

# Legal Aspects of Farm Data

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GOAL	For farmers to know their legal responsibilities and rights in regards to farm data.
OUTCOME	Farmers reduce their legal exposure and protect their rights to their data in case of dispute.

## Data Ownership

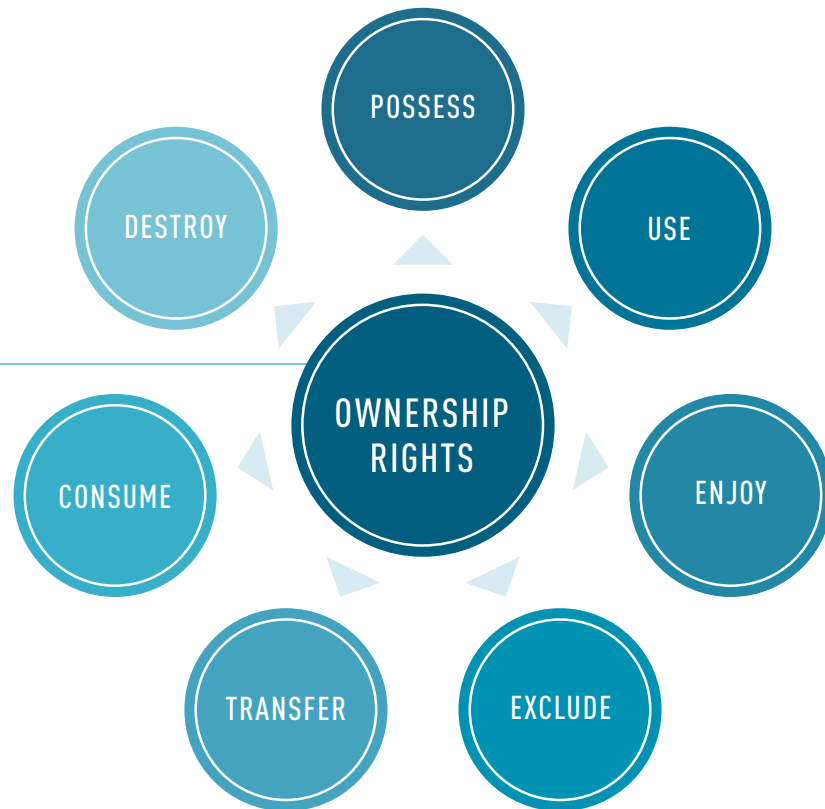
Ownership of something intangible, such as data, can be more difficult to define than something tangible. You can only own something if the law recognizes an ownership right. Ag data is not a traditionally recognized type of property. In the U.S., our laws recognize ownership of real property (land), improvements (buildings), personal property (goods) and even animals. Ag data is none of these.

U.S. laws also recognize ownership of intellectual property (IP) in a few instances. You can own a patent on a new invention. You can own a trademark or copyright. Ag data doesn't fit into these traditional IP classifications.

That leaves the law of trade secrets as the only real path for protection of ag data. A trade secret is a formula, pattern, method, etc., that is generally unknown to others and that has economic value. The classic example of a trade secret is the formula for Coca-Cola.

Although the definition of trade secret is not a perfect fit for agronomic data, a farmer who keeps data for years and understands a particular field better than anyone else probably has a strong argument that his or her ag data could be a trade secret – provided reasonable steps are taken to maintain its secrecy.

DATA OWNERSHIP RIGHTS  
CAN TAKE MANY FORMS



## Transfer and Control of Ag Data

With the general understanding that ag data likely contains trade secrets – assuming certain conditions are met – issues surrounding transfer and control of ag data should be addressed using the law of trade secrets. That means that owners of ag data should take steps to protect and maintain ag data secrecy. There are many areas where farmers routinely are asked to share data, but for purposes of example, this article addresses three: in farm leases, where farmers hire custom services such as spraying or fertilizer application, and with companies with which farmers do business.

### Data Ownership with Farm Leases

In a farmland lease, a landowner and farmer may both consider that they have ownership rights to data generated on a particular parcel of land. It may be agreed that the tenant owns it all, the landowner owns it all, they share ownership or something in between.

