Facilitate Open Science Training for European Research

University of Malta
L-Università ta’ Malta
COPYRIGHT AND RE-USE OF RESEARCH PUBLICATIONS AND RESEARCH DATA

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Attorney-at-law
Creative Commons Portugal Legal Lead

FOSTER
LEGAL PROTECTION OF RESEARCH DATA AND PUBLICATIONS
I. COPYRIGHT PROTECTION

II.
COPYRIGHT PROTECTION: OVERVIEW

• Intellectual creation
• Literary, scientific or artistic domains
• Protects expressions, not ideas
• Original = not copied from others
• Merit and purpose are irrelevant
• Necessary forms are not protected
• Certain freedom of choice
• Not enforceable against similar but independently created works
• TBD on a case-by-case basis
COPYRIGHT PROTECTION: OVERVIEW

• Protection commences automatically upon creation of the work
• No need for registration or other formalities
• No need to be published
COPYRIGHT PROTECTION: OVERVIEW

• Exclusive right to use or authorize others to use literary or artistic works:
  - Making a copy or downloading
  - Translating or adapting, etc.
• Exceptions:
  - Private copy
  - Citation, etc.
• Economic rights vs. moral rights
• Author vs. rightholder
• Territorial right
COPYRIGHT PROTECTION: OVERVIEW

COPYRIGHT PROTECTION: DATA

• Separate items of data in certain form
• Datasets in certain form
• Databases in certain form

=  

©

• Bare facts
• Bare items of information

=  

©
COPYRIGHT PROTECTION: DATA

FORM
=
PROTECTED

CONTENT
=
FREE
COPYRIGHT PROTECTION: DATA

FORM = PROTECTED

• Tables
• Formulas
• Words
• Complete datasets
• Photographs
• Videos
• Maps
• Diagrams
COPYRIGHT PROTECTION

PROTECTED

• Written down in original wording
• Presented in original manner
• Selected from a larger set of data and processed
• Original selection and arrangement to form a database
COPYRIGHT PROTECTION: DATA

NOT PROTECTED

• Simply presenting a series of measurements in a table
• Short phrases
• Standard scientific terms/structures
• Satellite photos
Even if the FORM is PROTECTED by COPYRIGHT, BARE FACTS can still FREELY be used, provided they are presented in a different (own) form

EXCEPT IF

The use of the BARE FACTS constitutes a substantial retrieval from a database protected by SUI GENERIS RIGHT
I.

II. SUI GENERIS RIGHT PROTECTION
SUI GENERIS RIGHT PROTECTION

OBJECT: arts. 2 and 7 Database Directive

- Collection of items (figures, codes, words, descriptions, photographs, etc.)
- Items must be independent: it must be possible to separate them without their loosing their value/meaning
- Arranged in a systematic or methodical way
- Individually accessible by electronic or other means
- Qualitative and/or qualitative substantial investment in either the (1) obtaining, (2) verification or (3) presentation of the contents
SUI GENERIS RIGHT PROTECTION

EXCLUSIVE RIGHT: art. 7 Database Directive

• Right to prevent unauthorized extraction and/or re-utilization of the whole or of a substantial part of the contents of the database
• Protects the investment not the creation
• Different from copyright
SUI GENERIS RIGHT PROTECTION

(OPTIONAL) EXCEPTIONS: art. 9 Database Directive

• Private purposes
• (Non-commercial) Purposes of scientific research, provided that (a) source is indicated and (b) extent is justified by the purpose
• (Non-commercial) Purposes of illustration for teaching, provided that (a) source is indicated and (b) extent is justified by the purpose
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II.
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Open Data definition by Open Knowledge
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Three “layers” of licences
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Section 1 – Definitions.
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I. CC PUBLIC DOMAIN TOOLS
Data related to published science should be explicitly placed in the public domain

Panton Principles
<table>
<thead>
<tr>
<th>Features</th>
<th>Public Domain Mark</th>
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<tbody>
<tr>
<td>Nature of tool</td>
<td>Label for works already in the worldwide public domain</td>
</tr>
<tr>
<td>Who may use</td>
<td>Anyone with knowledge</td>
</tr>
<tr>
<td>Scope</td>
<td>Copyright, including all related and neighboring rights</td>
</tr>
<tr>
<td>Legal status of work to which tool may be applied</td>
<td>Any work that is already free of known copyright worldwide, including all neighboring and related rights</td>
</tr>
<tr>
<td></td>
<td>NB: the PDM deed notes that moral rights may persist</td>
</tr>
<tr>
<td>Person(s) whose rights are affected upon application</td>
<td>None, PDM is not legally operative of tool</td>
</tr>
<tr>
<td>Rights affected upon application of tool</td>
<td>None, PDM is not legally operative</td>
</tr>
<tr>
<td>Rights that may exist/persist after application</td>
<td>Moral and other related and neighboring rights that persist post-expiration of applicable copyright term (but note, PDM does not attempt to affect those rights)</td>
</tr>
<tr>
<td>Effect on work itself upon application</td>
<td>None, PDM is not legally operative but instead labels a work already free of known copyright and related and neighboring rights through means such as expiration of term of applicable copyright term</td>
</tr>
<tr>
<td>Features</td>
<td>CC0 Public Domain Dedication</td>
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<td>----------------------------------------------</td>
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<tr>
<td>Nature of tool</td>
<td>Tool that effectively places a work in the worldwide public domain</td>
</tr>
<tr>
<td>Who may use</td>
<td>Rights holder (&quot;affirmer&quot;)</td>
</tr>
<tr>
<td>Scope</td>
<td>Copyright, including all related and neighboring rights</td>
</tr>
<tr>
<td>Legal status of work to which tool may be applied</td>
<td>Any work that is restricted by affirmer's copyright or neighboring and related rights, in one or more jurisdiction(s)</td>
</tr>
<tr>
<td>Person(s) whose rights are affected upon application of tool</td>
<td>Rights of the affirmer only; no effect on the right(s) of third parties</td>
</tr>
<tr>
<td>Rights affected upon application of tool</td>
<td>All of affirmer's copyright and related and neighboring rights are unconditionally waived or licensed (where waiver is not effective)</td>
</tr>
<tr>
<td>Rights that may exist/persist after application</td>
<td>Moral and other related and neighboring rights of affirmer that are not waivable or licensable</td>
</tr>
<tr>
<td>Effect on work itself upon application</td>
<td>Places work as closely as possible in the public domain, worldwide</td>
</tr>
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</tbody>
</table>
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