

A brief guide to determining what consent is necessary to reuse someone else's research data

This brief guide can help researchers quickly determine what consent they need in order to reuse someone else's research data. It includes references to the detailed explanations in 'The legal status of raw data: a guide for research practice', 2009.

It is important to note that this brief guide cannot replace the full legal guide but is meant only as an aid to finding one's way around this document. This brief guide is derived from the schematic overview in the full legal guide.

Do you want to make a copy for your own use?



You do not need to seek consent for this.

Do you want to input data into your own scientific/scholarly database, without sharing it with anyone other than your own team of researchers?



You do not need to seek consent for this.

Explanation: Even if the data is protected by copyright or database right, this type of use is one of the permitted exceptions: making a copy for your own use (Section 2.4.5) of a copyright-protected work or retrieving substantial portions of a database in the context of scientific/scholarly research (Section 3.2.5; retrieving non-substantial portions does not require consent in any case: Section 3.2.3).

Do you want to publish some of the data that you are borrowing or to share it with someone other than your own team of researchers?



Then you probably need to secure the author's consent.

Check whether copyright applies:

Does the research data have an original character of its own and bear the personal stamp of the author? (Tip: Is it conceivable that two different authors, working separately, could have arrived at precisely the same form?.)



Copyright applies and you need to secure the consent of the author/authors.

Explanation: The decisive point is therefore whether the author had freedom of choice in arranging the data in a particular form and whether he did this – deliberately or otherwise – on the basis of personal preference (Section 2.3.2). Even just a selection consisting solely of bare facts may be subject to copyright protection (Section 2.3.3).

Check whether database right applies:

Are you dealing with a collection of independent materials (research data)?

Is the data collection arranged systematically?

Has there been a substantial investment in obtaining, verifying, or presenting the materials? The investment in carrying out the research that generates the data does not count.



Database right applies and you need to secure the consent of the author/authors.

Explanation: This is explained in detail in Sections 3.1.1., 3.1.2, and 3.1.3.

Do you intend publishing the protected data that you have borrowed in some way, or making it available to other people in some other way?



Copyright applies and you need to secure the consent of the author/authors.

*Explanation: in cases such as this, the law speaks of **publication** (Section 2.4.2). Other people's data can only be copied or utilised for the purpose of your own research without the author's consent if it is not published (Section 2.4.2).*

The proposed use requires the author's consent (Section 4.3).

Are you dealing with the right to cite, works produced by a government body, the all-inclusive form, a selection of bare facts or other types of data (photos etc.)?



Then there is a copyright law exception and you do not need to secure consent.

Explanation: These exceptions are explained in Sections 2.4, 2.1.2, 2.3.3, and 2.3.4.

Do you intend not only borrowing data from the database for your own research but also publishing it further, for example in a publication, or do you intend sharing your own material (which will then include the data you have borrowed) with other people?



Database right applies and you need to secure the consent of the author/authors.

Explanation: In cases such as this, the law speaks of reuse.

Do you intend reusing a substantial portion of the database?



There are no clear criteria for what constitutes a "substantial" portion. It is necessary to consider the relationship between the reused portion and the database as a whole, as well as the technical and economic value of the reused portion.

Explanation: See Section 3.2.3; see also 3.2.8.

Do you intend using a government database?



You do not need to seek consent for this.

Explanation: Unless provided otherwise, government databases are basically not subject to database right (Section 3.2.6). You do not require the consent of the rightholder in order to retrieve substantial portions of a government database in the framework of scientific/scholarly research (Section 3.2.5)

Do you intend borrowing in full or publishing in full a text that has been published (or is intended for publication) but that is not protected by copyright or database right?



This is only permitted if you publish it in an altered version.

Explanation: See Section 4.

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