



Summary Data Science - Regulation and Law

Data Science Regulation & Law (Tilburg University)

Cluster 1 - Introduction to Data Science: Regulation & Law

Lecture 1 and 2. Data Science and Law

Data Science = Data science is the study of where information comes from, what it represents and which can be turned into a valuable resource in the creation of business and IT strategies. (<http://searchcio.techtarget.com/definition/data-science>)

Law = rules that govern and guide actions and relations among and between persons, organizations, and governments. The social, political, moral, and economic dimensions of the law are essential to a proper understanding of its workaday operation. Reflection upon the nature of law reveals important insights into who we are and what we do.

- Two principal answers
 - Natural lawyers: law consists of a set of universal moral principles in accordance with nature
 - Legal positivists: law is just a collection of valid rules, commands, or norms that may lack any moral content

Law = regulation?

- Yes → trying to change behaviour
- No → there is more regulation than law

Justice = justice is about fairness. Sometimes law is about protecting fair outcomes (interests of parties involved). How does argumentation work?

- Grounds: 'he has stolen a bike'
- Warrant: underlying rule that connects ground and conclusion
- Backing: rules need to have an appropriate legal source
- Rebuttal: counter argument against conclusion. 'Stole bike to bring man to hospital'
- Conclusion: 'he has to pay for the damage'

Absolute rights and relative rights

- Absolute right: right that can be exercised against all others. (e.g. property right)
- Relative rights: right that can only be exercised against one or more determined persons (e.g. loan)

Objective and subjective rights

- The law (objective); my right (subjective) – e.g. privacy

Purposes and functions

The law consists of norms regulating human behaviour and rules that organise the state. So law organizes the state and the state organizes the law: the law, indirectly, organizes itself.

- establishing standards
- maintaining order
- resolving disputes
- protecting liberties and rights

Judicial function: adjudicates disputes, deciding how a disagreement should be settled.

Legislative function: determine the rules that will govern the process of adjudication.

Legislation tells judicial function how to adjudicate.

Executive function: ensure, first, that the disputing parties submit to adjudication in the first place, and second, that they actually comply with the settlement eventually reached through the judicial process.

Systems and traditions

Legal system: an operating set of legal institutions, procedures and rules. There are two legal traditions: Civil Law and Common Law.

	Civil Law	Common Law
Written constitution or codified laws	Yes	Not necessarily
Judge made-Law	No	Yes
Contractual freedom	Less	More
Type of judge	Investigators	Arbiters between parties

Civil Law countries: Most countries in Europe and Latin America

Common Law countries: U.S.A, Canada, U.K, Australia, New Zealand

Principles and rules

Principles are at a higher level of abstraction than rules. They form the background of legal rules and can be used to interpret, to complete or to correct legal rules. (See Ch.3 about R Dworkin)

Are all rules legal rules?

- $E=mc^2$
- The bishop may move as far as it wants, but only diagonally.
- It is not allowed to bring food and drinks into the lecture room.

Legal rules: Judge made (in verdict) or by legislator (in codes). Who has the authority to make rules? (See what is said about HLA Hart in Ch. 2)

Sources and hierarchy

- Statutes / Acts
 - Constitution: e.g. Privacy and Non discrimination
 - Act of Parliament
 - Delegated acts
- Customary Rules
 - Custom and Principles
- Judicial Decisions
- Treaties and binding decisions of international organisations

Argumentation and legal reasoning

There are different legal domains:

- Private Law
- Public Law
- Criminal Law

There are different actors in different legal domains (e.g. the Public prosecutor) and there are different roles of same actor in different legal domains (e.g. active or passive role of a judge). Civil Law system: Judge must apply the law. The law needs to be interpreted.

