

MODULE 3

# DATA, DATABASES, AND TRADE SECRETS

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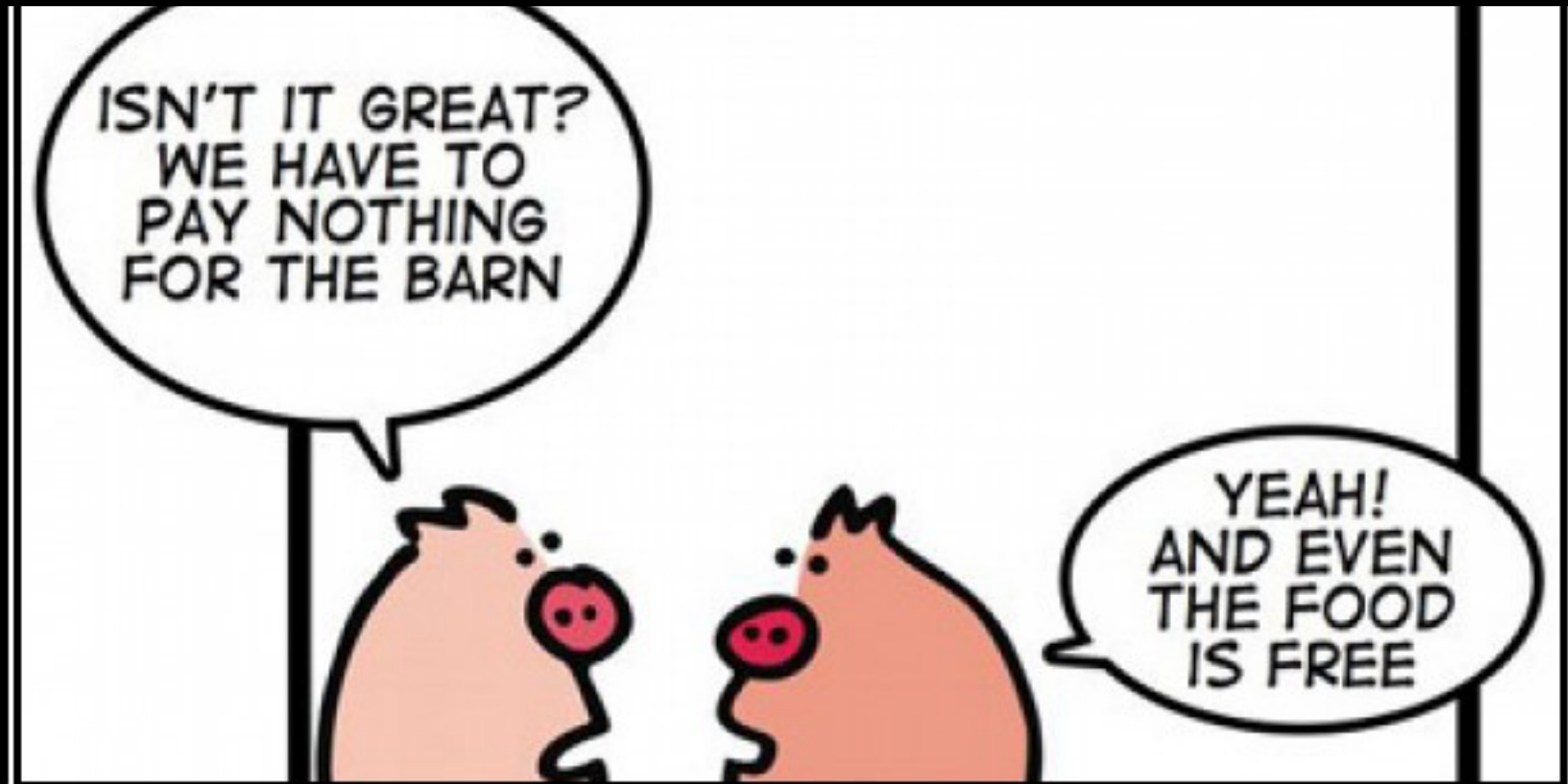
# WHAT IS DATA?

- Data is everywhere!
- Your daily schedule, your telephone number, your social media contacts, a list of your closest friends, your location, your DNA, the weather, the bus schedule, the stock market... all are data.
- Just think about your interaction with your mobile phone today, how much data does it collect?
- Who owns that data?

