

Infoterm

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Guide to Terminology Agreements

ELRA - TermNet

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PREFACE

Given the central importance of the availability of reliable terminologies in education, scientific and technical writing, and general specialist communication on the one hand, and the masses of information now being made available online on the other, a comprehensive solution to copyright problems in the field of terminology is urgently needed.

This Guide to Terminology Agreements, produced by Infoterm and published jointly by the European Language Resource Association (ELRA) and TermNet, represents the first results of a number of activities concerning legal issues to be supported and/or undertaken by ELRA as part of its brief to promote the language engineering industry in Europe, and to facilitate the widespread provision of high-quality resources in particular. Originally published in German, it has now been translated into English, French and Spanish and translations into a number of other European languages are planned.

The Guide represents the culmination of a long period of work by many experts, and provides an overview of current good practice in terminology which will be of considerable benefit to practitioners in the field. In addition, since many of the problems are similar to those faced in other areas of language engineering, the Guide will also be of considerable relevance beyond the terminology profession, and will form a nucleus for further, sector-neutral work.

We at ELRA would like to thank all those involved in the production of the Guide, and in particular the authors and our co-publishers, TermNet, for their efforts.

Antonio Zampolli †
President, ELRA Board

FOREWORD

A work like this Guide, which examines copyright problems from the perspective of terminology work and resources, naturally has a long gestation period and builds on the work of many others people.

Preparatory work

In October 1986, the International Information Centre for Terminology (Infoterm) convened an International Expert Workshop on Copyright in Terminology, the published results of which were later supplemented by a (draft) “Code of good practice - Copyright in terminology”. The latter was prepared in co-operation with a number of experts on the recommendation of the Joint Inter-Agency Meeting on Computer-Assisted Translation and Terminology (JIAMCATT), the relevant co-ordination group for the international organizations belonging to the UN system.

DTT Symposium

In 1992, the Deutscher Terminologie-Tag e.V. (German Terminology Association) organized a Symposium on Intellectual Property Rights in Terminologies, which included a number of contributions on the difficulties of protecting property rights in terminological data. This Symposium made a significant contribution to raising awareness of copyright problems, both in the field of terminology and beyond.

TKE’93 Workshop

In addition, the Symposium paved the way for another International Workshop on Copyright in Terminology organized as part of the Third International Congress on Terminology and Knowledge Engineering (TKE’93) in Cologne in August 1993. This Workshop discussed a model contract for the exchange of terminologies drafted by Jürgen Goebel in close co-operation with Infoterm was discussed. The present “Guide to Terminology Agreements” is largely based on the results of these discussions.

KnowRight’95 Congress

Since then, an International Expert Meeting on Intellectual Property Rights in Information was held in Vienna, 23-24 March 1995, as a joint event organized by UNIDO, UNESCO, Infoterm and the Austrian Computer Society (OCG). In turn, this served as preparation for the First International Congress on Intellectual Property Rights for Specialized Information, Knowledge and New Technologies (KnowRight’95), held in Vienna, 21-25 August 1995. The pre-conference workshop on “Copyright in Terminology and Lexicography” organized by Infoterm provided further input.

Acknowledgements

In addition, individual experts from a number of subject fields have contributed to this document. In particular, we would like to thank (in alphabetical order) Ms. Jennifer Draskau, Ms. Deborah Fry, Mr. Pierre Lewalle, Mr. Michael Schaar, Mr. Klaus-Dirk Schmitz, Ms. Roberta Schwarz, Mr. Richard Strehlow, Mr. Louis-Claude Tremblay, Mr. David Walker, Mr. Malcolm Williams and Ms. Sue Ellen Wright for their assistance.

Financial support

Last but not least, we gratefully acknowledge the assistance of the European Language Resources Association (ELRA) and its CEO, Dr. Khalid Choukri, in supporting the finalization and production of the English and German versions of the Guide. Versions in other languages are planned for the future.

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CALL FOR COMMENTS/AMENDMENTS

This Guide to Terminology Agreements offers a fresh approach to copyright problems in terminology in several ways:

(1)

It aims to enhance awareness of the latent problem of intellectual property rights in the field of terminology, and of the indirect and somewhat unexpected links between this problem and questions of product quality and product liability.

