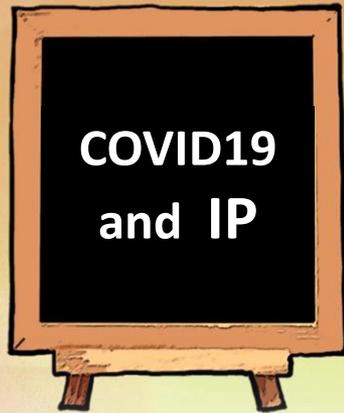
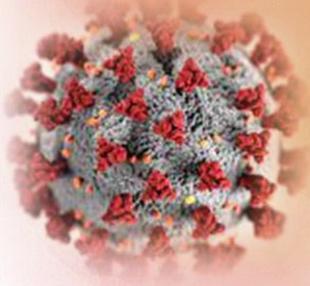
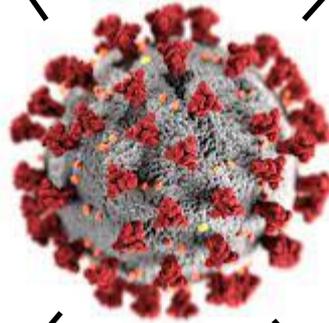
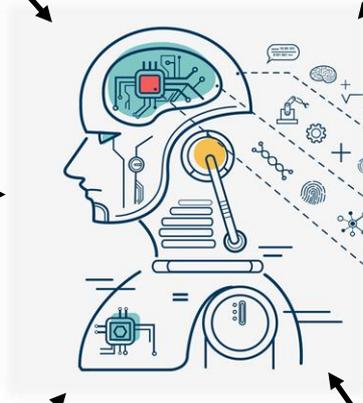
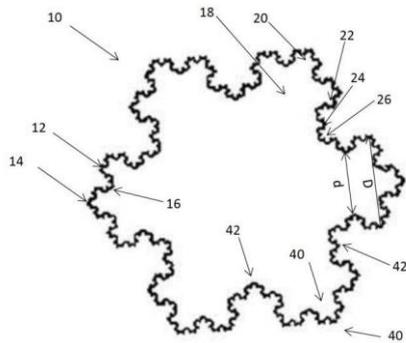


Implications of Covid-19 for Intellectual Property  
Professor Sang Jo JONG  
Seoul National Univ.  
School of Law





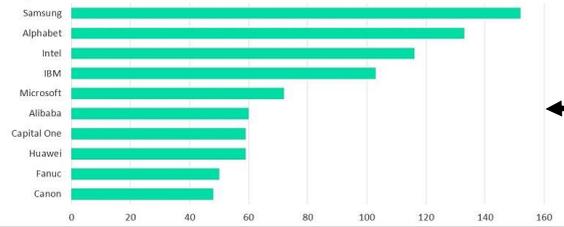




inventions made by "DABUS"



Top Companies with most patent filings in AI - 2020



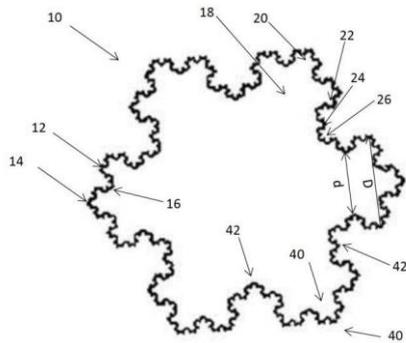
Source: GlobalData Disruptor Intelligence Center

GlobalData.