[https://upload.wikimedia.org/wikipedia/commons/6/6d/Data\\_types\\_-\\_en.svg](https://upload.wikimedia.org/wikipedia/commons/6/6d/Data_types_-_en.svg)



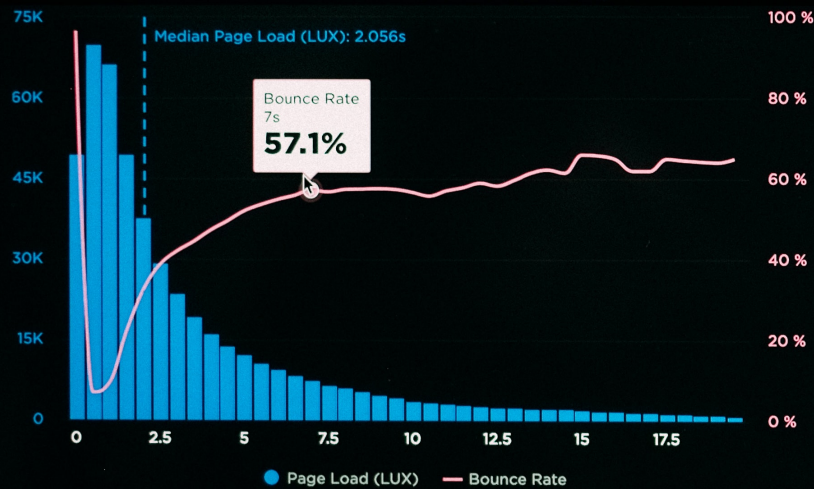
# WHAT DATA MEANS FOR THE APP BUSINESS MODEL



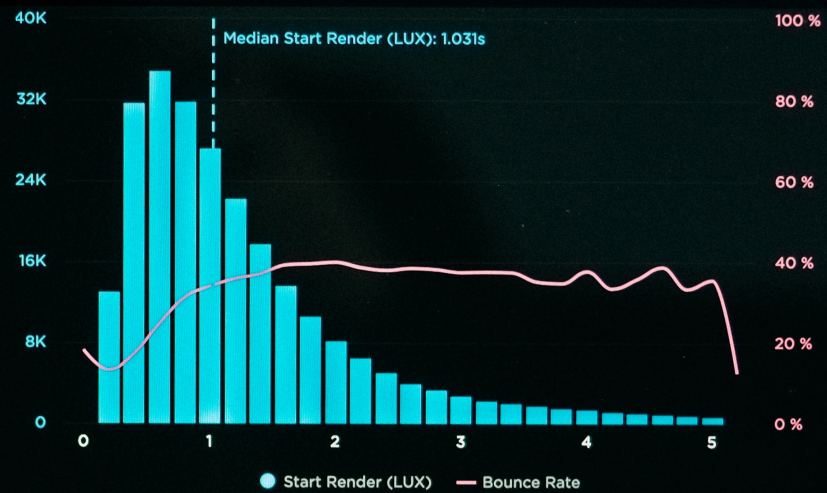
# THERE IS NO LEGAL PROTECTION OF DATA (AS SUCH)

