

The SKOR Codex (2012), La Société Anonyme
ODI Commission "Data as Culture"

Law, licensing & best practice



heavily adapted from
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Barrister – called to the Bar in 2003

copyright and related rights

information technology

commercial and contract law

digital media law

Act for and advise:

start ups and small companies

public and private sector

Parameters

English law

substantive law (i.e. statutes and cases) in order to provide background and context to the above
within the context of international business

Practical tips and hints

knowledge and skills that can assist day-to-day

Questions, discussion and participation

Broad overview

Key legal issues to be considered when evaluating data

- computer crime

- personal data

- overview of intellectual property rights and related issues

Licensing

Open licensing

Key business and commercial considerations

Non proprietary use restrictions

What if?

Terms and conditions forbid data extraction or re-use

1. Stephen access a public website
2. Elaine takes data from the CD she bought from the publisher
3. Jo signs up as a user on a website and then uses data from the site

Possibly

1. Stephen commits a criminal offence (computer misuse)
2. Elaine is in breach of contract
3. Jo is both

Computer Misuse Act

Offences

- unauthorised access to computer material

- unauthorised access with intent to commit or facilitate further offences

- unauthorised modification of computer material

Penalties

- 2 – 10 years imprisonment

- fines

Contract

Terms and conditions of use may restrict further use
no requirement for ownership

Personal data

Definitions

- “any information relating to an identified or identifiable natural person”
- “an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”

Examples

- list of email addresses
- blog post about day at work
- anonymised patient data where the GP has the key

Problems

Data protection principles

- meets a condition for lawful processing

- more conditions for sensitive personal data

- transfer out of the EEA (cloud, website)

- purpose limitations

Data Protection Act offences

- knowingly or recklessly obtaining personal data from a data controller

Solutions

Meticulous adherence to data protection law

Consent

Anonymisation

aggregation

danger of re-identification

ICO guidance



<http://ico.org.uk>

Data sharing code of practice

Anonymization code of practice

Data sharing checklists

Property Rights

Owning data

ownership of facts

you ought not to be able to own a fact

what about?

maps

still life sketches

photographs

arrangement of facts in a table

selection of a compilation

Copyright

Copyright, Designs and Patents Act 1988

Protects original works:

original literary, dramatic, musical or artistic works, including
computer programs and some databases

Arises automatically once recorded without the need for
registration

© symbol

Owner is the author or his or her employer

Rights continue for author's life plus 50-70 years

Rights

Copying (all or a substantial part)

Issuing copies to the public

Renting or lending to the public

Performing, showing or playing the work in public

Communicating the work to the public

Making an adaptation of the work

or doing any of the above in relation to an adaptation

... and

Authorizing any of the protected acts

Also:

secondary infringement

joint infringement

Criminal offences

Beware

Consultants and paying for the creation of materials

Joint ownership

“public domain”

User generated materials

Submitting your materials online

Assignment must be signed and in writing

Exceptions

Fair dealing

Non-commercial research

Private study

Criticism and review

Reporting

EU harmonization

Trio of directives:

- Software directive

- Database directive

- Information society directive

Partial harmonization

“own intellectual creation”

Relevance

Contents of the database – general copyright

images

text

Database software – software copyright

Structure of the database – database copyright

Investment in database – database right

“Database”

A collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means

Database Right

Aimed at database promoters

Rewards **substantial** investment

obtaining

verifying

presenting

Infringement

Infringed by

extraction

re-utilization

Little and often

Cases

Fixtures Marketing (collecting v obtaining)

Football Dataco v Sportradar (where)

Directmedia Publishing v Albert-Ludwigs-Universität
Freiburg (how)

Apis-Hristovich v Lakorda (when)

UK

Football Dataco v Stan James (obtaining)

Fixtures Marketing

Fixtures Marketing v Organismos prognostikon agonon
podosfairou (C-444/02)

aka British Horseracing Board

creating is not obtaining

organizational data is probably excluded from the right
value of the contents irrelevant

