

This information guide contains general responses to common concerns about ownership of rights in research data. It may be necessary to consult specialist resources to answer more specific questions about research data. This guide complements other information guides on *Making Research Data Available*, *Frequently Asked Questions: Using Research Data* and *Choosing a Licence for Research Data*. A *Glossary* is available to explain certain terms used in this information guide.

When is research data protected?



In this information guide the definition of **research data** used in the [Concordat on Open Research Data](#).

Research data are the evidence that underpins the answer to the research question, and can be used to validate findings regardless of its form (e.g. print, digital, or physical). These might be quantitative information or qualitative statements collected by researchers in the course of their work by experimentation, observation, modelling, interview or other methods, or information derived from existing evidence. Data may be raw or primary (e.g. direct from measurement or collection) or derived from primary data for subsequent analysis or interpretation (e.g. cleaned up or as an extract from a larger data set), or derived from existing sources where the rights may be held by others. Data may be defined as 'relational' or 'functional' components of research, thus signalling that their identification and value lies in whether and how researchers use them as evidence for claims. They may include, for example, statistics, collections of digital images, sound recordings, transcripts of interviews, survey data and fieldwork observations with appropriate annotations, an interpretation, an artwork, archives, found objects, published texts or a manuscript.

Research data are likely to be a 'bundle' of different types of information and content, sourced from third parties, or created by the researcher. Research data may be factual and/or creative.

Data as such, like facts, principles, mathematical concepts and methods are not protected by copyright.¹ However, there are cases in which data, not as such but part of collections, can be protected. Additionally, whereas data as such are not protected by copyright, that does not mean data are not protected by other laws (e.g. confidential information or personal data). This guide will offer guidance in this area with a specific focus on research data.

This information guide will focus on those elements of research data that, in the UK, might be **automatically** protected by **intellectual property rights** such as **copyright protected works** and **databases** protected by **copyright and/or the Sui Generis Database Right (SGDR)**.

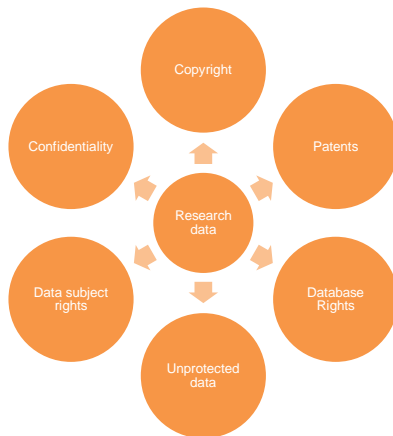
¹ Agreement on Trade-Relation Aspects of Intellectual Property Rights, WTO, Article 9

How does rules on research data impact on use?

Research data may be: -

- Automatically protected by the law;
- Regulated by contract.

Multiple types of protection might exist in research data, or there may be elements that have no legal protection.



As explained in this information guide, the **default position is that the owners of protected rights can restrict the use of those rights.**

Licensing is a way to stipulate when and how protected rights in research data can be used by others. Our information guides on *Making Research Data Available* and *Choosing a Licence for Research Data* provide further information on how to make research data available through licensing.

Our information guide on *Using Research Data* explores some of the concepts that are important when thinking about using data created by another researcher.

Before thinking about licensing or using research data, it is important to understand the rights that can arise automatically in the UK in research data. The rest of this guide will discuss copyright and the database right.

Sui Generis Database Right

– **SGDR** is a right protecting databases where there has been a substantial investment in obtaining, verifying or presenting the data. *You can read more about SGDR on pages 3-4 of this information guide.*

Copyright is a property right in certain types of works. Some works are original, but copyright also protects some non-original work. Copyright does not protect ideas. *You can read more about copyright on pages 5-6 of this information guide.*

Confidentiality protects confidential information. This might be imposed by a contract or if the information is marked confidential. Use of confidential information might give rise to a claim for compensation if confidentiality is breached.

Data Subject Rights arise in information that identifies individuals and are recognised by **data protection** laws in the UK and EU. The [Information Commissioner's Office](#) oversees the implementation and enforcement of data protection law in the UK.

