

**PEERE Workshop on**  
**Guidelines and protocols for**  
**data sharing in peer review**  
**University of Brescia**  
**July 22-23, 2015**

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# Topics

- ✓ Copyright: what is, what should be and what should be not
- ✓ Are peer-reviews copyrightable?
- ✓ Are database created by publishers copyrightable?
- ✓ Data mining: which solutions?

# Purposes of Copyright

Copyright

- ✓ Should promote creativity and knowledge

But copyright

- ✓ Creates monopolies

But we need a new vision of copyright

- ✓ As something which should promote access to works where this access is not competitive with the exploitation of the copyrighted works

Copyright should not

- ✓ Limit the free flow of data, information, knowledge

# Are Peer-Review Reports Copyrightable?

- A peer-review report is a piece of information
- Can peer-review reports be protected under copyright law?
- They could be protected **per se** or, if collected, protected as a **database** under certain circumstances

# Database Protection



# What's a database?

- A **collection** of independent works, data or other materials arranged in a **systematic or methodical** way and individually **accessible** by electronic or other means
- Database protection does not cover computer programs used in the making or operation of databases accessible by electronic means

# Ownership

- Who is the author and the owner of the database?
- The “maker” of a database as held by the EU database directive?
- The company (publisher), if collecting and organising the data is made by the employee/maker in the course of his employment?
- The single contributors (reviewers)?
- In general, economic rights on database are regulated by contractual terms

# What is protected?

**Creativity**



**Sweat of the brow**





# EU DIRECTIVE 96/9/EC

## Copyright

- databases which, by reason of the **selection or arrangement** of their contents, constitute the author's **own intellectual creation** are protected as such by copyright

## Sui generis right

- qualitatively and/or quantitatively a **substantial investment** in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part of the contents of that database

# “Sweat of the brown” doctrine

- Under the “Sweat of the brown” doctrine, only the value created by the labor is required, not a degree of creativity
- Under this doctrine a directory created by A cannot be copied by B, but B can create his own directory (different from the A’s one) collecting the same data of the directory
- This doctrine was rejected by the US Supreme Court in the case *Feist Publications*

## *Feist Publications, Inc., v. Rural Telephone Service Co.*

- Rural is a telephone company publishing white pages created with the data collected from its subscribers
- Feist is a phone book compiler, whose white pages cover a geographic area which is much wider than the one of Rural
- Feist tried to obtain a licence from Rural, which refused
- Feist extracted the listings from Rural's directory, partially modifying them
- Rural sues Feist and two lower courts ruled in its favor

# Nothing but raw data?

- “Many compilations consist of **nothing but raw data** - i.e. wholly factual information not accompanied by any original expression. On what basis may one claim a copyright upon such work? Common sense tells us that 100 uncopyrightable facts do not magically change their status when gathered together in one place”
- Justice Sandra Day O'Connor, judge of the case *Feist Publications, Inc., v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)

## *Selected, coordinate, arranged*

- A database is copyrightable only if it is “selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship” pursuant to 17 U.S.C. §101
- In this case the compilation meets the **originality standard**

# Value of a Database

- ✓ Size and quality of the data collected
- ✓ Segmentation of the data
- ✓ Database accuracy
- ✓ Cost of maintenance
- ✓ User friendly
- ✓ Positioning and reputation within the industry

# Is Copyright Law the Solution?

- Reports of the reviewers)
- Databases which collect these data

# Referees' Reports

- A work must be original and creative
- In general, peer-review is not copyrightable as a work as it lacks of the minimum degree of originality and creativity required
- Thus a peer-review is not, per se, a copyrightable information
- However, if a peer-review does not follow a template and discusses the paper, then it'd be protected by copyright



# Database Collecting the Reports

- It can be copyrighted if it requires the minimum standards provided by the EU database directive
- According to the US law, a wider degree of creativity is also required

# Data Mining

- Aka KDD: Knowledge Discovery in Databases
- All the activities of automated categorization, summarizing, analyzing of data included into a database
- Data are used for patterns, trends and other useful information
- For data mining, data need to be copied
- Is this copy a copyright infringement?

# Current Legal Framework

- temporary or permanent reproduction by any means and in any form, in whole or in part is forbidden by database directive – article 5 (a)
- this could be lawful where there is use for the sole purpose of **illustration** for teaching or scientific research, as long as the source is indicated and to the extent justified by the **non-commercial purpose** to be achieved
- is the **copy** included in this exception?

# Public Consultation on the review of the EU copyright rules

- March 5, 2014
- (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?
- (b) [In particular if you are a service provider:] Have you experienced obstacles, linked to copyright, when providing services based on text or data mining methods, including across borders?
- (c) [In particular if you are a right holder:] Have you experienced specific problems resulting from the use of text and data mining in relation to copyright protected content, including across borders?

# Julia Reda's Report on Copyright

- According to some copyright holders two separate licenses would be required, the first one for reading the work and the another one for data mining processes
- The report suggests to clarify that the right to access to the data includes also the right to extract data through **automated analysis techniques**

# The New UK Copyright Law

- The Hargreaves Report suggested to introduce a new copyright exception
- Researchers are allowed to make copies of any copyright material, without any consent:
  - ✓ for the **purpose** of computational analysis
  - ✓ if they have a lawful **access** to the work
  - ✓ for **non-commercial** research

# EU Parliament Motion

- Motion for a European Parliament resolution on text and data mining and copyright / April 8, 2015
- Calls on the Commission to step up the search for a fair balance between the right to process scientific data and the right to privacy, and equally, between the full exploitation of the potential of TDM (with researchers being allowed to data mine content freely) and the protection of researchers and publishers.

# Thank You



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