

Practice Leader Insights From Cleary's Gareth Kristensen

By **Gareth Kristensen** (March 24, 2025)

In this Law360 U.K. Expert Analysis series, practice group leaders share thoughts on keeping the pulse on legal trends, tackling difficult cases and what it takes to make a mark in their area.

In this installment, Gareth Kristensen, head of the Europe, Middle East and Africa intellectual property practice group at Cleary, discusses the challenges when data laws are not adapted to frontier artificial intelligence, why IP rights can have such significant value, and how nothing beats a deep understanding of what you enjoy within the realm of tech, IP and data.

The Most Challenging Matter I've Worked On

We are working on a number of advisory matters at the moment where intellectual property and data laws are not well-adapted to frontier artificial intelligence technologies in the global digital economy. This creates substantial challenges of interpretation.

For instance, the U.K. Copyright, Designs and Patents Act was enacted in 1988 and, to quote Justice Richard Arnold, remains "rooted in the analogue world."^[1] Even some more recent enactments, such as the General Data Protection Regulation in 2016 and the European Union Copyright Directive in 2019, are creaking at the seams when applied to state-of-the-art technologies.



Gareth Kristensen

There have been many fantastically challenging matters over the years. Those are the best ones, and they are what I'm here for.

A formative matter from earlier in my career was a financial technology mergers and acquisitions deal on which I cut my teeth as a relatively junior associate. It was challenging for a panoply of reasons: the sheer volume of technology and data elements to address in the transaction documents; the large-scale plenary negotiations; intense sprints during key phases — extended periods of in-person live drafting sessions locked in large meeting rooms — that continued for many years post-closing during the technology separation, migration and transition process; and the novel substantive issues and bespoke drafting required to resolve them.

All of this taught me the risks and value of securing rights in data in the data-driven economy.

Laws and Regulations in Need of Reform

I always found it captivating that IP rights can have such significant value in our lives and our businesses. Yet they are intangible — although often expressed in physical form — sometimes ephemeral, but often long-lasting and, fundamentally, they are social constructs

enshrined in the laws that regulate our society.

IP rights only have value because of our Rousseau-like social contract incentivizing innovators to create for the benefit of society, and enabling them to enforce their rights in their works through a just and equitable legal system against those who infringe or misappropriate them. But as creatures of sovereign legislatures, IP rights are ultimately territorial, despite some harmonization under international conventions and treaties, and IP laws are most in need of reform today in areas of diametrical opposition across international boundaries.

Technology can cross borders in nanoseconds. It is unsustainable in our era for there to remain significant misalignment, and in some cases, total polarization, across major markets in the IP laws governing the training, development, and deployment of AI models and systems.

Important Developments and Trends I'm Tracking

Undoubtedly, at the intersection of IP, data law and AI, an important development has been proposals by governments around the world — including in the U.K., EU, Hong Kong, Japan, Singapore and some U.S. states — for significant reforms of IP and data protection law, such as text-and-data mining exceptions to copyright law, to address perceived legal uncertainties in AI training, development and deployment.

Where legislation lags, protracted litigation steps in to fill the void. The ongoing tumult is affecting market participants across the economy, delaying investment, distorting incentives, and creating friction and inefficiencies for IP rights holders and AI developers alike.

A Lawyer I Admire

Since his book "Robot Rules" first hit the shelves in 2018, Jacob Turner at Fountain Court Chambers has fast become a leading voice in AI law. He has been involved in cases testing the boundaries of IP law, such as acting for Stephen Thaler in *Thaler v. Comptroller-General of Patents, Designs and Trade Marks*, before the U.K. Supreme Court in 2013. The case involved the patentability of inventions devised by an AI system without a human inventor.

Turner hosts regular AI round tables and is well-connected in the AI ecosystem. The governments he is advising on AI legislative matters need his insight now more than ever at this critical juncture in AI law reform.

My Advice to Junior Lawyers

Find out what you enjoy within the realm of tech, IP and data, and just read voraciously in those areas. Nothing beats a deep understanding of and interest in the underlying technology, product or service; the risks and opportunities; the client strategy; and the market and geopolitical context. Listen to all the podcasts and commentary you can find on your topics of interest. Go to industry conferences, step outside of your comfort zone, ask lots of questions, and absorb different perspectives on how the law might apply to, or be shaped by, new technologies.

Move quickly to update colleagues and clients when there is breaking news in this fast-paced area of the law — time is often of the essence! It's rewarding to feel that you could make a contribution to client strategy by engaging proactively with current events.

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[1] R Arnold, 'The need for a new Copyright Act: a case study in law reform' (2015) 5 QMJIP 110, 119.