## 알고리즘이 임의로 생산한 게임 배경



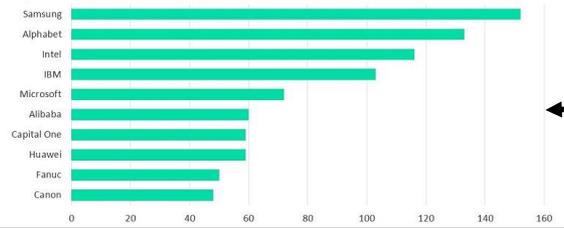
In the realm of computer gaming, the increasingly sophisticated technology of **procedural content generation (PCG)** has enabled real time, in-game production of highly detailed virtual landscapes and cityscapes--displays that were once designed by hand.



inventions made by "DABUS"

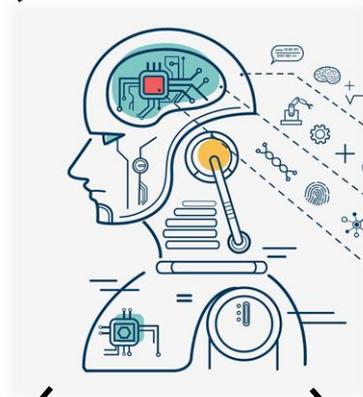


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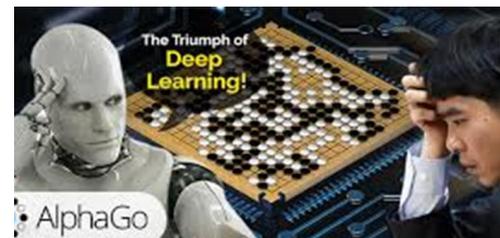
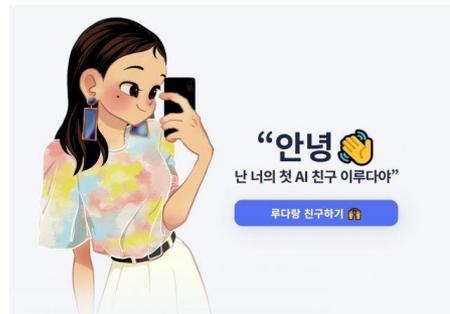


Source: GlobalData Disruptor Intelligence Center

GlobalData.



 THERAGEN ETEX



# Data Alliance in the Private Sector



Companies such as Shinhan Card, SK Telecom, and GS Retail are promoting the data alliance. The Data Alliance becomes a private data dam that collects, combines, analyzes, and distributes all data from the private sector.

# Data Dam

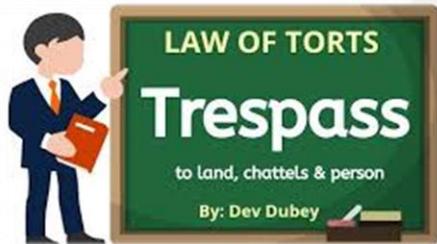
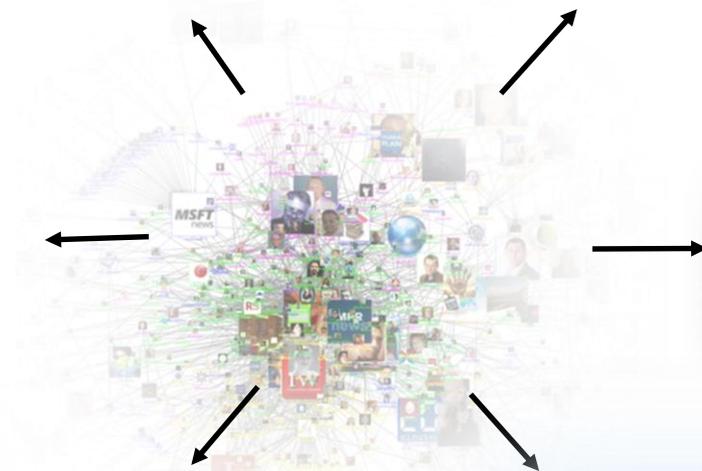


The Korean government will build a data dam so that data can be widely used by artificial intelligence. In order to collect data, de-identify and standardize data, the government is expected to invest 100 million dollars in the 'public data open project' and 300 million dollars in the 'AI learning data construction project', 8 billion dollars in 2022, and 16 billion dollars in the following years.

