Digitally reliant

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To make the most of a smart built environment we need to ensure we have suitable data strategies in place, writes Anne-Marie Friel

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Dealing with the day-to-day issues related to construction, it can be easy to forget that one of the purposes of the built environment is to serve communities and improve quality of life. As technology develops and our society becomes increasingly digitally reliant, the data generated from our physical infrastructure will become a crucial component of how communities interact with, use and manage those assets. We refer to this as infratech.

Planning for the impact of fast-moving digital technology over the life of a physical infrastructure asset can feel overwhelming but, regardless of the technology that might be adopted, the common thread will be the increased reliance on data sharing between relevant communities. Enabling data sharing in a controlled, secure and efficient manner should be the overarching vision. Developing a data strategy for assets provides a framework for realising this vision, regardless of the specific technology.

The 3 Cs

The key legal and commercial considerations of your data strategy can be described as the 3 Cs: compliance, contracts and collaboration.

Data compliance issues are a regulatory maze. Take the examples of data generated by travellers using connected cars on a highway, or by tenants in a smart residential building. Compliance issues arise, not just in terms of personal data and privacy law, but also in other ways: for example, individual rights under consumer law, the application of anti-trust and competition rules ? regulators keep a close eye on activity driven by data to analyse a dominant position ? and the impact of any information security compliance requirements.

Data ethics are increasingly important in establishing trust and transparency with stakeholders around how the data they generate will be used. Where regulation is conflicting, particularly where data is passing across global supply chains, compliance approaches need to be designed to ensure compliance by design, in line with the strictest of these standards.

When it comes to compliance, we are all only as strong as our weakest link, so compliance conduct and culture around data use will be crucial.

There is no specific EU legislation that regulates ownership of data and no real consensus on how to regulate it. While there may be limited intellectual property rights (IPR) in data, reliance on IPR to establish ownership of data is not satisfactory in most cases. We recommend establishing contractual data rights as a preference. Contracts govern commercial relationships, set arrangements and allocate risks: all of these principles can apply to data use.

Currently, most construction contracts only contain personal data clauses, at best, and often include onerous IPR and confidentiality provisions that do not help parties manage data issues effectively. Effective contractual data clauses will identify the kind of data to be shared, how it will be used and by whom ? and set out how liabilities and responsibilities will be managed between the parties.

Connected parties will need to be prepared to collaborate in the commercialisation of business models if we are to unlock the full benefits of data. Some operators have chosen to enable open data sharing, to encourage innovation for the benefit of communities. To enable more collaboration in the built environment we need to create structures that give incentives for and encourage collaboration.

There are 3 key considerations:

- to recognise the value of data and think about data as an asset;
- to promote trust and transparency in data use and talk openly about how the data will be commercialised for better outcomes; and
- to organise and collaborate ? for example, by developing data sharing and exchange tools such as data trusts.

A careful data strategy will help unlock potential to transform physical infrastructure assets through infratech. We need to plan for success, while keeping in mind the importance of the 3 Cs.

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Further information

- Related competencies include: Data management
- This feature is taken from the RICS Construction journal (November/December 2019)
- Related categories: Asset management ; Contracts ; Data and design ; Data and technology