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IoT - a few contractual salient points

Although the Internet of Things (IoT) has been in the news for many years, the acceleration of digitisation brought about by COVID-19 reinforces the need to adequately grasp the legal issues raised in this area.

Although these issues are likely to vary from one industry to another, for example, since machinery is not subject to the same legal constraints as medical devices, certain common denominators can be identified, including the following issues:

- **Liability.** using IoT involves a multitude of stakeholders ranging from hardware to software and telecommunications operators. In the event of damage, it may prove delicate to determine responsibilities, with questions as to the possible application or not of the [Federal Law on Product Liability](#), respectively of [Directive 85/374/EEC](#). The establishment of strong governance and a quality management system, required by law in certain areas such as medical devices, will often be recommended.
- **Data protection and cybersecurity.** IoT obviously means Big Data and data transfer. In this context, it will be necessary to ensure compliance with applicable regulations, including the [GDPR](#) or certain IoT-specific legislation such as the ones enacted in the States of [California](#) (in force since 1 January 2020) or [Oregon](#) (however limited to connected devices for private and household use), for example. In this context, the [guidelines adopted by the United Kingdom](#) may prove a useful starting point for designing its products in accordance with the principle of “security by design”, which should be followed in this area.
- **Intellectual property.** Not surprisingly, the [number of patent applications surrounding IoT technologies](#) has exploded in recent years. There can be little doubt that this phenomenon will continue, with a trend that is undoubtedly more favourable to the patentability of software when a technical effect can be linked to the operation of the algorithm in question.
- **Data ownership.** The question of who owns the data generated by the use of the device is one of the most debated issues in the negotiations. It goes without saying that the manufacturer wishes to obtain ownership of the rights to this data in order to expand its database as part of its continuous improvements efforts, so as to generate a competitive advantage. Moreover, depending on the circumstances, the manufacturer may not wish all the data generated by the use of the device to be accessible to its customers. The latter will obviously take a different view, and consider that the data it generates belongs to them. The issue is a thorny and exciting one, and will then be the subject of discussions between the parties, often more commercial than legal.
- **Consumer support and protection.** The use of IoT technologies raises some questions about the legitimate expectations that consumers may have in relation to these devices. Is the manufacturer obliged to update these technologies? Can the manufacturer decide overnight to remove certain features that consumers have enjoyed until now? Can it decide to remove the customer service it used to provide in relation to these technologies because it considers the version of the product to be obsolete? These are complex questions, which in any case require a high degree of transparency on the part of the manufacturer in the information communicated to its customers and which will be the subject of a subsequent publication focusing on these questions.
- **Tax impact.** The use of IoT technologies blurs the distinction between products and services. This transformation of

business models, where the product is completed by additional services, not to say transformed into an on demand service, raises questions from a tax point of view, since products and services are not subject to the same regime. If in doubt, it is therefore highly recommended that you seek the advice of an expert on this issue.

The few examples above, which could be multiplied, underline the fact that the contractual issues raised by the advent of IoT technologies are numerous and complex. The success of their commercial deployment depends on the drafting of clear contractual provisions, so as to enable their manufacturer to benefit from a sustainable model and the continuous improvement of the related products. As in any emerging field, it is therefore highly recommended to seek the advice of an expert.

Source : <https://www.wg-avocats.ch/en/news/tech-data-en/internet-of-things-contractual-points/>