## USERS: LAST 7 DAYS USING MEDIAN ▾

### LOAD TIME VS BOUNCE RATE



### START RENDER VS BOUNCE RATE



### PAGE VIEWS VS ONLOAD

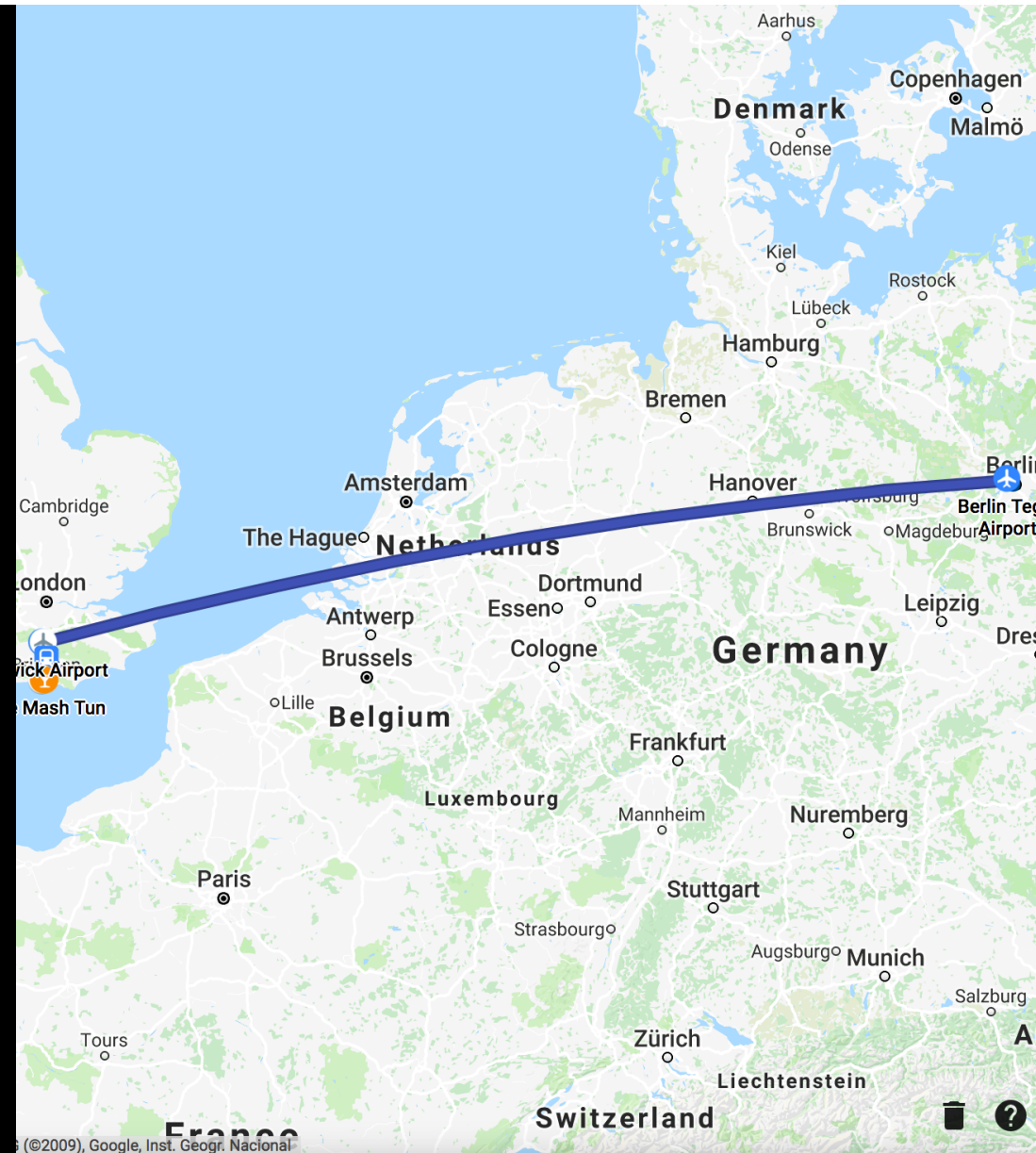


### SESSIONS



# DATA

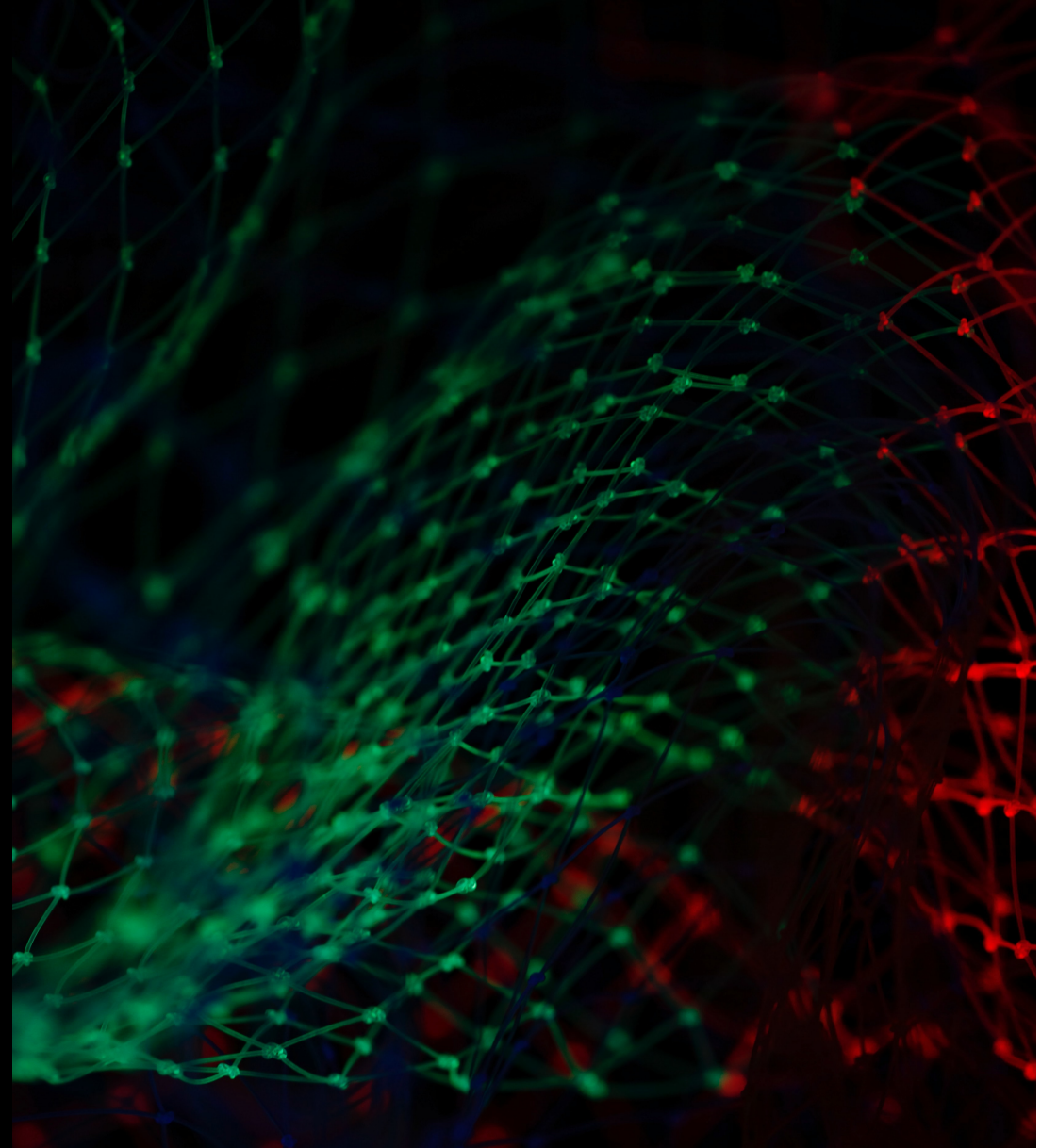
- Any type of information contained in the database.
- This can range from works subject to copyright protection, to non-protected elements such as individual facts and figures.
- Important to determine the type of database to determine possible protection.



