

# Legal Issues in Decisions on the Use and Storage of Research Data, especially in Inter-institutional Research Projects

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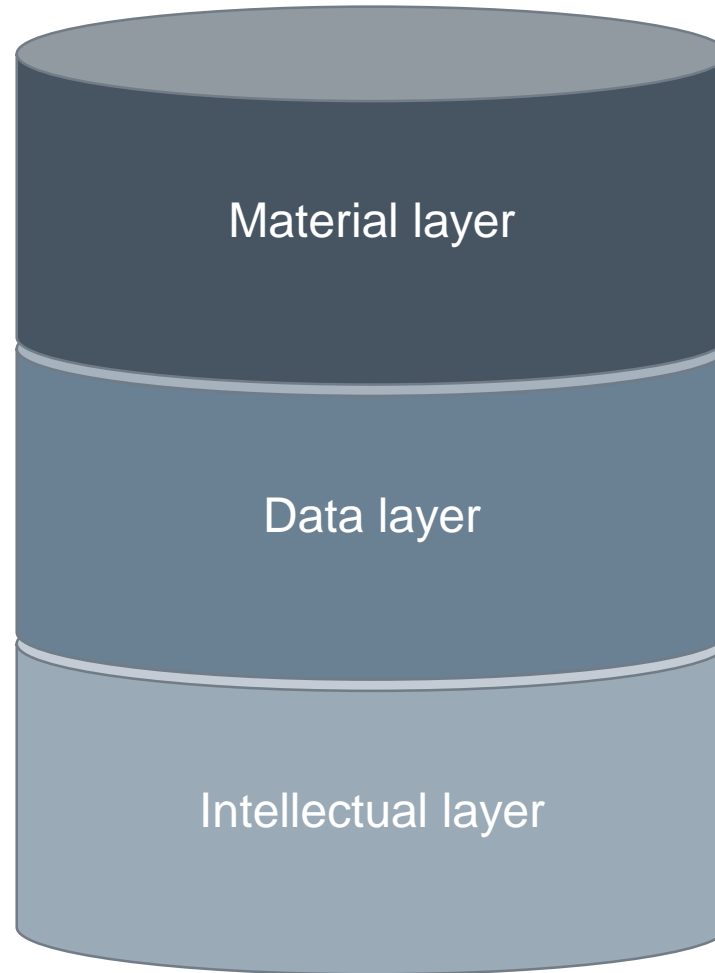
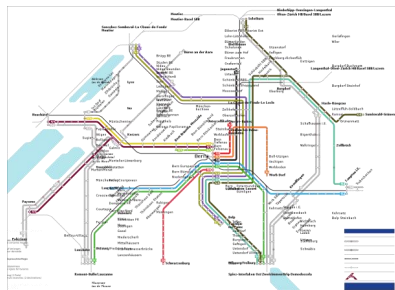
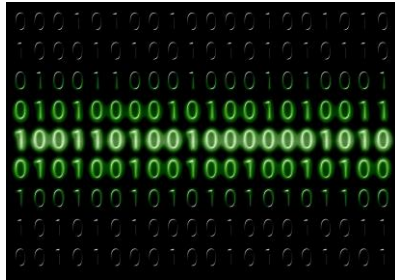
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# Agenda

- › I. Applicable laws and rules
- › II. Data handling person
- › III. Timing of contracting
- › IV. Summary

# I. Applicable laws and rules

# Layer model on (research) data

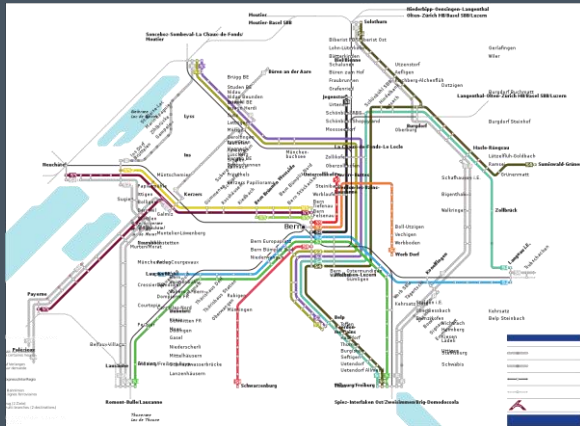


Property, Possession,  
Tort Law, Criminal Law

Trade Secrets, Rights of  
makers of database,  
Copyright

Copyright, Rights of  
makers of database,  
Data protection (GDPR),  
Trade Secrets, Patents,  
Design, Tort Law etc.

