

Copyright and Data

Who should read this?

This guide is relevant to those who deal with data, including researchers who generate or compile data, database/repository managers who store, manage and retrieve data, and users who access and use data. ‘Data’ is used here in a broad sense, as including datasets from observations, investigations, instruments, surveys, statistical data, metadata, recordings, images, video, software and text.

What is copyright?

Copyright is a kind of property interest that comes into existence automatically when an original work is created, without the need to register or comply with any formalities. A wide range of works can be protected by copyright, including reports and documents (‘literary works’), diagrams, plans, graphs, images and photographs (‘artistic works’) and videos and multimedia works (‘cinematograph films’). A fundamental concept of copyright is that protection is given, not for ideas or information, but for the form in which ideas or information are expressed. Mere facts are not protected by copyright. Copyright does not exist until the idea or information is expressed in words, figures or symbols (in analog or digital form) from which copies can be made. Copyright relates to the particular form of expression used by the author/s to convey ideas, facts or information to the world.

Copyright exists only in original works, that is, works which have not been copied from an earlier work and possess the requisite degree of originality. A work will meet the originality threshold if it has been produced through the exercise of independent intellectual effort involving, for example, skill, judgment, knowledge or creativity. Copyright is a property interest that is separate from ownership of the object in which the work is embodied. As an example, copyright in a digital file is a distinct property right from the computer disk or USB key on which the copyright work is stored. As personal property, copyright can be dealt with in the same way as other forms of property, including licensing, mortgage and sale.

Does copyright apply to data?

Copyright applies to text, images, recordings, videos etc in a digital form, in the same way that it would to analog versions of those works. The code of computer programs (both the human readable source code and the machine readable object code) is protected by copyright as a literary work.

Data compilations such as datasets and databases can be protected by copyright in the literary works category, which includes ‘tables’ or ‘compilations’. A table or compilation, consisting of words, figures or symbols (or a combination of these) is protected if it is (1) a literary work and (2) has the required degree of originality. Mere information or a random collection and listing of unrelated facts or data will not be considered to be a compilation for copyright purposes. However, a factual compilation will be a literary work if it supplies ‘intelligible information’. It will be protected by copyright as an original literary work if it has been produced by the application of independent intellectual effort by the author/s, which may involve the exercise of skill, judgment, knowledge, creativity or labour in selecting, presenting or arranging the information. Copyright applies not to the facts/information itself, but to the particular way the facts/information are presented in the dataset or database.

Who owns copyright in data?

The general rule of ownership is that the author or creator of the material is the first copyright owner and that copyright will only pass to another person if there is a written assignment (transfer) that is signed by the copyright owner. This means that, as general rule, the person who produces the data will own copyright in it. If two or more people have collaborated in producing the data, such that their individual contributions cannot be separated out from the whole work, they will be joint authors and will jointly own copyright. In a situation where the data has been produced by an employee acting in the ordinary course of their employment duties, copyright will belong instead to that person’s employer. Any of the basic rules of copyright ownership can be displaced by the terms of a contract that provide for copyright to belong to someone else. For example, a collaborative research



agreement may state that copyright is to be owned by a corporate body rather than by individual researchers or their employing institutions. This means that to understand who owns copyright it is necessary to know how the work was created (who the individuals were and in what capacity they did the work), as well as the terms of any agreements that affect ownership.

What effect does copyright have?

Copyright consists of a set of legal rights, which can be exercised by the copyright owner to prevent other persons from doing an extensive range of acts with the copyright work, without the copyright owner's authorization.

For data in digital form, the most important of these rights are:

- to **reproduce** (copy) the work, including producing a digital version from the hard copy and a hard copy from the digital version;
- to **publish** it, by distributing copies to the general public;
- to **communicate it electronically** to the public, such as by making it available for download from a website or distributing the digital file;
- to **adapt** it by converting it from one version to another, for example by translating a computer program from one computer language to another;
- to ensure that electronic rights information associated with a copyright work (that identifies the author, copyright owner or terms of use) is not removed or altered; and
- to prevent circumvention of technological protection measures (which can take the form of equipment or software, such as encryption) designed to control access to or copying of the copyright works to which they are applied.

Individual authors of copyright works also have additional rights known as moral rights, which are personal to the author and cannot be assigned. These are the rights (1) to be **attributed** (identified) as the author of the work, where reasonable; (2) to object to **false attribution**, that is to prevent someone else being wrongly identified as the author of the work; and (3) of **integrity**, that is to prevent derogatory treatment of the work that would prejudice the author's reputation.

Copyright is infringed if a person deals with the copyright work by doing acts that involve any of the copyright owner's rights, without authorization or legal justification. However, copyright will only be infringed if more than a substantial part of the copyright work is used; dealing with an insubstantial part of a copyright work is a free, non-infringing use, even if it involves an act within the scope of the copyright owner's rights. There are numerous general and specific exceptions to copyright infringement, which permit a user to do an act without first obtaining permission from the copyright owner and without payment of any royalties or fees. An important set of exceptions are the fair dealing exceptions, which exempt from infringement certain dealings with copyright works. For example, it is not an infringement of copyright to deal fairly with a work for purposes of research or study, or criticism or review (as defined in the Copyright Act).

Managing copyright to enable access and use

As a copyright owner if you wish to (1) deposit your data into a repository or database; (2) share your data online; or (3) allow others to access and use your data, you will need to manage your copyright to permit others to use it as intended. Permission can be granted in the form of a non-exclusive licence to anyone who wants to reproduce or use your data. For example, you will need to permit the database/repository manager to copy your digital dataset file into the database or directory (an exercise of the right of reproduction) and to make your file available online so it can be viewed or downloaded (an exercise of the right of communication to the public). The database/repository manager may ask you, when depositing your dataset, to agree to a Repository Deposit Licence for your data. For further information, see the OAK Law project publications, *Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context* (2007) <http://eprints.qut.edu.au/8865/> and *Practical Data Management: A Legal and Policy Guide* (2008), available at <http://www.oaklaw.qut.edu.au/reports>. Open content licences, such as Creative Commons licences, can be used to grant wide permission to use your data to both database/repository managers and users. For more information see the ANDS guide, 'Creative Commons and Data'.



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