# DATABASE

- A **database** is a collection of information that is organized so that it can easily be accessed, managed, and updated. In one view, databases can be classified according to types of content: bibliographic, full-text, numeric, and images.
- A **dataset** is a collection of data, usually corresponds to one column in a database.

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# LEGAL PROTECTION OF DATA

# THE PROBLEM

- Data as such doesn't fit copyright quite well. Simple collection of data does not warrant copyright protection.
- Articles, pictures, literature, music, etc. could be individually protected.
- Numbers, information, raw data may not be protected.

writing, and intends to finish, as soon as his Health will permit. In the mean time, he presents the *Reader* with a *Table* of such *Apertures*; which is here exhibited to the Consideration of the Ingenious, there being of this *French* Book but one Copy, that is known, in *England*.

## A TABLE of the Apertures of Object-Glasses.

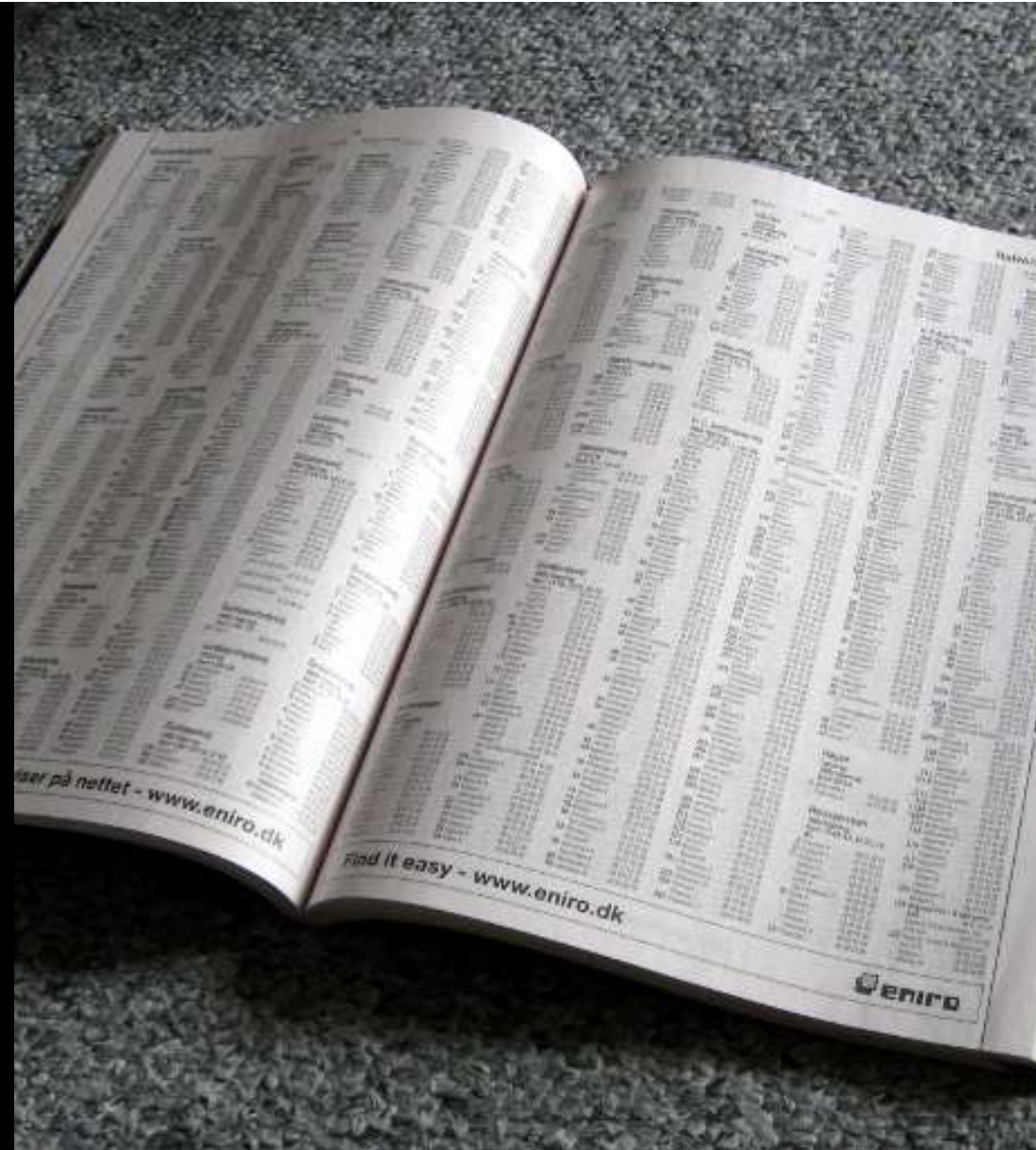
The Points put to some of these Numbers denote Fractions.