COMMON LAW VERSUS CIVIL LAW

Common law is not codified	Civil law is a codified set of laws
Judicial precedents are binding	Judicial precedents are not binding
Judges make rulings, set precedent, and moderate between the conflicting parties	Judge's role is to establish the facts of the case and to apply the provisions of the applicable code
Main source is judicial precedents or case law	Statutes and other subsidiary legislations are the main sources
An adversarial system	An inquisitorial system

Pediaa.com

Different interpretation methods are:

- Grammatical / linguistic interpretation: literal meaning
- Historical interpretation: using the legislative history, to reveal the intent of the legislator
- Systematic interpretation: considering the broader context of the legal framework in which a provision is listed
- Theological interpretation: focus on the purpose of the law

Problems with interpretation

- Things or ideas change over time
- Provision may be unclear
- Gaps in law (not covered by provision)

Judge must provide argumentation of the verdict:

- Legal equality
- Legal certainty

Argumentation theory, or argumentation, is the interdisciplinary study of how conclusions can be reached through logical reasoning; that is, claims based, soundly or not, on premises. It includes the arts and sciences of civil debate, dialogue, conversation, and persuasion. It studies rules of inference, logic, and procedural rules in both artificial and real world settings.

Part XXII. Theft and Poaching

Section 310

Any person who takes any property belonging in whole or in part to another person with the intention of unlawfully appropriating it, shall be guilty of theft and shall be liable to a term of imprisonment not exceeding four years or a fine of the fourth category.

What might be problematic in view of stealing data?

Article 3:1 Definition of 'property' as a legal object

'Property' (or 'assets') comprises of all things and all other property rights.

Article 3:2 Definition 'things'

'Things' are tangible objects that can be controlled by humans.

Legal reasoning:

- Analogy: a similarity in some respects between things that are otherwise dissimilar (freedictionary.com)

Verdicts regarding electricity:

Electricity:

- It exists in itself
- Can be stored in a physical object
- Can be generated and distributed
- Can be consumed as desired
- Has value

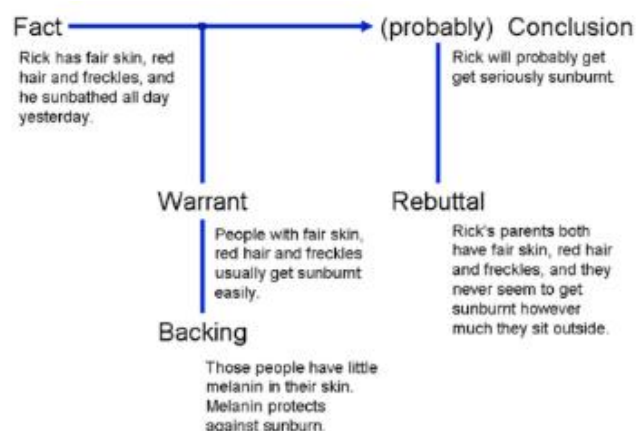


Figure 1 Stephen Toulmin Scheme

310 Sr. aims to protect assets to be taken by unauthorised people, so electricity can be considered to be property.

*Source code: on the basis of the criteria for electricity it might be property / a thing.
But, 310 Sr: "take and appropriate" means; the property must leave the possession of person A to come into possession of person B.*

- A contratio: from a contrary position (latin-dictionary.org)

If stealing only occurs when the property leaves the possession of person A to come in possession of person B, and with data these also remain in the possession of person A, then the data have not been stolen.

*Since 2006 it has been regulated with the implementation of the Cybercrime Convention:
s. 139c Dutch Criminal Code
Section 139c*

Any person who intentionally and unlawfully intercepts or records by means of a technical device data which is not intended for him and is processed or transferred by means of telecommunication or by means of a computerised device or system, shall be liable to a term of imprisonment not exceeding one year or a fine of the fourth category.

Jurisdiction:

- The official power to make legal decisions and judgements
- Case can have different outcome depending on where the dispute arises
- Very important to know which rules are applicable
- Not always easy to internet environment:
 - Dematerialisation
 - Internationalisation

International and EU law

*Dutch Law Article 93 and 94 Dutch Constitution:
Article 93*

Provisions of treaties and of resolutions by international institutions which may be binding on all persons by virtue of their contents shall become binding after they have been published.

Article 94

Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons.