## Intellectual layer



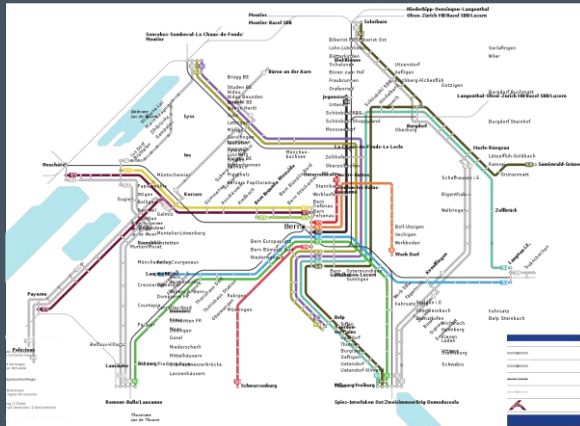
### › Act on Copyright and Related Rights

### › Copyright protection requires esp. originality

- Subject must reflect the personality of its author, as an expression of his free and creative choices
- It lacks free creative choices if the expression has been dictated by technical considerations, rules or other constraints

### › This is why there is usually no copyright protection for contents in (quantitative) research data

## Intellectual layer



- › Higher education framework act (HRG) – sec. 24 Publication of research results

In the publication of research results, research staff members who have made their own scientific or other significant contribution **shall be named as co-authors**; where possible, their contribution shall be identified.

- Legal effect towards everyone conveyed by tort law

- › DFG Guidelines for Safeguarding Good Research Practice – Explanation to Guideline 10:

In particular, **the researcher who collected the data is entitled to use them**. During a research project, those entitled to use the data decide whether third parties should have access to them (subject to data protection regulations).

- Legal effect towards contractual partners conveyed by labour law; legal effect towards work colleagues conveyed by institutional rules (e.g. institutional statutes) or regional state law