Lengths of Glasses.	For excellent ones.		For good ones.		For ordinary ones.		Lengths of Glasses.	For excellent ones.		For good ones.		For ordinary ones.	
	Feet, Inches.	Inch. Lines.	Inch. Lines.	Inch. Lines.	Feet, Inches.	Inch. Lines.		Feet, Inches.	Inch. Lines.	Inch. Lines.	Inch. Lines.	Inch. Lines.	Inch. Lines.
1	4	4	4	3	25	3	4	2	10	2	4		
	6	5	5	4	30	3	8	3	2	2	7		
	9	7	6	5	35	4	0	3	4	2	10		
	0	8	7	6	40	4	3	3	7	3			
1	6	9	8	7	45	4	6	3	10	3	2		
2	0	11	10	8	50	4	9	4	0	3	4		
2	6	0	11	9	55	5	0	4	3	3	6		
3	0	1	0	10	60	5	2	4	6	3	8		
3	6	2	1	11	65	5	4	4	8	3	10		
4	0	4	2	0	70	5	7	4	10	4			
4	6	5	3		75	5	9	5	0	4	2		
5	0	6	4	1	80	5	11	5	2	4	5		
6	1	7	5	2	90	6	4	5	6	4	7		
7	1	9	6	3	100	6	8	5	9	4	10		
8	1	10	8	4	120	7	5	6	5	5	3		
9	1	11	9	5	150	8	0	7	0	5	11		
10	2	1	10	6	200	9	4	8					



# WHY IS "RAW" DATA NOT PROTECTED UNDER COPYRIGHT?

- There are many answers to this question. The main reason is that data does not fall under the subject matter for copyright.
- Even if it does, the accumulation and collection of such data is not "original" in the copyright sense, it is not creative, it's not an intellectual creation that reflects the author's personality.
- Take the famous US case of *Feist v Rural Telephone*, where the defendant were accused of having copied several phone entries from the claimant. The court declared that facts are not copyrightable. "...100 uncopyrightable facts do not magically change their status when gathered together in one place."



# CAN DATA BE PROTECTED THEN?

- Under some circumstances, some data can be protected, particularly if the data is not raw information. Pictures and social media texts can be data.
- Under some circumstances, metadata could be protected as a technological protection measure.
- You can use other legal tools, such as contract law.



# CLICKWRAP AND TERMS OF USE


- A large number of datasets are often protected by contracts and terms of use through the use of click-wrap agreements.
- Click-wrap: one of those contracts you click when you sign up to a service. Your apps may have something like this.
- Efficient way to bypass the entire ownership debate, sets out obligations and prohibitions on downstream use of the data.
- Independent of the ownership (or lack of) of the contents of the database.

