



**YOUR GUIDE TO
DATA SHARING AND
LEGAL ISSUES**

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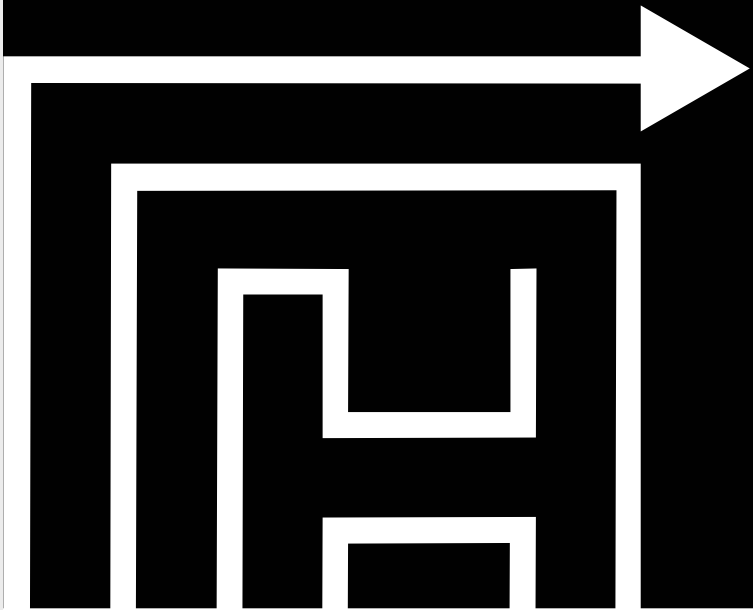
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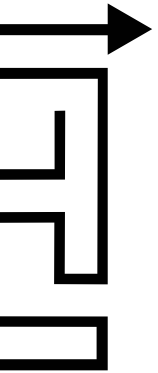
01

INTRODUCTION



DATA FOR BUSINESS AND SOCIETY: CHALLENGES AND RISKS

- Creating value from data
 - Data-driven business models (core business)
 - DATA FOR THE PUBLIC GOOD (DATA SHARING)
- Legal issues...?



IN THE LAST DECADES...



DIGITALISATION

Es. MULTIMEDIA CONTENTS,
VIDEO ON DEMAND, CLOUD, IoT,

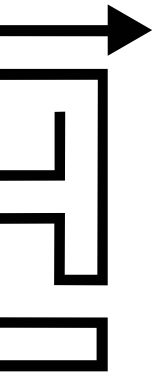
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DATAFICATION

AUTOMATED DATA
PROCESSING (ALSO
PERSONAL DATA)

