

BIG DATA ON THE FARM

LEGAL ISSUES SURROUNDING FARM DATA OWNERSHIP, TRANSFER AND CONTROL

Todd Janzen

JanzenAgLaw.com

@JanzenLaw

tjanzen@psrb.com

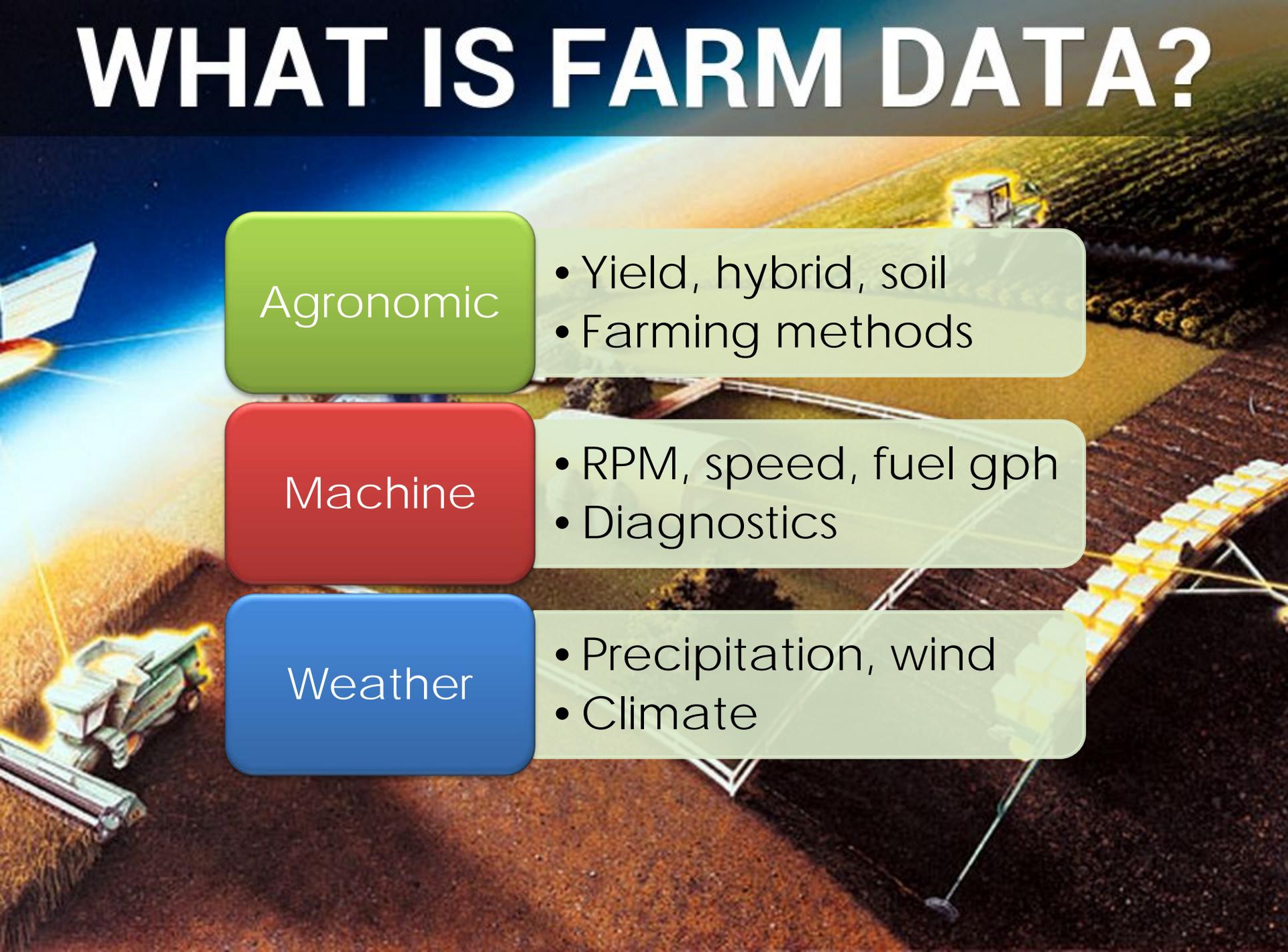
Presentation to Farm Cooperative
Conference, Nov. 6, 2015

Today's Agenda

1. How the law views “farm data”
2. Industry standards and transparency
3. Data ownership issues for coops



WHAT IS FARM DATA?

