

Research Data Management Policy Guideline

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1. Objective

The Johannes Kepler University (JKU) acknowledges the fundamental significance of managing research data and related records needed to attain high-quality research and scientific integrity. Correct and easily accessible research data form the basis and essential component of any research activity. They also enable the research process or research results to be reviewed and justified, as well as subsequently used. The JKU strives to promote the highest standards in this respect in compliance with the FAIR principles in order to ensure the long-term value of research data for science, research and society. This policy guideline is designed to advise JKU scientists on how they handle research data.

2. Scope & period of validity

This guideline covers the collection, processing, storage and subsequent use of research data. It applies to the entire academic staff of the JKU for an indefinite period. If research activities are promoted or financed or sponsored by a third party and the underlying contract requires specific provisions regarding research data (in particular intellectual property rights, access rights, exploitation rights), the provisions of the specific contract shall take precedence over the provisions of this policy guideline. The same applies to cooperation agreements with external research partners.

3. Definition of terms

ALCOA+ principle: ALCOA is an acronym that describes the five most important aspects of Good Clinical Practice (GCP) in the handling of clinical research data. These are: **A**ttributable, **L**egible, **C**ontemporaneous, **O**riginal and **A**ccurate. The plus stands for CCEA. This is an extension of the ALCOA principle and stands for Complete, Consistent, Enduring and Available.

Data clearing: Data clearing involves checking the permissibility of the transfer of personal data by the JKU to third parties with regard to the latest edition of the data protection act and the basic data Protection ordinance, as well as the protectability of research data, especially in terms of the applicable copyright law. The tasks of data clearing are performed decentrally at the JKU:

- The **Legal department** is responsible for specific legal matters relating to data protection and copyright, unless these can be fulfilled by one of the following departments.
- The **Research service and knowledge transfer** department at the JKU is responsible for information and advice on third-party funded projects, research funding and support in the application process.
- The **Data protection officer** performs their tasks in accordance with article 39 of the GDPR, in particular advising and informing in connection with the processing of personal data and monitoring compliance with the applicable data protection regulations by the JKU and its employees. In addition, pursuant to article 38 (4) of the GDPR, the Data protection officer is a point of contact for data subjects in connection with the processing of their personal data and the exercising of their rights according to the GDPR.
- In addition, JKU researchers are supported by the JKU **IPR management** department in the field of intellectual property rights (IPR), in particular in connection with patent and licensing matters, and in the drafting of corresponding contracts.
- The Competence Centre for Clinical Studies (**KKS Linz**) at the Centre for Clinical Research (ZKF) at the medical faculty provides consulting services regarding the processing of personal data in clinical research.

Data management plan (DMP): The objective is to describe all activities performed within the context of research activities involving research data throughout their life-cycle by specifying which data are collected, processed and stored for how long and for what purposes, and ensuring that these activities are performed in accordance with the relevant legal (in particular data protection, copyright), contractual and intra-university requirements, in particular the Guideline for safeguarding good scientific practice¹, the FAIR principles and ethical principles.²

Austrian privacy law: Federal law regulating the protection of natural persons with regard to the processing of their personal data (latest edition of Federal Law Gazette I No. 14/2019).

¹ SOP 8201.

² <https://www.forschungsdaten-bildung.de/datenmanagementplan?la=de> retrieved on 14.02.2020.

GDPR: Regulation (EU) 2016/679 of the European Parliament and of the Council dated 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, replacing directive 95/46/EC (basic data protection regulation).

Third parties: Natural or legal persons, authorities, institutions or other bodies that are not attributable to the Johannes Kepler University Linz.

FAIR principles: Principles implemented within the framework of research data management to ensure the Findability, Accessibility, Interoperability and Re-usability of research data.³

Austrian research organisation law: Federal law concerning general research in accordance with article 89 of the GDPR and research organisation (latest edition of Federal Law Gazette I No. 31/2018).

