

# Licencing

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## Reasons for having this lecture

- Cloud computing and Big Data are buzz words
- Data we see on Internet is about 10%, the rest remains invisible
- Data are ubiquitous (presented or found everywhere)
- Big Data are volatile (they move across borders)
- Very little is known about who "owns" data available on internet
- Why the question about using data legally is important?
- Data are volatile that makes difficult to say what law is applicable
- Legal rules does not keep pace with new technologies
- There are various legal concerns (protection, security)

## What we understand as "data"

- "Big Data" is not a legal term, rather IT
- But word "data" is used in law (as a part of the word or with an adjective e.g. **personal data, database**)
- Data = (roughly) means information
- Dataset vs. Database
- Public data (all information in the public domain)
- Open data are public data that are structured and maintained
  - <https://data.europa.eu/en>
- Personal data (limiting processing and movement or transfer of personal data of natural persons)

## Interests involved

- Right to privacy: protection of personal data (natural persons only)
- Safety & security concerns (cybersecurity in public interest)
- Economic concerns
  - Safety & security concerns (private interest)
  - Advertisement (reputation)
  - IPR: royalties (profit)
  - Limitation of competition

## Data protection in economic interest

- Copyright protection (collections, computer programs)
- Sui generis right (databases)

# Copyright protection

## International legal framework:

- Bern Convention (1886) protects collection of literary and artistic works
- TRIPS Agreement (1994) provides copyright protection for the "compilation of data or other materials"
- WIPO Copyright Treaty (2004) protects compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations"

The copyright protection as such does not provide right means for protection of factual databases (e.g. telephone directory, library catalogue - sweat of brow doctrine)

## EU Database directive (96/9/EC)

- Increases scope of legal protection of database makers
- Strengthen database industry
- Provides for double scheme of protection: copyright + sui generis rights
- It does not apply nor to the content nor to the computer program needed for using the database (both are protected separately by Copyright Directive)

## The scope

- Definition of a database: "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means"
- Limited scope regarding the persons who may be subject to obtaining database rights (makers or rights holders): nationals or habitual residents of an EU state (companies with principal place of business or central administration within the EU)
- Problem: in the cloud, the end-users are left with uncertainty who holds database rights



## Double level of protection

- **Copyright:** "databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright"
- Introduced new IPR ("**sui generis**" right): the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database

## Reasons for introducing the database right in the EU

- To prevent free riding
- Variability of the terms of protection among member states as to the level of protection had adverse impact on the internal market
  - Need for originality prevented the protection, or
  - Threshold of originality very low, the "sweat of brow" doctrine (skill and labor)

## Exceptions and limitations of right for text and data mining (Directive 2019/790 on copyright and related rights in the Digital Single Market)

- "text and data mining" means any automated analytical technique aimed at analyzing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations
- Lawful access condition
- Scientific research limitation (including storing of the data): text and data mining may not be limited by the right holder
- Reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining (including temporal retention) unless it has been expressly reserved by the right holder

## Digital and cross-border teaching activities

- Use for the sole teaching activities to achieve non-commercial purpose
- May be for fair compensation

## What's a license? Do we need one?

- License means an agreement that IP holder (licensor) gives right of use to another person (licensee)
- IPR can be sold ( in legal terms: "transferred" or "assigned")
- Before using any data:
  - Are there any personal data involved? Ask data administrator for permission
  - Are data protected by IPR? If so, do I have a license to use it?
    - Copyright (artistic works: the author died more than 70 years ago?)
    - Sui generis rights (databases – 15 years, starts again in case of any change)
  - In case I need a computer program to analyze data, do I have a license to use it? (copyright: the author died more than 70 ago?)

## Types of licenses for software and data

- Open license
  - IPR right holder give right to use of original work to anyone at no cost provided that the user follows conditions of the license
  - It usually allows for building on it, change, improvement or customization with no or minimal restriction (such as acknowledging the original author's work)
  - E.g. Creative Commons (written works, images, music, visual and other artistic expressions), GNU General Public License (software)
  - Some IPR rights have been waived and the work is in public domain

## Proprietary licenses

- IPR holder retains control over the work, computer program or database
- It sets up conditions of use usually on commercial basis
- Does not allow for changes, improvements etc.

## Public domain concept

- Consists of creative work to which no exclusive IPR apply (IPR may have expired, been forfeited, expressly waived, or may be inapplicable)
- It varies by country and jurisdiction
- Creative Commons Public Domain Mark





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