



Who Owns the Data?

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PRACTICE AREAS

Agri-Business

Technological advances increase daily, especially in the agricultural industry. Precision farmers must be aware of new technology in order to stay competitive. However, there are other issues to be aware of that accompany any new technology. With the technological advances of precision agriculture comes the concept of information security - namely, who owns and controls the data that is collected? Producers need to understand who is getting access to their data.

MORE DATA THAN EVER

With the proliferation of the use of yield monitors, GPS units, grid soil sampling, scouting, remote sensing, geographic information systems and variable rate technology, there are numerous ways data can be collected on a farm. Some of the data includes instantaneous yield measurements, the nutrient composition of any section of land, and maps of an entire region with all of the data accumulated and accessible with incredible accuracy. This data is extremely valuable - some uses include improvement of the efficiency of each region of the farm, an increase in crop productivity and reduction of off-site movement of pollutants.

OWNERSHIP AND CONTROL

Two major issues exist with respect to all of this data that is collected - ownership and control.

Ownership of the data is an issue because the data has value. If a farmer completely owns all of the precision farming equipment that collects the data, then there is not really an issue of ownership or control - the farmer owns and controls his data. But this situation is not common.

More often, either the farmer hires an outside party to collect the data or partially owns the equipment that collects that data. In this scenario, ownership and control is largely determined by the terms of the contract. For example, an outside party could be collecting data for a

farm and providing the farmer access to the data. But once the relationship between the farmer and the outside party is terminated, the outside party who collected the data may not provide any of the previously collected data regarding the farm – even though the farmer has already paid for the service of collecting the data.

This is why it is extremely important to consider the terms of any agreement that involves the capture, collection, and use of any data collected by precision-farming technology.

ISSUES TO WATCH FOR

Here is a list of issues to consider when forming any agreement that involves, or may involve, data collection. This list is not exhaustive but will be useful to discuss with legal counsel when evaluating any agreement.

- If the farm exists as part of a landlord-tenant relationship, who owns the data collected from land?
- Is data allowed to be sent to a central clearinghouse or databank operated by a third party?
- Is the data allowed to be passed on to a government agency without consent?
- What are the exact rights associated with the data?
- Which data source actually controls if there is a dispute regarding a conflict of data?
- If there is an independent contractor relationship, who owns the rights to the data?
- What are the responsibilities of each employee in regards to data collection?
- Are there confidentiality provisions in place in regard to the raw data, generated maps and management recommendations?
- Who can control and access the raw data?
- Can the farmer compel the transfer of data to a new provider without cost or penalty?
- Will maps be provided in physical or digital forms?
- Who owns any maps or recommendations based on the data?

These are just some of the issues associated with the ownership and control of data. Undoubtedly, these issues will grow and become more important in the future.

For any questions regarding who owns your agricultural data, contact John Mashni at jmashni@fosterswift.com or call 517.371.8257.