Research data: Data resulting from scientific research, experiments, measurements, simulations, surveys or interviews. They include structured mass data as well as unstructured data in a wide range of formats and contents, including process data such as processing steps, algorithms and programs developed during a research project.⁴ This is all information required to support or validate the history, outcome, observations and findings of research activities (e.g. raw data, processed data, released data, published data).

Research data management: Process covering the entire life cycle of research data, in particular the planning, acquisition, collection, publication, documentation, provision and storage and archiving of research data.⁵ Advice and information for researchers in connection with research data management and the preparation of data management plans is provided by staff of the JKU University Library.

Research documentation (FoDok): Database that stores metadata relating to research performed by JKU employees.

Open licence: According to article 24 paragraph 1 of Austrian copyright law, the author of a copyrighted work may allow other (natural or legal) persons in the form of a work use licence to use the work for one-off, or all types of exploitation, reserved for the author. Furthermore, the author can also grant others an exclusive (absolute) right to use the work. The transfer of these rights takes place in the form of licenses within the framework of copyright contracts.⁶ Open licenses (open content) generally allow free or open use, distribution, reproduction and processing of the data as long as the author is named;⁷ in research, the Creative Commons core licenses (CC BY and CC0) are often used.

³ H2020 programs. Guidelines on FAIR Data Management in Horizon 2020, released by EUROPEAN COMMISSION, Directorate-General for Research & Innovation.

⁴ The research data working group of the Digital Information Priority Initiative of the Alliance of German Science Organisations available at: <https://www.allianzinitiative.de/archiv/forschungsdaten/> [on 12/02/2020]; E-Science: Science within new framework conditions. Technical concept for the ongoing development of the scientific infrastructure in Baden-Württemberg, published by the Ministry of Science, Research and the Arts Baden-Württemberg (2014), 16.

⁵ Research data management. A handbook published by the research data working group of the Alliance of German Science Organisations' Digital Information Priority Initiative, 1st edition (2018), 4.

⁶ *Bücheler* in *Kucsko/Handig*, urheber.recht² § 24 Rz 4 f.

⁷ Cf. in detail *Bücheler* in *Kucsko/Handig*, urheber.recht² § 26 Rz 14 ff.

Austrian patent law: Patent law 1970, Federal Law Gazette I No. 37/2018.

Personal data: According to Article 4 No. 1 of the GDPR, personal data is all information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the natural person.

Repository: Databases operated by research institutions, in particular universities, for the storage, archiving, management and availability of scientific materials and research data.⁸

Austrian university law: Federal law on the organisation of universities and their studies (University act 2002 – UG) Federal Law Gazette I No. 3/2019.

Austrian copyright law: Federal law on copyright applying to literary and artistic works and related property rights, Federal Law Gazette I No. 105/2018.

4. Rights of use

4.1 General information

The JKU is entitled to the rights of use of copyrighted works created by people at the university in the course of their university activities, based on the corresponding employment contract regulations. In all other respects, the provisions of article 106 in Austrian university law and Austrian copyright law in their respective valid versions shall apply.

In accordance with section 106(1) sentence 1 of Austrian university law, scientific members of staff at the university shall be entitled to publish their own academic research work and results; this shall also apply to doctors during medical specialist training in accordance with section 96 of Austrian university law as well as to academic staff working on externally funded projects (project staff).⁹

In addition, in accordance with section 106(1) sentence 2 in conjunction with sections 11 and 20 of Austrian copyright law, academic members of staff at the university who have made their own academic contribution to a research project shall have the right to be named as co-authors. Scientific members of staff who independently create copy-righted works are therefore entitled to be named as the sole author.¹⁰ If a com-

⁸ Free access to scientific information. Repositories available at: <https://open-access.net/informationen-zu-open-access/repositorien/> [on 12/02/2020].

⁹ Grimm in Pfeil (ed.), Personalrecht der Universitäten (2010) § 106 Rz 2.