(2)

It tries to reconcile general ethical principles and legal provisions governing the respect for intellectual property on the one hand, and the need to prevent any undue restriction of terminological activities on the other.

(3)

It provides sample provisions and suggestions for items to be included in terminology agreements, thus helping to avoid clashes of interest with respect to terminological data (a subject which so far has largely eluded the attention of legislators).

This pragmatic approach should be of considerable value to practitioners in the field. However, it should not be forgotten that copyright issues in general, and their application in terminology in particular, are some of the most thorny problems facing the emerging information society. We would, therefore, ask our readers to use their influence to ensure that a satisfactory, comprehensive and pragmatic solution to the – by no means trivial – problem of copyright is reached as quickly as possible. Only if this is the case, can the uncertainty which hampers the provision of reliable terminologies be removed.

Equally, the authors are fully aware that the Guide is only one step in an ongoing process that will eventually lead to a comprehensive solution. As a result, we regard the Guide as a living document and would welcome any suggestions for improvements or comments. In particular, we would like to encourage our readers to provide

- comments and suggestions for improving the Guide, and
- sample formulations from existing copyright clauses, or relevant contracts, for inclusion in future issues of the Guide.

Any such information should be sent to:

International Information Centre for Terminology (Infoterm)

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Guide to Terminology Agreements

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INTRODUCTION: HOW TO USE THIS GUIDE

This “Guide to Terminology Agreements” is the English translation of the German “Leitfaden für Terminologievereinbarungen” by the same authors, which was published in 1996. As such, it primarily reflects German copyright law. However, it also takes European developments into account, as well as drawing on the work of international terminology standardization activities, and on the terminology laid down in the relevant ISO standards. These supranational aspects, plus the general comparability of and uncertainty surrounding copyright problems throughout the world, makes the Guide valuable in other countries, and led to the wish to have it translated. In addition, it is hoped that subsequent versions of the Guide will be fully localised to take account of Anglo-Saxon copyright law and jurisdiction.

The Guide consists of five parts and an Annex:

Part 1: Aspects and clauses of terminology agreements

Part 1: “**Aspects and clauses of terminology agreements**” lists a large number of items and sample formulations that *may* be of relevance to many, if not most, agreements on the preparation, revision, processing, conversion, exchange, production and marketing of terminological data. Where a more simple agreement is required, irrelevant items may simply be omitted.

Sample provisions are printed on a grey background.

Part 2: Code of Good Practice

The continued rapid development of computer hardware and software, the increasing integration of information and communication technologies, and the vastly improved facilities for merging, converting and networking data are making the legal enforceability of copyright, and its technical enforcement, more and more difficult. Were legal provisions fail to offer a solution, more general principles should be invoked to provide guidance to the parties involved. This is the aim of Part 2: “**Code of Good Practice**”.

Part 3: Glossary

Part 3: “**Glossary**” defines the main concepts used in the Guide.

Part 4: Bibliography

Part 4: “**Bibliography**” offers selected bibliographic references to publications and other documents which can be consulted for further details, or which can supply background information.

Part 5: Index

Part 5: “**Index**” provides a quick list of references to the main points discussed in the Guide.

Annex: EC Directive

Shortly before going to print we were able to include **Directive 96/9/EC of the European Parliament and of the Council on the Legal Protection of Databases** (adopted on 11 March and published on 27 March 1996) as an Annex to this Guide.

PART 1

ASPECTS AND CLAUSES OF TERMINOLOGY AGREEMENTS

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PART 1

ASPECTS AND CLAUSES OF TERMINOLOGY AGREEMENTS

1 Parties to the contract:

Agreement on the Preparation/Revision/Processing/Conversion/Exchange/Production/Marketing/Compilation of Terminological Data

to be concluded:

between A: **Supplier** (e.g. originator - i.e. author, compiler, editor, reviser, copyright owner -, transmitter, terminology database operator, publishing house, licensor, etc.) or **Contractant**
and B: **User** (licensee for personal/international use or with a right or rights of re-use, such as publication, online provision, re-licensing...) or **Contractor**

for the purpose of the

- Preparation
- Revision
- Processing
- Conversion
- Exchange
- Production
- Marketing
- Compilation

of terminological data (and associated information).

