

# Legal Issues in Data Management: A Practical Approach

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# Legal Issues in Data Management: A Practical Approach

- focus on the legal issues in the management of repositories
- adopt a skills-based approach to repository management
- provide guidance on how to develop practical strategies for management of the legal issues:

*Practical Data Management: A Legal and Policy Guide (2008)*

# Legal Issues in Data Management

## What does “management” mean in this context?

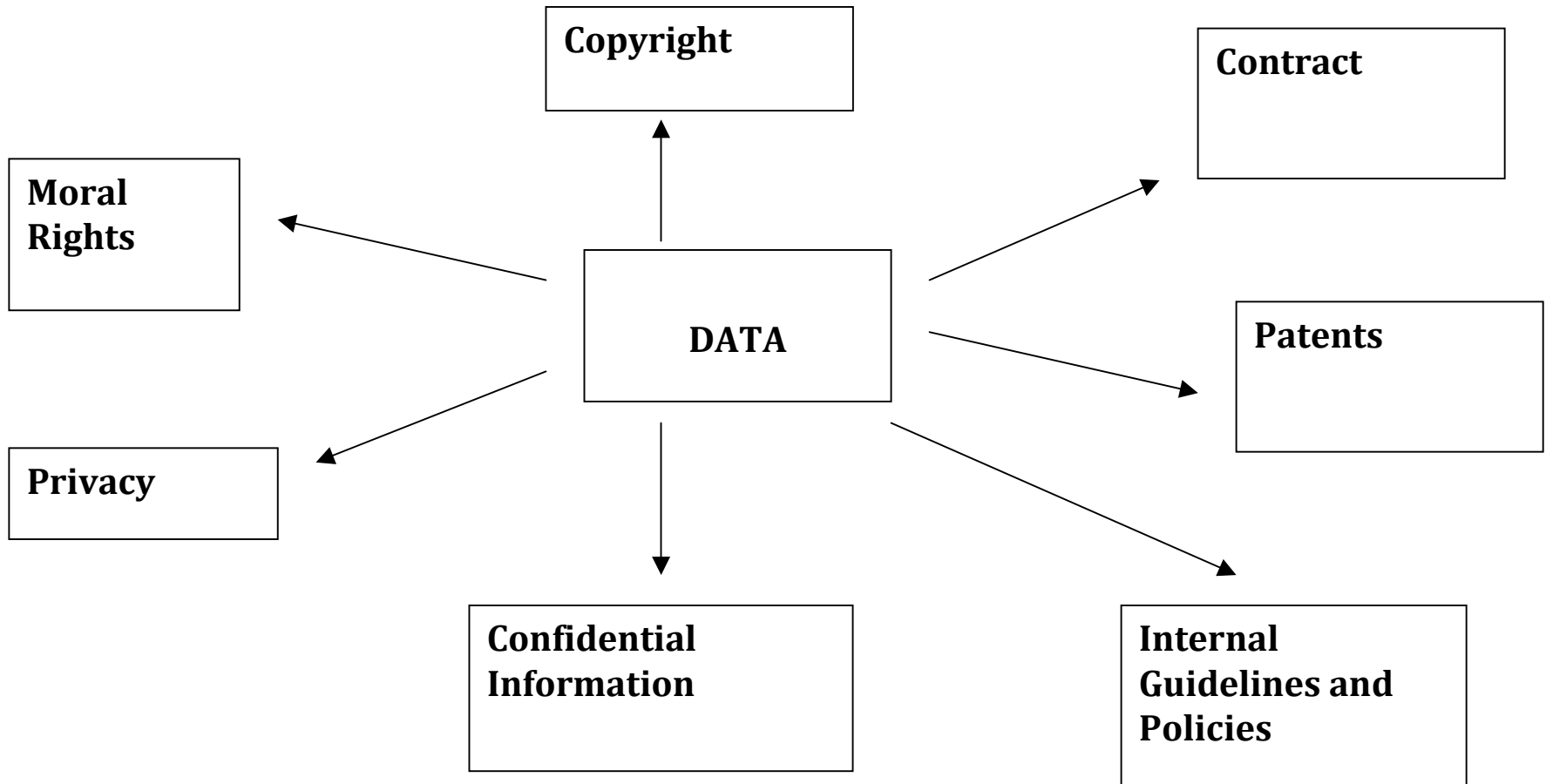
- We are managing RIGHTS in INFORMATION
- Can be complex – potential for confusion – impediment to use of data
- Need to understand the rights existing in information and data
- Determine WHO is able to do WHAT with the information and data
- Implement management policies in practice

## Why does it matter?

- In the information age/e-Research cyberinfrastructure, information and data are VALUABLE



# Legal rights in research data



# Legal rights in research data

These rights may overlap –

- different areas of law may apply to the same dataset
- different people may hold different legal rights in the same dataset

How do we deal with these varied rights and interests?

