RIGHTS TO DATA
Legal Review

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• The legal status of the ownership of the data depends on the following factors:

- What kind of data is in question?
- How data was created?
- What kind of information data contains?
- What kind of intellectual property rights applies to data?
Different Types of Data

• Research data
  - "primary data" for example collected health information
  - "derivative works" for example research results generated by using the collected data

• Biological material
  - Use is restricted by the law or by a consent of a patient

• Personal data
  - Could be a part of research data or biological material, but use is restricted for legitimate purposes (consent, public interest)
Ownership rights

• Data as knowledge, who can own knowledge?

However, access/exploitation can be restricted in two cases:

• Data is treated as confidential information

• Data is regarded as intellectual property
• Research results can be covered by:
  – Copyrights (e.g. publications, software, educational materials)
  – Database rights
  – Catalogue rights
  – Trade secret (protected usually by contractual arrangements)
  – Patents (Inventions)
Copyright

- A legal right which belongs to its creators without a separate registration
- Expression of work shall be unique and creative
- The knowledge is not protected, only the expression

Patent

- Protects an invention, but requires a "registration"
- Invention may be a technical device, method composition or process
- Novelty and uniqueness required, compared to state of art
Moral Rights (copyright)

- A part of copyright
- Personal rights of the author
- Cannot be transferred from the author
- Right of attribution:
  - Author’s name should be always stated or referred
- Right of integrity:
  - Works cannot be changed without permission
  - Reputation cannot be harmed
Derivative Works

- Permission to make such works is required from the original creator/copyright holder

- In case modifications of original work is permitted, only the new material is covered by a new copyright and the original material is still covered by an existing copyright
Data as Confidential Information

- In case data is not publicly available, and cannot be covered by intellectual property rights, it can be kept confidential and as protected as a “trade secret” protected only as long as kept secret (e.g. recipe of Coca-Cola)

- The access to confidential data can be regulated by contractual provisions (NDA, MTA, DTA) --> different types of rights:
  - Right to use exclusively/non-exclusively
  - For commercial purposes/ non-commercial purposes (research and education)
  - Right to transfer further to third parties
Ownership rights

• University’s rights to research data:
  ➢ Was the data generated in a project funded by an external funding (Business Finland, H2020, companies’ funding etc.)?
    ➢ University has usually granted certain rights to the funding organization
    ➢ all rights shall belong to the university in order to comply with its obligations towards the funding organization
    ➢ rights shall be transferred from a researcher to the university by a separate "transfer of rights"—form in the beginning of a project

  ➢ Was the data generated as a part of open research?
    ➢ data belongs to a researcher
    ➢ University has a secondary right to the data
    ➢ However, data may be subject to confidentiality, data management and storage instructions
Ownership rights and authorship within the research group are not always related:

→ Even if the university (or sponsor) has some rights to the data (e.g. externally funded research), researchers have always a right to publish the research results **UNLESS**

1) publication is restricted by an external sponsor (company, funding organization etc.)

2) Publication is requested to be delayed for the time of application period for protection of intellectual property rights (e.g. patent application)

3) Publication is restricted by an agreement (e.g. consortium agreement, joint research)
Authorship in Publications

- Authorship questions are defined by academic and ethical principles and guidelines → connection to moral rights
- List of authors/ order of names in the list of authors are regulated by academic and ethical principles, not by ownership rights!
- University of Helsinki is committed to TENK guidelines
- Mutually agreed rules within the research group in the beginning of the project in order to avoid future disputes? → breach of such agreement might be then a legal issue
Thank you!