Regardless of who the landowner and tenant determine will own the data, a lease should address at least three data issues:

- *Define the types of data, since there is no widely recognized legal definition*
- *Establish who is the default owner of the defined data*
- *Spell out what happens when the lease expires or is terminated*

Depending on the landowner's interest in the farming activities on their land, a landowner may also want to require periodic uploads from the tenant of the current ag data. Today's online cloud-based data sharing tools would facilitate this transition, as a landowner could be granted permission to access their tenant's files remotely.

In the long run, the data will certainly be an asset of the landowner as it will assist with establishing the proper rental rate, productivity, and nutrient content of the farmland.

### Data Ownership and Custom Service Providers

Farmers often utilize local fertilizer, seed, and pesticide input suppliers, cooperatives, consultants, nutritionists, and other persons to engage in activities on their farms.

A local co-op that custom sprays pesticides is a perfect example. So then who owns the data generated by the co-op's sprayer?

Applying the trade secret definition to the data generated by the sprayer, suggests that the entity which creates the "pattern," "method" or "technique" – the co-op – would be the owner of the trade secret. But the law also recognizes "work for hire." The employer is the owner of the "work" in those situations. Assuming the applicator owns the data, data ownership may need to be specified in custom applicator agreements. Here are few provisions that should be included:

**Ownership of Data Generated:** Either the farmer or the applicator could be considered the data owner. The important thing is that the contract removes any uncertainty.

**Transfer:** Should specify whether ag data is to be transferred or made accessible to the farmer.

**Accuracy:** Should warrant that their applicator's equipment has been properly calibrated before each use, and that data generated by their operations is accurate. Without assurances that the data is accurate, sorting out ownership is pointless.

**Privacy Protection:** An applicator should promise to take reasonable steps to safeguard information gathered during custom farming operations.

**Retention:** A contract should spell out exactly how long the applicator will maintain the data. A reasonable expectation might be at least one growing season to allow farmers plenty of time to remove data before deletion.

### Data Ownership and Input Supply Companies/Ag Tech Providers

Beyond their landowners and custom applicators, farmers commonly work with other companies that may have access to data. These might include a farm equipment company or a company providing farm management services or agronomy recommendations. Complicating issues is that sometimes these companies working with farmers have agreements with other companies that could impact the farmer's data.

### Transfer and Control of Ag Data *(continued)*

The company provides the agreement that outlines data ownership and use. Some of the specifications may include provisions such as:

1. *What categories of data does the product/service collect?*
2. *Does the provider recognize my ownership of the data?*
3. *Is my data portable after it is uploaded? Can I move my data from this platform to another platform?*
4. *Will you ask for my consent before providing my data to third parties?*
5. *Can I delete my data if I stop using your product?*
6. *What happens to my data if the tech provider is sold?*

7. *Does the product convert my data into a proprietary format? (This means I cannot use my data elsewhere once uploaded)*

8. *Is my ag data aggregated and anonymized?*

9. *Will the ag tech provider notify me if there is a data breach?*

A service called “Ag Data Transparent” provides the answers to these questions for firms that are certified with that program. A survey by the American Farm Bureau indicated a level of frustration of farmers with data contracts offered by companies – their three most important issues are the uncertainty of trust, the time it takes to understand the contract and the complexity of the contracts.

### Public Right to Know Laws

The Freedom of Information Act (FOIA) provides the public the right to request access to records from any federal agency, to keep citizens informed about their government. Federal agencies are required to disclose any information requested under FOIA unless it falls under one of nine exemptions which protect interests such as personal privacy, trade secrets, national security and law enforcement.

In addition to FOIA, state and local laws may allow individuals to request information from public records. If a farmer or agribusiness is working with a federal, state or local government agency on a project, their data could be subject to a FOIA or a state/local request.

Exemption 4 of FOIA protects trade secrets and commercial or financial information which could harm the competitive posture or business interests of a company. Exemption 6 protects information that would constitute a clearly unwarranted invasion of personal privacy of the individuals involved, including addresses and phone numbers.

### For More Information

Ag Data Transparent: <https://www.agdatatransparent.com/>

Privacy and Security Principles for Farm Data, American Farm Bureau Federation: <https://www.fb.org/issues/technology/data-privacy/privacy-and-security-principles-for-farm-data>

The Freedom of Information Act, Office of Information Policy (OIP), U.S. Department of Justice <https://www.foia.gov/>

For more information and links to additional resources, visit [www.unitedsoybean.org/techtoolshed](http://www.unitedsoybean.org/techtoolshed)