

# Big Data

## ～ Protecting Big Data through Contracts ～

### 1. Introduction

In recent years, the amount of data obtained through various products / services has exploded as the number of situations in which IT is used has grown. The large amount of data collected (big data) is effectively used for marketing and other purposes, and especially under the policy of creating what users want from the viewpoint of design management and lean startup, the value and applicability of data can be extremely high.

In addition, some data can add value when combined with other data, and the need to exchange data with different companies, including those in other industries, is increasing. Therefore, not only how to utilize data, but also how to protect the data collected by the company and how to consider the rights related to the data are extremely important aspects of using data to grow business.

Furthermore, in the AI field, having access to a large amount of high-quality data is crucial to the accuracy of the AI engines.

### 2. Need for contractual protection

Under the current laws, although protection as “limited provision data” (Article 2, Paragraph 7 of the Unfair Competition Prevention Act) was added by an amendment to the Unfair Competition Prevention Act, big data is not subject to rights such as ownership rights under the Civil Code (Because it is an intangible object. See Article 206 of the Civil Code and Article 85 of the same Code.) protection as various intellectual property rights and protection as trade secrets under the Unfair Competition Prevention Act are limited as protection for big data.

Specifically, as shown in the figure below, the data itself can be protected by copyright, patent, or trade secret under the Unfair Competition Prevention Act, and limited provision data, each of which has its drawbacks.

Data protection, along with these intellectual property rights, is increasingly being sought through contracts between interested parties.

#### 【 Intellectual Property Rights on Data 】

Type of rights	Point at issue
Copyright	Although there is a possibility of protection under Copyright Act for databases, there are not necessarily many cases where big data is effectively protected as a database in the process of collection and processing. In addition, much of the data itself, such as mere statistical figures, are not considered to be creative under the Copyright Act.
Patent	Methods of processing and analyzing data can be the subject of rights, but the cases in which the data itself is recognized as the highly advanced creation of technical ideas utilizing the laws of nature are considered limited.
Trade secret	It may not be easy to satisfy the confidentiality requirement, which is one of the requirements for trade secrets. It may also be difficult to satisfy the requirement of non-public knowledge, depending on the nature and handling of the information.

Limited provision data	If (1) electromagnetic control, (2) limited external provision, and (3) usefulness are recognized with respect to the subject data, injunctive relief etc. can be sought against the unauthorized acquisition, use, provision, or use for other than the intended purpose of such data. However, the revised act does not cover the transfer etc. of deliverables resulting from the unauthorized use of limited provision data.
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### 3. Points to keep in mind when entering into an agreement regarding data

#### (1) Type of Data

Data are diverse in content and must be considered according to their content. There can be many different ways to classify data, for example, structured or unstructured data. Another classification is personal data (including personal information)/non-personal data in terms of whether or not special care is required in the acquisition and handling of information. Although not all personal data is subject to the regulations of the Personal Data Protection Act or GDPR (General Data Protection Regulation/EU General Data Protection Regulation), it is a useful classification in the sense that it provides an antenna to consider whether it is necessary to take measures in light of the regulations.

#### (2) Merits and limitations of protection by contract

Even if the data is not protected as a trade secret under the Unfair Competition Prevention Act, if a confidentiality obligation is imposed on the subject data in the contract, a breach of the confidentiality obligation can be brought against the other party to the contract if the other party violates the confidentiality obligation and discloses the data to a third party.

However, in principle, the contract is only effective between the contracting parties. If a third party who is not in a contractual relationship with the contracting party discloses the data, the third party cannot be held liable for such disclosure, in principle, unless it satisfies the requirements of a trade secret under the Unfair Competition Prevention Law.

Therefore, when protection is to be provided by contract, it is necessary, of course, to ensure that the content of the contract provides adequate protection, but it is also necessary to carefully consider whether the parties to be bound by the contract are excessive or deficient.

Our firm also handles work related to the protection of big data as described above, and we are happy to provide support from a legal perspective, so please feel free to contact us in this regard.

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