

The Legal Frontier of Data

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Who owns the intellectual property rights to data: the entity collecting it, or the entity creating it? Where does intellectual property law, privacy law, and labor law stand regarding data collection?

The omnipresence of technology has allowed for the automation of data collection and has given businesses the ability to collect consumer data in unprecedented quantities and depths. Businesses once relied on surveys and studies to provide a snapshot of consumer markets and mindsets. Now, they can employ data tracking technology to create profiles of consumers, collecting information such as shopping habits, age, income, race, gender, and location. On an individual scale, these profiles can be used to more effectively advertise by curating targeted ads. On higher levels, this data can be used to predict the overall makeup of markets and project future trends and consumer habits.

While consumer data is a valuable tool for businesses, its collection can feel invasive and its application unnerving. Understandably, consumers may feel a sense of privacy invasion when a simple Google query for “rubber duck” results in weeks of Facebook ads for rubber ducks and other bath products. While many companies have provided options for users to toggle their data tracking settings, these features are not required by law. And even if such features are available, they can be tedious to enable and manage, posing a problem for less tech savvy consumers. These issues raise questions of whether companies should be legally obligated to create features allowing users to turn off data tracking and what those features should look like.

Consumers are not the only group whose data is being collected. Companies collect data in the workplace to monitor employee activity and optimize productivity. While such optimization programs can be a valuable tool for businesses, the application of labor laws to employee data collection is not clear. Are workers obligated to allow their employers to collect data on their activity? To what extent can this data be used?

Though legislators have not addressed the issue of who holds legal rights to data, courts will face the issue in various contexts and provide much needed clarification to businesses, consumers, and employees alike. Companies should monitor legal developments on the ownership of data and evaluate the potential consequences. Munck Wilson Mandala’s established IP, employment, litigation, and cybersecurity practices will continue to monitor these evolving issues and expand our expert knowledge in this area.