

# PRIVATE LIFE PROTECTION, INTELLECTUAL RIGHTS PROTECTION AND TOOLS DISSEMINATION

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This article aims at presenting the work performed by the caENTI Innovation and Dissemination Manager at the beginning of the project third reporting period. Indeed, the first part of the article presents the reflexions we led about the most efficient way to protect individual data whilst creating, managing and analysing data bases in a research-action prospect. In a second part, we explain our suggestions regarding the most appropriate way to protect the caENTI intellectual creations, on the one hand the data bases and on the other hand all the other documents the consortium has designed for more than two years. Lastly, we briefly describe the tools the caENTI consortium has created and implemented to disseminate the results of its activities.

Key-words: data-bases, personal data, software, licence, dissemination

During the year 2008, the caENTI Innovation and Dissemination Manager mainly worked on two dimensions of this issue: on the one hand, the protection of private life while creating and working on data bases including personal data, and on the other hand the protection of the intellectual creations designed by the caENTI consortium, and especially of software and data bases.

### 1. The protection of private life whilst creating and managing data bases

Regarding the protection of private life while creating and working on data bases that include individual data, we paid much attention to the evolution of the European and national legal frameworks on this issue. This study showed there have been three main chronological steps in this legal evolution at the European scale.

First of all, the French law n°78-17 voted in 1978 and called «Data processing and liberties law » (« Informatique et Libertés » in French) is one of the very first laws adopted in this field at the world level.

As the European earliest and more complete text regarding this issue, this law n°78-17 became the main reference of the fundamental European text on this subject that was voted in 1995. The latter corresponds to the second step of the European legal frameworks evolution on the relations between protection of private life and work with data bases. Indeed, the directive 95/46/EC concerning personal data protection and free movement of such data, voted on October, 24<sup>th</sup> 1995, is presently the fundamental European text. It aims at harmonizing the European legislations about protection of data, private life and individual liberties.

At the time of transposing this voted directive, many countries belonging to the European Union modified their internal legislation, in order it respect the directive content. To study this third step of the European legal frameworks evolution regarding private life protection, we drafted a table of the present legislation in each of the European country where there is at least one caENTI member, and we got the following result.

State	Laws in force	Control authority
Belgium	Transposition law of the directive 95/46/EC: December, 11 <sup>th</sup> 1998 Additional dispositions in a law of February, 26 <sup>th</sup> 2003	Commission of private life protection
France	Transposition law of the directive 95/46/EC: August, 6 <sup>th</sup> 2004 (law n° 2004-801)	French National Commission Data Processing and Liberties (CNIL)
Hungary	Law of November, 17 <sup>th</sup> 1992 about protection of personal data	Parliamentary Commissioner for data protection and freedom of information
Italy	Transposition law of the directive 95/46/EC: laws n°675 and 676 of December, 31 <sup>st</sup> 1996 about protection of personal data A new code of data protection became valid on January, 1 <sup>st</sup> 2004	Responsible for Data protection
Romania	Transposition law of the European Union acquis (represented by the directive 95/46/EC): law n°677-2001 about people's protection vis-à-vis the processing of personal data Creation of the control authority by the law n°102-2005	National Control Authority of the processing of personal data

Slovenia	Law of July, 23 <sup>rd</sup> 1999 about protection of personal data	Information Commissioner
Spain	Transposition law of the directive 95/46/EC: Organic law of December, 13 <sup>th</sup> 1999 (n°15/1999) that became valid on January, 14 <sup>th</sup> 2000	Agency for the data protection

After having focused on the chronology of the personal data protection texts in Europe, we started studying in detail three dimensions of this issue on the one hand at the European level, and on the other hand in each of the caENTI country. We chose these dimensions because they seemed especially important in the context of the caENTI activities and consequently we wanted to make sure our procedures of data processing respect them. They are firstly the user's access to the data that concern him/her, secondly the access of other people to the user's personal data. These “other people” especially refer to social workers, in particular specialized educators and caseworkers, who intervene with the user. The third dimension we decided to emphasize is the authorised way of using personal data in order to make scientific surveys and needs evaluation.

Concerning the user's access to the data that concern him/her at the European level, the main principles about the protection of personal data and free movement of such data were defined by the directive n°95/46/EC of October, 24<sup>th</sup> 1995. These key-elements consist in giving access to the user to all the information that concern him/her and imposing to the organization that gathers and processes personal data to explain the planned use of these gathered data to the user. Nevertheless, this legal text does not specify the way this right can be concretely implemented. Indeed, it does not indicate if the user can be accompanied whilst consulting the gathered data, and in this case by which kind of people (family members, lawyers,...). These precisions should be given by each of the European countries legislation, that should not only be adapted so as to respect the European directives but also specify the way people can concretely enjoy the rights created by the European right. The obligation to transpose directives in national legislations and to vote national legal texts that respect European right is based on the recognized and accepted superiority of European right on national European ones.