An aerial view of a farm at sunset or sunrise. A satellite is visible in the upper left sky, emitting a beam of light towards the ground. In the middle ground, a tractor is working in a field. In the lower left, a combine harvester is harvesting grain. The background shows a large field with rows of crops and a fence line.

Agronomic

- Yield, hybrid, soil
- Farming methods

Machine

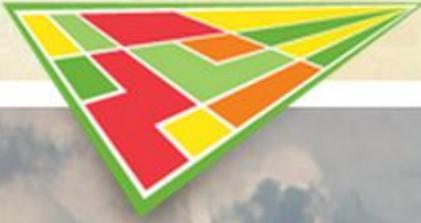
- RPM, speed, fuel gph
- Diagnostics

Weather

- Precipitation, wind
- Climate

FarmLogs

FieldScripts.



JOHN DEERE

FARMserver

FARMserver

AgFiniti[®]
Powered By
Ag Leader[®]

THE AGRI-DATA SOLUTION

HANGED!



THE YEAR



Granular

G DATA?

AgriEdge **Excelsior**



CASE IH
AGRICULTURE

THE CLIMATE CORPORATION

encircaSM

WHO OWNS FARM DATA?



Is “farm data” something that can be owned?

Patent

No

Copyright ©

Probably Not

Trademarks

No

Trade
Secrets

Maybe

PATENT

AN INVENTION IS NEW, USEFUL, NON-OBVIOUS



TRADEMARK

WORD, NAME OR SYMBOL IDENTIFYING GOODS



COPYRIGHT (C)

CREATIVE WORK FIXED IN A TANGIBLE MEDIUM

The Scarecrow Takes Time to Think

who was named Pastoria, lost the crown to the Wonderful Wizard, who passed it on to me. Now the girl Jinjur claims it, and I sincerely hope it will not give her a headache."

"A kindly thought, which I greatly admire," said the Tin Woodman, nodding approvingly. "And now I will indulge in a quiet think," continued the Scarecrow, lying back in the throne. The others remained as silent and still as possible, so as not to disturb him; for all had great confidence in the extraordinary brains of the Scarecrow.

And, after what seemed a very long time indeed to the anxious watchers, the thinker sat up, looked upon his friends with his most whimsical expression, and said:

"My brains work beautifully today. I'm quite proud of them. Now, listen! If we attempt to escape through the doors of the palace we shall be captured. And, as we can't escape through the ground, there is only one other thing to do. We must escape through the air. He paused to rest all his brains."

The Scarecrow Takes Time to Think

...the air can carry us easily. So I suggest
...the Tin Woodman, who is a skilled
...will build some sort of a machine, with
...wings, to carry us; and our friend Tip
...bring the Thing to life with his magical

...and Nick Chopper

...brains"

...let

...quite clever"

...Wizard Woggle-

...it can be

...and Tip, that

...Tin Woodman

...making the



TRADE SECRET



TRADE SECRET



Information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

TRADE SECRET



Information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**If farm data contains
valuable trade secrets**



**then we need to treat
farm data that way.**

The Challenge of Uniformity

Privacy and Security Principles for Farm Data

Transparency

Notice

Control

Defining key terms

Choice

Portability

Unlawful activities

Ownership



How do the Ag Data Principles define “ownership”?



◎ Privacy and Security Principles for Farm Data:

- Default: The farmer owns.
- But if other interested parties, the farmer and other parties must get together and decide.
- The owner should be the one who contracts with ATP.

Farm Data Co-op Problems

Scenario 1

- Leased field fertilized at request of farmer (tenant).
- Landowner calls and wants the fertilization data.
- Does the coop have a duty to provide it landowner?

Scenario 2

- Coop maintains digital records of pesticide applications for all farms in the county.
- Pesticide manufacturer asks coop for the data.
- Does Coop comply?