How do we develop useable systems for managing these rights and interests?

# Management: Systems and Processes

*Building the Infrastructure for Data Access and Use in Collaborative Research: An Analysis of the Legal Context (2007)*  
Dr Anne Fitzgerald and Kylie Pappalardo and Others

*Practical Data Management: A Legal and Policy Guide (2008)*  
Prof. Anne Fitzgerald, Kylie Pappalardo and Anthony Austin

- Data management policies and principles
  - Data Management Plans (DMP)
  - Data Management Toolkits (DMT)

# Data management policies and principles

A data management policy contains high level statements and principles about how data generated and compiled by the research project is to be made available for access and use.

# Data management policies and principles

A data management policy should explain and address:

- the research discipline of the project;
- how research is to be conducted;
- the funding arrangements for the research project;
- the kind of data generated or collected by the project;
- how and when data is to be deposited into a database or repository;
- when and on what basis data is to be shared and made available for access by other researchers;
- any legal obligations imposed on the research project or individual researchers; and
- how intellectual property rights are to be managed.



# Data Management Plan (DMP)

- addresses how data is collected, stored, managed and disseminated
- addresses data ownership, data security and legal rights applicable to the research data
- Unlike a data management policy, the DMP concentrates on practical measures rather than setting out principles or broad policy statements.

# Data Management Plan (DMP)

- acknowledges the diverse range of parties involved in a research project - collectors and compilers of data, data analysts, database managers, parties that have funded the research project and consumers or users of the data and database - and applies to each of them
- establishes protocols for dealing with data both within the research project and externally. The DMP should envisage, to the extent possible, the many different ways and purposes for which users may seek to access and use the research data. The DMP should also consider unusual or **complex situations** that may arise in the collection and collation of data.

# Example structure for a Data Management Plan (DMP)

1. Project description.
2. Survey of existing data.
3. Data to be created.
4. Data Organisation Methods (optional).
5. Data Administration Issues:
  - Funding & **Legislative Requirements.**
  - **Data owners & Stakeholders.**
  - **Access & Security.**
  - Backups.
6. Data Sharing & Archiving.
7. Responsibilities.
8. Budget.

From the Australian National University (ANU) *Data Management Manual: Managing Digital Research Data at the Australian National University*, Version 1.0 (July 2008)  
<[http://ilp.anu.edu.au/dm/ANU\\_DM\\_Manual\\_v1.0.pdf](http://ilp.anu.edu.au/dm/ANU_DM_Manual_v1.0.pdf)>

# Example: model provision for a Data Management Plan

## 2. Ownership

The research data has been generated or compiled by ***[insert name of depositing entity]***'s employees or contractors. ***[Insert name of depositing entity]*** is the owner of copyright in the research data or has a licence from the copyright owner to deposit the data into ***[insert name of digital repository in which data will be deposited]***. Where copyright in the research data is owned by another party, ***[insert name of depositing entity]*** has obtained all necessary licences and permissions from the copyright owner to deposit the data into ***[insert name of digital repository in which data will be deposited]*** and to make the data available for access and reuse under a Creative Commons 2.5 Attribution Licence.

# Data Management Toolkit (DMT)

- provides practical guidance to researchers about managing their data in compliance with the project's data management policies and procedures, DMP and the relevant legal framework.

# Management: Systems and Processes

These systems and processes need to work in **complex** situations as well as simple ones...