Directmedia

Directmedia Publishing v Albert-Ludwigs-Universität
Freiburg

100 most important poems in German Lit. 1730-1900

Directmedia copied selectively and critically

still an extraction

does not matter that it was done by hand

does not matter that the arrangement has changed

Apis-Hristovich

Apis-Hristovich v Lakorda

When: when the contents appear in the new form

Multi-module database

assess what is the database

Football Dataco

Football Dataco v Stan James

football data

recorded by experts at sports grounds

measuring is “obtaining”

Copyright

Species of copyright

most learning from literary copyright carries over

infringement is much the same (reproduction, communication to the public etc)

“Own intellectual creation”

selection

arrangement

Football Dataco

Football Dataco v Yahoo!

Fixtures lists

claim: copyright

setting up fixtures requires lots of intellectual creation

rejected: contents of the database do not matter

database are **only** protected by European copyright

Related issues

Moral rights

Confidentiality

Rights in other countries

- hot news

- ancillary copyright for press publishers in Germany

Licensing

Introduction and overview of licence terms

Licence

A licence is a permission
need not be a contract
permits all or only some acts that require permission

Licence terms

Exclusivity

non-exclusive v exclusive v sole

Right to sub-license

Many parameters, eg

perpetual

irrevocable

royalty-free

worldwide

Scope of licence

Scope of licence

- copy
- use
- develop
- license others/sub-license
- licensed product or materials
- geographic territory
- individual licensee
- company or organisation
- named/numbers of users
- site licence
- network and remote access
- restrictions

Purpose and duration

Purpose of licence

- educational/research

- commercial

- internal business purposes

Duration

- perpetual

- irrevocable/non-terminable

- fixed term

- renewable

Commercial terms

Commercial terms

one off fee

ongoing subscription

additional fees e.g. support and maintenance

payment terms

IPR

reproduction of copyright notices

infringement of third party IPR

- indemnity
- other remedies

General licence terms

delivery and acceptance

practical terms e.g. operating
software and equipment or
system requirements

additional services/know how e.g.
updates

quality

liability

confidentiality

termination rights

assignment

dealing with disputes

governing law

Structures

Incorporation of terms

signed, negotiated licence agreement

shrinkwrap

clickwrap, browsewrap and on-line terms

embedded terms

application service provider

subscriber-based

framework arrangements

SAAS

Open licensing

Definitions and overview

What do we mean?



<http://opendefinition.org/>

“A piece of data or content is open if **anyone** is free to use, reuse, and redistribute it — subject only, at most, to the requirement to attribute and/or share-alike”

Background and history

GNU General Public Licence

Government and open data

<http://www.data.gov.uk/>



Slides by Francis Davey (adapted from those of Sherree Westell)



Public sector information

Open government licence



<http://www.nationalarchives.gov.uk/doc/open-government-licence/>

Creative Commons



<http://creativecommons.org.uk/>

Attribution

use: **none** v non-commercial

re-use: **none** v no-derivatives v **share-alike**

C00

waive all rights



Slides by Francis Davey (adapted from those of Sherree Westell)



CC Open licences

CC0

CC-BY

CC-BY-SA



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CC problems

Inconsistent porting

- UK (England and Wales) – 2.0

- UK (Scotland) – 2.5

- International – 3.0

Inconsistent reference to database right

- International 3.0 – no reference

- French 3.0 – includes database right

Open Data Commons



<http://opendatacommons.org/>

Open Data Attribution Licence

Open Data Commons Open Database Licence

Open Data Public Domain Dedication and Licence

Public domain

CC0

includes database right
contents **and** data

PDDL

database only

Bespoke terms

Rights owner applies its own terms to a work

Never write your own open licence

(unless ...)

Licensing and commercial objectives

Analysing and applying licence terms

Is it right for us?

Key commercial and legal issues to consider before
selecting a licence under which to make available data or a
work
using licensed data and works

Key points

Type of data or work

Third party content and rights

Irrevocability

Intended activities and practicalities

Recognition

Revenues and business models

Questions, discussion and points