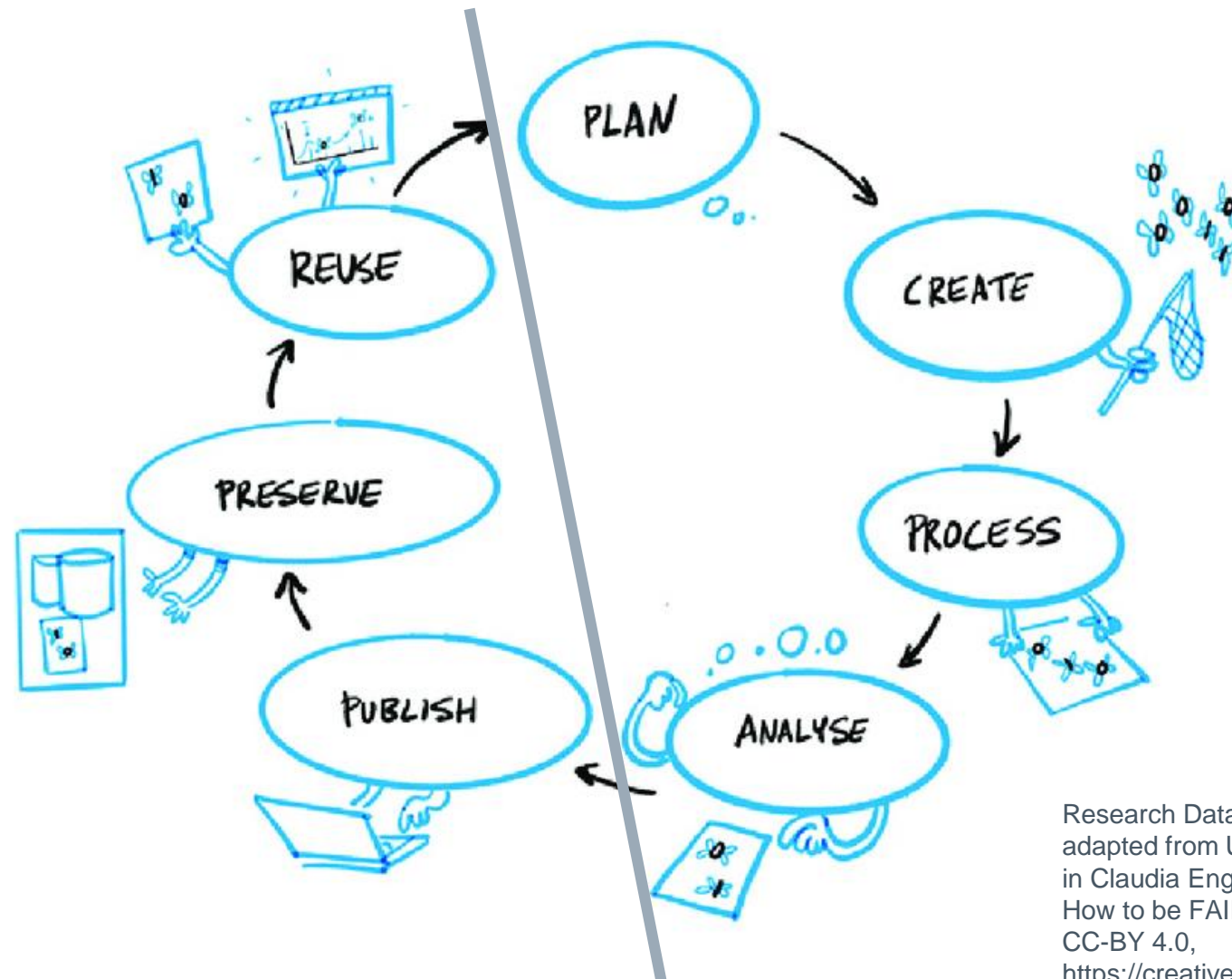
- › Guideline 13:

As a rule, researchers make all results available as part of scientific/academic discourse. In specific cases, however, there may be reasons not to make results publicly available [...]. **Researchers decide autonomously [...] whether, how and where to disseminate their results.**

## II. Data handling person

*Or who is the rights holder?*

# 1. Relevant actions – ‘What’



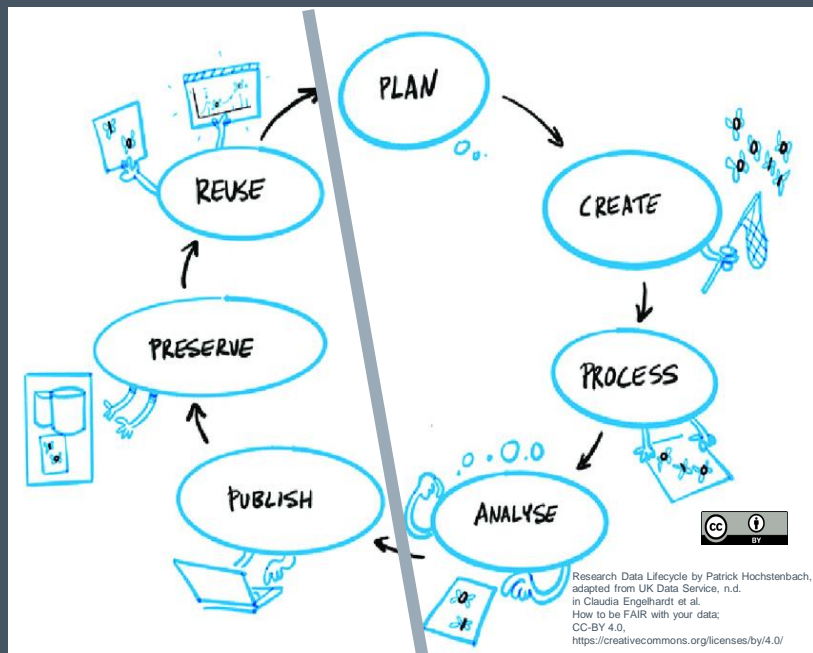
Research Data Lifecycle by Patrick Hochstenbach,  
adapted from UK Data Service, n.d.  
in Claudia Engelhardt et al.  
How to be FAIR with your data;  
CC-BY 4.0,  
<https://creativecommons.org/licenses/by/4.0/>



