



Report on an Analysis of Legal Issues in Research Infrastructures

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e-IRGSP2

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Background

e-IRGSP2



e-IRGSP2

FIRST LEGAL ISSUES REPORT

PUBLIC EU DELIVERABLE: D4.1

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Abstract: This document explores some legal issues relating to Research e-Infrastructures. The legal issues analysed herein are related to a) the legal form for Research e-Infrastructures, b) the pre-commercial procurement as a complementary support to research infrastructures and therefore innovation, and c) grids as one of current main representatives of e-Infrastructures. With regard to grids, the emerging legal issues are structured, a list of sub-issues relating intellectual property rights is provided, whilst the issue of privacy and data protection is analysed in more detail.

Background



- Report was produced in the context of e-IRGSP2
- Work Package 4 is “Legal Issues”, with objective:
 - State of the art in legal aspect questions that arise during the e-IRG operations
- Identify Gaps in legal aspects work
- Provide results to the e-IRG
- Engage stakeholders as necessary



Process

e-IRGSP2

- Report written by lawyers.
- In frequent interaction with technologists (i.e., us).
- Communication and learning went both ways.



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Key achievements - Overview



- Prepared comprehensive “First Legal Issues Report”, to be used as a basis for e-IRG feedback and engagement
- Intangible achievements
 - Bridge the gap between the legal profession and technologists
 - (We Are Not Lawyers)



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Key achievements - Overview

e-IRGSP2

64 pages



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Key achievements - Overview

e-IRG SP2

28,192 words



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Key achievements - Overview



108 footnotes* †, ‡, §, ¶

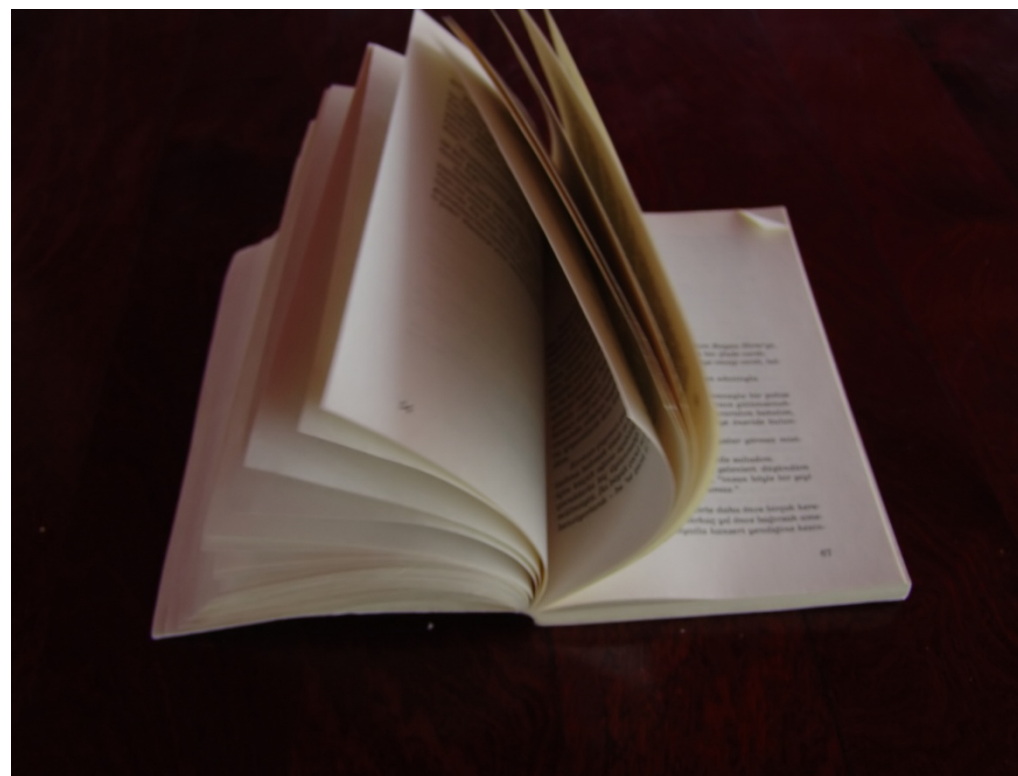
* Yet Gibbon's *Decline and Fall* would not have been the same without footnotes. (D. Knuth)



Key achievements - Overview



1. Legal Forms for Research e-Infrastructures
2. Pre-Commercial Procurement
3. Legal Issues in Grids



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Legal Issues Survey 1/3: Legal Forms for Research e-Infrastructures



- Scope and Criteria for Selection of Suitable Legal Form
- National Legal Forms
- European Legal Forms
- European Research Infrastructure (ERI)
- Analysis of Current Options



Legal Issues Survey 2/3: Pre-Commercial Procurement

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- US public sector spends \$50bn per year in procurement of R&D
- 20 times higher than in Europe
- 50% of the gap in the investment gap between the US and Europe
- US expenditure in R&D excluding defense is still 4 times higher than in Europe
- \$3.4 bn gap excluding defense



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Legal Issues Survey 2/3: Pre-Commercial Procurement



- Aim and Scope
- Legal Framework for Pre-Commercial Procurement
 - Application of public procurement directives and the fundamental principles of the EC treaty
 - Application of state aid rules
- Main Characteristics
 - Risk-benefit sharing
 - Competitive development in three phases
 - Separation of the R&D from the commercialisation phase



Legal Issues Survey 3/3: Legal Issues in Grids

e-IRGSP2

- Personal Data Protection in Grids
 - EU Data Protection Law
 - General Principles and Legal Grounds for Lawful Data Processing
 - Data Controller Obligations
 - Data Subject's Rights
 - Territorial Application of Data Protection Directives
 - International Data Transfers
- Intellectual Property Rights

HARVARD LAW REVIEW.

VOL. IV. DECEMBER 15, 1890. NO. 5.

THE RIGHT TO PRIVACY.

"It could be done only on principles of justice, and the
not public ownership, which, when applied to a new subject, make
national law without a precedent, with more than a hundred and
approved by many."

Written by Mr. William O. Taylor, 4 Burr. 329-330.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et contra*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in

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Lessons Learned



- Legal Issues is a huge subject
- Legal Issues are essential to e-Infrastructures, but technologists might be difficult to engage.
- Legal Issues are becoming more and more important.



And there can be more...



“One of the most striking, if little noted, aspects of the recent US stimulus bill is that 53 of its 407 pages are devoted to setting up the administrative framework for a national system of electronic health records (EHRs)” Nature **458**, 259-260



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Thanks



Available at:

http://www.e-irg.eu/images/stories/publ/e-irgps2_public_deliverables/e-irgsp2_d4.1.pdf

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Please send us suggestions and comments!

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