¹⁰ Toms in Kucsko/Handig, urheber.recht² § 20 UrhG Rz 19 ff, 25.

puter program or a database (section 40f paragraph 3 Austrian copyright law) is created by an employee in fulfilment of tasks for which they are employed, the right to copyright designation according to section 40b Austrian copyright law - unless agreed otherwise - belongs to the employer.¹¹

In the case of an employee invention in accordance with section 7 paragraph 3 of Austrian patent law, the rectorate must be informed of the invention and the JKU has a right of access to it in accordance with section 106 paragraph 3 Austrian university law. In accordance with section 8 paragraph 1 Austrian patent law, the researcher is entitled to special remuneration for transferring their invention to the employer and for granting right of use with regard to such an invention (cf. SOP 8209). According to Section 20 paragraph 1 Austrian patent law, the inventor is entitled to be named as the inventor.

4.2 Special provisions relating to the Faculty of Medicine

In the case of employee inventions made by employees of the JKU or Kepler Universitätsklinikum GmbH (KUK) and the JKU, the cooperation agreement between the JKU and KUK stipulates in sections 23.1. and 28.1. that both KUK and the JKU will ensure that inventions made by their employees in the course of their work for the clinical department of the medical faculty are directly or indirectly adopted and, depending on cost bearing capacity, can be utilised for the benefit of KUK or the JKU. The costs of the special remuneration for the invention to be paid by the employer in accordance with Austrian patent law are borne by the contracting parties in proportion to the exploitation revenues they earn.

5. Principles of research data management

Research data are stored and made available in a suitable repository or archiving system and are referenced using persistent identifiers.

When depositing data in a repository, researchers are required to declare their affiliation to the JKU in accordance with the provisions of the **"Guideline for the declaration of affiliation for publications and research projects"**¹². In order to maintain the integrity of research data, it must be stored correctly, completely, unaltered and reliably, and must be findable, accessible, traceable, interoperable and, where possible, made available for re-use in accordance with FAIR principles. To enable the re-use of research data or research results by citing the original sources, the currently valid citation rules must be applied. The storage must be dated, and subsequent changes must be stored as separate-

¹¹ Toms in *Kucsko/Handig*, urheber.recht² § 20 UrhG Rz 24; Wiebe in *Kucsko/Handig*, urheber.recht² § 40b UrhG Rz 7; Woller in *Kucsko/Handig*, urheber.recht² § 40f UrhG Rz 40; Nowotny in *Perthold/Stoitzner*, UG^{3.01} § 106 Rz

¹² SOP 8212.

ly as possible from the original data. When dealing with clinical research data, it is recommended that the ALCOA+ principle of good clinical practice be applied.

Whenever personal data is handled, it must be in compliance with the applicable data protection regulations. When handling health data, the increased data protection requirements must be met. According to article 2 paragraph 1 of the GDPR in conjunction with article 4 paragraph 1 of Austrian privacy law, the provisions of the General Data Protection Regulation and the Austrian privacy law apply to the fully and partially automated processing of personal data. If data are not processed automatically, but manually instead, the GDPR only applies if the data are stored or are to be stored in a structured file system that is organised according to specific criteria, so that access to the personal data it contains is not only possible by sequentially going through the entire collection, but there is a simplified method of indexing and locating its contents.¹³ Files and collections of files and their cover sheets which are not arranged according to specific criteria - and are therefore unstructured - are not covered by the GDPR; paper files, for example, such as court files in particular, are not covered.¹⁴ Also excluded are data obtained purely orally, acoustically or visually, provided they are not to be stored.¹⁵

In the absence of any particular creative achievement (since the implementation and display of results is usually the task of a computer program) - individual data, raw data or results of the mere evaluation or analysis results are in principle not works in accordance with section 1 paragraph 1 of Austrian copyright law and are therefore not protected by copyright, so there is also no provision for licensing.¹⁶

However, data collections may constitute databases protected by copyright in accordance with section 40f paragraph 1 of Austrian copyright law (database works). But, if the collection of data does not achieve the necessary level of creativity (simple database), it is not protected as a collective work (section 6 Austrian copyright law); in this case ancillary copyright in accordance with section 76c onwards of Austrian copyright law applies if a substantial investment was required for the procurement, verification and presentation of the contents of the database.¹⁷ Whether or what kind of protectability applies to research data requires verification in each individual case by the department responsible for data clearing.

