Legal & Policy Issues
DataONE Community Engagement & Outreach Working Group

Legal and Policy Issues

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Learning Outcomes

After completing this lesson, participants will be able to:

- Identify ethical, legal, and policy issues for managing research data
- Define copyrights, licenses and waivers
- Understand reasons behind data restrictions and how to observe them
- Discuss ethical considerations surrounding the use of research data

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Setting the Stage

- Legal – a law is "any written or positive rule or collection of rules prescribed under the authority of the state or nation."
  - e.g., U.S. Copyright Act
- Ethical – "being in accordance with the rules or standards for right conduct or practice, especially the standards of a profession."
  - e.g., Institutional Review Board (IRB) & Institutional Animal Care and Use Committees (IACUC)
- Policy - a specified "course of action adopted for the sake of expediency, facility, etc."
  - e.g., Paperwork Reduction Act

-- Definitions from Dictionary.com

Intellectual Property (IP)

"Intellectual property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce."

-- World Intellectual Property Organization

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What does IP include?

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- Copyright
- Patents
- Trademarks
- Industrial Designs

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Who might claim control over data?

- You
- A funder
- Student, scientist, researcher, PI
- An institution
- A private company
- Nobody

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Identifying Ownership and Control

- Funder agreement
- Institutional intellectual property policy
- Private company data use agreement
- Attached license

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Why Does Ownership & Control Matter?

- For Creators:
  - to derive benefit as a result of their work
- For Others:
  - to avoid potential legal trouble
  - to know where to get permission for use.

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Copyright versus License

Copyright: "[T]he body of exclusive rights granted by law to copyright owners for protection of their work." *--U.S. Copyright Office*

- Facts and data cannot be protected by copyright
- Metadata and data arrangement can be protected (sometimes)

License: states what can be done with the data and how that data can be redistributed (e.g., General Public License (GPL) and Creative Commons(CC))

Waiver: (e.g., CC0) relinquishes all rights of ownership or control and usually commits the "work" to the public domain

Intellectual property laws will vary depending upon country or region.

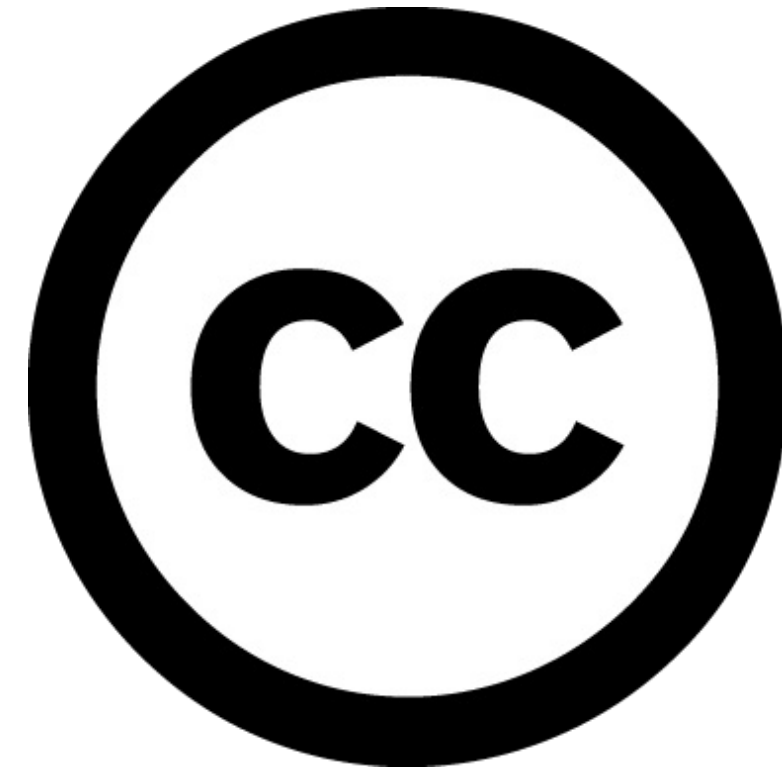Copyright is a precursor to having the power to assign licenses or waivers.

Facts and Copyright

- Facts cannot be protected by copyright, but what is a fact?
- Current case law determines the limits:
  - Feist Publications, Inc. vs. Rural Telephone Service Co.
  - Baker v. Seldon
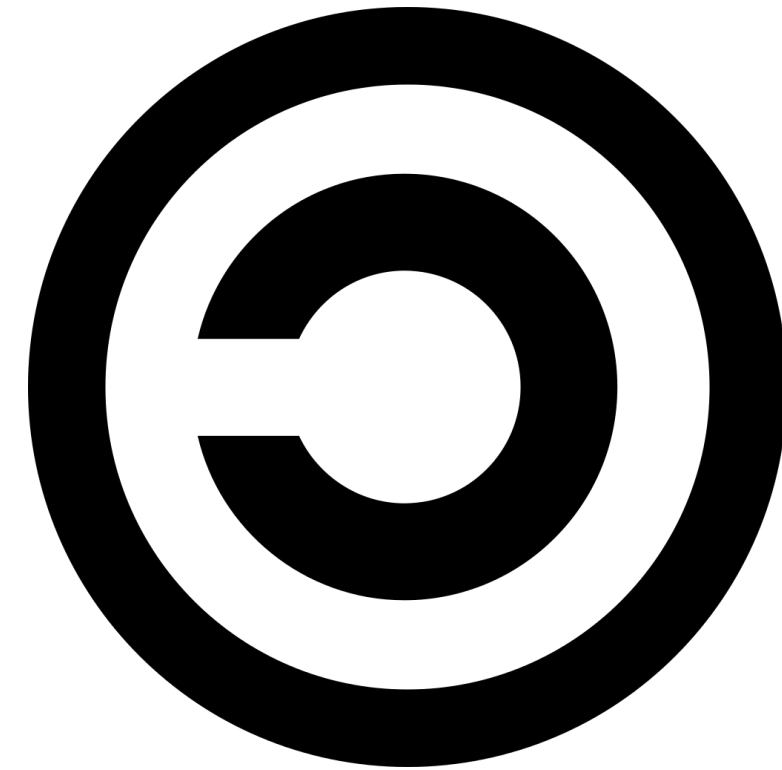 - Miller v. Universal Studios