# Complex situation: example 1

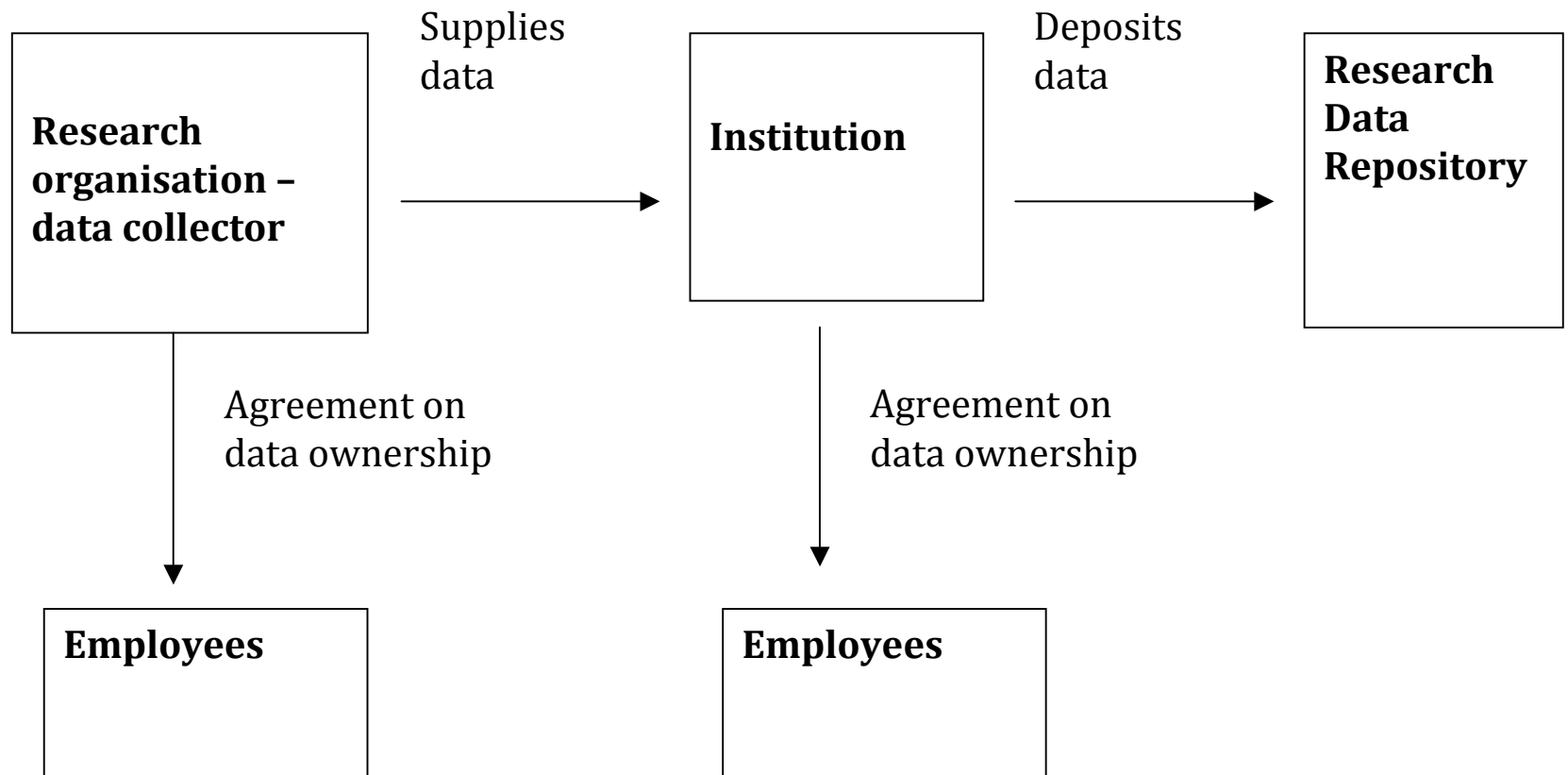
## copyright ownership

Who will own copyright in the dataset?

This may be affected by:

- who collected or created the data
- who compiled the data
- any employment or independent contractor relationships
- funding arrangements
- other contractual agreements affecting ownership rights

