



Queen Mary
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IP Issues in SMEs Access to Government Data: an brief overview

Expert Meeting on SMEs and Their Use and Access to Government Innovation

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Agenda

- Setting the scene: data – driven economy and SMEs
- Selected instances of national approaches to IP protection of government data
 - United Kingdom
 - United States
 - Germany
 - France
 - China

The data-driven economy and access to data

- Stimulate innovation and develop new products and services
- Access to data is essential to AI – generated innovation
- The value of public sector information to consumers, businesses and the public sector is estimated in the many billions
- SMEs are likely to be the main beneficiaries of open data access, since they often lack the resources or tools to access proprietary data or to mine data where it requires sophisticated analytical tools.
 - Open access data, however, requires fewer resources to utilise
 - Open data stimulates innovation by removing barriers to access, use and share ability of data
- Open data can help to create a variety of new business offerings, such as platforms that facilitate analysis, insight and decision-making (both for business and consumers);
- Open data contributes to the creation of new products and services

United Kingdom

- Government-produced information in the United Kingdom is protected under Crown and Parliamentary copyright, according to the Copyright, Designs and Patents Act 1988 (CDPA)
- Protects works made by officers or servants of the Crown in the course of their duties.
- Ownership of Crown copyright protected works is vested in The Crown and has an extended protection period of 125 years from the end of the year in which the work was created. S. 163(1)(a) CDPA 1988 (unless published)
- Late 1990s - Green Paper on Crown copyright in the information age

United Kingdom: consequent to the Green Paper (covers both © and database rights)

- United Kingdom Government Licensing Framework (UKGLF) – *inter alia*, provides for a policy and legal overview regarding licensing arrangements for the use and re-use of public sector information, exhibits best practices, standardises the licensing principles for government information, mandates the OGL as the default licence for Crown bodies and recommends OGL for other public sector bodies.
- Open Government Licence (OGL) - similar to the Creative Commons Attribution License 4.0 and the Open Data Commons Attribution License.
 - The licence grants a worldwide, royalty-free, perpetual, non-exclusive licence to use the information to copy, publish, distribute, transmit and adapt the Information, as well as exploit it commercially and non-commercially
 - Requires attribution
 - Exempted from such licence is data such as, *inter alia*, personal data in the information, departmental or public sector organisation logos, crests and the Royal Arms

United States

17 U.S.C. § 105, 1976 - "copyright protection is not available for any work of the United States Government."

17 U.S.C. § 101 1976 - Works of the US Government are works "prepared by an officer or employee of the United States Government as part of that person's official duties."

Such works include writing, images, and computer code and do not bare restrictions on reproduction, derivative works, distribution, performance or display.

Applies only to Federal government works.

United States: scope of public domain

- Exceptions to this include, *inter alia*, privacy and publicity rights, other US Government IPRs such as trademarks for logos, or works that are used by the US Government by permission of a rights holder.
- The exception to copyrightability does not apply to individual US states and local government.
- The exception does not apply to exploitation outside the US, and the US Government reserves the right to claim copyright protection outside of the US for its governmental works.
 - Some agencies, however, waive their copyright by means of the CCo 1.0 Universal Public Domain Dedication
- ..

Germany

- Starting point: official works (*Amtliche Werke*), generally do not enjoy copyright or database right protection
- S. 5(1) Urheberrechtsgesetz (UrhG): “acts, statutory instruments, official decrees and official notices, as well as decisions and official headnotes” are excluded from copyright and database protection.
- According to S.5(2) UrhG, ‘other official texts’ are exempted from copyright protection, provided that they are created for official use and it is in the interest the public.
- ‘Other official texts’ include all types of copyrightable works, such as written and pictorial works of a scientific or technical nature, which are written by a public authority or a person appointed to perform a public service as part of performing an official obligation.
 - S.5(2) UrhG requires the user to indicate its source and not to alter the work

Germany: scope of public domain and reconciliation with copyright fundamentals

- Official works that are created solely for internal use still enjoy copyright protection.
- July 2017 – Open Data Law: covers data from all public authorities subject to Federal government.
- Raw data obtained during the fulfilment of public-law duties or through third parties, will be made available on public networks in machine readable form
 - Does not cover written documents
 - Does not cover public sector bodies that are not directly subject to Federal government
 - List of exception

France

No specific explicit provision excluding from copyright protection government publications, such as legislative acts or judicial decisions.

However, there is a legal convention according to which official acts are excluded from copyright protection. Such works include, *inter alia*, laws, decrees, orders, regulatory acts of local authorities, and judicial decisions.

France: entitlement & scope

- However, copyright law protects other administrative works, such as databases, images, software and studies by virtue of their creation.
- Copyright belongs to the relevant state agency, provided that the administration's officials produce such content in the course of the exercise of their duties.
- The code de la propriété intellectuelle (CPI) further sets out in Art. L.131-3-1 that in relation to the performance of a public service task, "the right to exploit a work created by a State agent in the course of his duties or according to instructions received, is from the moment of creation, transferred automatically to the State."
 - An exception covers scientific research activities of a public scientific and technological establishment or of a public scientific, cultural and professional establishment; the rights in such works must be transferred by virtue of contract

France: The Digital Public Act

Covers a wide array of issues pertaining to the digital environment.

Notwithstanding copyright questions, according to the law public entities must make their databases available online.

Furthermore, they are required to to guarantee the the quality and the updating of 'referencing data' such address book.

China: in brief

- A limited exception from copyright law.
- Article 5, PRC Copyright Law - written works, such as news reports of facts and happenings, laws, regulations, court decisions, and other works created by government entities in order to inform the public (as well as their official translations), and calendars, forms, tables and formulas, are excluded from copyright protection .
 - Compilations of such works may be protected by virtue of the selection and arrangement of their content.

Main takeaway

Divergence regarding the legal model employed in order to enable access and exploitation

Copyright is usually no barrier to open access

Presentation Concludes

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