We are also presently studying the access of other people than the user (in particular social workers and medical staff) to his/her personal data and preparing a synthesis of this issue state, firstly at the European caENTI members level and then at the international level. On this point, we already noticed there are sharp differences from a European country to another one. Indeed, this access possibility depends on many factors, and firstly on each European Union member legislation philosophy (Welfare State versus neo-liberalism). This possibility also depends on the kinds of people who intervene with the user. They can belong to a broad spectrum, from the social workers working in the public sector to the voluntaries involved in non-governmental organizations. The access to users' personal data also varies according to the professional sector, either medical or social. Lastly, the kind of organization in which the user is received (that can be for example an hospital, a public social service devoted to help unemployed people to find a job, a non-governmental organization helping handicapped people to develop their relationships with able-bodied people or a non-governmental organization helping immigrants to integrate in the society of the country where they settle) also influences the possibility for the staff members to have access to the users' personal data.

As far as the respect of personal data confidentiality when they are used to meet survey and evaluation needs is concerned, two main options are presented in the directive n°95/46/EC. Under the terms of this legal text, the organization that needs personal data to make a diagnosis or an evaluation can apply for a preliminary authorization by its national control authority. The dossier must be submitted before starting the processing when the latter is or can be considered as able to generate risks of people's rights and liberties violation. The European Union determined this general principle and gave to the European States the competence to precisely define what a “*processing*”

*generating risks of people's rights and liberties violation*” is. The second option consists in the possibility for the organization which needs to use personal data within its activity framework, to make a simplified declaration. This option can be chosen when the processing the organization should make is not considered as representing any risk of people's rights and liberties violation. In this case, it is even sometimes possible to be exempted from legal steps, when the national control authority regards the processing as particularly innocuous.

## **2. The protection of intellectual creations**

### **2.1. The protection of free software**

Regarding the software that were already created by some members of the caENTI consortium, we wondered how to protect them from undesired use, whilst giving access to them to a broad users' community. To do so, we thought about applying the free software regime to them. Indeed, this regime allows the users to run, distribute, study, change and improve the software. Among the free software, we should distinguish on the one hand, the open source ones which use conditions are quite restrictive and on the other hand, the shareware and freeware which execution is free and which logic is generally commercial. Consequently, the source codes of the latter are not accessible. One of the main free software common points is the fact they emphasize their authors' will to limit -but not abandon, it is a capital point- their prerogatives in a collaborative prospect. As the number of free software has increased much during the latest years, many licenses were created to meet the specific legal needs of their different categories.

As Innovation and Dissemination Manager, we had to suggest to the consortium the adoption of the free software license most appropriate to the caENTI needs, in particular at the software dissemination time. In this prospect, we first listed the indispensable characteristics we wanted to find in the license we will adopt to protect the free software the caENTI designs. We considered the adopted license had to allow diffusing the created software in order that a worldwide users' community could take advantage of them, had to forbid any commercial use of the software, had to impose a diffusion with a sources quotation (as on the “Philcarto” website) and had to apply diffusion norms compatible with the European right. After having drafted this list, we looked for licenses respecting at least most of its criteria and we found two: the CeCILL license and the EUPL one.

As regards the CeCILL license, its main advantages are its compatibility with many important elements of the law and data-processing fields. Indeed, this license is compatible with the European legal terminology, with the French law -which is much more protective for the authors than the common law regime- and with many free software licenses. It is in particular compatible with the GNU-GPL one, which is the free software license most used in the world. Besides, the CeCILL license imposes to quote the sources of the disseminated documents, it is quite easy to adapt to the needs and use context of a free software and it is very complete. Nevertheless, the CeCILL license has two main disadvantages. Indeed, it is sometimes incompatible with the European right and it is especially designed for the free software, what means that it imposes to communicate the source codes and it allows a commercial use of the software. Moreover, the CeCILL license is only available in French and English.

Concerning the EUPL license, its main advantage is its global compatibility with the European orientations and law. Indeed, it is officially developed and approved by the European Commission, it is completely complying with the European right and it is translated and valid in all the languages of the European Union countries. In addition, it also takes into account the national laws of the European Union countries. Regarding the data-processing field, it is compatible with most of the significant free software licenses. Lastly, it is very easy to use and it imposes to quote the sources when a document is disseminated. The disadvantages of this license are quite similar to the CeCILL license ones. Indeed, both are especially designed for the free software, what means it

is possible to make a commercial use of the software and it is imperative to communicate the source codes.