# Relationships between parties





# Complex situation: example 1

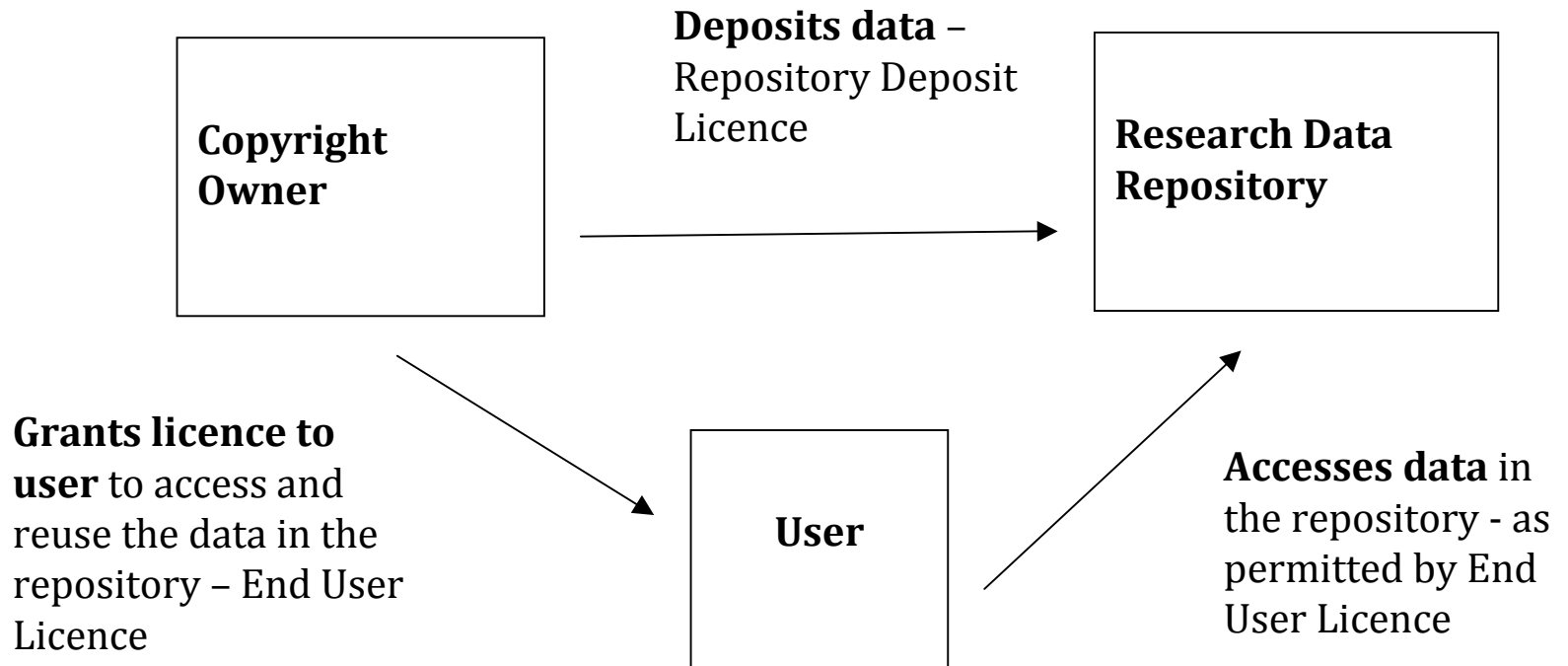
## copyright ownership

A copyright owner will control how the dataset is used, copied and shared.

This will impact upon:

- whether the data can be made available in a digital repository or database;
- who will be permitted to access the data; and
- who can use the dataset and how they may use it.

# Copyright Licensing for Research Data



# Data Management Toolkit – copyright ownership

## Who owns the copyright?

1. Who created or compiled the data?

Insert names of person/s here:

1. **Was the data created or compiled by an employee in the ordinary course of their employment?** [If the data has been created or compiled by an independent contractor – answer NO here]

No  Creator/compiler owns copyright

Yes  Employing institution may own copyright

**Name of employing institution:**

2. **Is there an agreement in place between the employer and any employees/contractors about copyright ownership?**

**If yes, insert the relevant terms of the agreement:**

1. **Are there any other contractual agreements that may affect copyright ownership (e.g. does your research funding agreement require some /all of the copyright rights (or other rights) to be invested in the funding organisation)?**

**If yes, insert the relevant terms of the agreement:**

2. **Taking into consideration the arrangements and agreements considered above, who owns copyright in the data?**

**Insert names of copyright owner/s here:**

# Complex situation: example 2

## privacy

- If a research project is dealing with personally identifying information and/or health information –
- Which privacy laws will apply?
  - If the research project is based at a public university, State legislation or administrative protocols will apply
  - If there is collaboration with industry or Commonwealth government, then Commonwealth privacy laws may apply
  - What if there is collaboration between 2 universities complying with different State's privacy laws?