Patents are registered rights in novel inventions of products or processes. Patent protection is not discussed in this guide.

Some research data may not benefit from any legal protection, although moral and ethical considerations may apply.

1. Sui Generis Database Right (SGDR)

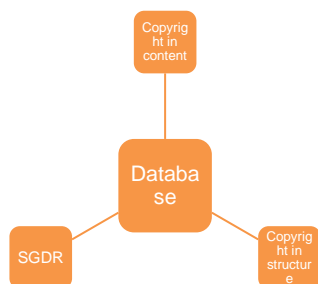
For legal purposes, a 'database' means "a collection of independent works, data or other materials arranged in a systematic or

methodical way and individually accessible by electronic or other means.”

Databases are not automatically protected by law unless: -

- (1) the **selection or arrangement** of the contents are **the author’s own intellectual creation** – in which case **copyright** protection applies to the structure of the database; or
- (2) they qualify for a special IP right (called the **sui generis database right (SGDR)**) because there has been a **substantial investment** in **obtaining,² verifying or presenting the contents** of a database (e.g. a database of poetry titles).

The content of a database can *also* be composed of copyright protected works in the first place, such as a database of scholarly articles. However in this case it is not the copyright in the database that extends to the content, there are simply two independent copyrights in the same database: the copyright in the database structure if it is sufficiently original, and the (independent) copyright in the element constituting the database. In addition there also may be a SGDR right in the substantial investment in the database. The latter protects the database from substantial extractions, therefore effectively offering a form of protection to data that would otherwise not be protected.



How long does SGDR last?

² Courts have distinguished ‘obtaining’ (recording existing data such as the number of goals at a football match) from ‘creating’ data (e.g. creating football fixture lists). The latter do not qualify for SGDR protection.

The SGDR applies in the EU for **15 years** (renewable if further substantial investment in the database).

Who owns SGDR?

SGDR is owned by the **maker** of the database, which is usually the person or entity who bears the financial risk.

Financial risk in academic research

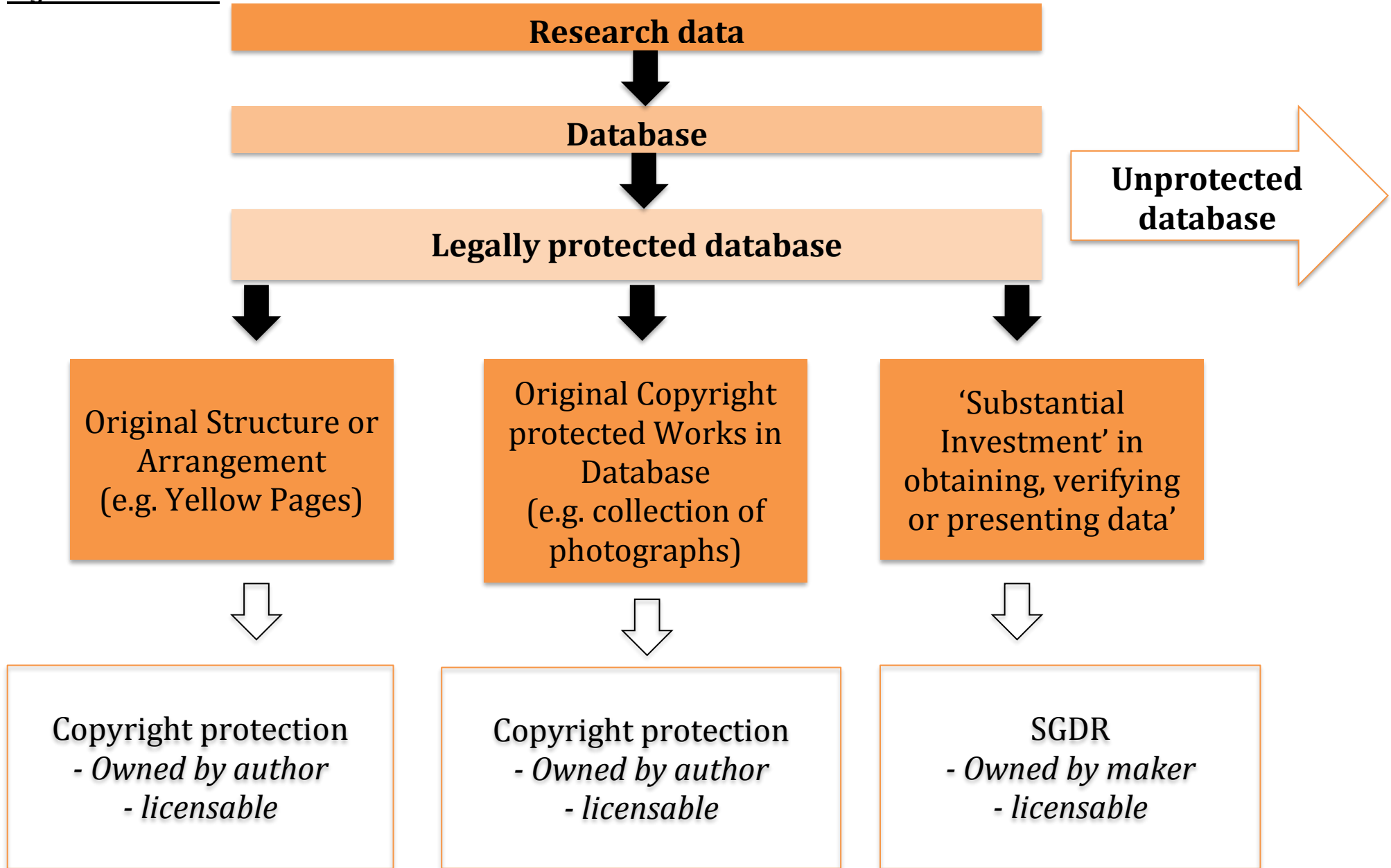
In academic research the financial risk of projects is usually borne by the funder or institution (an institution’s insurance cover might provide backing for unfunded research projects). It is therefore possible that the SGDR in a database produced during research may be owned by the funder or institution, even where copyright arising in the database may be owned by the researcher. However, contracts among the different parties (funders, universities, researchers, etc may provide differently.

