Understanding data ownership in an open context

The legal framework for research data is complex. There is not a single unified law, but many different laws passed at different dates and in different contexts. However, a few points can help you get your bearings.

The general principle of public data being made open by default has been progressively extended to research data under the Valter (2015) and Lemaire (2016) laws. They establish a general principle of openness and free reuse of public information (Open Data by default). In principle, research data counts as public information, and is thus subject to the general principle of default opening of public data. It is only in a series of exceptional cases that research data, like all public data, is not subject to this general principle, especially to protect third parties' rights (relating to intellectual property, private life, confidentiality, and secrets).

Status of research data

Unlike publications, there is no copyright on all data. There is copyright on certain data which is intellectual work in the meaning defined by the intellectual property code. Data which is not intellectual work is public information. Thus in most cases it is not the researcher who owns data but the institution.

Data and codes issuing from research are held to be administrative documents: this implies free access on request, the obligation to disseminate them free of charge, and free reuse. Thus the principle which prevails for research data is "as open as possible, as closed as necessary".

In the event of a consortium of international teams, the question of data ownership needs to be settled in advance.

Obligation to share research data

The Digital Republic Law (2016) seeks to preclude publishers from capturing research data and thus preventing its reuse. Article 30 of this law states that, whenever data issues from research funded to the tune of at least 50% by public money, then it is "not protected by a specific right or particular regulation, and on being made public by the researcher, institution, or research body, may be freely reuse". Article 6 places a new obligation on universities: the principle of making all "complete" administrative data (which includes research data) open by default.

It is even an obligation to publish data online if at least one of the following criteria is met :

- A request to communicate it has been received following the CADA procedure
- The data is geographical or environmental (INSPIRE Directive)
- It is listed in the repertory of the main administrative documents the institution has to produce and keep up to date
- The data is of environmental, social, sanitary, or economic interest

Nevertheless, while it is theoretically an obligation to make data openly available, this may in practice be deferred, concern only part of the data, and be adapted on a case-by-case basis, depending on the nature of the data itself.

Reusing data

Concerning reuse of data issuing from research activity, the Digital Republic Law states that it is openly available if :

- The data issues from research funded the tune of at least 50% by public money;
- The data is not protected by any specific law;
- The data has been made public by the researcher or establishment.

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Further information

- European Commission – Open science and intellectual property rights
- (French Ebook) Livre blanc — Une Science ouverte dans une République numérique
- Fact sheet - Legal, ethical and scientific integrity aspects (French)