

Legal Issues Surrounding the Collection, Use and Access to Grey Data in the University Setting

How Data Policies Reflect the Political Will of Organizations

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Introduction

- Grey data are works of sufficient importance to be collected and preserved by the library or its affiliated institutional repository.
- Several university policies were studied asking whether or not these policies expressed or reflected the “political will” of the institution towards its grey data.
- The study discusses: political will, legal issues, analysis of data policies, conflicting roles and recommendations.

Defining Political Will

Post, Raille, & Raille (2010) developed a systematic approach defines “political will” into successive components:

1. A sufficient set of decision makers
2. With a common understanding of a particular problem on the formal agenda
3. Is committed to supporting
4. A commonly perceived, potentially effective policy solution

Legal issues surrounding collection, use, and access to grey data -- Copyright

- Facts: survey or experiment results, statistics, field observations / recordings
- Compilations of data
- Works of thin copyright:
 - Oral histories and interviews
 - Mixed works: lab results or field observations with researcher commentary / notes
- Fair Use:
 - Re-use of “thin works” and
 - Reproduction in order to extract unprotected data or data-mining

Legal issues surrounding collection, use, and access to grey data – Trade Secrets

- Elements:
 - Independent economic value, actual or potential
 - Value derives from not being generally known
 - Not be readily known or ascertainable (a secret)
 - Reasonable measures must be taken to secure the content
 - Not ascertainable by proper means
 - Proper means: reverse engineering
 - Improper means: espionage, theft, bribery, misrepresentation and breach or inducement of a breach of duty to maintain secrecy. Wis. Stat. § 134.90(1)(a)
 - The information must have economic value to the party appropriating the secret
- Would not apply to grey data generated from federally (U.S.) funded projects

Legal issues surrounding collection, use, and access to grey data – Misappropriation

- *International News Service v. Associated Press*, 248 U.S. 215 (1918)
- *National Basketball Association v. Motorola, Inc.*, 105 F.3d 841 (2nd Cir. 1997)
 - Information gathered at a cost
 - Time-sensitive
 - Defendant's use of the information constitutes free-riding
 - In direct competition with the plaintiff
 - Free-riding reduces the incentive to produce the product or service

US Universities Data Policies & Terms and Conditions: Analysis

- Subject of Terms and Conditions: IL (copyright focus), MI, Harvard, MN and Purdue (most elaborate) govern users, VA Tech (contributors)
- Contract formation:
 - Click-to-agree (MI)
 - Use equals assent (IL, MN, VA Tech, Purdue)
 - No contract (Harvard)
- Attribution (moral right): attribution (all except Purdue)
 - CC BY or statement suggesting that result

US Universities Data Policies & Terms and Conditions: Analysis

- Permissions (all except Purdue): Illinois and Harvard (CCO or non-standard), Michigan (akin to CC SA), Minnesota (instructs users to contact authors) and VA Tech (seek permission of author to upload)
- Privacy: Michigan, Minnesota, VA Tech (IRB protocols / Administration responsible for user privacy) and Purdue
 - Illinois and Harvard: no indication
 - Tracking technologies: Illinois and Harvard (Google Analytics) and Purdue (cookies)
- Use restrictions: MI (NACJD and NCHS), Harvard (no contract, CCO alone), Purdue (elaborate), IL and MN (none)

US Universities Data Policies & Terms and Conditions: Analysis

- Disclaimers (all but Harvard), MI (data collector and funding agency responsible), MN (warranty or fitness for a particular purpose), VA Tech (provides warranty?: contact Administrators issues/errors), Purdue (“as is”, fitness, merchantability, accuracy, completeness, uninterrupted, errors, viruses or harmful components)
- Damage waivers: MN and Purdue
- Sanctions: MI (return data, deny access, tenure/termination, institutional suspension/damages), VA Tech (right to remove), Purdue (termination/suspension)

Conflicting Roles

- Paraphrasing from Rooskby—Part of the educational mission of higher education with regard to intellectual capital includes storing, creating, and disseminating new knowledge.
- Data policies should, and in some circumstances, must require that the intellectual benefits inherent to grey data flow into society; however, there is a competing narrative.
- Exercising intellectual property rights is lucrative and helps to ensure institutional longevity; however, it also requires institutions to defend their property rights.
- The conflict between the institution's educational purpose—research, teaching and service--and the need to protect and monetize intellectual property may influence data repository policies.

Conclusions & Recommendations

- Employ click-to-agree for terms and conditions of use
- Warranties regarding the reliability of the data should be disclaimed
- Exercise relevant / applicable proprietary rights:
 - Unless the content is copyrightable--Use CC0
 - If copyrightable--Use CC BY license or a provision requiring proper citation/attribution
- Address other legal obligations:
 - Privacy of research subjects
 - Publication of publicly funded research, and
 - Contractual agreements with private partners.
- Should reflect the educational mission of the university

Questions???

THANK YOU

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