It is important to check the terms of any funding or collaboration agreement to see whether ownership of the deliverables is specified.

What can SGDR owners do?

The SGDR will protect a database from extraction (copying) of substantial amount of data, or repeated extraction of insubstantial amount, therefore effectively extending protection to the data.

Rights in Databases



2. Copyright law

Copyright protection arises automatically. The UK requires works to be fixed (expressed or recorded in some way) before they are protected.

Original **literary, musical, dramatic**³ and **artistic** works may be protected by copyright law. Certain non-original works such as the **typographical arrangement of published editions, sound recordings, broadcasts, and films**⁴ are also protected by copyright.⁵ The **structure of databases** can also be protected by copyright – see the next section for more detail.

Copyright law does not protect ideas that are not expressed in an original form of expression – for example, recipes and magic tricks. There is no requirement to use the © symbol in the UK, although this is common practice.

Copyright law grants the owner the exclusive right to control certain rights such as reproduction, redistribution, communication to the public etc.

Who owns copyright?

Type of work	Default* Owner
Literary	Author
Musical	Author
Dramatic	Author
Artistic	Author
Database	Author

³ A dramatic work must be capable of being communicated in motion – e.g. a choreographed dance

⁴ Copyright in the recording of the film is protected separately from the dramatic work being filmed.

⁵ These are called 'related rights' in international copyright law.

Sound Recording	Producer
Film	Joint: Producer & Principal Director
Broadcast	Person making broadcast
Typographical arrangement	Publisher

*Can be varied by contract

The **author** is usually the person creating the work, but if the work is created jointly, it may be jointly owned, and if a work is created by someone in the course of a contract of employment it may be owned by the employer (depending on the contract).

Copyright ownership in academic institutions

Copyright ownership in the contracts of employees and researchers working for academic institutions often vary the statutory rule that an employer owns its employees copyright. It is essential to check the employment contract and the Intellectual Property Policy of an institution to understand who owns copyright. Practice can vary from institution to institution.

How long does copyright last?

