

Regulation and Competition

Legal Aspects of Big Data

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What started as a mere idea is now the key to the future: we of course speak of big data and big data-based IT projects. Described as the "Oil of the 21st Century" ¹, data is THE new big challenge and big data, referring to the exponential growth of the data generated, is THE way to take it up.

Economically, big data technologies are now everywhere as all business industries have long understood the value they can potentially deliver: investment in big data technologies continues to expand, according to a recent survey by Gartner, Inc., which found that 73 percent of respondents have invested or plan to invest in big data in the next 24 months, up from 64 percent in 2013 ².

From the legal point of view, the success of a big data project essentially requires managing four key areas:

First key area: **the availability of data** composing the big data. While the concept of data ownership has no legal status as such ³, the use of data is nonetheless frequently regulated by various regulations, such as for example those related to:

¹ See e.g. Jacques SECONDI, "Big data : Le pétrole du 21^{ème} siècle", in *Le Nouvel économiste*, 22 Feb. 2012.

² Gartner Press Release, Stamford, Conn., September 17, 2014: "Gartner Survey Reveals That 73 Percent of Organizations Have Invested or Plan to Invest in Big Data in the Next Two Years".
<http://www.gartner.com/newsroom/id/2848718>

³ See Alain BENSOUSSAN, "La propriété des données", Blog expert *Le Figaro*, 18 May 2010.

- data privacy and personal data protection, especially at the EU level in the light, with special focus on the future General Data Protection Regulation ⁴ that should become effective in the next few months;
- open data and the use of public data ⁵;
- contractual ownership processes in place on social networks and with connected devices and internet of things ⁶;
- business know-how and trade secrets.

The legal discussion around the data composing the big data should rely on the framework already in place for databases, which have been eligible for specific protection in European since 1996 ⁷.

Second key area: the **intellectual property** in and to big data tools, often based on the guiding principles of open source and related contracts. Moreover, the question of the protection of predictive algorithms should not be neglected, in particular with respect to the protection of investments.

Third key area: **the lawfulness of the data processing**. The processing of personal data is very strictly regulated in many jurisdictions and a series of fundamental principles must be respected specifically when it comes to personal data, including purpose limitation, proportionality, relevance and

⁴ "Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)", 25 Jan. 2012, COM(2012) 11 final.
http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf

⁵ At the European level:

Directive 2003/98/EC of the European Parliament and the Council adopted on 17 Nov. 2003 on the re-use of public sector information ("PSI"), as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF>

In France: Act No. 78-753 of 17 July 1978 on the freedom of access to administrative documents and re-use of public information; Ordinance 2005-650 of 6 June 2005 amending Law No. 78-753 of 17 July 1978 implementing the EU Directive of 17 Nov. 2003 and creating a special status for "public information"; Decree No. 2005-1755 of 30 December 2005 on the freedom of access to administrative documents and re-use of public information, made for the purposes of Act No. 78-753 of 17 July 1978.

⁶ Eric BARBRY, "The Internet of Things, Legal Aspects: What Will Change (Everything)...", in *Communications & Strategies*, no. 87, 3rd Q. 2012, pp. 83-100.
<http://ssrn.com/abstract=2304137>

⁷ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0009&from=EN>

security⁸. In this respect, the same concerns applying to cloud computing also apply to big data.

Fourth key area: **understand, control and manage business projects**. Businesses are of course very interested in big data as it offers huge business opportunities and serves as a fantastic tool to better know their customers. How to build an efficient IT project fully compliant with all legal requirements?⁹ A specific approach is required that basically involve the following steps:

- Map the data;
- Review the related legal framework;
- Select the right service providers, based on specific legal prerequisites;
- Chose the right contractual architecture, for instance by kicking-off the project with a PoC (Proof of Concept).

Finally, it should be stressed that the legal aspects of big data, notably the contractual aspects, should not be viewed not only at the national level but also at the European and worldwide levels.

Data scientists usually break big data into four dimensions, known as the "4 V's"¹⁰: Volume, Variety, Velocity and Veracity. A 5th V could be added, standing for the Validity of legal aspects¹¹.

⁸ E.g., "OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data".

<http://www.oecd.org/internet/ieconomy/oecdguidelinesontheProtectionofPrivacyandTransborderFlowsOfPersonalData.htm>

or French Data Protection Act No. 78-17 of 6 January 1978.

<http://www.cnil.fr/documentation/textes-fondateurs/loi78-17/>

⁹ See e.g. Chloé TORRÈS & Emeline BISSONI, "How to Build a Customer/Prospect Database Lawfully in France", in *Communications & Strategies*, no. 88, 4th Q. 2012, p. 131.

¹⁰ IBM's "The Four V's of Big Data": <http://www.ibmbigdatahub.com/infographic/four-vs-big-data>

¹¹ Jean-François FORGERON (2012): "Vous avez dit Big Data ?", Blog tendance "*Informatique et droit*", 3 May 2012.

<http://www.alain-bensoussan.com/avocats/vous-avez-dit-big-data/2012/05/03>