STRATEGIC ASSET FOR
BUSINESS

DATA AS SOCIAL
VALUE/DATA FOR
GOOD

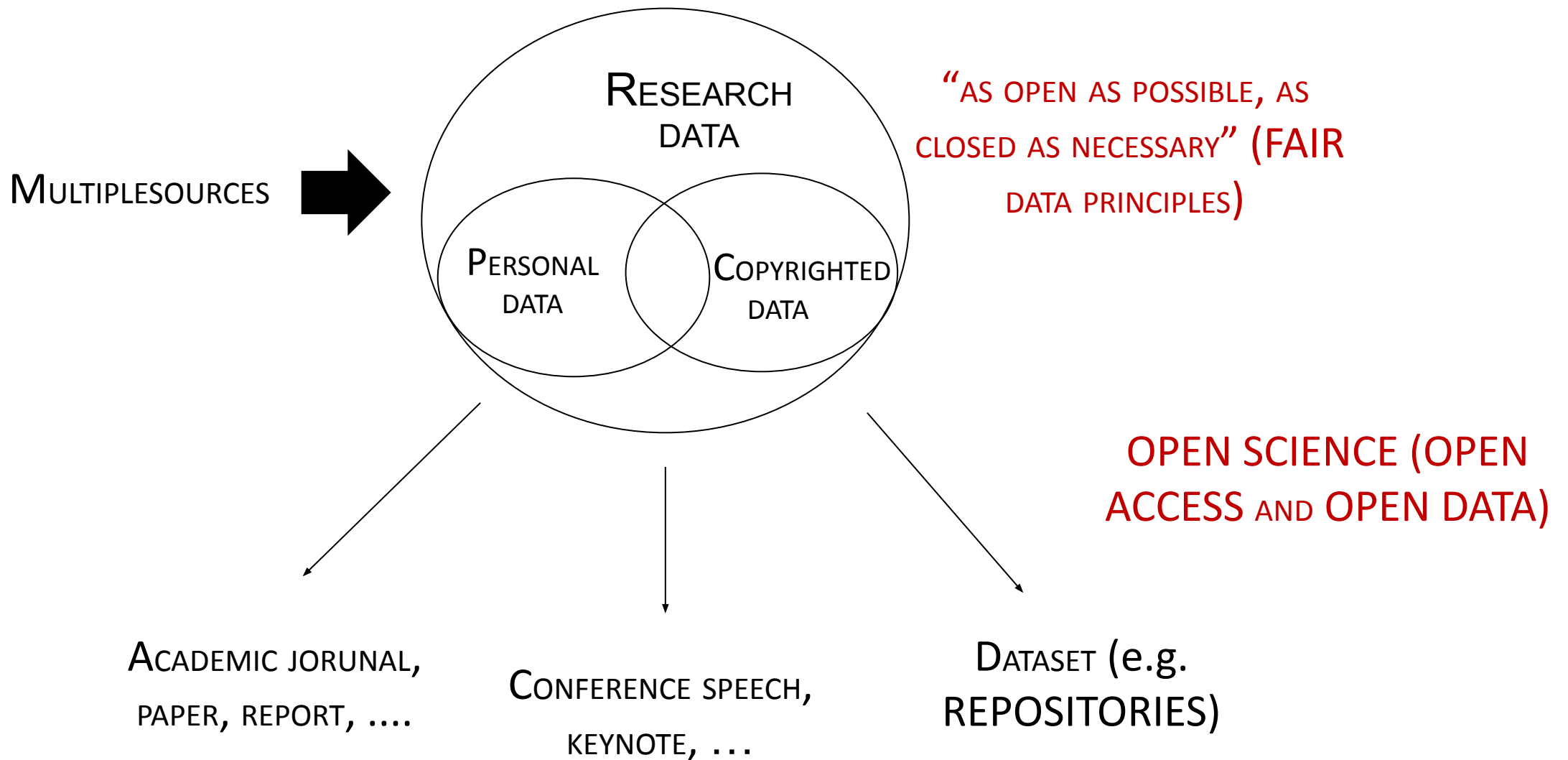


DATA, TECHNOLOGY, AI

- Easy ACCESS to information
- New data-driven ECONOMY
- “Gold rush” of OPEN SCIENCE



RESEARCH AND (OPEN) DATA



DATA FOR GOOD...

- Scientific research
- Cultural heritage
- Digital Humanities
- Statistics
- ...



LEGAL ISSUES

- Access to materials/documents
- **Privacy & Data Protection**
- **IP rights management (copyright and neighbouring rights)**

02



**EU DATA STRATEGY
2020**

EU DATA STRATEGY (2020)

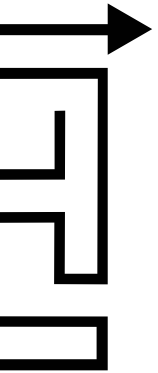
To enhance free movement of (personal) data □ it requires to be balanced with the protection of the fundamental rights and freedoms of the individuals

To regulate new players in the digital era (e.g. platforms, social media, data intermediaries, etc.)

More data interoperability

More data security and resilience

New opportunities for data sharing (e.g. research data, data altruism, data space, etc.)