EU Law:

- Primary Law: Treaties
- Secondary Law: Decision, Directive, Regulation (Recommendation, Opinion)

"a directive is distinct from a decision or a regulation. While a regulation is applicable in Member States' internal law immediately after its entry into force, a directive must first be transposed by the Member States. Thus, a directive does not contain the means of application; it only imposes on the Member States the requirement of a result. They are free to choose the form and the means for applying the directive. "Furthermore, a directive also differs from a decision as it is a text with general application to all the Member States. Decision directed to addressees." (since Treaty of Lisbon general has become the basic

instrument in the field of the Common Foreign and Security Policy) European Court of Justice: curia.europa.eu.

The Council of Europe is the continent's leading human rights organisation. It includes 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law.

The Council of Europe promotes human rights through international conventions, such as the Convention on Preventing and Combating Violence against Women and Domestic Violence and the Convention on Cybercrime.

The European Court of Human Rights oversees the implementation of the Convention in the member states. Individuals can bring complaints of human rights violations to the Strasbourg Court once all possibilities of appeal have been exhausted in the member state concerned. European Court of Human Rights: hudoc.echr.coe.int

Law vs. Regulation

Regulation: "The promulgation of rules by government accompanied by mechanisms of monitoring and enforcement." Or "The sustained and focused attempt to alter the behaviour of others according to standards or goals with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information-gathering and behaviour-modification."

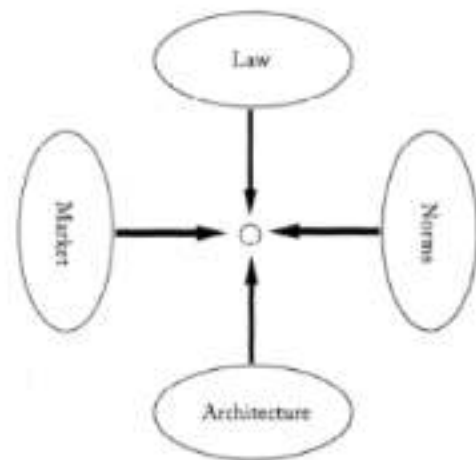


Figure 2 Lessig:
Four modalities of regulation

Cluster 2 – Private Law

What is private law?

- Private law is the part of law that covers private relationships.
- Law is the authority of rules (and knowledge) which determines the outcomes of court cases.
- These rules, which everybody has to follow, are mainly found in statute law and case law.
- The primacy of freedom (or autonomy) is an important principle of private law. Private parties are free to regulate their own affairs, private law provides only restrictions.

Contract law Tort law Property law



Lecture 3. Contract Law

Formation of contract

- Basic notion in private law is contract.
- Parties are bound to obligations that they have voluntarily accepted.
- Each party promises on the condition that the other party also promises (mutuality).
- Parties intend to be legally bound

Obligations and enforcement

- Unconditional imperative: you have to do/must refrain (verplichting/plicht)
- Act or not act, give or not give
- More or less concrete
- Right as counterpart of obligation?
- Enforcement by court (remedies)

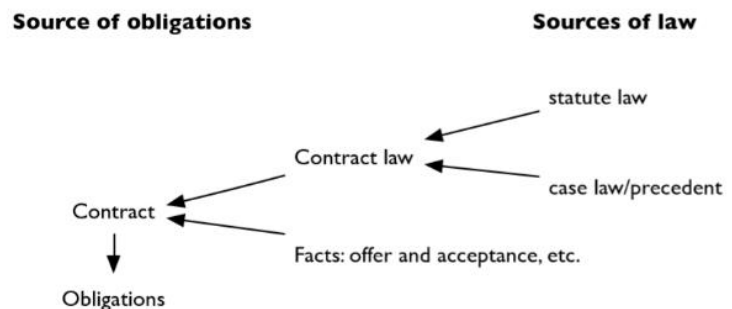
Phases of a contract

- Formation
- Consequences (content of contract, remedies in case of non-performance)
- termination

Law states: "A contract is concluded, without any further requirement, if the parties: (a) intend to enter into a binding legal relationship or bring about some other legal effect; and (b) reach a sufficient agreement."

There are a few sources of obligations:

- Tort law: rules binding everyone
- Contracts



Important for the exam for private law: Doctrines (possible categories and exceptions, rules/criteria) and how to apply them (look for relevant doctrines).