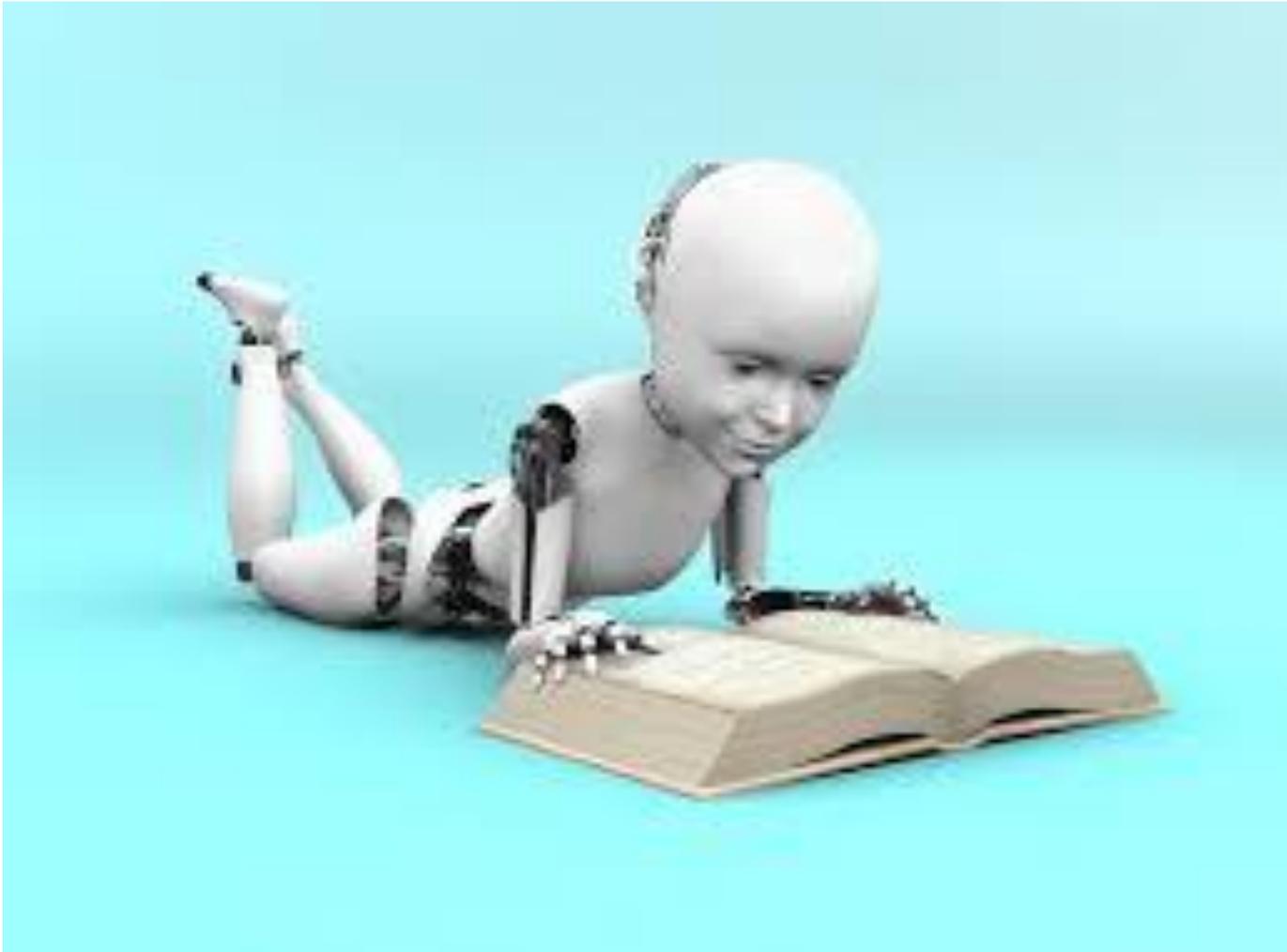
Database Right

**TRADE  
SECRET**

© Copyright



# Robots are crawling all over the Internet



# Disputes on Real Estate Data



Although the plaintiff Naver was a database producer, there was no evidence that its real property data were copied without permission by a crawling method, and when the defendant collected its property data by receiving data directly from its member brokers, the rights of the database producer were not infringed: Seoul Central District Court Decision 2017 Kahab 81043 decided on 2017.12.29,