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(last updated April 02, 2019)

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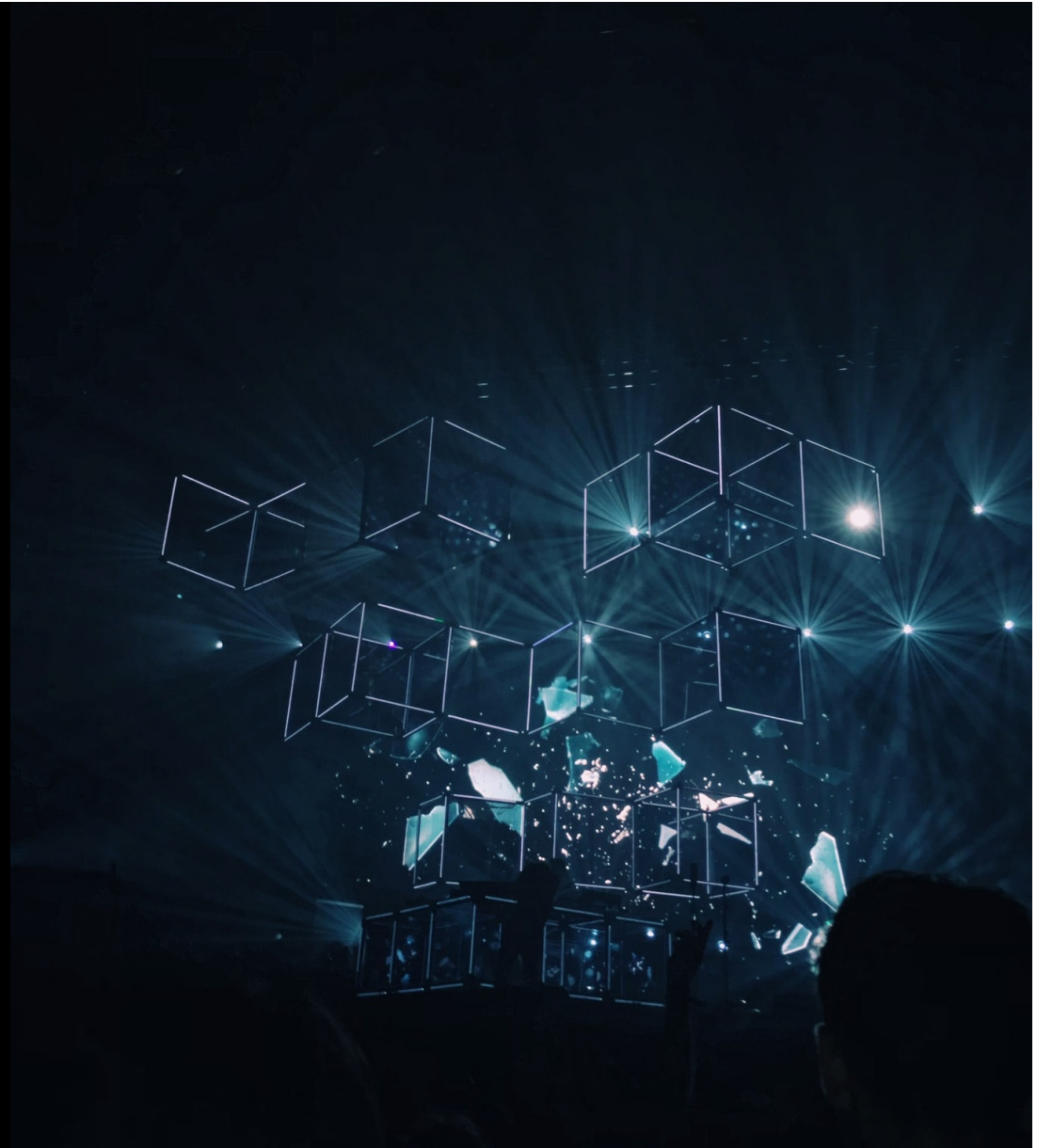
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### PART 2

# TRADE SECRETS

- Another regime that can be used to protect data is by trade secrets.
- Also known as breach of confidence, or misuse of private information depending on your country.
- Trade secrets are not IP right as such, but it's a legal framework that protects trade secrets.
- Particularly useful is the concept of unlawful acquisition of data through unauthorised access, copying of the information, or dishonest commercial practices.

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# TRADE SECRETS DIRECTIVE

- Directive (EU) 2016/943 harmonises practices around Europe on trade secrets.
- 'trade secret' is information which meets these requirements:
- it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- it has commercial value because it is secret;
- it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;



# DATA BREACHES

- Data is in principle also protected through criminal law by computer access crimes, eg. Computer Misuse Act 1990.
- Countries that have implemented principles set out in the Budapest Cybercrime Convention 2001 should have some form of illegal access provision in their legislation.
- Extremely difficult to prosecute. Data breaches are becoming more common.



