

An IP-law Perspective on research data usability and interoperability

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on Legal Interoperability of Research Data

What are research data?

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- Research data are data produced or use for research purposes.
- Depending on the research field this can be
 - “Classic” data = number or possibly “simple” specifications concerning the color or form of an object or
 - um copyright protected works, e.g. texts
- In this presentation the term research data refers to data which are not protected by copyright.



The European data base protection challenge

Data bases

- Research data are mostly part of a set or collection of data.
- If such a collection
 - Can be queried and
 - If a substantial investment was taken to built the collection and make it searchable,

The collection may qualify as a data base as defines in the EU data base protection directive ([Directive No. 96/9 EC](#)) (In Germany §§ 87a ff. UrhG).

If that is the case, so called ancillary protection right (neighboring right) apply automatically.

Data and data bases

- The data base protection protects the data base as a whole.
- The protection does not infect individual data in the data base.
- Content of a protected data base that does not have in IPR protection of its own stays in public domain.

Making research data available

Making research data available for re-use

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Making research data available for re-use: Who decides?

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- As a first step, it has to be established who has the right of disposal over the data.
- The person (natural or legal) who has got the right of disposal can decide if the date are to be made available to third parties and what use conditions are to be attached.
- The person (natural or legal) who has got the right of disposal does not need to be identical with the person who produced the data and who built the data base.



Making research data available for re-use: How?

- In the cause of making research data available it ought to be communicated
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 - who has the right of disposal over the Data base (if applicable).

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- In the cause of making research data available it ought to be communicated
 - who has the right of disposal over the data and
 - who has the right of disposal over the Data base (if applicable).
 - If the individual data are public domain or IP law protected (copyright or ancillary right).
- Depending on this suitable licenses can be chosen for
 - The data,
 - Possibly the data base,
 - possibly for Software needed to use the data.

Data may be use without a license

- Yes you can 😊 ...
- It the data are in public domain or
- An IP law exception applies (German law §§ 52a, 53 87c UrhG).



Legal Interoperability of Research Data

Principles & Implementation Guidelines

RDA/CODATA Interest Group
on Legal Interoperability of Research Data

Research Data Alliance

Research Data Alliance

- Launched in 2013
- Community-driven : 5700 members / 128 countries
- Provides a neutral space where its members can come together through focused global Working and Interest Groups to develop and adopt infrastructure that promotes data-sharing and data-driven research
- Works via working groups
- Produces outcomes: Legal interoperability paper is one
- Helmholtz Association is a member of RDA

RDA/CODATA Legal Interoperability IG

■ CODATA

- The Committee on Data for Science and Technology of the International Council for Science

■ RDA/CODATA Legal Interoperability IG

- Subscribed members: Currently 90
- Most active members: about 10
- Regular phone conferences
- Meetings during RDA plenaries
- Currently working with potential adopters of the Principles

Principles and Guidelines on the Legal Interoperability of Research Data

Aspects of legal interoperability

- Covered by current Version of the Principles
 - Copyright
- Not covered by the current Version of the Principles
 - Data Protection law
 - Liability law
 - National security / public order law
 - Labor law
 - Academic freedom
- Current version
 - <https://doi.org/10.5281/zenodo.162241>



Principles



1. Facilitate the lawful access to and reuse of research data



Guidelines for Principle 1

Facilitate the lawful access to and reuse of research data.

- A. Access to and reuse of research data should be open and **unrestricted as a default** rule, or otherwise be granted to users with the fewest limitations possible.
- B. Governments, institutions, or researchers can apply one of an **array of legal instruments** to place collections of research data in the public domain, with no restrictions on reuse.
- C. The **CCO** or **PDDL** waivers of rights are the preferred voluntary, nongovernmental approaches to facilitate the legal interoperability of research data. The non-restrictive (“common-use, attribution-only, **CC-BY 4.0**”) license may also be considered when disseminating the data for broad use.
- D. In asserting any rights and in applying access and reuse terms and conditions to any research data made publicly available, all members of the research community should make such data available **equitably** to all users, including the most disadvantaged ones.





2. Determine the rights to and responsibilities for the data



Guidelines for Principle 2

Determine the rights to and responsibilities for the data.

- A. Research data disseminators need to **establish who or what entity has the rights** to any given collection of data before the data are disseminated to others.
- B. It is also the responsibility of research data users to **abide by the rights** applicable to the collection of research data, as well as the specific user rights in the jurisdiction that the data are being used.
- C. Representatives of research communities who are also experts in policy and legal issues are encouraged to **participate** in fora that develop and implement laws and other norms governing access to, and the reuse and legal interoperability of, research data.
- D. A well-conceived **educational process** for researchers regarding rights and responsibilities in research data should be developed and adopted by relevant institutions.



Guidelines for Principle 3

Balance the legal interests.

- A. As a default rule, intellectual property **rights** in government or publicly-funded collections of research data **should be waived** as far as possible and distributed in the least restrictive manner.
- B. Governments and public research institutions need to **justify any restrictions** on research data that may be imposed over and above any restrictions on the access and reuse of data that are defined by existing legislation.
- C. Policymakers should **consider public interests** in developing rules for access to and use of publicly generated research data.
- D. Public research funding organizations and the rights holders of public research data sources should **reduce time embargoes** for exclusive personal periods of research use to the minimum necessary.
- E. As a default rule, all rights holders of research data that are partly or fully funded by the public sector need **to avoid the use of individual contracts or agreements that restrict** access to and reuse of the data.





4. State the rights transparently and clearly



Guidelines for Principle 4

State the rights transparently and clearly.

- A. The use of **standardized electronic statements** regarding the legal rights retained (if any) by the rights holders and providers of research data can greatly assist in their comprehensibility by a wide audience-- including by machines.
- B. The rights holder(s) of any given data used in research should **engage competent legal counsel** when it is necessary to determine the applicable law(s) and to clarify the differences among jurisdictions.
- C. Rights holders should **inform users about any special terms and conditions** of use.



5. Promote the harmonization of rights in research data



Guidelines for Principle 5

Promote the harmonization of rights in research data.

- A. Research policymakers and practitioners can use both **top-down** and **bottom-up** approaches, and mixes of both, to harmonize rights concerning research data.
- B. **Bottom-up** actions based on voluntary, private law mechanisms, can be an effective approach for research individuals or institutions to take in the absence of government action, but are relatively **fragmented and less harmonized**.
- C. **Top-down** harmonization through “hard” law, such as multilateral treaties or executive agreements, or national legislation or administrative regulation, can work in **some contexts** and can be extremely **useful as a broad harmonization tool**.
- D. **Process-based approaches** such as workflows decision-making charts, decision making apps and tools, or scoreboards might be considered useful tools to promote harmonization.





6. Provide proper attribution and credit for research data



Guidelines for Principle 6

Provide proper attribution and credit for research data.

- A. Attribution of research data used in any scholarly output should be a **normative convention** established by good research policy and practice, and preferably **not by a legal mandate or a license** requirement.

Thank you very much
for your attention

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