KILPATRICK TOWNSEND

4 KEY TAKEAWAYS

Data as Intellectual & Other Types of Property: Risk Management, Asset Protection, & Beyond

The ownership of data can be a murky question. How does counsel help their company protect the company's legal rights in its data? How does counsel help their company avoid violating the rights of others when using third-party data? What role might copyright, patent, trade secret, tort law, and contract play in data protection? What issues are important for in-house counsel to know of when entering contracts, creating policies, and advising their clients?

Kilpatrick Townsend partners Steve Gardner and Jason Gardner recently addressed these and other issues of counseling, transactions, and litigation related to data rights during a widely attended webinar.

Key takeaways from the presentation, include:

1. Data is a hot area that can be a highly valuable asset and a potential major risk for a company. Data is a broad category, with examples including scraped web pages and web data, AI training data and models, and compiled information such as genetic information and tracking data. Risks are also broad, with examples including unauthorized use, protecting money and time investment, vendor/joint ownership, and employee mobility.

2. Dealing with data and associated risks raises many questions, including who owns the data, rights violations, failing to protect or establish rights in data, ownership of derivatives, and licenses and scope.

3. When seeking to avoid violating rights of others using data or protecting rights in your data, consider copyright, database protection laws, patents, trade secret protection, contracts, intangible property and torts, and the Computer Fraud & Abuse Act.

4. Other regimes to consider can include data breach statutes, Digital Millennium Copyright Act (regarding technical measure circumvention), General Data Protection Regulation (EP — personal-privacy oriented), and common law claims, such as unfair trade practice and inducing contract breach.

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