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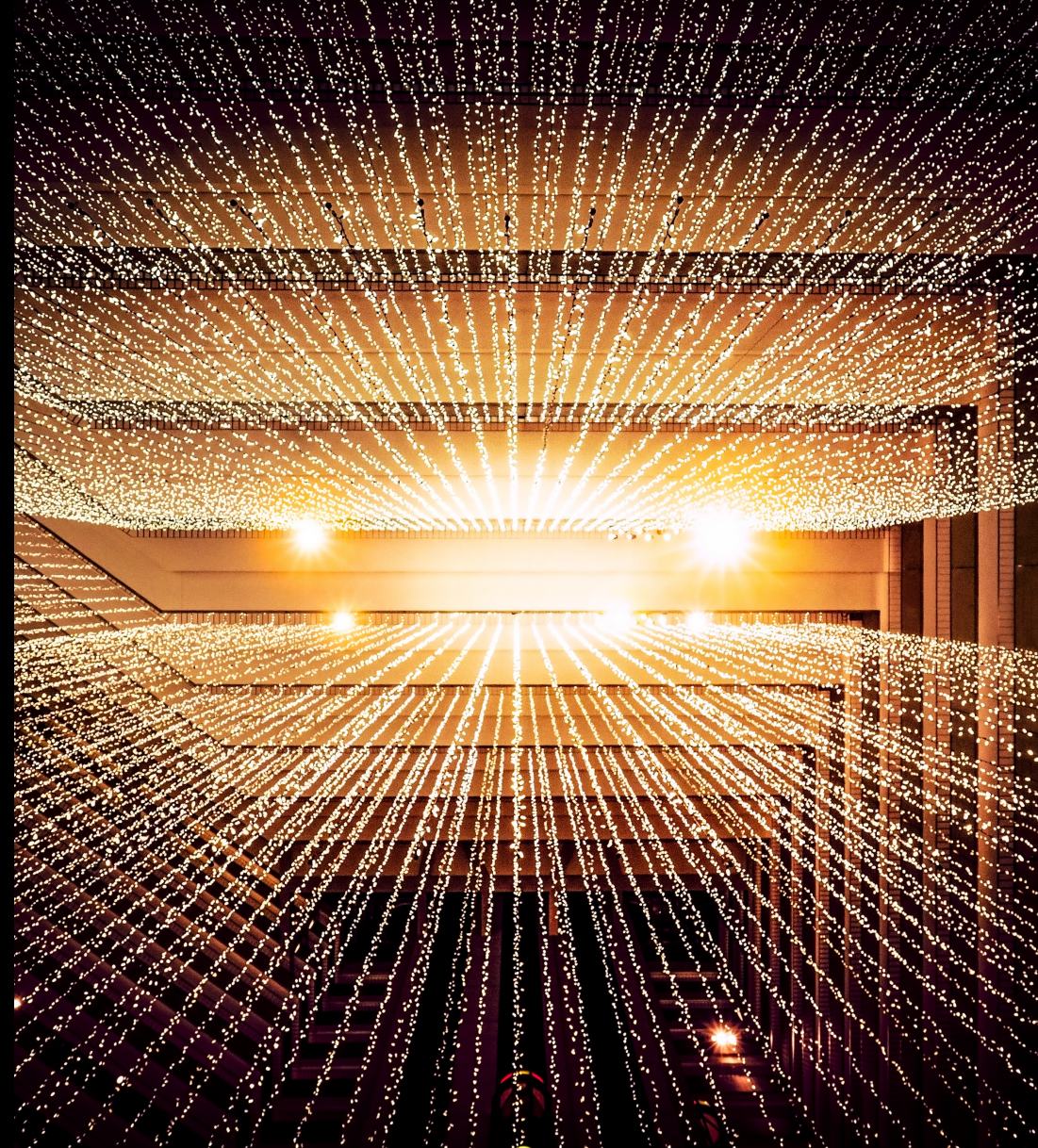
# LEGAL PROTECTION OF DATABASES



# DATABASES

- Databases are functional
- Independent protection to that given to the data itself.
- They are often implemented through software (protected by copyright).
- But the issue is not one of copying. The question with databases is one of extraction of data from the database.

