Ag Data Legal Issues for the Ag Retailer

TODD J. JANZEN, JANZEN AGRICULTURAL LAW LLC ©2016
Today’s Agenda

• How the law views “ag data”
• The Ag Data Transparency Evaluator
• Ag Data Legal Issues for the Ag Retailer
“Ag Data”: What are we talking about?

- Agronomic
  - Yield
  - Planting population
  - Pests
  - Seed

- Land
  - Soil
  - Fertility
  - Slope

- Farm Management
  - Financial
  - Profit
  - Contracts

- Machine
  - GPH
  - Speed
  - Efficiency
  - Maintenance

- Weather
  - Wind
  - Temperature
  - Precipitation
Traditional Ag Data “exchange”
Modern Ag Data “exchange”
Future Ag Data “exchange”
“THE FARMER OWNS HIS DATA”
PATENT

AN INVENTION IS NEW, USEFUL, NON-OBVIOUS
TRADEMARK
WORD, NAME OR SYMBOL IDENTIFYING GOODS
who was named Pastoria, lost the crown to the Wonderful Wizard, who passed it on to me. Now the girl Jinjur claims it, and I sincerely hope it will not give her a headache.”

“A kindly thought, which I greatly admire,” said the Tin Woodman, nodding approvingly.

“And now I will indulge in a quiet think,” continued the Scarecrow, lying back in the throne. The others remained as silent and still as possible, so as not to disturb him; for all had great confidence in the extraordinary brains of the Scarecrow.

And, after what seemed a very long time indeed to the anxious watchers, the thinker sat up, looked upon his friends with his most whimsical expression, and said:

“My brains work beautifully today. I'm quite proud of them. Now, listen! If we attempt to escape through the doors of the palace we shall be captured. And, as we can't escape thereon there is only one other thing to do. He must escape through the garden door. Whew! Good-bye!”
TRADE SECRET
Information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
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Does the farmer own her ag data?

- Patents: No
- Copyrights: Probably Not
- Trade Secrets: Maybe
- Trademarks: No
FARMOBILE’s Electronic Field Record (EFR)
What about consumer protection statutes?

- Medical
  - HIPAA

- Financial
  - Gramm Leach Bliley Act

- Ag Data

- Personally Identifiable Information
If ag data is a form of intellectual property, then we have to treat it like a trade secret.
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Farmers’ concerns with ag data contracts

Trust
Time
Complexity
How do we solve these problems?

Industry led effort to create standards: Privacy and Security Principles for Farm Data.
- Ownership
- Control
- Portability
- Choice
- Termination

Signed by 37 farmer-led organizations and ag technology providers.
How do we solve these problems?

Create a means to verify adherence to the **Data Principles**.
# 10 Question Transparency Evaluation

<table>
<thead>
<tr>
<th>QUESTION</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>What categories of data does the product or service collect from me, the farmer?</td>
</tr>
<tr>
<td>2</td>
<td>Do the Ag Technology Provider’s (ATP) agreements address ownership of my data after my data is transferred?</td>
</tr>
<tr>
<td>3</td>
<td>If the ATP contracts with other companies to provide data related services, does the ATP require these companies to adhere to the ATP’s privacy policies with me?</td>
</tr>
<tr>
<td>4</td>
<td>Will the ATP obtain my consent before providing other companies with access to my data?</td>
</tr>
<tr>
<td>5</td>
<td>After I upload data to the ATP, will it be possible to retrieve my original complete dataset in an original or equivalent format?</td>
</tr>
<tr>
<td>6</td>
<td>Will the ATP notify me when its agreements change?</td>
</tr>
<tr>
<td>7</td>
<td>Will the ATP notify me if a breach of data security occurs that causes disclosure of my data to an outside party?</td>
</tr>
<tr>
<td>8</td>
<td>Upon my request, can my original dataset be deleted when my contract with the ATP terminates?</td>
</tr>
<tr>
<td>9</td>
<td>Do the ATP’s agreements establish how long my original datasets will be retained?</td>
</tr>
<tr>
<td>10</td>
<td>Do the ATP’s agreements address what happens to my data if the ATP is sold to another company?</td>
</tr>
</tbody>
</table>
PROCESS FOR CERTIFICATION

ATP Signs Agreement

ATP
• Answers 10 Qns.
• Submits

ADTE Reviews

Approval or Denial
Approved!

