Report on the seminar
“The Legal Status of Research Data in the Knowledge Exchange Partner Countries”
9 September 2011, Brussels, KoWi Offices

Summary
The seminar offered valuable reflections on the study ‘The Legal Status of Research Data in the Knowledge Exchange Partner Countries’ that was commissioned by Knowledge Exchange. This report had been conducted by the Centre for Intellectual Property Law (CIER) at Utrecht University. The report received a very welcome response from all participants as it offers insights which are of utmost relevance to the current discussion on how to improve access to research data and make it available for re-use.

Since European national laws still diverge and sometimes remain unclear it can be difficult for interested parties to fully understand how open access to research data can be legally obtained. The main part of the report therefore offers an in-depth analysis of the intellectual property regimes that apply to research data in the four Knowledge Exchange partner countries. Moreover, the report provides three recommendations to achieve better access: making contractual arrangements with authors, harmonisation of European copyright law and setting up of policies on commercial interests. In the discussion a waiver or licence for researchers was considered to be most likely to be adopted. This could also be incorporated in a code of conduct for researchers. The discussion revealed that joint publicly and privately funded research poses a complex challenge as this requires balancing the interests of public funding and those of private companies.

Introduction to Knowledge Exchange and the activities of the Knowledge Exchange working group on primary research data
Marc Dupuis, the chair of the Knowledge Exchange (KE) Steering Group welcomed all participants and gave a brief overview of KE. He offered background on the four partners and the shared vision of the partners. The current focus within KE is on research data and open access. The initiative is to continue for a further three year term until 2014 and will continue to engage with other organisations active in the field of innovative information and communication technologies for higher education and research.

Franziska Regner, the chair of the KE working group on primary research data offered background information on the Primary Research Data Working Group, the group responsible for initiating this report. The working group is working on making data freely accessible, re-usable and professionally curated on the long term. Central elements in achieving this are:

- Secure storage
- Standardised metadata
- Accessibility
- Long-term preservation
- Appropriate organisational frameworks and services.
Referring to several policy papers in the European and international context, Franziska Regner emphasised that infrastructures for research data and the implied intellectual property right regulations are an international issue. In fact in the final report of the High Level Expert Group on Scientific Data ‘Riding the Wave’ creating clarity on the ownership of data was considered very important in improving awareness for all parties involved. According to the recommendations of ‘Riding the Wave’ legal issues should be “worked out so that they encourage, and not impede, global data sharing”. To this end KE commissioned the Centre of Intellectual Property Law (CIER) at Utrecht University, to write a report offering insight into the legal status of research data in the four KE countries.

Presentation on the report ‘The Legal Status of Research Data in the four KE partner countries’
Professor Madeleine de Cock-Buning and Allard Ringnalda from the Centre for Intellectual Property Law presented the central findings from their report. CIER has compiled four extensive reports, investigating the situation in each of the four KE countries. The findings of these country reports were collected and summarised in an overarching comparative report for the four countries including recommendations on how to make research data more accessible and available for re-use. The focus of the report is on how access to research data can be improved to allow for re-use. The report aims to provide clarity on the state of the law in the four KE countries and European law which has an impact on the practice of data sharing in the four countries. There are several regimes that are relevant:
- Copyright law
- Database right
- Patents
- Other domestic regimes (in the Netherlands the law on non-original writings, in Denmark the catalogue rule)
All these rights are exclusive rights, therefore permission is required to copy, share or make available the data. To be safe, the respective rights should always be cleared. One of the challenges lies in the fact that repositories would like to make data available but often they do not have the licence to do this as the rights still lie with others (see figure 1).

Figure 1: The steps in sharing a data set and allowing for re-use

2 http://www2.law.uu.nl/priv/cier/eng/home.htm
3 The report and the four annexes can be found at: http://www.knowledge-exchange.info/Default.aspx?ID=461
It is very difficult to determine whether intellectual property (IP) rights apply to datasets. IP protection may apply in some cases but the criteria are uncertain and may differ. Whereas the data themselves as facts are free, their form may be protected. The report aims at informing Knowledge Exchange and associated stakeholders on the state of the law and to give an insight in how the laws work in practice. This is explained in several characteristic situations pertaining to open access to research data.

A large proportion of research is also funded in part by private parties. Balancing their interests with the public interest is a complex matter. Moreover, privacy issues need to be taken into account.

Recommendations
The report offers three recommendations on how to achieve better frameworks for sharing research data and making them available for re-use. The recommendations presented by CIER differ in their approaches:

1. Contractual arrangements with authors
   Funders could require researchers to give permission as a funding condition, for example using a creative commons (CC)\(^4\) or comparable licence. However, these standard licences suggest specific IP protections that often do not exist. Therefore, CIER recommends to either regulate the use through codes of conduct or to create a special licence tailored for the field of research data.

2. Harmonisation of European intellectual property law
   At present, the legal status of transnational datasets will differ in the various countries. Special national regimes, e.g. the protection of non-original writings in the Netherlands and the catalogue rule in Denmark, form extra challenges. A harmonisation of European intellectual property law would be desirable to provide clarity on what use can be made of data sets.

3. Policy on commercial interests
   To guard the interests of private parties and universities alike there is a need to fine-tune contractual arrangements with tailored solutions.

Discussion
Wilma Mossink from SURFfoundation led the discussion on the findings from the report. Celina Ramjoué from the Directorate General for Research & Innovation of the European Commission offered her congratulations on the report, which had clearly required a lot of work. She considered the report to be an excellent contribution to the current discussion on appropriate frameworks for research and innovation. Celina Ramjoué outlined the changes in the policy perspective from open access to text publications to open access to data. Moreover, she pointed out that the findings from the report are of interest for the next framework programme “Horizon2020” and also for the funding through the European Research Area (ERA).

\(^4\) http://creativecommons.org/
Konstantinos Glinos from the Directorate General for Information Society and Media of the European Commission was next to offer his reflections. He offered many congratulations and thanks for the study. Konstantinos Glinos considered the report to be an extremely timely input for the activities in deploying an infrastructure for research data. He pointed out that it is important not to lose sight of why this topic is important: Making data available avoids duplication of effort and allows for a more efficient and innovative research process. Making more research data available for re-use will also offer companies access to a wealth of data. According to Konstantinos Glinos the study is also of interest for the European infrastructure projects OpenAIRE+ and EUDAT.

After these two responses various questions were addressed in the discussion, among them questions regarding possible demarcations of private research, the relevance of the Directive of Public Sector Information (PSI) and the feasibility of waivers and codes of conducts. The participants agreed that the analytic part of the report is extremely valuable and should be used in raising awareness and considering next steps. The experts from CIER stated that the analysis of the four KE countries offers an insight which is reasonably representative of intellectual property laws in other member states of the EU.

The question is now which further actions could be taken. The participants agreed that a next step could be setting up empirical studies analysing the practice of data-storage and re-use in different disciplines and countries. Public funding bodies should consider how to play an active part in the discussion.

The KE working group on primary research data will be looking into where actors can take steps. This will also be part of a report which is forthcoming and will connect with the recommendations from the report ‘Riding the Wave’.

All participants were thanked for their presence and contributions to the discussion. The European Liaison Office of the German Research Organisations (KoWi) was thanked for hosting the event.

The photographs were taken by Alexander Louvet, Alc Productions.