Artificial Intelligence and Data Markets – From Contracts to Public Policy

by Paul Gagnon, LL.M. IP (MIPC)
Artificial Intelligence in Today’s World…is there truth beyond the hype?

- What world exists beyond the headlines? Beyond GAFA?

- A quick word on Element AI and our business model

- The goal of this evening’s conversation – exploring the existence of the various markets around AI, and what are drivers behind these dynamics.
AI, data, IP, competition law…

- Where is AI today?

- Why “AI” as such is probably not the right term…

- A quick illustration by XKCD, and an example from our childhood…
**This is your machine learning system?**

_Yup! You pour the data into this big pile of linear algebra, then collect the answers on the other side._

_WHAT IF THE ANSWERS ARE WRONG?_

_JUST STIR THE PILE UNTIL THEY START LOOKING RIGHT._
Data as a Key Driver

- Our AI and Algorithms will be only as good as our data (see recent © work in the USA by Levendovski and Sobel)

- How does the law create this market? Does it hinder it?

- Recent legislative change on © reform – is it a good step forward or a poisoned apple?

- A quick word from Canada’s legislative landscape…
Open Data as a Solution?

- Open Data from Government – it seems promising, wouldn’t it?

- Core principles of Open Data – can we reconcile them with current economic and trade trends?

- Back to the basics…open vs accessible

- Parallels with Free and Open Source Software (and pitfalls..)

- What is property anyways?
The Data Licensing Game…or why it may even be easier to build nuclear weapons

- FTC Report from 2014

- Use-restrictions and auditability

- Warranties vs use-restrictions

- Is this a promising field of intervention for competition authorities?
What about competition enforcement in data markets?

- If it was hard to convince authorities (and scholars!) to look into in-depth IP markets...how can we do this with data?

- Recent work is promising and insightful, but shows how narrow-minding authorities were in the last 5-10 years.

- M&A / Licensing Practices & Contractual Overreach

- Privacy as a vector for competition enforcement?
Data as a Public Good?

- Does “data” really hold qualities defining a public good?

- How much data is too much? Or enough?

- Where’s the market? First-movers advantage? Technological capabilities? Aggregation?

- What about public services / public licenses to operate?

- Where is competitive advantage in AI?
What kind of market are we seeing emerge?

- Us & Them?
- Is collaboration possible?
- How is Element AI scaling and how is it leveraging fundamental research?
- What do clients want?
- GDPR – explainability / transparency and the march towards standardization…
How should competition law help?

- By rigorously applying existing frameworks to their closest equivalents

- By understanding data as a key input and as the prerequisite for dynamic competition in most (if not all) markets.

- By participating in research initiatives that use AI! Leverage existing resources to better dissect and understand the markets that emerge.
A word of thanks to conclude…