DATA REGULATION (EUROPE)

COPYRIGHT AND RELATED RIGHTS IN THE DIGITAL SINGLE MARKET (DIR. 790/2019)

UNFAIR COMMERCIAL PRACTICES (DIR. 2161/2019)

DIGITAL SERVICE SUPPLY (DIR. 770/2019)

DATA ACT (PROPOSAL)

OPEN DATA (DIR. 1024/2019)

DATA GOVERNANCE ACT (REG. 868/2022)

GDPR (REG. 679/2016)

PRIVACY AND ELECTRONIC COMMUNICATIONS (DIR. E-PRIVACY)

DIGITAL SERVICE ACT (REG. 2065/2022)

INTEROPERABILITY ACT (PROPOSAL)

ARTIFICIAL INTELLIGENCE ACT (PROPOSAL)

ONLINE INTERMEDIATION PLATFORMS (REG. 1150/2019)

DIGITAL MARKETS ACT (REG. 1925/2022)

03

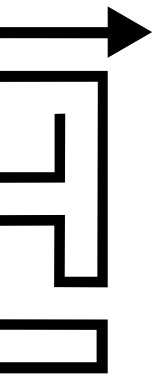


**RESEARCH DATA
SHARING**

(OPEN) RESEARCH DATA

DIRECTIVE (EU) 2019/1024 on OPEN DATA and the RE-USE of public sector information

*“Research data includes statistics, results of experiments, measurements, observations resulting from fieldwork, **survey results, interview recordings and images**. It also includes meta-data, specifications and other digital objects. Research data is different from scientific articles reporting and commenting on findings resulting from their scientific research (...) to support the dissemination of research data that are findable, accessible, interoperable and re-usable, the FAIR principle” (Recital 27)*

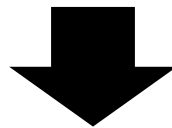


FAIR DATA PRINCIPLES

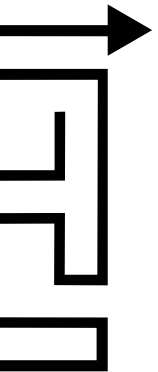
For data sharing and data re-use, data should be

- FINDABLE
- ACCESSIBLE
- INTEROPERABLE
- REUSABLE

Complying with FAIR principle does not necessarily imply that data sharing is free from CONSTRAINTS and LIMITATIONS

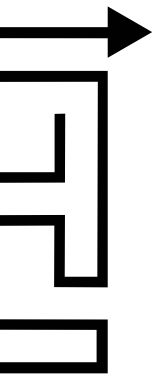


«AS OPEN AS POSSIBLE, AS CLOSED AS NECESSARY»



RESEARCH DATA

Art. 10 dir. 2019/1024: “Member States shall support the availability of research data by adopting national policies and relevant actions aiming at making publicly funded research data openly available (‘open access policies’), following the principle of ‘open by default’ and compatible with the FAIR principles. In that context, concerns relating to **intellectual property rights, personal data protection** and confidentiality, security and legitimate commercial interests, shall be taken into account in accordance with the principle of ‘as open as possible, as closed as necessary’. Those open access policies shall be addressed to research performing organisations and research funding organisations”



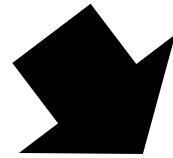
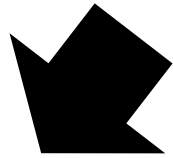
04



**DATA MANAGEMENT
AND LEGAL ISSUES
(PERSONAL DATA &
COPYRIGHT)**

DATA SHARING & LEGAL ISSUES

E.g. researchers wants to upload on Zenodo a ZOOM audio-video recording of an interview with an artist

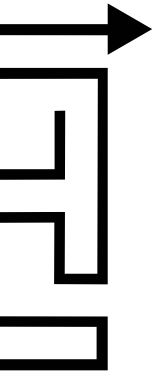


PROCESSING OF PERSONAL DATA

- Name
- E-mail address
- Portrait of an individual
- Voice
- Opinions (recorded)

COPYRIGHT ISSUES

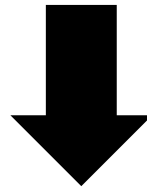
- The researcher and interviewer both claim the copyright over the recordings
- The portrait of a person may not be displayed, reproduced or commercially distributed without the individual's consent



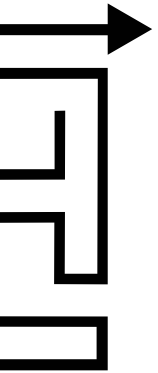
PRIVACY AND DATA PROTECTION

The development of ICT tools and the advent of the digital age have moved forward from the original concept of «privacy».