Contract in general

- In which phase does the problem occur?
- What do you want to achieve (uphold contract/get rid of obligation/obtain remedy)?
- Examine various possibly applicable tools to see whether you get the relevant result or not
- Are you assessing a contract?

Example: - Private Law Question – John buys a computer and it is broken. Relevant doctrines are: contract law (and not property law or tort law), breach of contract.

Formation of contract

- Offer and acceptance – consideration?
- Obstacles (exceptions) – defects of will

Information obligations: directives, consequences

Defects of will: when the will to be bound was defective → contract invalid / voided / rescission

- Mistakes (dwaling, mainly in civil law)
 - Implies duty to disclose
- Fraud

- Party caused other party by devious means to agree to the contract
- Threat
 - Party threatened other party to agree to the contract
- Undue influence
 - Abusing other party's vulnerable position for better contractual conditions
- Misrepresentation (mainly in common law)
 - Explicit representations
 - Warranties

Content of contract

- Interpretation
 - Objective: literal, text
 - Subjective: intentions behind text, context
- Good faith
 - Supplementation: gap-filling
 - Interpretive: intentions
 - Corrective: estopping unreasonableness
- Unfair terms
 - Standard terms
 - EU Directive 93/13: unfair clauses → not binding!
 - U.S. approach: mandatory terms in U.C.C.

There are two approaches to interpretation when considering written contracts

- Objective interpretation: based on text of contract (strict → common law)
- Subjective interpretation: based on intention, text as indication (interpretation → civil law)
- Advantage: unreasonable consequences of a contract are disallowed
- Disadvantage: loss of certainty (not possible to fully rely on the precise text of the contract)
- Implied terms: terms that are not explicit in the contract, but are read into it.

Common clauses in the content of contracts:

- Warranties
- Limitation of remedies (sole remedy)
- Liquidated damages
- Penalties? (prohibited in some countries)
- Termination clauses
- IP clauses!
- Jurisdiction clauses/choice of law

Remedies

- Breach of contract
 - Action for breach of contract: requirements are breach, default, attributability
 - Cause of non-performance? → force majeure?
 - Exam: specify forms of breach and remedies in contract!
- Specific performance
 - Common Law: damages primary remedy
 - Civil Law: performance primary remedy
- Damages
 - Physical injury
 - Property damage
 - Pure economic loss → may not be recoverable! (for example usually not in the U.S.A)

- Limitations of remote damages are: causality requirement, remoteness (in UK contemplation parties, foreseeability, in France direct and certain, in other civil law countries causality/attribution)
- An important restriction in tort law is that pure economic loss is not always compensated. This kind of damage can also exist in the case of tort. Certain torts or grounds of liability do not compensate for pure economic loss (this varies between jurisdictions). In particular, and important for the practice of data science, common law systems generally do not allow recovering pure economic loss for negligence, except in specific cases. This means that when someone for example negligently destroys your database, it is uncertain whether you can obtain an award of damages, as the damage from such a negligent act seems to consist solely of pure economic loss. If you do want to obtain compensation, you will either have to litigate on the basis of a different tort that does allow compensation of pure economic loss, or you will have to find that the case involves a specific case that requires an exception to the general exclusion of pure economic loss. Civil law systems take varying positions.
- Termination
 - For breach: response to breach of contract by other party
 - For specific conditions: based on a ground that justifies termination (i.e. death)
 - In order to end the contract: Common requirements for termination: notice period, damage/compensation, by notice or by court
 - At will: party is free to terminate without having to provide any reasons
- Time limits
 - Prescription: usually a number of years
 - Statute of limitations: prescription, but in common law called 'statute of limitations'
 - Limited period to complain: stipulated that shorter periods apply for certain complaints

Lecture 4. Tort Law

Tort Law

- The part of private law concerned with non-contractual liability
 - Prohibition of harming others
 - Which norm? Which interest is being harmed?
- Aims
 - Compensation of the victim for consequences of the tort
 - Prevention: threat of paying damages may provide an incentive against harmful behaviour
- Different kinds of liability
 - Fault liability
 - Strict liability
 - Vicarious liability

Tort law analysis:

Damage → who do you want to hold liable? → on what ground?

