BIG DATA ON THE FARM

LEGAL ISSUES SURROUNDING FARM DATA OWNERSHIP, TRANSFER AND CONTROL

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Today’s Agenda

1. How the law views “farm data”
2. Industry standards and transparency
3. Data ownership issues for coops
WHAT IS FARM DATA?

Agronomic
- Yield, hybrid, soil
- Farming methods

Machine
- RPM, speed, fuel gph
- Diagnostics

Weather
- Precipitation, wind
- Climate
WHO OWNS FARM DATA?
Is “farm data” something that can be owned?

- Patent: No
- Copyright ©: Probably Not
- Trademarks: No
- Trade Secrets: Maybe
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,” con-
tinued 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 through
the ground, there is only one other thing.
He paused to consider the alternatives.
But it had already been decided.
\"We will take the air\"
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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If farm data contains valuable trade secrets, then we need to treat farm data that way.
The Challenge of Uniformity

Privacy and Security Principles for Farm Data

- Transparency
- Notice
- Control
- Defining key terms
- Choice
- Portability
- Unlawful activities
- Ownership

www.fb.org
How do the Ag Data Principles define “ownership”?

- **Privacy and Security Principles for Farm Data:**
  - Default: The farmer owns.
  - But if other interested parties, the farmer and other parties must get together and decide.
  - The owner should be the one who contracts with ATP.
**Scenario 1**
- Leased field fertilized at request of farmer (tenant).
- Landowner calls and wants the fertilization data.
- Does the coop have a duty to provide it landowner?

**Scenario 2**
- Coop maintains digital records of pesticide applications for all farms in the county.
- Pesticide manufacturer asks coop for the data.
- Does Coop comply?
Farm Data in Co-ops / Custom Applicator Agreements

- If co-op does the work, does the co-op own the data the work generates?
Farm Data in Co-ops / Custom Applicator Agreements

- If co-op does the work, does the co-op own the data the work generates?

Is the work the co-op’s trade secret?

Information, including a formula, pattern, method, technique, or process, that derives independent economic value from not being generally known and not readily ascertainable.
Solution

- Address farm data issues in agreements with farmers.
  1. Define what farm data is.
  2. Establish who owns farm data.
  3. Explain each party’s rights to use and exclude others from using farm data.
Farm Data in Coop / Custom Applicator Agreements

- Contracts should address farm data:
  - Ownership
  - Privacy
  - Transfer
  - Retention
  - Loss
  - Accuracy
5 Questions Farmers Should Ask Their Ag Technology Provider

- What information is being collected?
- What control do I have after information is transferred?
- With whom is my information shared?
- Will the provider notify me if policies change?
- Can I delete or remove my data?
Farm Data Ownership Takeaways

- Treat farm data like a trade secret
- Address farm data in custom applicator agreements
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