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# The legal status of research data (copyright, database right)

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04/06/2015

# Legal status of research data

# Legal status of research data

- Raw research data : relevant to other researchers (for new research, new publications.)
- Definition of research data : very broad term (definitions in the humanities vs in the natural sciences; data vs metadata)
- Legal definition of data:
  - bare facts are basically free
  - if facts have been put into a certain form (copyright protection)
  - if facts constitute a protected database or data collection (data base protection).
- Research data : both bare facts and protected data
- Envisaging the situation of a researcher who wishes to make use of other people's data for a new study of his own

**Copyright**

# Copyright

- Book XI (Title 5 – copyright) Code of Economic Law
  - Bare facts are free; they belong to the domain of knowledge, which is a public good
    - Only protection to the form in which the bare facts are written down
    - Research data can generally be categorized as bare facts.
- Scientific/scholarly knowledge cannot be monopolized: a researcher does not have an exclusive right to utilize the data that he has discovered.

# When may research data be protected by copyright?

- Research data may be copyright-protected if it has been processed in 'a work' (a certain form, eg a table/diagram/text), and the author had freedom of choice (personal stamp) which he exercised in a manner of his own (not borrowed from other works).
- As a rule of thumb, one can ask whether it is conceivable that two different authors, working separately, could have arrived at precisely the same form. If that is in fact conceivable, then the work concerned will not usually enjoy copyright protection

# What actions require consent?

- Even though data may be copyright-protected, the following actions can still generally be carried out without consent:
  - incorporation of the factual data in one's own words in a structure of one's own
  - making a copy (including a digital copy) and utilizing that copy for one's own research, as long as it is not made available to others (article, graphic works, short fragments of other works)
  - Citing from the research data
  - Legislation and jurisprudence

# What actions require consent?

- Consent is therefore necessary for other types of use of copyright-protected data (or data collections). This may involve such things as:
  - inclusion of the research data in a publication
  - sharing the research data with other people
  - Including the whole of the research data in a database of one's own that is also shared with other people

**Database right**

# Database right

- Book XI (Title 7 – Databases) Code Economic Law

# When is research data protected by database right

- Legal definition of a database (highly specific)
  - A collection of separate items of data may constitute a protected database if those items are systematically arranged or are traceable in some other manner.
  - It is also necessary for creation of the database to have involved a substantial investment. The investment made in researching and creating the data that is included in the database does not count towards that substantial investment
- If there is no substantial investment, then the collection of data is not a database from the legal point of view, even though it may be considered to be one in normal usage

# When is research data protected by database right?

- Belgian law requires three conditions
  - The database must consist of independent items
  - The database must be searchable or systematically arranged so that individual items can be traced
  - There must have been a substantial investment in the database

# When is research data protected by database right?

- **Collection**

- A collection containing works, data, or other independent items  
→ includes research data (both bare facts and copyright-protected data)
- The materials in the collection need to be independent = it must be possible to separate them without their losing their substantive value or meaning
- The law does not impose any requirements regarding the size of the collection
- A database does not have to be in electronic form.

# When is research data protected by database right?

- **Searchability**
- A database must comprise a method or system that makes it possible to access each of the items in the database individually  
→ like an arrangement or indexation that allows each item to be traced

# When is research data protected by database right?

- **Substantial investment**
- It involves investment in:
  - obtaining (collecting) the contents of the database
  - presenting the contents
  - verifying the contents
- The investment made in researching and creating (producing, discovering) the data that is included in the database does not count towards that substantial investment !!!
  - database comprising research data : a lot of investment in the research itself and thus in 'creating' the data; that investment does not count

# What actions require consent?

- If there is in fact a protected database, the producer's consent is required for the following actions:
  - **Retrieving** (i.e. copying or downloading) **substantial portions** of the database
  - Repeatedly and systematically retrieving non-substantial portions of the database
  - **Reusing** (i.e. publish) substantial portions of the database

# What actions require consent?

- The producer's consent is not necessary for:
  - Using a database for **scientific/scholarly research** if no substantial portions of the database are published (reused)

# Schematic overview

# Question 1-2

- **Question 1 : Do you want to make a copy for you own use ?**  
→ You do not need to seek consent
- **Question 2 : Do you want to input data into your own scientific/scholarly database, without sharing it with anyone other than your own team or researchers?**  
→ You do not need to seek consent

*(Even if the data is protected by copyright or database right, this type of use is on of the permitted exceptions : making a copy for your own of a copy-protected work or retrieving substantial portions of a database in the context of scientific/scholarly research (retrieving non –substantial portions does not require consent in any case))*

## Question 3

- **Question 3** : Do you want to publish some of the data that you are borrowing or to share it with someone other than your own team of researchers ?

→ You probably need to secure the author's consent

# Question 3

## A. Check whether copyright applies

- **Does the research data have an original character of its own and bear the personal stamp of the author?** (tip: is it conceivable that two different authors, working separately, could have arrived at precisely the same form?)

→ Copyright applies and you need to secure the consent of the author

(The decisive point is therefore whether the author had freedom of choice in arranging the data in a particular form and whether he did this – deliberately or otherwise – on the basis of personal preference. Even just a selection consistently solely of bare facts may be subject to copyright protection)

# Question 3

## B. Check whether database right applies

- **Are you dealing with a collection of independent materials (research data)? Is the data collection arranged systematically? Has there been a substantial investment in obtaining, verifying, or presenting the materials?** (the investment in carrying out the research that generates the data does not count)
  - Database right applies and you need to secure the consent of the producer

# Question 4

- **Question 4 (copyright): Do you intend publishing the protected data that you have borrowed in some way, or making it available to other people in some other way?**

→ Copyright applies and you need to secure the consent of the author

(In cases as this, the law speaks of publication. Other people's data can only be copied or utilized for the purpose of your own research without the author's consent if it not published)

## Question 5-6

- **Question 5 (copyright)** : Are you dealing with the right to cite, official government acts, the all-inclusive form, a selection of bare facts or other types of data (non-original photos etc.)?  
→ Copyright law exception, you do not need to secure consent
- **Question 6 (database)** : Do you intend not only borrowing data from the database for your own research but also publishing it further, for example in a publication, or do you intend sharing your own material (which will then include the data you have borrowed) with other people?  
→ Database right applies and you need to secure the consent of the producer

# Question 7

- **Question 7 (database): Do you intend reusing (publishing) a substantial portion of the database?**

→ There are no clear criteria for what constitutes a 'substantial' portion. It is necessary to consider the relationship between the reused portion and the database as a whole, as well as the technical and economic value of the reused portion.

**Conclusion**

**Questions?**

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