Example:
Conserviscorp.com
## 10 Questions: A Closer Look

<table>
<thead>
<tr>
<th>Question 1</th>
<th>Answer</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>What categories of data does the product collect from the farmer?</td>
<td>Agronomic Data</td>
<td>Agronomic Data is defined as planting information, fertilizer applications, and yield data.</td>
</tr>
<tr>
<td></td>
<td>Machine Data</td>
<td>Machine Data is defined as engine speed, load, fuel usage, and miles traveled.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>These are defined in the <a href="#">Terms and Conditions</a>.</td>
</tr>
</tbody>
</table>
## 10 Questions: A Closer Look

<table>
<thead>
<tr>
<th>Question 4</th>
<th>Answer</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Will the ag technology provider obtain my consent before providing other companies with access to my data?</td>
<td>Yes</td>
<td>In our Privacy Policy, we inform you that we will never sell or share your data without your consent. More info: <a href="#">Privacy Policy</a></td>
</tr>
</tbody>
</table>

- Farmers can click on [links](#) to view the actual policies.
www.fb.org/agdatatransparent
Current Status and Projections

7 ATPs through testing and “live” on website
3 ATPs in the pipeline
12 new ATPs indicated interest in participating
20+ on website by year end

Participants are diverse:
- Seed companies
- Equipment manufacturers
- Data startups
- Silicon Valley and Corn Belt
- Farm cooperatives
Long term goals

• Help farmers understand ag data contracts
• Bring some uniformity to ag data contracts
• Recognize a new form of property: ag data
• Make ag data contracts better
# Supporters

## Farmer-Led Organizations
- American Farm Bureau Federation
- American Soybean Association
- National Corn Growers Association
- National Farmers Union
- National Sorghum Producers
- National Association of Wheat Growers
- National Potato Growers

## Ag Technology Providers
- Ag Connections
- AGCO
- Agrible
- Ag Integrated
- Conservis
- The Climate Corporation
- Beck’s Hybrids
- CNH Industrial
- Crop IMS
- Dow AgroSciences
- DuPont Pioneer
- Farmobile
- Farm Dog
- Grower Information Services Cooperative
- GROWMARK
- Granular
- John Deere
- Independent Data Management LLC
What have we learned so far?

Every company uses different contracts to accomplish the same goal.

The process produces better contracts.

It is an interactive process, not pass/fail test.
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Who Owns Ag Data?

If someone else does the work, does the person who generates the data have ownership rights?
Coops, Ag Retailers, Custom Applicators

Trade Secrets

Information, including a formula, pattern, method, technique, or process, that independent economic value from not being generally known and not readily ascertainable.
Problems with current agreements

- Using form website agreements
- Comingling “personally identifiable information” and “ag data”
- Not addressing the Data Principles
- Not addressing the 10 Questions for the Ag Data Transparency Evaluator
- Not treating ag data as a trade secret
Creating an Ag Data Use Policy

Step 1: Identify what “ag data” is:

Ag Data means agronomic, land, and weather data generated by Ag Retailer during any work contracted for farmer.
Step 2: Explain who owns “ag data”

Ag Data shall be the property of the ”farmer,” owned by the farmer at all times. For the purposes of this agreement, the “farmer” shall be the person who hires ag retailer to perform any work on any farm field.

Ag Data shall be the property of the Ag Retailer, owned by the Ag Retailer at all times.
Creating an Ag Data Use Policy

Step 3: Establish transfer, sharing, and access rights

With Ag Retailer
With Third Parties
With Landowners
With Other Family
With Agronomists
With Trusted Advisor
Step 4: Termination and Deletion

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Step 5: Address Effects of Aggregation and Integration

Ownership
Deletion
Anonymization
Control
Consent
Creating an Ag Data Use Policy

Traditional Legal Terms (Boilerplate)

Choice of law
Indemnity
Warranties
Loss of Data
Ag Data Use Policy

Why Bother?

Legislation?
One stop shop
Transparency
Ag Retailer employee understanding
Conclusion

There are no laws that protect ag data. It’s up to us.
Ag Data TransparencyEvaluator = Industry Watchdog
Create an Ag Data Use Policy