With the growth of the data-driven economy and the rise of Big Data, issues for the introduction of a novel property right in data. Apparently, in response to demands from the German automotive industry, the European Commission has in 2017 Communication on ‘Building a European data economy’ announced the idea of creating a ‘data producer’s right’ that would protect exclusive access data produced by machines and thus create a sui generis property right “to access, utilisation and exploitation of machine-generated data”. It would encompass the exclusive right to limit access, including the right to license such access. This would include a set of rights enforceable against any party independent of contractual relations thus preventing further use of data by third parties who have no rights to use the data, including the right to claim damages for unauthorized access to and use of data.

In response to the call for protecting industrial data in the face of growing economic policy initiatives that valorise European assets are being replicated by large American companies. The specter of Google becoming the European panacea has already led to an expiring 2011 initiative towards a sui generis data right now being debated. A sui generis database right, a ‘data producer’s right’ would be here to stay – a most unwelcome guest in the house of the EU database industry.

Although the contours of the ‘data producer’s right’ now being contemplated by the European Commission are still undefined, as are its envisaged boundaries, such a right would surely bring the protection of industrial data in the EU to a record level higher than the – much-vaunted and still-controversial – database right. Whereas database right protects data on the double condition that the data are structured in a database and the database is the result of ‘substantial investment’, the novel right would directly protect machine-generated data without any substantial investment. A ‘data producer’s right’ would also go far beyond any protection currently offered by US copyright law.

Clearly, introducing such a right would be disastrous. For instance, have you heard of the ‘exclusive right to access? If, as the European Commission rightly believes, “big data, cloud services and the Internet of Things are central to the EU’s competitiveness”, one would have expected supporters of this novel right to present a range of arguments in support of the desirability of a property right in machine-generated data. However, while the MPI’s Prof. Drexl of the Max Planck Institute has pointed out the European Commission’s table, so there is still hope that this calamity will be averted. Judging from the way the database is the result of ‘substantial investment’, the novel right would directly protect machine-generated data without any substantial investment. A ‘data producer’s right’ would also go far beyond any protection currently offered by US copyright law.

The great promise of big data – for the economy, for science, for society at large – is that this resource may be freely exploited. Introducing a ‘data producer’s right’ preventing unauthorized access to big data would directly contradict this. It would be hard to understand how the new right would square with the freedom of services and the free flow of data.

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The ‘exclusive right to utilise certain data, including the right to licence its usage. This would include a set of rights enforceable against any party independent of contractual relations thus preventing further use of data by third parties who have no rights to use the data, including the right to claim damages for unauthorized access to and use of data.’

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The European Commission’s initiative to address the so-called ‘data producers’ right’ was similarly motivated by European fears of dominance by the US database industry. Whereas database right protects data on the double condition that the data are structured in a database and the database is the result of ‘substantial investment’, the novel right would directly protect machine-generated data without any substantial investment. A ‘data producer’s right’ would also go far beyond any protection currently offered by US copyright law.

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