General fault-based liability (Civil law)

In general there are at least three elements:

- Fault: act that should not have been committed
- Damage: (of victim) harm to some interest
- Causality: damage is caused by fault (consequence of the act)

Fault

E.g. Art. 6:162 section 2 Dutch Civil Code

"The following acts are unlawful: the infringement of a right, violation of a statutory duty or a rule of unwritten law pertaining to proper social conduct."

- Infringement of right: property right, right to health or liberty
- Breach of statutory duty/rule: follow a statutory duty that is unlawful
- Violation of a rule of unwritten law pertaining to proper social conduct
 - Open norm of negligence (compare with negligence in common law)
- Negligence in civil law
 - Open norm of fault-based liability (content: common knowledge, morality, case law, experience, domain-knowledge(business rules))
 - Acts and pure omissions
 - Take into account other's interests (no undue risks, try to avoid harming other's interest)

Damage

- Harm to some interest
 - Material damage: physical injury, property damage
 - Immaterial damage: violation of privacy, slander
 - Punitive element
- Property damage: for tangible objects this is quite clear
- Pure economic loss: loss that is not a result of physical interference (database)
- Not all kinds of damage are always compensated
- Problem of proof

Causality

The damage is the consequence of the act that forms the basis of the action in tort

Conditio sine qua non: act not occurred, damage not occurred.

There should be sufficient connection (not: if you weren't born, there would be no damage)

Extra requirement depending on the jurisdiction

- Direct and immediate consequence; or
- Attributability of damage to the fault; or
- Remoteness or foreseeability

Common Law: Tort Law

Several torts with colourful names

- Trespass
- Negligence
- Fraud

For every kind of tort, there is a different regime → know when to consult an expert

Negligence in common law

Blyth: negligence:

- Duty of care: foreseeability and damage: you can't start with duty of care if you cannot recognize damage. Proximity: if it is too far away, it is irrelevant. Fair: general norm → unpredictable
- Breach
- Harm

Standard of behaviour: the reasonable man

Defences and remedies

Defences

- Consent: it is not unlawful if someone consented to the action
- Contributory negligence: damage primarily caused by own fault → no award or reduced award
- Prescription

Remedies

- Award of damages
- Injunction
- Order

Torts connected to data

- Defamation
- IP infringement → statutory law (IP-law)
- Destroying or interfering with data → criminal law prohibitions
- Privacy violation → statutory law (privacy law)
- Security breach → insufficient protection

Other kinds of liability

- Strict liability
- Liability based on duty of care of the guardian
 - Actual possibility to prevent/lower risk damage
 - Profit
- Vicarious liability
 - Torts committed by other persons
 - Vicarious liability for employees:
 - Employees, also in a similar position
 - Torts: some connection to the employment
 - Employer bears the damages
- Liability for objects
 - Mostly for animals and mortised vehicles
 - Liability for the keeper or owner
 - Ratio to protect the one who suffered the damage
 - Product liability
 - Liability for the manufacturer
 - Tangible objects

ISP liability

Art. 12-14 E-commerce Directive 2000/31

Types of ISP

Exemption of liability in specific circumstances

If exemption does not apply, liability is determined by national law (i.e. mostly negligence/defamation/IP infringement)

Hosting ISP

Article 14 E-commerce Directive - Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Lecture 5. Property Law

Objects of property:

- Land / immovables (attached to land in a durable manner such as a house or a tree)
- Movables / goods (not attached to land, able to move)
- Intangibles
 - Intellectual property rights (copyrights, database rights and patents)
 - Claims (right of a person on another (pay certain amount of money))

Data discussion: if personal data → protection rules

Parts of a human body are not part of property law (in the Netherlands: only right of ownership of tangibles)

Electricity → use once → appropriation → theft

Data → copy → no appropriation → no theft

Pin code → copy → no appropriation → no theft

Software → copy → no appropriation → no theft

Ownership

- Property rights → erga omnes (against everyone)
 - Use
 - Value (also: licence)
 - security
- Limited forms of property → numerus clausus (kind and content)
- Party autonomy
- Revindication → legal action of getting an object back that you own

