

European and United States intellectual property law covering data compared

Public domain and public sector information

- public domain is a United States legal doctrine with no direct legal equivalent in Europe
- in Europe, the Creative Commons CC0-1.0 waiver instead places material under a maximally permissive open license
- material produced by federal employees is automatically public domain within the United States
- no clear policy on open licensing public sector information (PSI) within Europe

Database protection

- introduced in 1996 as European Directive 96/9/EC to be thereafter transposed into national law
- protects public databases with substantial investment in their construction but excludes the effort of data collection
- enables insubstantial extraction and use
- remains generally impossible for users to estimate these thresholds
- no equivalent in the US but civil law concepts like misappropriation may apply (otherwise protection can be established via user contracts)

Data and code hosting sites

- in Europe, injunctions against internet intermediaries are straightforward to obtain and the defendant need not necessarily be present
- the US Communications Decency Act § 230 protects interactive computer services from liability for information provided by third parties

New industrial data right (IDR) ?

- the European Commission is currently toying with the idea of an industrial data right
- whether a workable regime can be designed remains unclear



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issue	continental Europe	United Kingdom	United States	covers or includes	notes
legal context					
legal tradition	civil law	common law	common law	relative reliance on statute versus case law	
highest court	European Court of Justice	under negotiation	US Supreme Court		
copyright	automatic	automatic	automatic, can register	computer programs, datasets, content, artistic works	1
threshold	personal intellectual creation	sweat of the brow	minimal creativity	human authorship implicit	
exemptions	exhaustive list of exceptions		fair use	quotations, commentary, scientific usage	
moral rights	yes	no	no	moral rights cannot be waived	
public domain (PD)	not directly applicable	similar to US	a US legal doctrine		
plaintiff friendly	Germany			open licenses normally lack choice of law provisions	
database protection	automatic	automatic	no equivalent	structured data not necessarily electronic	2
threshold	substantial investment			database construction but not data collection	
allows	insubstantial extraction			scope remains ill-defined	
public sector information	no clear policy for public bodies	Crown copyright + OGL	work by federal employees is PD		3,4
personal privacy	GDPR	GDPR		information that can potentially identify a natural person	5
commercial privacy	trade secret	trade secret	trade secret	information must possess commercial value	
software patents	no	no	yes	energy system modeling is too abstract	
internet intermediaries	article 17 filter, injunctions		safe harbor and take-down	data hosts, code sharing hosts	6,7
industrial data	new industrial data right?	—	—	machine-derived data streams	8

Notes:

1: a dataset is taken to be a collection of atomic data points

2: European Directive 96/9/EC

3: European Directive 2019/1024

4: Open Government License OGL-UK-3.0

5: European Regulation 2016/679

6: European Legislative Resolution 2016/0280: article 17 (article 13 in drafts) colloquially known as the "upload filter" provision

7: US Communications Decency Act, § 230

8: currently under consultation via the European strategy for data