Choosing an open license

- Why use an open license?
  - Facilitate data sharing and discovery
  - Increase visibility of your data
  - Advance knowledge
- Creative Commons
  - CC0 (not a license, but a waiver)
  - CC BY (Attribution)
  - CC BY-ND (Attribution-NoDerivs)
  - CC BY-NC (Attribution-NonCommercial)
  - CC BY-SA (Attribution-ShareAlike)

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Other Considerations

- Copyright vs. Copyleft
  - "a strategy of utilizing copyright law to pursue the policy goal of fostering and encouraging the equal and inalienable right to copy, share, modify and improve creative works of authorship." (copyleft.org)
- Attribution Stacking
  - CC BY requires all derivative works to acknowledge all contributors to all works from which they are derived.
- Redistribution
  - CC BY-SA requires all works that derive from a work designated BY-SA must be distributed under the same license.

Norms for Data Use

When using data

- Give credit to the data authors
- Be responsible with the data
- Share what you learned
- Respect the Data License or Waiver
- Understand and follow any restrictions or regulations

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Ethical Use of Data

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- Understand your funder/institution policies on data sharing
  - Review your IRB protocols and approvals
  - Remove personal data
- Using someone else's data
  - Give credit
  - Respect the license
  - Protect the data appropriately

Why might data use or sharing be restricted?

- Data involves threatened and endangered species
- National security and classified research
- Export controls
  - Can apply to technologies and data
- Use of Human Subjects
  - Personally identifiable information of any kind
  - E.g., Health Insurance Portability and Accountability Act (HIPAA) as governing law for personal health information

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Be Aware of Regulations

- Range of regulations mediating how researchers interact with data or objects of data collection (e.g., humans, animals; consult IRB or IACUC)
- Constraints around data management (e.g., cloud services, software agreements, etc.)
- Institutional policy review processes (e.g. Paperwork Reduction Act)
- Open vs. proprietary – some institutions (e.g., universities) may need to waive rights to permit open access.

Privacy and Security

Involves:

- What we can collect and how
- How we share data, results and outcomes
- Reuse of human subject data
- Data storage and destruction

IRB interpretations and review across institutions are not always consistent

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Privacy vs. Confidentiality

- Privacy
  - Protects access to individuals (or entities)
- Confidentiality
  - Protects access to information about individuals
  - Can be thought of as information privacy

Summary

- Know who can claim ownership or control over data products
- Assign licenses or waivers appropriately
- Behave ethically and in accordance with established community norms
- Respect the licenses or waivers assigned
- Protect privacy and confidentiality
- Know what restrictions and liabilities apply to products and processes

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Resources

- Frequently asked questions about PRA / Information Collection. Accessed June 26, 2015 at http://www.hhs.gov/ocio/policy/collection/infocollectfaq.html.
- Creative Commons. Accessed June 26, 2015 at https://creativecommons.org.
- Norms for data use and publication. Accessed June 26, 2015 at http://www.Vertnet.org/resources/norms.html.
- Export controls. Accessed June 26, 2015 at http://vcresearch.berkeley.edu/export-controls.
- Protected groups. Accessed June 26, 2015 at http://www.uidaho.edu/ora/committees/irb/protectedgroups.
- Health information privacy. Accessed June 26, 2015 at http://www.hhs.gov/ocr/privacy.

Resources, continued

- Protecting personal health information in research: understanding the HIPAA privacy rule. Accessed June 26, 2015 at http://privacyruleandresearch.nih.gov/pr_02.asp.
- Information Liability. Accessed June 26, 2015 at http://www.law.fsu.edu/journals/lawreview/downloads/263/phil.pdf.
- Guidelines for Responsible Data Management in Scientific Research. Accessed June 26, 2015 at http://ori.hhs.gov/education/products/clinicaltools/data.pdf
- Who Owns Research Data? Accessed June 26, 2015 at http://ori.dhhs.gov/education/products/columbia_wbt/rcr_data/case/index.htm
- Constructing Access Permissions. Accessed June 26, 2015 at http://libweb.uoregon.edu/datamanagement/sharingdata.html#three

About

Participate in our GitHub repo: https://dataoneorg.github.io/dataone_lessons/

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