# 1. RELEVANT ACTIONS – ‘WHAT’

DFG Guidelines for Safeguarding Good Research Practice

Guideline 14: Authorship



An author is an individual who has made a genuine, identifiable contribution to the content of a research publication of text, data or software. [...]

Explanations:

[...] What constitutes a genuine and identifiable contribution must be evaluated on a case-by-case basis [...]. An identifiable, genuine contribution is [...]

- the development and conceptual design of the research project, or
- the gathering, collection, acquisition or provision of data, software or sources, or
- the analysis/evaluation or interpretation of data, sources and conclusions drawn from them [...].

## 2. Acting person – Obligations

no (labour) obligation to plan, create, process, analyse



- > Research projects with voluntary, contractual obligations

(Junior) Professors

- > Every other project

- > Research projects with voluntary, contractual obligations
- > Projects occurring during work for employer

Academic Assistants, Research Associates etc.

- > Research projects leading to own academic degree (e.g. promotion, habilitation)

- > Research projects with voluntary, contractual obligations

Students

- > Every other project

Obligation to plan, create, process, analyse



## 2. Acting person – ‘Who is the rights holder?’

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- > Publication rights
- > Attribution rights
- > Right to object to derogatory treatment
- > Right of access
- > Exploitation rights

(Junior) Professors  
(and Students)

- > Only voluntary, contractual granted specific rights

rights and entitlements enforceable by **employer**

- > Attribution rights
- > Right to object to derogatory treatment
- > Right of access
- > Publication rights if data stems from own qualification process
- > Exploitation rights if data stems from own qualification process

Academic Assistants, Research Associates etc.

- > Non-exclusive rights of use
- > Publication rights to all other data if not conflicting with concrete scientific interests

rights and entitlements enforceable by **employee**

# III. Timing of contracting

# 1. Contracts and undertakings before the start of a project

- › General rule: No contracts in detriment of third not involved parties
- › Differentiation:
  - No permission to dispense any rights, claims or legal interests of third parties
    - › E.g. Publication, non-exclusive rights of use
    - › Even concerning ‘not yet employees’
    - › Such clauses don’t come into effect
      - Additional contract between concerned parties necessary; must be voluntary
  - Allowed to dispense any rights only enforceable by contracting parties

## 2. Contracts and undertakings during research project

- › Every rights holder must be involved
- › DFG Guideline 10 states:
  - The legal framework of a research project includes documented agreements on usage rights relating to data and results generated by the project.
- › Every understanding and consent must be made voluntarily
  - E.g. own possibility of own qualification must not be explicitly or implicitly endangered
- › Possibility to form a revocable agency by private act

### 3. Contracts and undertakings after research project

- › A publication of research data by rights holders obstructs their possibility of objection to further publications
  - If institution holds necessary rights of use, no consent to further publication needed – contracts are possible
- › Previous individual contracts can be continued unless they provide otherwise

# IV. Summary



## IV. Summary

- › Research data whose content is not covered by copyright and/or related rights should not be treated differently from protected research data, because other similar claims grant almost the same amount of protection.
- › Generally rights ownership follows the legal or contractual obligation to create/process/analyse research data.
- › Some rights may not be waived.
- › Research agreements and contracts can not dispense any anticipated rights of third parties.

Thank you for your  
attention.