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Legal and ethical issues in open access to ressarch data

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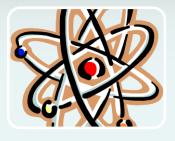RECODE final conference

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Objectives –
"How to" do open access to research data

- To **reduce stakeholder fragmentation** in the open access movement
- To produce ***evidence-based*** policy recommendations on supporting open access to research data

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Case studies

Physics

Particle Physics and Particle Astrophysics (PPPA) Group

Health

FP7 Project EVA (Markers for emphysema versus airway disease in COPD)

Bioengineering

Bioengineering Institute, Auckland NZ, and Virtual Physiological Human (VPH) Community

Earth Sciences

Global Earth Observation System of Systems (GEOSS)

Archaeology

Open Context

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Grand challenges

Stakeholder values & inter-relationships

Infrastructure & technology

Legal and ethical issues

Institutional and policy issues

Key messages

The development of open access to research data needs to be:

- Informed by research practices and processes in different fields

- Supported by an integrated institutional and technological data infrastructure and guided by ethical and regulatory frameworks

- Underpinned by infrastructure and guiding frameworks that allow for differences in disciplinary research and data management practices

- Characterised by a partnership approach involving key stakeholders, researchers and institutions

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RECODE recommendation

Recommendation 9:

Systematically address legal and ethical issues arising from open access to research data

Work package 3: Legal and ethical issues

1. Identify legal and ethical obstacles, barriers and solutions in relation to open access to research data
2. Use interviews with appropriate case study representatives to examine the ethical and legal issues
3. Conduct a workshop with a diverse array of stakeholders to validate the work package findings and identify elements of good practice

Key research findings

- The existing legal regime and requirements for ethical research practice create a complex landscape for researchers.

- Current best practices suggest that the use of existing institutional or disciplinary mechanisms for addressing legal and ethical issues should be a first stop for addressing issues related to copyright, intellectual property and research ethics.

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A complex landscape

- Legal obligations to which stakeholders are subject are sometimes in conflict
  - intellectual property
  - privacy
  - data protection
  - open access mandates

- An opportunity for devising new solutions, rather than a barrier

Practitioners wishing to comply with open access mandates often have to navigate privacy, data protection and intellectual property issues.

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Creative solutions

- These complex and contradictory obligations prompt stakeholders to find practical solutions to navigate them in creative ways
    - Using internal review boards with particular expertise (e.g., research ethics or data protection) and soft law measures to review materials before they are released
    - Using licensing to control how the research data is re-used

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Intellectual property

- Creative Commons and other open Licenses such as Government Open Licenses.
  - Define conditions under which data can be opened
  - Can vary from no restrictions (e.g., CC0) to restrictions on commercial use, derivatives, etc.
- Licensing can enable open access
- Licensing can also ensure that re-users respect other obligations such as privacy and data protection

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Privacy and data protection

- Institutional or disciplinary review mechanisms
  - Interpreting risk levels around privacy and personal data on a case-by-case basis
  - Frees staff from having to develop expertise

Through the GPS coordinate you can identify the particular land and then if you go, you can verify also who is the owner of that land. So you can trace back the physical person behind the data. When the question reached the Data Protection Coordinator, I think we agreed that we could only disclose the data and the area where it was, but not the GPS coordinate…

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Research ethics

- Ethical review boards
  - Evaluate content
  - Flag issues
  - Suggest alternatives
- Disciplinary or professional codes of conduct

[W]e take a lot of our clues on the ethical front from various journals and other kinds of venues where people publish this kind of material routinely and most journals and publishing houses have ethical guidelines that they follow. And we look to them sometimes for clues, because it's quite similar in many ways.

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Recommendations on addressing legal and ethical issues in PSI

1. Explore the use of licensing, especially Creative Commons or open government licenses, to address legal and ethical issues;

2. Stakeholders associated with open data should begin by trying to ask different questions to produce a relationship that is not viewed as trading off legal compliance and open access;

3. Consider technical or institutional solutions to legal and ethical problems;

4. Establish and clarify circumstances where it is lawful and appropriate to provide open access to data which may be personal data

5. Make better use of internal review processes and expertise

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Further information

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