In the UK, as well as EU countries, copyright protection lasts for: -

Type of work	Length of copyright protection
Literary	Lifetime of Author plus 70 years**
Musical	Lifetime of Author plus 70 years
Dramatic	Lifetime of Author plus 70 years
Artistic	Lifetime of Author plus 70 years
Database	Lifetime of Author plus 70
Sound Recording	50 years from date of recording/publication

Film ⁶	Lifetime of the last to die of the Principal Director/Screenplay Writer/Composer plus 70 years
Broadcast	50 years from first broadcast
Typographical arrangement	25 years from publication

** i.e. where the author died before 1948

After expiry of these periods, the work enters the **public domain**.

⁶ The film recording is protected separately from any copyright in the dramatic work being filmed. The film script might also attract literary copyright. The idea, characters and title of a film are usually not protected.

What can copyright owners do?

You can read more about copyright at CopyrightUser.org.

Copyright owners have rights to restrict certain acts in relation to the protected work such as copying, distributing and communicating the work to the public. The effect is that in most instances use of copyright protected works requires permission from the owner.

Moral rights are additional rights in copyright works. These give the original author of a copyright work the right to: -

- be **attributed** as the author
- protect the integrity of the work (i.e. to object to alteration or derogatory treatment of the work).
- Object to false attribution; and
- Privacy in certain (personal) photographs and films.

Moral rights can be **waived** but they cannot be transferred.

Where **moral rights** arise in original copyright protected works, these rights belong to the **original author** and cannot be transferred although they can be waived.

Using copyright protected works

In the EU, there is no concept of 'fair use' of works protected by copyright (or SGDR).

There are some limited **exceptions** which permit use of protected copyright works in scenarios such as: -

- **Fair dealing** for [quotation, criticism and review](#)
- Fair dealing for [parody & pastiche](#)
- Fair dealing for [news reporting](#)

- Fair dealing for [research & private study](#)
- Non-commercial [text and data mining](#)
- [Disability](#) enablement

[Libraries](#), [museums](#), [galleries](#) and [archives](#) and other [education](#) institutions also benefit from some limited exceptions. You can read more about copyright exceptions at CopyrightUser.org.

If an exception does not apply, then permission is required. However, an owner may grant a standard permission using a **licence**.

Depending on the type of licence, free use of the research data may be permitted, allowing for **use/re-use** or **re-mixing**. Other research data may be subject to certain conditions such as **attribution** of the original research data owner, or attribution of the owners of other rights in the research data. More restrictive licences may prevent using the research data for commercial purposes or not altering the research data.

If the research data does not specify a licence, it is necessary to consider whether use of any protected content within the research data would **infringe** the rights of anyone.

Using research data globally?



Although copyright principles apply in most countries, there are variations and the law in force should always be researched.

Orphan Works

Copyright works where ownership is unknown or where the owner cannot be found are often called '[orphan works](#)'. This does not

mean they can be freely used. The UK government operates an [Orphan Works Register](#) and provides a scheme for licensing orphan works.

More Information

More Information Guides

- *Making Research Data Available*
- *Choosing a Licence for Research Data*
- *Frequently Asked Questions: Using Research Data*

You can find out more about rights in research data from:

- The [Intellectual Property Office](#)
- [CopyrightUser.org](#)
- [UK Data Service](#)
- [UK Data Archive](#)
- [OpenMinTeD](#)
- [OpenAIRE](#)
- [Horizon 2020 Open Research Data Pilot](#)
- [Day Thomson, S., Preserving Social Media, Digital Preservation Coalition 2016](#)

Some useful legal sources:

- Copyright, Designs and Patents Act 1988
- Directive 96/9/EC of 11 March 1996 on the legal protection of databases
- The General Data Protection Regulation (GDPR) (EU) 2016/679
- Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS), WTO, 1995

The production of this information guide has been supported by

CREATE, University of Glasgow, the University of Glasgow Research Information Management Services and Jisc.

Suggested citation: Information Guide: Introduction to Ownership of Rights in Research Data, CREATE, University of Glasgow, 2018

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CREATE [CRedit taxonomy](#)

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Funding: Jisc (Grant Reference DIINNAA)