

# Kluwer Arbitration Blog

## Countdown to RIDW24: Global Dispute Trends in the Age of Data and Climate Change

John B. Quinn (Quinn Emanuel Urquhart & Sullivan LLP) · Thursday, February 15th, 2024

### Data-Related Disputes

Nearly five billion people use social media. Last year saw the expansion of AI-based businesses, from search engines to data analytics to product development. Some of the most valuable data for AI-training sets includes photographs, names, birth dates, consumer preferences, and family histories that users have published online or otherwise made available. Companies are building businesses on aggregations of such data, often collected by web scraping or manual collection. That is creating multiple sources of increasing liability exposure.

*First*, every business is under regular cyberattack by those who want to gain access to the data that it has collected. The shift to remote working and cloud-based storage has made it more difficult for businesses to maintain data security. There were dozens of high-profile data breaches in 2023, and the legal consequences are becoming more severe. Companies face the cost of redressing the breach, reputational harm, potential declines in share price, and government proceedings. They also face an increase in class or group action lawsuits from private plaintiffs whose lawyers are well-funded and adept at exploiting the legal system.

*Second*, the growth of AI and its need for massive training datasets have led to a wave of lawsuits seeking to hold businesses liable for abusing publicly available information for commercial purposes. For example, in the United States, these businesses and those with whom they share the data are getting sued under statutes that often impose statutory damages of thousands of dollars (which do not require a showing of an actual loss or harm) for *each* violation. A company's exposure from just one of these cases can run into billions of dollars.

These are just two examples of the types of data-related claims that will proliferate. Others are antitrust and competition, as big data is seen as a source of market power, and privacy, which has gotten more attention globally as "Big Tech" companies are seen as manifestations of a "Big Brother", which monetizes individual's personal information.

### Climate Change-Related Disputes

Climate change will likely affect almost every area of dispute. According to a report published by the London School of Economics, 2,341 cases have been captured in the Sabin Center's climate

change litigation databases. Of these cases, around two-thirds (or 1,557 cases) have been filed since 2015, the year the Paris Agreement was adopted. While these cases have predominantly been filed in the United States, climate change-related cases are a global phenomenon—from May 2022 to May 2023, similar cases were filed in seven new countries. While 2023 saw a slight slowdown in the number of these cases filed, the diversity of cases continues to grow, and an uptick is expected in 2024.

Some climate change disputes will be driven by government action. As governments pass more laws and regulations to address climate change—such as those concerning corporate disclosure requirements—there will be more enforcement lawsuits brought by regulators. In parallel, private parties will bring suits against governments challenging those regulations. Private parties, armed with the standards established by government regulations, will likewise bring private actions to seek redress for businesses’ failure to meet those standards.

Other lawsuits will be driven more directly by both environmental and market changes. As brands wish to capitalize on consumer sensitivity to environmental issues, “greenwashing” claims will likely proliferate. Governments, insurers, and real estate owners will find themselves in more lawsuits concerning responsibility for the impacts of climate change, including extreme weather events and coastal erosion. And we can expect both citizens and environmental groups to continue the trend of “strategic” lawsuits designed to change corporate and government behaviors.



*We look forward to attending the SCCA24 Conference!*

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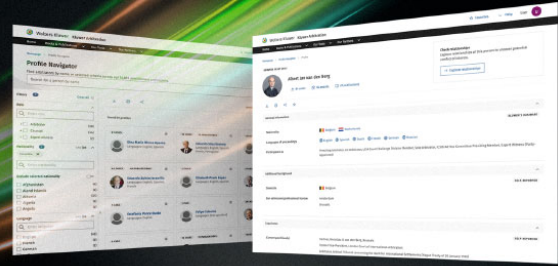
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