

INTELLECTUAL PROPERTY  
FOR THE EUROPEAN UNION  
IN A WORLD OF CHALLENGES

Expert Conference

19 – 20 February 2020  
Zagreb

**Is it a time for a new data governance?**

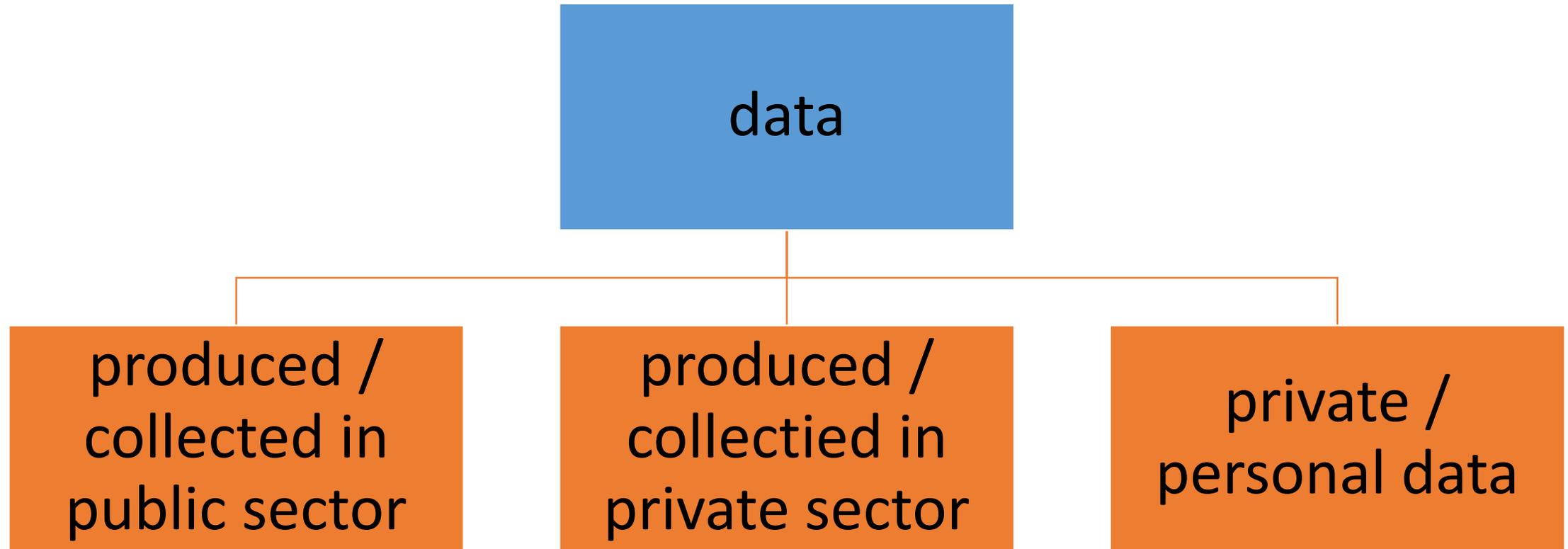
A view from academic research

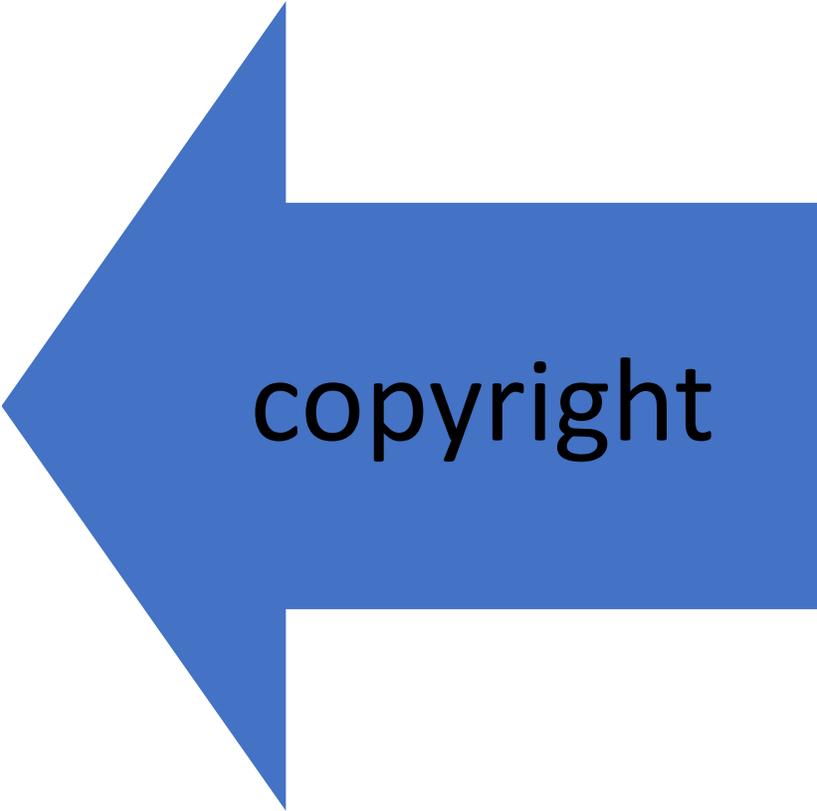
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Associate Professor,

