ERICSSON

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Ericsson WIPO Intervention on data and IP

Ericsson is a top ten PCT applicant handling large amounts of data. The total monthly mobile network traffic reached 72 exabytes in June 2021 with a year-on-year growth rate of 44%. Some 40 % of that data is carried through our networks.

With the rise of AI, data plays an ever-larger role. Big collections of data become essential, and much of the associated cost may be attributed to gathering and maintaining them. This puts the value of data at a premier level but also raises many challenges.

One such challenge is data ownership when data is processed by other entities. When is the ownership transferred from the original owner? When is the data set considered a new set? Who is the owner of data merged from several data sets from different owners? What if a machine learning model is trained on data owned by another party? If the model is trained on data covered by copyright, could the training constitute copyright infringement or not? Can the data owner claim any rights to the results of the training?

Ownership can be regulated in contracts. This may be convenient to the individual parties but creates a fragmented pattern where ownership varies significantly and where terms are confidential.

When regulating data use, often only consumer data is considered, but business to business data does not receive equal attention. A more useful distinction could be to separate personal data from non-personal data, irrespective of whether the data is consumer data or not.

With personal data regulations like GDPR, it is necessary to define what data is personal, its intended use and retention. For multinational organizations, it is a challenge to comply with various national and regional regulations, and to analyze the implications of transferring data between jurisdictions due to a low degree of harmonization of the laws. There is a risk for incompatible legislations that apply simultaneously in these cases, which can negatively impact international R&D efforts, and business collaboration in general.

In some countries, there exist sui generis database rights, not requiring a creative aspect in the compilation such as in copyright law. Other such rights, like semiconductor design rights, have historically not proven to be commercially successful, and the value of creating a sui generis right for data as such is currently not clear, partly due to lacking international harmonisation.

Suggestions on requiring the depositing of data for patent applications, as with depositing of biological material, are not advocated by Ericsson. This involves data confidentiality, sensitivity, and ownership risks, where the patent applicant may not have the legal right to deposit the data used to conceive the invention. Unwanted disclosure of data risks exposing sensitive information, particularly due to the digital nature of data, in contrast with the physical nature of biological material deposited in the existing depositary authorities. Placing administrative burden on patent applicants to deposit the data will make the patent system for such inventions less attractive, instead incentivising resorting to trade secrets, which would be counter to the patent system's aim of spurring innovation.

Issues with unwanted disclosure of data are also applicable in case of proposed regulations trying to force organizations to share data with local organizations in national interest.

In conclusion, laws need to provide more clarity on data and a more harmonized view across the globe without increasing the risk and burden of organizations seeking protection of their innovation.

About us

We are one of the leading providers of Information and Communication Technology (ICT) to service providers, with about 40% of the world's mobile traffic carried through our networks. At Ericsson we enable the full value of connectivity by creating game-changing technology and services that are easy to use, adopt and scale, making our customers successful in a fully connected world. For more than 140 years, our ideas, technology and people have changed the world: real turning points that have transformed lives, industries and society.

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