People necessarily share more personal information about themselves to use a service, etc.



The original concept of PRIVACY is strengthened with DATA PROTECTION



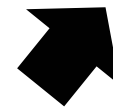
PERSONAL DATA



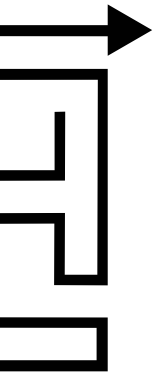
any
INFORMATION
relating to an
identified or
identifiable
**NATURAL
PERSON**



- **IDENTIFIED** (e.g. passport copy, email, ...)
- **IDENTIFIABLE** directly or indirectly in combination with other data (e.g. voice recording, GPS, portrait of an individual, ...)



PERSONAL DATA refers only to **NATURAL PERSON** (human beings), not to animals, places, legal subjects (e.g. companies, foundations, etc.)



DATA AND INFORMATION...



DATA should be considered
as source of INFORMATION

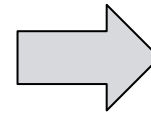


INFORMATION is what is
conveyed or represented
by DATA

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88769202

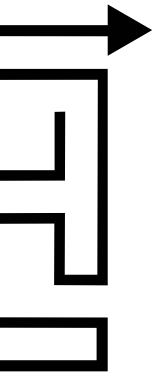
@university.com
@university.com
@university.com

(apparently) random
numbers or domain



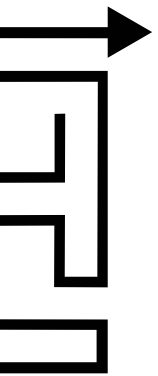
88782938@university.com
89272829@university.com
88769202@university.com

student ID number + email
address

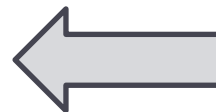


PRINCIPLES RELATING TO PROCESSING OF PERSONAL DATA

- LAWFULNESS, FAIRNESS AND TRANSPARENCY (fair and legitimate use)
- PURPOSE LIMITATION (for what scope?)
- DATA MINIMISATION (how many data are relevant, adequate and proportionate?)
- ACCURACY (keep data updated)
- STORAGE LIMITATION (for how long?)
- INTEGRITY (adopt technical and organizational measure)
- ACCOUNTABILITY (to act and not to react)



(PERSONAL) DATA
PROCESSING



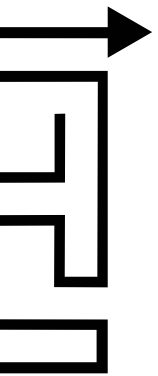
RIGHT TO DATA
PROTECTION



PROPORTIONALITY

REGULATION (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

«**The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality (...) in particular the respect for private and family life, home and communications, freedom of thought, conscience and religion, **freedom of expression and information**, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity**» (Recital 4)

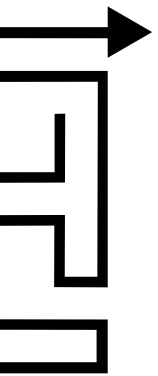


RESEARCH AND PERSONAL DATA PROCESSING

- Further processing for ARCHIVING PURPOSES IN THE PUBLIC INTEREST, SCIENTIFIC OR HISTORICAL RESEARCH purposes or STATISTICAL purposes shall, in accordance with Art. 89, **not be considered to be incompatible with the initial purposes** (art. 5(b) GDPR)
- Personal data **may be stored for longer periods** insofar as the personal data will be processed solely for ARCHIVING PURPOSES IN THE PUBLIC INTEREST, SCIENTIFIC OR HISTORICAL RESEARCH or STATISTICAL purposes in accordance with Art. 89 (art. 5(e) GDPR)