After having made this study about the protection by licenses of the free software caENTI designs, we made some suggestions to the caENTI representatives. As their reactions were fairly positive, we asked the Steering Committee members to validate them during its meeting that took place during the conference of Territorial Intelligence of Besançon on October, 15<sup>th</sup> 2008. Our propositions included two main points. Firstly, we suggested adopting the EUPL license for the free software that precisely correspond to this definition. The concerned software are those that aim at making collaborative improvements, that are based on the idea to communicate the sources and that are designed to allow using them in a commercial prospect. Then, for the software we want to better protect, we suggest drafting a specific license inspired by the EUPL principles but in which we would make fundamental adaptations according to the caENTI project specific needs. Thus, in the created license, we could forbid the software commercial use and foresee several protection degrees regarding the source codes communication we would like to make (from the choice to oblige ourselves communicating them to the total prohibition of communication).

## **2.2. The protection of other intellectual creations**

We also focused our attention on the way to protect the other caENTI intellectual creations. To do it, we studied the different existing licenses that have this objective. It quickly appeared that the most efficient one is Creative commons. Indeed, it can be used for almost all the intellectual creations except for software, and in particular for the ones we produce much: scientific articles, maps and data bases. As a consequence, I consider Creative commons fairly corresponds to the caENTI present needs. Besides, it was though adopting the philosophy to share knowledge within the scientific community. At the same time, this license allows the rights' holder indicating to his/her audience or partners, the use conditions of his/her creations he/she authorizes, and it allows him/her choosing the law to be applied to the dissemination contract. Vis-à-vis the caENTI needs, the Creative commons license has not only the advantage to protect many kinds of creations, but also to be complying with the international private law and to be available in many associated countries. We should specify that among them there are all the countries members of the caENTI. Besides, the Creative commons license is translated into all the caENTI languages. It is a very adaptable license, which is very easy to implement and use. Lastly, the Creative commons license has recently received positive echoes in case laws, for example in Spain in February 2006. However, this license has two disadvantages as regards the caENTI consortium needs. Indeed, we noticed the absence of an international harmonised version of the license. Nevertheless, the most serious problem is this license only allows protecting the conditioning of the intellectual creation. It does not allow an intellectual creation's author protecting the concept he/she designed and on which is based the creation. However, when we made the balance of the advantages and disadvantages of this license, we concluded it is rather well-adapted to the caENTI needs in terms of scientific articles, data bases and maps protection. Consequently, during the Steering Committee organised on October, 15<sup>th</sup> 2008, on the first day of the international conference of Territorial Intelligence of Besançon, we presented this license and asked the meeting participants to validate its use to protect most of the caENTI intellectual creations. Convinced of this license qualities, they unanimously declared themselves in favour of the adoption of the Creative Commons solution.

## **3. The dissemination tools of the caENTI activities and results**

Since the launching of the caENTI project on March, the 1<sup>st</sup> 2006, the consortium has used two main instruments to communicate on its activities and disseminate their results towards a wide audience, and also to jointly work on coordinated research-action activities in a remote way. The first of these instruments is the Internet portal, which is a public dissemination tool. Its first version was implemented at the very beginning of the Coordination Action and the second -improved one-

was presented during the international conference of Territorial Intelligence of Huelva in October 2007. This second version of the portal focuses on territorial intelligence, and not only on the caENTI project anymore. This portal has presently a satellite website, called Catalyse community, that allows downloading documentation on the Catalyse method and tools, for example pragma and anaconda. This website design results from our strategy to add to the caENTI main portal satellites concerning specific thematic, such as the Catalyse toolkit and the international conferences, as we will explain it below. The second dissemination instrument of the caENTI project is CooSpace, which is a cooperative workspace opened to all the caENTI members and also to the associated researchers. Its main characteristic is to be quite similar to a virtual laboratory. In addition to these two instruments that have existed since the very beginning of the caENTI project and that have a daily functioning, we should also present other three important communication instruments that were designed, or at least implemented, in the course of the caENTI project. The first of them is the international annual conferences of territorial intelligence. The first one was organised in Alba Iulia (Romania) in September 2006, the second one in Huelva (Spain) in October 2007 and the third one in Besançon (France) in October 2008. The target of these annual events that gathered members of the caENTI project and other researchers and actors interested by the territorial intelligence problematics was to favour regular communication and exchange among the caENTI community and with people working on connate issues. Each year, we improved the conference communication cover so as to online attract a broader audience than the consortium members. Thus, during the conference of Huelva we implemented a blog website and during the conference of Besançon we put on it live videos of some special moments, for example the presentation of the territorial intelligence network prospects by Jean-Jacques GIRARDOT and the invited conferences. As regards the International Journal of Territorial Intelligence, its first issue should be edited in the next weeks following the international conference of Territorial Intelligence of Besançon. This journal aims at disseminating the best works performed in the territorial intelligence field at the world scale, not only by members of the caENTI network but also by all the researchers and actors working about these issues. The caENTI network is also creating an international master of territorial intelligence with an Erasmus Mundus certification. This project, led by the universities of France-Comté, Huelva, Liege, Pecs, Alba Iulia and Salerno, received the requested national approvals in 2008. Consequently, it will be implemented in these six universities for the first time during the academic year 2009-2010.