Becoming owner

- Possession (creation, finding, registration)
- Transfer (specific transfer of good, general transfer such as inheritance or merger)
- Statute of limitations

Transfer of property

- Title: underlying agreement/reason/cause for transfer (often sales contract)
- Power to dispose: you need the right in order to transfer an object to someone else
- Delivery:
 - Immovable: deed + registration
 - Movable: possession (sometimes deed + registration)
 - Claims: notification, or deed + registration
 - IP rights: deed (+ registration)

Property law and contract law

- Contracts about property use

- Rent, lease
 - Superficies, rights in rem: registered
- Contracts about transfer
- Security rights

Enforcement

- Property & Tort
- Trespass
- Conversion (and trover)
- Nuisance

Reclaiming property

- Civil law: revindication
- Common law: conversion/trespass
- Based on ownership, and only for tangibles

Insolvency

- Security rights (by deed)
 - Mortgage
 - Pledge
- Bankruptcy
 - Only on own property!
 - Claims are pooled

Virtual property and data

- Can never own object in game (contractual agreement) → non-transferability clause
- Virtual object with value (lot of time and effort spent getting it) → property law
- Virtual swords, domain names
- Digital assets

Cluster 3 – Intellectual Property Law and GDPR

Lecture 6, 7 and 8 – Intellectual Property Law

Simple Model

- Input data protected → ask owner for permission (you are dependent on the owner)
- Algorithm/analysis: you want to protect that if you developed it
- Output data → sometimes you want to protect it (selling), sometimes not (sharing)
- If you do not have physical access to data, you cannot use it
- Data and analysis deliver new data, but this data can be used again for analysis
- Third party and algorithm working together → protected by IP right

Trade Secrecy

If you have developed something and take reasonable measures to keep it secret. 'Trade secret' means information which meets all of the following requirements:

- It is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- It has commercial value because it is secret;
- It has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

Characteristics of trade secrecy

- Not protection of idea or data per se
- Protection against improper appropriation, use, disclosure
- Mainly usable: if secrecy barrier is difficult to take or if infringement difficult to detect
- Cheaper than patent protection but not completely gratis either.
- From societal perspective, the drawback is that algorithms are not available for others to elaborate on (less follow-on innovation).

Patent law

- Does not protect data, only technology. In data science → protect algorithms.
- Patent: document which describes an invention and creates a legal situation in which the patented invention can only be exploited with the authorization of the owner of the patent.
- Sources of patent law: European Patent Convention, National Patent Acts.

National character of patent law

- Each country has its own patent act, patent in the Netherlands → invention only protected in the Netherlands.
- Country with big market, you may want patent there: the Netherlands → Rotterdam harbour.
- Problem of obtaining patent protection in multiple countries:
 - Expensive
 - Patents can only be granted to something that's new (unknown to public in general)
 - Must translate patent application to languages of countries in which you apply
 - Somebody can already have copied idea before patent is official
- European patent convention: obtain patents in multiple countries with one procedure.

Contract sociale

- Society wants something in exchange from inventor for 20 years patent/monopoly
- 1,5 year after procedure patent office publishes patent application and invention description
- Patent law → trade secrecy (innovation for society → invention is known → get inspired)

Patent file

- An abstract shortly described the invention
- A description in which the invention is described in a context
- Claims which actually describe the invention and process that protection is sought for
- There is no definition of what an invention is, also not tested for if you apply for patent
- Legislations specify a number of things that are certainly not inventions
- Mathematical method cannot be protected, application of the mathematical method can
- You would not be able to obtain a patent for programs for computers

Computer programs as such

- European patent office (EPO) provides patents for software → technical character
- Only infringement if someone copies complete software, one change → not infringement

Implications for data analysis algorithms, technical character?