RESEARCH AND PERSONAL DATA

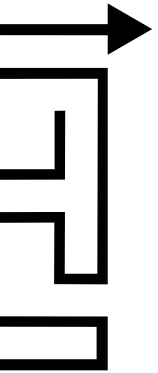
Art. 89 GDPR: “Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that **TECHNICAL and ORGANISATIONAL MEASURES** are in place in particular in order to ensure respect for the principle of **DATA MINIMISATION**. Those measures may include **PSEUDONYMISATION** provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by **further processing which does not permit or no longer permits the identification of data subjects** [DE-IDENTIFICATION; ANONYMISATION], those purposes shall be fulfilled in that manner”.



RESEARCH DATA & COPYRIGHT

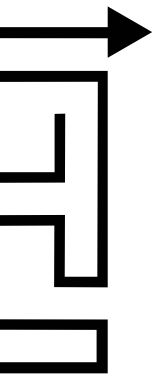
Huge amount of research data in research projects are at the same time:

- personal data (e.g. portrait of individuals, audiovisual contents)
- copyright-protected (original) works (e.g. interview, photograph, social media post)



DATA SHARING & COPYRIGHT

- Mandatory exemption for public interest
- Standard licensing agreement (e.g. Creative Commons 4.0)
- Waiving of IP rights (public domain)
- Collective licensing
- Copyright (and *sui generis* database right) exception for uses of TEXT AND DATA MINING technological tools performed by universities, research organisations and cultural heritage institutions (art. 3 Dir. 2019/790)



DATA SHARING: WHERE TO ACT?

DATA INTEROPERABILITY

DATA TRACEABILITY (E.G. BLOCKCHAIN)

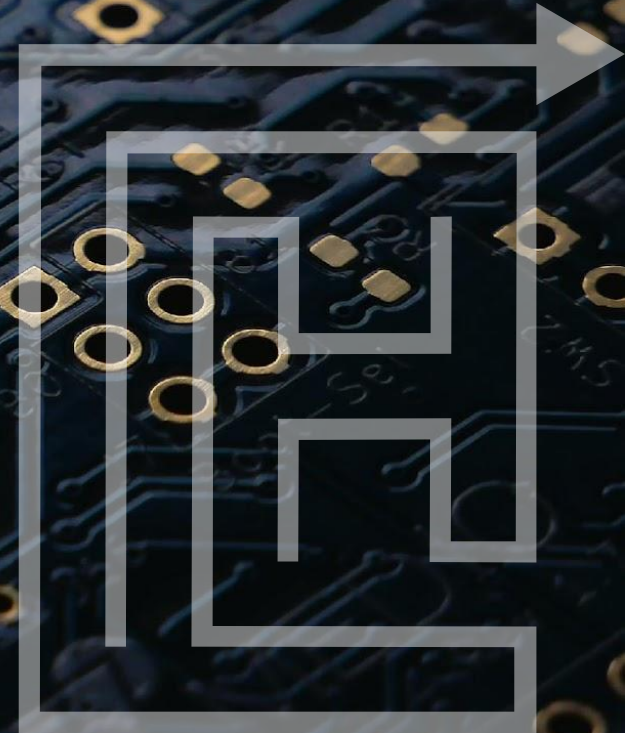
DATA ACCURACY

CYBER-SECURITY

TECHNOLOGIES (E.G. AI)

DATA PROTECTION BY DESIGN & BY DEFAULT

COPYRIGHT AND OPEN LICENCES



RISK-BASED APPROACH

LOW RISK (no personal data, only copyrighted data) □ giving up IP rights or transfer them to the researcher or choosing a broad range licensing agreements, such as CC 4.0 (e.g. videos and images)

MID-LEVEL RISK (personal data & copyrighted data) □ conditions and safeguards for DP in standard licensing agreement (e.g. photograph)

HIGH-LEVEL RISK («sensitive» data art. 9 GDPR, copyrighted data) □ licensing agreement should impose anonymisation by default or other safeguards (e.g. audio-visual contents)



www.culturalheritage.eu

Follow our journey



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