Open Research Data: Missing Pieces in the Database Directive

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Sharing research data is growing trend in the international research community. This trend could be attributed to both public regulation and spontaneous development. In 2015 open, dataintensive and networked research has been proclaimed as the driver for faster and innovation by the European Council. The Open Science Data movement complements the second leg of the Open Science movement, namely the Open Access to publicly funded scientific results. The EU implemented the Open Research Data Pilot in the Horizon 2020 EU Framework for Research and Innovation. Participants in these pilots are required to deposit data in an open repository. Also, in order to make research more transparent and reproducible, the world's leading publishers, such as Nature Publishing Group, require the authors to make materials, data, code, and associated protocols promptly available to readers without undue qualifications. Finally, research institutions are also gradually changing their policies in order to follow the trend by creating data repositories.

Publishing of research data online will become integral part of dissemination of scientific results. Consequently, data will be mined, compiled, reorganized and merged into new databases by third parties.
In this paper we examine whether the Directive 96/9/EC on legal protection of databases offers suitable and clear rules for parties who are involved in modern international, multicentric and data driven research and follow the Open Research Data trend.

We argue that current relevant EU legislation is missing answers to some questions related to copyright and sui generis database rights in the context of Open Research Data. Particularly we focus on two problematic issues: joint ownership of sui generis rights and protection of raw research data from further propertization.

As regards to the first issue the Directive 96/9/EC and the relevant CJEU case law defines relatively clearly whether the database acquires copyright or suigeneris protection. However, it does not provide for much guidance when it comes to exercising these rights jointly. Even though the Database implicitly acknowledges joint ownership, the specific regulation of this issue is left to the national legislator. In a very brief comparative analysis of three selected national implementations
(United Kingdom, Germany, Czech Republic) we present the different approaches to joint ownership and exercise of sui generis rights and demonstrate the possible resulting problems in the international context.

As regards to the second issue, we hold the opinion that the Directive 96/9/EC does not balance the rights of researchers who publish their data for the sake of transparency and those who mine them. Most of the data made available online does not qualify for any database protection. They could be freely extracted by second party and compiled into larger databases, which would meet the criteria for the respective protection. The originator of the data however does not have any share in IP rights to the new database. We discuss, within the context of *R yanair* case (C30/14), whether it is possible or practical for the originator, to use click through agreements to prevent such scenario.