

UK Location Data Sharing Operational Guidance

Part 3 – Intellectual Property:
Rights and Confidentialities
in Data Publishing

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This is the third part of the UK Location Data Sharing Operational Guidance.
The guidance series supports the UK Location Strategy by addressing business interoperability issues which could present barriers to the sharing and re-use of location data.

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Introduction

Purpose of document

This document provides a guide to help ensure data publishers consider rights and confidentiality when publishing location information. The document gives a general overview of intellectual property rights and contractual rights, and is not a substitute for legal advice.

Three examples of best practice are highlighted in the guide to show how different organisations deal with some particular issues.

This document should be read together with the second part of the UK Location Data Sharing Operational Guidance on Licensing and Charging¹.

Intellectual property rights

Intellectual property rights protect certain categories of information and works that are the result of human intellectual endeavour. The main types of intellectual property rights are:

- copyright,
- database rights,
- patents,
- trade marks,
- registered and unregistered design rights.

In the context of INSPIRE, the focus is on data and information which is protected by copyright and database right. Therefore copyright and database rights are the focus of this document.

Ownership of copyright and database right

UK law on copyright is defined in the Copyright, Designs and Patents Act 1988². Databases are protected under UK law under the Copyright and Rights in Databases Regulations 1997³.

¹ <http://location.defra.gov.uk/wp-content/uploads/2011/08/Data-Sharing-Operational-Guidance-Part-2-v1-1.pdf>

² <http://www.legislation.gov.uk/ukpga/1988/48/contents>

³ <http://www.legislation.gov.uk/uksi/1997/3032/made>

In the case of central government and its agencies, where the agency is a Crown body, most of the information produced will be subject to Crown copyright and/or Crown database rights. Copyright and database right may also be assigned or transferred to the Crown by the original owner(s).

Non-Crown public sector bodies own the copyright and database right in the information they produce. Copyright and database rights may also be assigned or transferred to an individual or organisation by the original owner(s).

Contractual Rights

Contractual rights are rights arising out of a contract or licence enabling an intellectual property owner to control another's use or reproduction of intellectual property assets which the owner controls. They may grant permissions, place conditions or impose restrictions on use of intellectual property but they are not intellectual property rights. More information on licensing terms is available in UK Location Data Sharing Operational Guidance on Licensing and Charging⁴.

⁴ As Note 1 on page 1

Best Practice 1: The UK Government Licensing Framework

The UK Government Licensing Framework (UKGLF) developed by The National Archives provides a policy and legal overview of the arrangements for licensing the use and re-use of public sector information, including spatial data, both in central government and the wider public sector.

It sets out best practice, standardises the licensing principles for government information, and recommends the Open Government Licence (OGL) as the default licence for public sector information. UK Location has endorsed the UKGLF as the licensing framework for the use of spatial datasets covered by the INSPIRE Regulations. OGL is the default licence for a wide range of information owned by the Crown.

For further information about the UKGLF see:

<http://www.nationalarchives.gov.uk/information-management/government-licensing/the-framework.htm>

A summary checklist for data publishers

A basic guide for data publishers when publishing data sets is to consider the following steps.

Data publishers should:

1. Ensure that they consider, understand and take appropriate measures to protect against misuse of their information.
2. Ensure that they acquire the necessary rights when data is acquired from third parties.
3. Ensure that they are not breaking any confidentiality when publishing data.

This guide expands on this checklist and describes what data publishers need to take account of.

1. Protecting your data

Licensing

Before publishing data, data publishers need to consider the level of legal protection, and terms of use (if any), that should apply to access, use and re-use of their data.

Part 2 of the UK Location Data Sharing Operational Guidance⁵ covers Licensing and Charging. It provides detailed guidance on what the INSPIRE Directive requires and allows from a licensing perspective, how public sector organisations can license data using the licence models and guidance contained in the UK Government Licensing Framework.

⁵ As Note 1 on page 1

2. Data acquired from third parties

Data publishers should ensure that they acquire the necessary rights to publish data. They should also make it clear to users of their data who owns the information for the purposes of acknowledgment and additional licensing requirements.

Publishing a third party's data

Many public sector bodies acquire and use data from third parties under licence. If it is likely that this information will need to be published, either to meet specific legislative obligations or to meet the body's corporate objectives, then the necessary rights to do so should be acquired when licensing the third party data. Negotiating these rights retrospectively, for example at the point of publication, can lead to unnecessary delays and cost which may be avoided if negotiated upfront.

