The **selection** authorship involved in choosing the material or data that is included in the database.
- The **coordination** authorship involved in classifying, categorizing, ordering, or grouping the material or data.
- The **arrangement** authorship involved in determining the placement or arrangement of the material or data within the database as a whole.
- The authorship involved in **creating the material or data** that appears within the database.

Compendium of U.S. Copyright Office Practices §§727.2

Examples: Analyses, Graphics Including Screen Displays, Reports

- Trade Secret
- Copyright
- Main Question is Ownership – Lion's Share Test

Patent

- USPTO Class 706, Data Processing:
- Artificial Intelligence: artificial intelligence type computers and digital data processing systems and corresponding data processing methods and products for emulation of intelligence.

Example of Patent (February 23, 2021) :

“Optimization processing for neural network model”

Abstract: The present disclosure provides a method and a device for optimization processing of neural network models. The method includes the following: determining one or more target layers of the neural network model based on the number of neurons at each layer of the neural network model; for each of the one or more target layers, adding a **virtual layer between the target layer and a preceding layer of the target layer**, where neurons at the virtual layer are separately connected to neurons at the target layer and neurons at the preceding layer of the target layer, and addition of the virtual layer reduces the number of connections between the target layer and the preceding layer of the target layer; and training the neural network model after having added the virtual layers, **to obtain an optimized neural network model.**

Copyright, Fair Use, and New Laws Under Consideration



- Any precedents for the legality of mass copying, without reproductive display?
- Google Books/Hathi Trust, 2nd Circuit opinions, cert. denied
- Results:
 - Almost complete vindication of Google's theory
 - Second Circuit's reliance on absence of market for new uses
 - Reliance on absence of widespread display uses
 - Future additional uses – largely unaddressed

- Compare Dr. Seuss cases
- “Purpose and Character of the Use”
- “Effect of the Use on the Market for the Original”
- What are the purposes of AI applications?
- How to determine future uses?

- Grokster
- Legality of automation
 - Sony Betamax
 - Cartoon Network v. Cablevision
- Lenz v. UMG 9th Cir. *en banc* opinion re automating fair use review
- Other anti-circumvention laws

- Global Partnership on Artificial Intelligence
 - developed by OECD
 - US joined June 2020.
- Existing EU Regulation governs “datamining” for non-profit research purposes
- UK Copyright, Designs and Patents Act 1988, includes s. 9(3) concerning computer generated works
- EU White Paper, European Parliament 2020 reports
- Draft EU regulation expected

- Much proposed federal legislation
 - None passed to date
- Feb 2019 and December 2020: Executive Orders
- December 2020: the National Defense Authorization Act
- Other federal regulatory proposals under consideration
- Restrictions on facial recognition: mostly state and municipal
 - Restrictions on private use in employment in MD, IL and now OR

- 13 questions posed by U.S. Patent & Trademark Office
- US PTO Report issued last fall
- The New Administration's Approach?
- Military and political dimensions
- How to deal with EU database rights or new AI rights?

- Data Use

- HIPAA permits use without patient authorization of a “Limited Data Set” of PHI which removes most but not all PHI identifiers for research, healthcare operations and public health.
- The agreement must specify the scope of use
- Compared with sharing with de-identified data

- Role for Law Department

- HIPAA compliance
- Institution has rules that supplement or are independent of HIPAA
- Institution’s rules for sending out data
- Institution’s rules for receiving data

Thank you for your attention!

Questions?

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