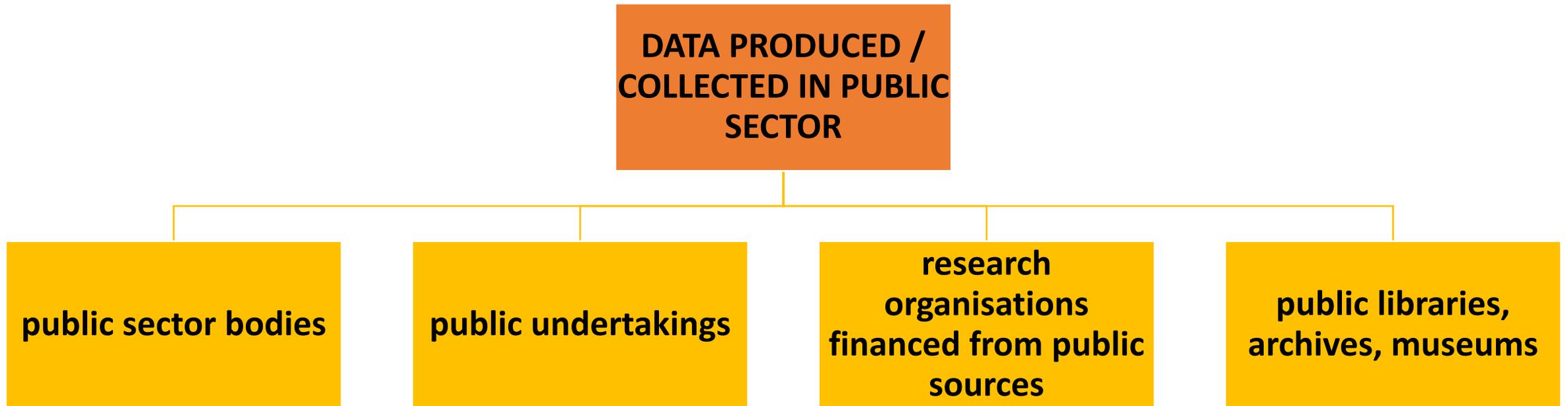
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# Information society





# Directive (EU) 2019/1024 on open data and the re-use of public sector information

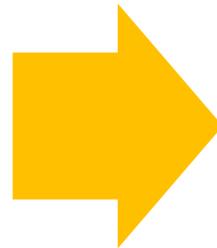


**document**



**any content, whatever its medium (paper or electronic form or as a sound, visual or audiovisual recording) or part of such content**

**'re-use' means the use by persons or legal entities of documents held by:**



**public sector bodies or public undertakings for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced,**

# High value datasets:

- **Geospatial**
- **Earth observation and environment**
- **Meteorological**
- **Statistics**
- **Companies and company ownership**
- **Mobility**

**The obligation to make available the data in open formats, possibly free of charge, or under a margin costs, exceptionally under reasonably return of investments, in machine-readable, interoperable formats, automatically accessible or available for the re-use or on request of the interested party  
NOT APPLIED TO**

- **documents for which the third parties hold intellectual property rights**
- **documents held by public service broadcasters**
- **documents held by cultural establishments other than public libraries, archives and museums**
- **documents held by universities and research organisations, with exceptions**

# Research data

- 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.
- Research data shall be **re-usable for commercial or non-commercial purposes** insofar as they are publicly funded and have already made publicly available through an institutional or subject-based repository. In that context, legitimate commercial interests, knowledge transfer activities and pre-existing intellectual property rights shall be taken into account.

# Libraries, archives, museums and other cultural institutions

- Rec 65 :
- One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services.
- Libraries, including university libraries, museums and archives hold a significant amount of valuable public sector information resources, in particular since **digitisation projects** have multiplied the amount of digital public domain material. Those **cultural heritage collections and related metadata** are a potential base for digital content products and services and have a huge potential for innovative re-use in sectors such as learning and tourism.
- Other types of cultural establishment, such as orchestras, operas, ballets and theatres, including the archives that are part of those establishments, should remain outside the scope of this Directive because of their specificity as performing arts and the fact that almost all of their material is subject to third-party intellectual property rights.

# Intellectual property:

- The obligations imposed in accordance with PSI Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention, the TRIPS Agreement and the WCT.
- The right for the maker of a database provided for in Article 7(1) of Directive 96/9/EC shall not be exercised by public sector bodies in order to prevent the re-use of documents or to restrict re-use beyond the limits set by this Directive.

# Employees:

- Rec 56
- This Directive should be without prejudice to the rights, including economic and moral rights, that employees of public sector bodies may enjoy under national law.

# Exploitation rights

- Rec 57
- Moreover, where any document is made available for re-use, the public sector body concerned should retain the right to exploit that document

# Copyright and related right held by third parties:

- Orphan works
- Out-of-commerce works
  
- Content under the protection
- Content created by employees

- **Is it a time for a new data governance?**
- **With respect to copyright and related rights – the transformation of general principles of exclusive rights is already running with respect to public sectors at least at the policy level**