It is also important that public sector bodies ensure that any third party data used is acknowledged appropriately so that users are aware of any potential additional licensing requirements.

Publishing derived data

Derived data is a term that is often used to describe new data or information that have been created using an existing dataset or information asset as its source, for example where spatial information or data attribution, has been:

- copied,
- replicated,
- reproduced, or
- generalised.

Under intellectual property law data may be considered to be derived if it encapsulates a significant proportion of the original, or source, data. However, under contract law the definition of the term 'derived data' varies considerably from one licence (which is in effect a contract) to another. It is therefore crucial that decisions on derived data are based upon the specific definition within the licence in question. For example, a licence may control or even restrict the derivation of further datasets even when the resulting dataset contains no 'copy' (significant or otherwise) of the data (for instance when a dataset is used as input to a modelling process and the output contains none of the input data and cannot be 'reverse engineered' to re-form it). In this case it is contract law and not intellectual property rights that would be controlling use.

Where individuals and organisations intend to make derived data available, whether to public sector bodies or other third parties, it is important that all potential users of the data also understand any relevant terms and conditions relating to any third party rights and their practical implications.

Ideally, data publishers should ensure that their licences include the terms and conditions applying to derivation and subsequent publication of derived data.

Further questions for data publishers bodies to consider before publishing

1. Are there comprehensive records of how datasets have been acquired? If not, it is likely that legal obligations, restrictions or limitations on use of the data may not be fully understood.
2. If a third party has collected data has the contract or arrangement stipulated that the intellectual property in the data will be owned by the publishing body? If not, then the contractor, as the creator of the data, may own the data.

Best Practice 2: Defra's approach to the use of contractors

Defra's standard approach is to ensure Crown ownership of intellectual property in data when making a contract which involves use or creation of intellectual property. Defra requires an indemnity from a contractor that any third party intellectual property issues have been noted and licensed, or otherwise avoided, such that there is no infringement and if there is an infringement, Defra will be compensated for any loss.

The onus is therefore placed firmly on the contractor to ensure consent for use of third party intellectual property in a data set where relevant.

3. Confidentialities

Data publishers should consider whether they are breaking any confidentiality in publishing data or information.

Many public sector bodies will have data that contains confidential information. Public sector bodies should ensure that they balance their INSPIRE obligations with the need to respect the confidentiality of the body itself or, more often, those of third parties.

A good example of this is the protection of 'personal data' as required by the Data Protection Act, and the need to protect the rights of the individual about whom data is obtained, stored, processed or supplied. Another good example is environmental sensitivity to species or habitats which may require protection under law.

In other cases, the disclosure of some data could compromise national security, defence or public safety. Other examples where information may be confidential include issues related to national security, commercial confidentiality and information relating to legal proceedings.

Further questions for public sector bodies to consider:

1. Do you have a legal power to share the data? Data publishers must establish whether they have express and implied statutory and common law powers to publish data.
2. Do other legal rules of law prevent the publishing of data? For example, the Data Protection Act 1998 or competition law.
3. Can actions or modifications enable the sharing of data that would otherwise be restricted? For example:
 - data protection statements to enable sharing of personal data in cases where there is a mutual benefit (such as to reduce cost, provided that action is taken to comply with the data protection principles in Schedule 1 of the DPA unless an exemption to those principles applies),
 - removal or aggregation of confidential data to enable sharing by anonymising personal data so that persons are not identifiable.

Best practice 3: Environment Agency approach to confidentiality

The Environment Agency has developed an 'Approved for Access' process for checking that a specified category of data is always safe to release to the public. Data is assessed at an attribute level against a number of criteria including Commercial Confidentiality, National Security and Personal Data. These checks are cross referenced against legal obligations that override confidentiality, for example under public register legislation.

Data is designated as safe for release in response to a request and/or for publication. In most (but not all) cases the information can also be licensed for re-use, with any licence conditions being noted through the process.

The process was identified as best practice in the EC published INSPIRE document 'Good practice in data and service sharing' document available at:

http://inspire.jrc.ec.europa.eu/documents/Data_and_Service_Sharing/GoodPractice%20DataService%20Sharing_v2.pdf.