



THINK FORWARD

Brinks Gilson & Lione Shareholder Discusses Evolution Of Personal Data And Its Link To Intellectual Property Ahead Of World IP Day On April 26 and New GDPR Rules Starting May 25

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Ann Arbor, Mich. - At a time when privacy and personal data are making daily news, Michael N. Spink, a shareholder in the Ann Arbor office of Brinks Gilson & Lione, one of the nation's largest intellectual property law firms, has noted a growing dimension of personal data and its connection to intellectual property, referencing two pertinent calendar dates—[World IP Day](#) on April 26 and the new [General Data Protection Regulation \(GDPR\)](#) effective on May 25—that will help further the conversation about the importance of privacy and the value of personal data.

“On April 26, the world observes a day dedicated to intellectual property because IP puts a value on inventions, literary and artistic works, and name brands and logos that move commerce, create wealth and make a distinctive mark,” Spink said. “As individuals share not only the personal aspects of their life on social media platforms, but also catchy phrases, business ideas and artistic renderings, they need to consider their posts as intellectual property that can be used by emerging or existing enterprises that can claim that work as their own. That’s why the language in the terms and conditions of social media platforms matters.”

The recent proliferation of updated *terms and conditions* messages—the ubiquitous phrase authorizing websites and the access gained by social media platforms to user information when the terms and conditions are accepted—has a stronger intellectual property component than many users consider.

“The negative backlash on terms and conditions has been focused mainly on the provider’s access to private user data – and that’s valid – but there’s also a great deal of intellectual property potentially being signed away when a user clicks ‘accept,’” Spink said.

Spink has been on both sides of the discussion, as a user who accepts terms and conditions on websites and social media platforms and an attorney who works with clients to craft language explaining terms and conditions of mobile apps and other tech tools. He explains the types of intellectual property users may be signing away.

“For the privilege of posting photos, individual artwork, videos and pithy sayings on free sites, users may not be aware that they risk losing the rights to such works, many of which can be defined as intellectual property,” Spink said. “As a general rule, I would advise users on sites such as LinkedIn, Twitter and Instagram not to post new business ideas, personal artwork, lyrics, and conceptual logos unless they understand the potential loss of some rights to the intellectual property protecting them.”

There are IP protections in place, but enforcement can be difficult, and IP owners must be vigilant. The [Digital Millennium Copyright Act](#) is intended to protect against the use of technology to circumvent copyright laws. Trademark owners are also obligated to enforce their rights as owners under U.S. Trademark law. The challenge is doing so amid the vast canvas of social media platforms. Spink also

points to the new [General Data Protection Regulation \(GDPR\)](#) rules that go into effect in the European Union on May 25, as another example of the growing awareness of the value of personal data. Under the terms of GDPR, organizations are required to ensure that personal data is gathered legally and under strict conditions, be responsible for safeguarding it from misuse and exploitation, and respect the rights of data owners—or face penalties.

“The goal of GDPR is to harmonize data privacy laws across Europe and to offer greater data protection privacy, but the regulations also cover any organization in the U.S. or other parts of the world that interact with European Union subjects to sell goods and services or monitor data of EU residents,” Spink said. “Given the global reach of the Internet, GDPR has real implications in the U.S.”

“Intellectual property and social media will continue to evolve,” Spink continued. “While much of traditional case law guiding intellectual property protections can be transferred to legal matters that emanate from social media, there are also IP issues particular to social media that are yet to be fully addressed. That will happen as social media matures as a communications channel and as the topic of regulation has the country’s attention with privacy data breaches at Facebook and elsewhere.”

Brinks Gilson & Lione

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