Farm Data in Co-ops / Custom Applicator Agreements

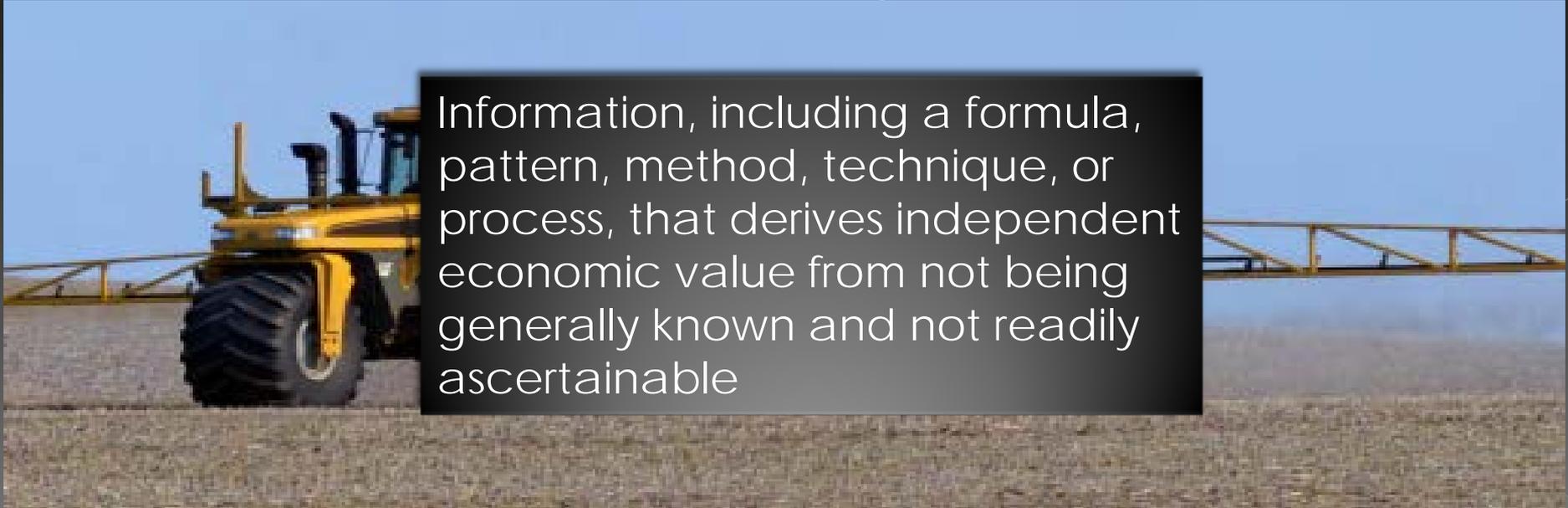
- If co-op does the work, does the co-op own the data the work generates?



Farm Data in Co-ops / Custom Applicator Agreements

- If co-op does the work, does the co-op own the data the work generates?

Is the work the co-op's trade secret?

A photograph of a yellow tractor in a field, with a black text box overlaid on the right side. The tractor is positioned on the left, and the field extends to the horizon under a clear blue sky. The text box contains a definition of trade secret information.

Information, including a formula, pattern, method, technique, or process, that derives independent economic value from not being generally known and not readily ascertainable

Solution

- ◎ Address farm data issues in agreements with farmers.
 1. Define what farm data is.
 2. Establish who owns farm data.
 3. Explain each party's rights to use and exclude others from using farm data.

Farm Data in Coop / Custom Applicator Agreements

● Contracts should address farm data:

Ownership

Privacy

Transfer

Retention

Loss

Accuracy



5 Questions Farmers Should Ask Their Ag Technology Provider

What information is being collected?

What control do I have after information is transferred?

With whom is my information shared?

Will the provider notify me if policies change?

Can I delete or remove my data?



Farm Data Ownership Takeaways

- Treat farm data like a trade secret
- Address farm data in custom applicator agreements



Photo: @TheChadColby

FIND ME ON THE WEB



JANZEN
— AG LAW —
blog

A Legal Pioneer
on Agriculture's
New Frontier.
Agriculture,
Technology,
Law and Policy.

Ag Tech Blog:

JanzenAgLaw.com

Twitter: @JanzenLaw

Phone: 317.637.0700

Email: tjanzen@psrb.com

Plews Shadley Racher & Braun LLP, 1346 N. Delaware St., Indianapolis IN 46202
www.psrb.com