Provided that there are no third-party rights, legal obligations, ethical aspects or property regulations to the contrary, research data should be freely licensed and made openly available for re-use, while respecting intellectual property rights.

¹³ *Ennöckl* in *Sydow* (Ed.), Europäische Datenschutz-Grundverordnung Art 2 Rz 6 f.

¹⁴ *Feiler/Fargo*, EU-DSGVO Art 2 Rz 4; *Zerdick* in *Ehmann/Selmayr* (Ed.), DS-GVO Art 2 Rz 3; *Heißl* in *Knyrim*, *DatKomm* Art 2 DSGVO Rz 52 ff.

¹⁵ *Jahnel/Bergauer*, *Teil-Komm DSGVO* Art 2 Rz 18; *Heißl* in *Knyrim*, *DatKomm* Art 2 DSGVO Rz 55.

¹⁶ *Dürager*, ÖBL 2018/80, 263 mit Bezug auf OLG Hamburg 6. 5. 1999, 3 U 246/98 GRUR 2000, 319.

¹⁷ *Dürager*, ÖBL 2018/80, 263 f; *Woller* in *Kucsko/Handig*, *urheber.recht*² § 40 f UrhG Rz 7.

In accordance with section 2f paragraph 3 of Austrian research organisation law, the minimum archiving period for research data is **10 years** from publication of the research results or completion of the research activity. The administrative documents accompanying the research activities must also be archived. If research data and records are to be (or have to be) erased or destroyed, this may only be performed using a standardised process, taking into account all legal regulations, especially internal university regulations and ethical aspects. Principal investigators or their legal successors must be informed and offered the opportunity for the research data to be handed over. All measures taken must be documented and be accessible for possible later assessment.

6. Responsibilities

6.1. Responsibilities of the JKU

The JKU is committed to creating the conditions for fulfilling this policy guideline by promoting research support practices.

The JKU is responsible for the following areas:

- a. The provision of technical assistance, subject to financial constraints, and advice on the collection, documentation, storage, availability, archiving and, where appropriate, destruction of research data and external repositories.
- b. The provision of guidelines and directives for the uniform handling of research data, taking into account the principles of research ethics and scientific integrity, etc.
- c. The provision of templates for data management plans, as well as advice on the preparation and maintenance of data management plans.
- d. The provision of consultation and training on data protection with a special focus on sensitive or personal data.
- e. The promotion of best scientific practice; instruction and ongoing training in the field of research data management and advice on the collection, documentation, storage, availability, archiving and, where appropriate, destruction of research data.
- f. The implementation of measures to raise awareness regarding the importance of research data management.

6.2. Responsibilities of the researchers:

Researchers are responsible for the following areas:

- a) The preparation, submission and updating of data management plans (DMP) for research activities, their registration and ensuring their compliance with them.
- b) The management (collection, documentation, storage, availability, archiving and, if necessary, destruction) of research data and data sets in accordance with the principles and requirements of this policy.
- c) The planning of a possible further use of the data subject to the definition of rights of use and the allocation of appropriate licenses. The rights to re-use or publish research data should not be granted to third parties such as commercial publishers or agents without securing the rights to make the data available openly and to re-use it.
- d) The transfer of research data to a repository, at the latest by the time the research activity has ended.
- e) The linking of the repository in which the research data is stored to the research documentation (FoDok).
- f) The compliance with all legal, contractual and institutional requirements relating to research data as well as the fulfilment of the requirements of contract principles, sponsors or providers of funding.

7. Contact

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