# Complex situation: example 2 privacy

For research groups, the best practice approach will be to adopt the highest standard of privacy compliance that is applicable to all of the parties.

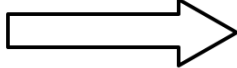
Often, this will mean complying with the Commonwealth *Privacy Act 1988*.

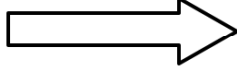
# Data Management Toolkit – privacy

## Will privacy restrictions apply?

1. Does the data collected contain personal information about an individual, such as:

- personally identifying information?
- health information?

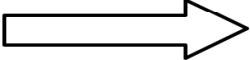
Yes  The *Privacy Act 1998* (Cth) or the equivalent state legislation may apply – proceed to steps 2 - 5.

No  Privacy legislation will not apply – skip this section.



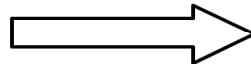
**1. Do you have consent from the person identified to use or disclose this information?**

Yes  Privacy restrictions will not apply – skip this section.

No  Privacy restrictions under the relevant legislation may apply – proceed to steps 3 – 5.

**2. Has the data been collected or compiled by:**

- a Commonwealth government agency or body?
- a private sector organisation?
- employees of a private sector organisation?



**The *Privacy Act 1988* (Cth) may apply – see your institution’s lawyer for advice.**

**1. Has the data been collected or compiled by:**

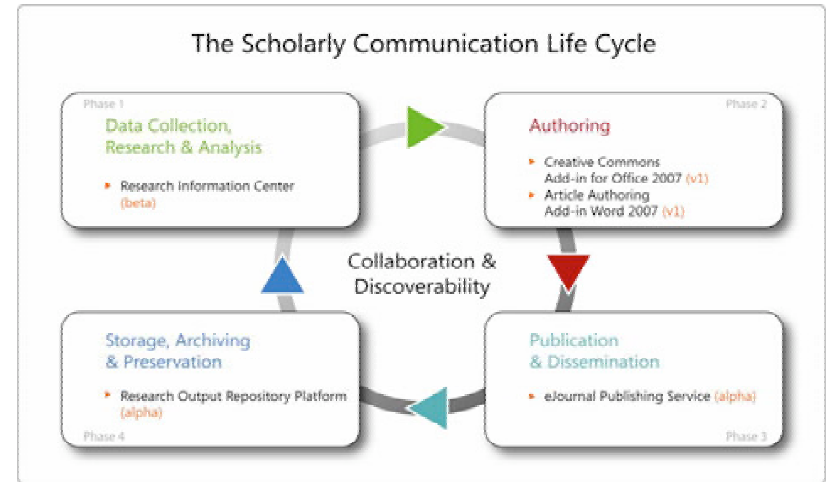
- a state or territory government agency or body?
- a university institution enacted under a state Act?

**1. If privacy legislation does apply, what restrictions have you imposed to ensure that the relevant data or information is kept private?**

**Restrictions:**

# Software tools for e-Research

**Microsoft** has recently released a series of software tools and resources for e-Research, including:



- Article authoring add-in for Microsoft Office Word 2007, which assists in capturing metadata;
- Creative Commons add-in for Microsoft Office;
- Microsoft Math add-in, which enhances Microsoft's Office Word 2007 with computational and graphing capabilities.

# Software tools for e-Research: Microsoft

**The Microsoft e-Journal Service.** This offering provides a hosted, full-service solution that facilitates easy self-publishing of online-only journals to facilitate the availability of conference proceedings and small and medium-sized journals.

**Research Output Repository Platform.** This platform helps capture and leverage semantic relationships among academic objects — such as papers, lectures, presentations and video — to greatly facilitate access to these items in exciting new ways.

**The Research Information Centre.** In close partnership with the British Library, this collaborative workspace will be hosted via Microsoft Office SharePoint Server 2007 and will allow researchers to collaborate throughout the entire research project workflow, from seeking research funding to searching and collecting information, as well as managing data, papers and other research objects throughout the research process.





# **PRACTICAL DATA MANAGEMENT: A LEGAL AND POLICY GUIDE**

Professor Anne Fitzgerald, Kylie Pappalardo and Anthony Austin

Will soon be available online at: <http://www.oaklaw.qut.edu.au>  
and <http://www.e-research.law.qut.edu.au>