- Yes, data analysis leading to control for a machine (predicting based on processing capability)

- No, data analysis leading to information for humans (which football player is most popular?)
- Doubts case → technicality through higher efficiency
- Conclusion: in certain condition, if practical application or technical character → patentable
- Substantive requirements: new, involves inventive step, susceptible of industrial application

Novelty

- Defined as 'not part of the state-of-the-art' (not known)
- Does not necessarily mean absolutely new, but up until now not known by the public

Copyright

Protected by copyright:

- Work is an abstract concept
 - No formalities
 - Originality (own intellectual creation, own original character carrying personal stamp of the author (Dutch Supreme Court))
 - Examples of work protected by copyright:

◦ Painting	◦ Magazine
◦ Print	◦ Movie
◦ Sculpture	◦ Map
◦ Photograph	◦ Architecture
◦ Book, paper	◦ Choreography
◦ Letter, diary	◦ Original collections
◦ Music	◦ Translation
◦ Play	◦ Arrangement
- Not harmonized by a directive
- Infopaq (ECJ)

Difference between copyright and patent law

- Patent law protects idea (steps to solve problem), copyright only protects expression of law
- Copyright protects for blindly copying code, but does not protect for reusing code
- For a patent you have to apply, copyright emerges automatically (no formalities)
- Copyright on the same thing is theoretically possible, for patent law it is not

Dutch Supreme Court

Could be a work under certain circumstances: - Selection for inclusion in schedule of components and reactions from an infinite set of components and reactions - Selection based on scientific and technical knowledge, insight and experience - Where (even tough?) - Selection relates to objective scientific data - Aimed at reaching a scientific or technical result

The rightsholder

- The initial rightsholder (the person with whom the rights emanate)
 - The maker (physical and intellectual creator of the work)
 - The 'designer' who instructs and supervises the physical maker
 - The employee
 - The legal entity who publishes the work (no natural person named as author)
 - NOT: work made for hire
- Later rightsholders (who become rightsholders through inheritance, transfer/assignment)

Exclusive rights

- A bundle of exclusive rights
 - Exploitation rights
 - Moral rights
- Exploitation rights subdivided in categories
 - Reproduction right (i.a. art. 2 InfoSoc Dir)
 - Many forms of 'making public' (non-legal term)
 - Adaptation, translation, arrangement

Hyperlinking

Is about making (a webpage which includes) a hyperlink, not about clicking a hyperlink. Is this communication to public or not? Look whether the person making the link does so for profit or not and whether they did or did not know they were linking to something without permission for it.

- Not linking for profit → assumed you did not know (rightsholder must prove opposite)
- Linking as company → assumed you did know (you must prove opposite)

Limitations of exclusive rights.

Requirements for exceptions to exclusive rights:

1. In certain special cases
2. Do not conflict with normal exploitation of the work or other subject-matter;
3. Do not unreasonably prejudice the legitimate interests of the rightsholder

UK Copyright Act

Exception for the context of text and data mining: allows you to have lawful access to the work and may make a copy to do computational analyses if you acknowledge that it is somebody else's work.

Database rights

- Limited protection for the structure of the database
- EU commission: all words of an author in db → own selection with preferred work » copyright protected, all work of an author » not your own intellectual creation » not protected
- Software used in a database (management system) → not database rules, but software rules
- Only get database right if you do a substantial investment in obtaining the database content:
 - Quality: some data are very hard to come by or costly to obtain
 - Quantity: amount of data is large
 - Obtaining verification or presentation of the database

Exclusive rights

- Extraction: permanent or temporary transfer of database or substantial part
- Re-utilization: making available to the public of database or substantial part; by distribution copies, by renting, by online or other forms of transmission (need permission)

Database protection

- Repeated and systematic extraction and/or re-utilization of insubstantial parts (everything outside substantial part, milking)
- Repeatedly looking something up in a database does not mean that you are milking

Lawful users

Exception to database directive:

- May extract and/or re-utilize insubstantial parts of content

- May not perform acts which conflict with normal exploitation
- May not prejudice holder of copyright

Click to accept license condition

"Binding nature of certain provisions. Any contrary contractual provision shall be null and void."

Exception to the sui generis right

Only for lawful users of a database which is made available to the public:

- Private purpose extraction or re-utilization
- Non-commercial teaching / scientific research
- Public security / judicial procedure

Duration

Duration of database protection is 15 years. Renewable with every substantial change/investment.