# Recruitment Information

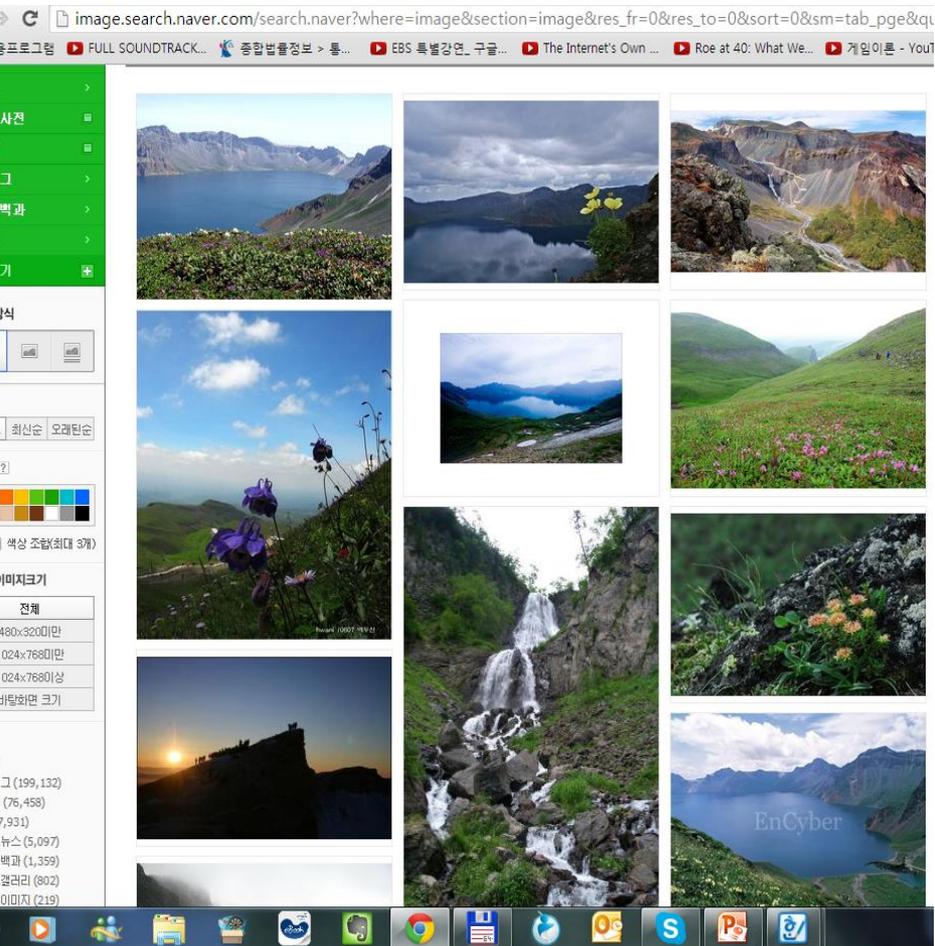
끝이 다른 시작  
**JOBKOREA**

사람중심 취업사이트  
**saram**in

- Unauthorized copying and use of recruitment information through web crawling is prohibited as it is an unlawful competitive act in which achievements made by other people's considerable investment or effort are used for one's own business in a manner contrary to fair trade practices or fair competition under Article 2, Item 1 (C) of the Unfair Competition Prevention Act. (Seoul Central District Court Decision 2015 gahap 517982 held on February 17, 2016).
- The fact that the defendant collects and copies the recruitment information posted on the Internet webpage by Job Korea and posts it on its own homepage by a crawling method violates the rights of Job Korea as a database producer (Seoul High Court Decision 2016 na 2019365 held on April 6, 2017).



# Fair Use



- Purpose and amount of use: Thumbnail images are not for aesthetic and artistic purposes, but for the convenience of users' search, and they are much smaller and with a lower resolution than the original. Accordingly, it is difficult to view those thumbnail images as being made and used in its essential aspect as a copyright work.
- Impact on market: In addition, thumbnail images may not replace the demand for original photos as they attract and direct internet users to the homepage of the plaintiff photos through the address indicated in the thumbnail images. Supreme Court Decision 2005Do7793 held on Feb. 9, 2006.
- Providing thumbnail images as a result of image search by an internet user may not be viewed as a direct infringement of the copyright owner's right of reproduction, display and public transmission: Supreme Court Decision 2009Da76256 held on Mar. 11, 2010.

