Open Research Data (ORD) Legal restrictions and options for safeguarding legal rights

Main outcomes of measure 4 of the ETH Domain ORD Programme

Lib4RI – Coffee lecture series – 3rd February 2026
Katharina Eggenberger, Co-Lead WSL Project Office: Grants-Legal-KTT

WSL

A research institute
of the ETH Domain

ORD @ Eawag, Empa, WSL

➢ **Report available on the [ETH Domain Open Research Data Portal](#)**

➢ **Contact points for RDM / publication of ORD:**
   - Team Lib4RI Data Management: datamanagement@lib4ri.ch
   - EnviDat: envidat@wsl.ch
   - ERIC/open: rdm@eawag.ch
   - Empa Scientific IT: scientificit@empa.ch

➢ Institutional points of contact for **legal** advice:
   - Empa/Eawag: Marco Panayiotou, Head KTT/Legal
   - WSL: Katharina Eggenberger, Co-Lead Project Office: Grants-Legal-KTT

Content

Definitions

Legal Basics

Guidelines for Open Research Data (ORD)

Institutional requirements for publication / registration of research data

Questions and Answers

ORD guidelines: definitions

- ➢ **Research Data** are all data that the relevant scientific community deems necessary for validating research findings.
- ➢ **Metadata** are data that provide information about data.
- ➢ **Open Research Data (ORD)** are Research Data that are publicly available, accessible, and reusable at no cost.
- ➢ **Scientific Code** means machine-readable instructions created in a research project to analyse Research Data, to reproduce research findings from a data set, or to perform experiments.
- ➢ **FAIR Principles** are internationally recognised guidelines to improve the Findability, Accessibility, Interoperability and Reuse of Research Data.
- ➢ **Research Leader / Principal Investigator (PI)**: The leader of a research project is the person who is in charge of defining and achieving the research goals.

Legal Basics

➢ **No Data Ownership** (in the legal sense)

➢ **Provisions providing some rights in data:**
    - Copyright protection for works of art and literature
    - Trade Secrets, i.e., confidential/ not published know how
    - Data Protection Law (personal data)
    - Sui Generis Right in Databases – only in EU

➢ **Contracts**: Limitation for use and/or publication of data

➢ **Third party rights in data**: need to check and/or ask for a license

"Ownership" in Data

ETH ACT

Art. 36[102] Intellectual property rights

[1] With the exception of copyright, <mark>all other rights to intellectual property</mark> created during the official duties of persons in an employment relationship as defined in Article 17 <mark>shall belong to the two federal institutes of technology and the four research institutes within the ETH Domain.</mark>

(…)

Most important general restrictions

➢ **Data protection law:** research data may contain personal data, i.e., data relating to an identified or identifiable person (data subject); such data must be completely anonymised before published as ORD.

➢ **Copyright law**: research data may contain copyright protected subject matter such as text, images, video footage, source code, and the like; such data may only be published as ORD with the **consent of the copyright holder**.

➢ **Protection of trade secrets:** research data may consist of or contain trade secrets, i.e., confidential know how. Such data may only be published as ORD with the **consent of the trade secret holder**.

Domain specific restrictions

➢ **Domain-specific restrictions vary according to the field of research.** They are laid down in the Goods Control Act, the Human Research Act, and in the Geoinformation Ordinance, to name but a few of the most important laws and regulations.

➢ These restrictions usually apply to research activities in general, and not specifically to the making available of research data as ORD. Researchers should therefore be familiar with the restrictions that apply in their field of research.

➔ **Need to check on a case-by-case basis**

Restrictions: Example
Geoinformationsverordnung, SR 510.620

Schweizerisches Landes-forstinventar (Grundlagen)	SR *921.0* Art. 33, 34 SR *921.01* Art. 37*a*	<mark>WSL</mark> [BAFU]			B	
Schweizerisches Landes-forstinventar (Ergebnisbericht)	SR *921.0* Art. 33, 34 SR *921.01* Art. 37*a*	<mark>WSL</mark> [BAFU]			A	
Langfristige Wald-Öko-systemforschung und Sa-nasilva-Inventur	SR *921.0* Art. 33, 34 SR *921.01* Art. 37*a*	<mark>WSL</mark> [BAFU]			B	

ORD guidelines: main points

➢ **Guiding Principle:** Research Data should be made available as ORD.

➢ **ORD-related decisions:** Although data "ownership" vests in the respective institution of the ETH Domain, ORD-related decisions should be made by the researchers and the research leaders / principal investigators.

➢ **Responsibility:** Principal investigators examine whether applicable laws, third-party rights, or contractual obligations, such as data protection laws, copyright law, confidentiality obligations, and domain-specific regulations, restrict or prohibit the making available of research data as ORD.

ORD guidelines: main points (II)

➢ **License:** If the repository does not require the use of a specific license, researchers and research leaders jointly decide on the license to be used. The use of the **Creative Commons Zero License (CC0)** or the **Creative Commons Attribution License (CC-BY)** is recommended.

➢ Additional institutional requirements (not regulated in the ORD guidelines) / **Publication / Registration of research data:**
Eawag→ Eric
WSL→ EnviDat

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Q&A

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