<https://unsplash.com/photos/LqKhndzSF-8>



# COPYRIGHT

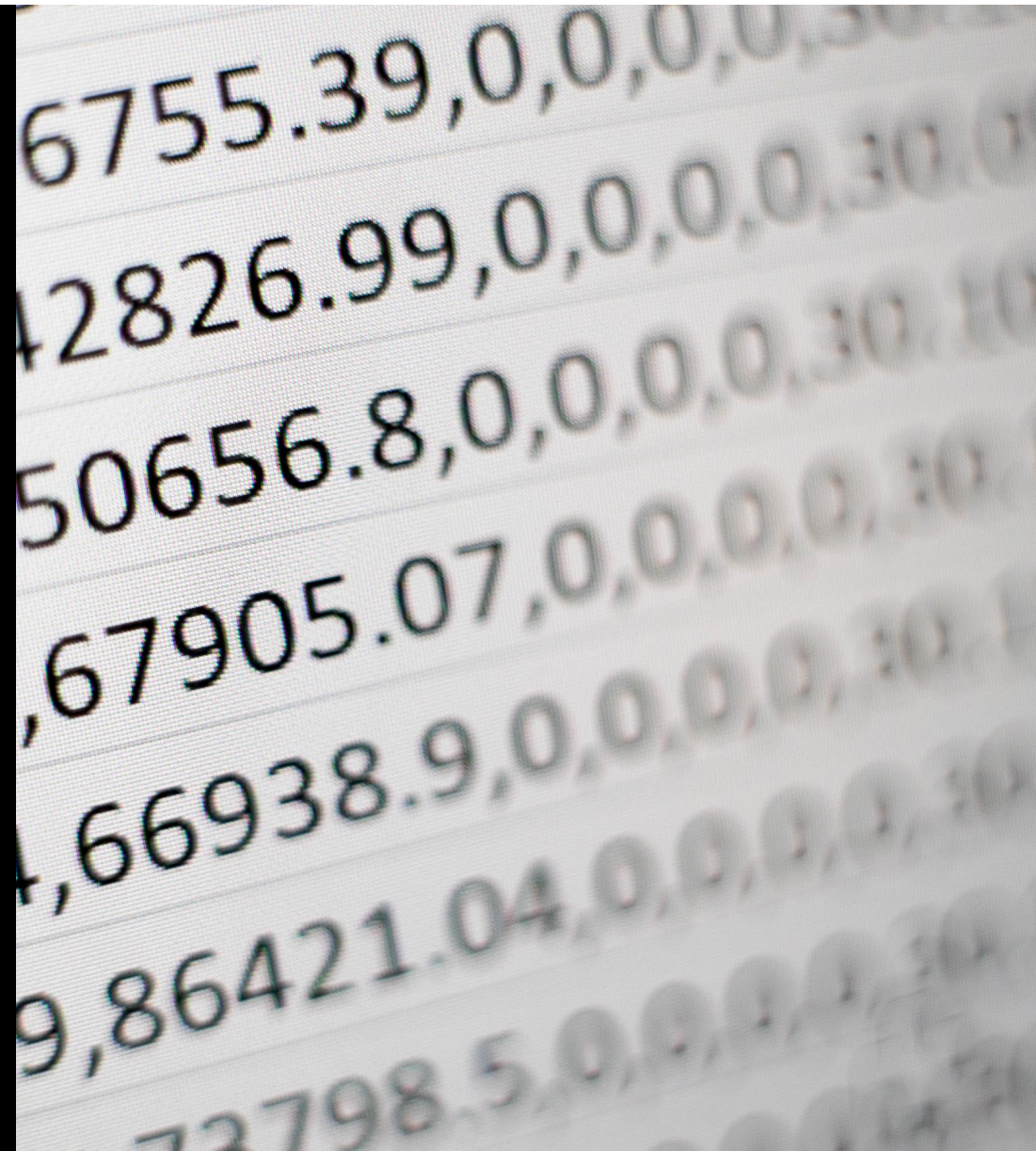
- Berne Convention Art. 2(5) (5): Collections of literary or artistic works such as encyclopaedias and anthologies which, **by reason of the selection and arrangement of their contents**, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.
- See also TRIPs and WIPO Copyright Treaty.



# DATABASE RIGHT

- Enacted in the Directive 96/9/EC to enhance European competitive advantage and encourage the creation of more databases.
- Exclusive right given to the maker of a database for 15 years.
- Database is defined as a collection of independent works, data or other materials that are arranged in a systematic or methodical way, and are individually accessible by electronic or other means.
- The right exists if "there has been a substantial investment in obtaining, verifying or presenting the contents of the database".

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## OTHER CONSIDERATIONS

- Lots of data issues are covered by data protection law, which falls outside of this course.
- Data controllers and processors have certain obligations to data subjects.
- Data protection is not an IP right.
- Other interesting subjects are those of data mining, which now fall under the new copyright directive.



# WHAT DOES IT MEAN FOR APP DEVELOPMENT?

- Data will often be one of your most important assets as a developer, it tells you who your customers are, but it can also be a valuation marker for your app.
- Data as such has very little IP protection, so it may be vital to secure it in other ways.
- It is very much dependent on your country. The best way to secure your data is through trade secrets and contracts.
- Other rights may apply.

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THANKS!

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