# Amendment to the Copyright Act (Proposal)

- It is to generate additional value by analyzing a large amount of data including a large number of copyright works that reproduction and transmission of data are allowed to the extent necessary for the purpose of data analysis and, yet, not for the purpose of enjoying the thoughts or feelings expressed in the work. Reproduction and transmission of data shall be limited to cases in which the data be accessed legally. Reproductions made in accordance with the exception for data analysis may be stored and kept to the extent necessary for data analysis: Article 43 of the Copyright Act (Reproduction and transmission for data analysis)

## **Amendment to Unfair Competition Prevention Act (Proposal)**

- Unauthorized use of technical and business data that are provided to a specific person or a large number of businesses as a business,
- When the data have been collected and managed in a significant amount by electronic method, and is not managed as confidential.
- Misappropriation of data shall not be subject to criminal punishment.

# Data Basic Law (Proposal)

Article 12 (Protection of data assets) ① No one shall engage in any of the following acts.

1. The act of infringing on business profits of a data producer by taking or using all or a substantial portion of data, that has economic value generated by significant investment and effort by the data producer, through illegal means.

Article 13 (Use for data analysis) ① Data, etc. which are copyright works of others may be taken and used if necessary for data analysis. However, this is not the case if data, etc. are used for the purpose of allowing humans to appreciate or enjoy them.

# Act on Promoting Intelligence and Digital Transformation in Industry (Proposal)

Article 9 (Principles of Industrial Data Protection and Utilization)

- ① A person who produces industrial data has the right to use and profit by utilizing the relevant industrial data in a way such as processing, analysis, use, and supply.
- ④ No one shall infringe on the right of an industrial data producer in a manner contrary to fair trade practices or competition law. In this case, when determining whether it is a method contrary to fair trade practices or competition law, the purpose and nature of the use of industrial data, and the effect of the use of industrial data on the present or potential value of the industrial data should be comprehensively considered.

# Act to Support SME

## Smart Manufacturing Innovation (Proposal)

Article 2 (Definition) The definition of terms used in this Act are as follows.

1. (omitted)
2. (omitted)
3. "Manufacturing data" refers to data produced, retained, and utilized by companies from manufacturing processes such as product planning, design, and manufacturing to utilization processes such as product distribution, marketing, and maintenance/management.

Article 4 (Relation to Other Laws) ① Except for the special provisions in other laws regarding the promotion of smart manufacturing innovation, manufacturing data shall be subject to this Act.

② In cases where the manufacturing data processed through the manufacturing data platform corresponds to or includes personal information, trade secrets, or small and medium-sized business technology, except as stipulated in this Act, the 「Personal Information Protection Act」, the 「Unfair Competition Prevention and Trade Secret Protection Act」, and the 「Act on Protection and Support for Small and Medium Enterprise Technologies」 shall apply.

# Over-Protection and Under-Utilization

**Copyright Act**

**Data Basic Law**

**Unfair Competition  
Prevention Act**



**Act to Support SME  
Smart Manufacturing Innovation**

**Act on Promoting  
Intelligence and Digital  
Transformation in Industry**



# Access to Data in the Age of AI



- (1) defendant's conduct created potential for irreparable harm, and
  - (2) plaintiff was likely to prevail on merits of its trespass claim:
- eBay v. Bidder's Edge***, 100 F. Supp. 2d 1058 (N.D. Cal. 2000)

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- (1) spiders or crawlers do not always cause physical injury or irreparable harm to the chattel, and
- (2) unsolicited emails in bulk did not constitute trespass of Intel's e-mail system:  
*Intel Corp. v. Hamidi*, 30 Cal. 4th 1342 (2003)

What's the new order  
emerging during the pandemic?