2 Preamble

2.1 General purpose of the contract and contractual relationship between A and B

This agreement serves the general purpose of furthering the preparation of high-quality terminology by promoting co-operation between different parties and avoiding duplication of effort, and of making these terminological data and collections of data available to users in the best possible form. It defines the contractual relationship between A and B for the purpose of *(add description of the precise purpose here)* on the basis of existing supranational and national law.

2.2 “Code of Good Practice” and arbitration in case of conflict

Any interpretation of or additions to the following provisions which may become necessary in order to resolve cases of doubt shall be made on the basis of the Infoterm “Code of Good Practice”, which is an integral part of this agreement. National and international legislation shall only be invoked to solve such conflicts in the second instance. In addition, an arbitration procedure chaired by the International Information Centre for Terminology (Infoterm) may be invoked.

3 Subject matter of the contract

3.1 Detailed description of the activity or activities forming the subject of the contract

- Preparation (compilation, revision, etc.) of a terminology file or terminology database
- Entry of terminological data into an existing terminology file/database
- Processing of terminological data (for the purpose of.....)
- Conversion of terminological data (for the purpose of.....)
- Exchange of terminological data
- Access to (retrieval from, etc.) a terminology database (for the purpose of.....)
- Release of terminological data for further (commercial/non-commercial) use, e.g.
 - online retrieval
 - publication
 - transmission to third parties
 - information services

3.2 Detailed scope of the activity or activities forming the subject of the contract

- Purpose (in general terms)
- Subject fields/subfields
- Quality and quantity of the data
- Data alone or data plus software
- Language(s) in which the data are available
- Restrictions (regarding data structure, etc.)

Note: If necessary, the technical and organizational details pertaining to the subject matter of the contract can be recorded in an annex to the agreement. This avoids complicating the contract text unduly and allows flexible definitions of the subject matter (e.g. in the case of ongoing changes in the terminology database).

4 Copyright and other similar rights

4.1 Disclaimer

(Supplier) gives no warranty and assumes no liability for the correctness and/or completeness of the data forming the subject matter of the contract.

4.2 Exploitation rights

- Rights granted under the contract
- Contractual rights to take precedence over legal provisions
- Types of data (data categories, data elements, data fields)
- Types of use
- Frequency of use (by ... people at ... locations)
- (Type of) Reproduction
- Permissible modifications (e.g. omissions, additions, merging of specific data with/without obligation to notify other party)
- Transmission to third parties
- Data storage media
- Non-disclosure agreement

- Other uses
- (Type of) Dissemination
- Special provisions as stipulated in an annex to the contract (including concrete specification of tasks)

4.3 Declaration of ownership and other rights of disposition

Declaration of the Supplier that s/he is the owner of the copyright right or other rights to the data offered and that s/he can conclude an agreement of this kind (power of attorney/representation).

Note: In all cases, it should be clearly stated whether the contractor is being granted an exclusive or a non-exclusive right, whether this right is for a limited or unlimited period, and whether it applies globally or only to a particular territory. Where the copyrighted work is the result of the co-operation of a number of project partners with equal rights, the allocation and distribution of these rights should be explicitly noted in the contract; where this is not the case, joint copyright in the terminology/data collection exists.

5 Contract details (including rights of the Supplier with regard to the subject matter of the contract)

Subject matter as specified in 3.1 - 3.2 (for the purpose of/for re-use in)

5.1 Type of Data

- Linguistic data
- Non-linguistic data
- Associated information: - source
-

5.2 Type of Use (1) Purpose

- Main purpose
- Other purposes, if applicable
 - education and training
 - translation:
 - * human~
 - * computer-assisted~
 - * machine~
 - scientific/technical writing
 - technical documentation
 - scientific journalism
 - merging with other (types of) data to create:
 - * new tools
 - * new services
 - dissemination via radio and/or television broadcasts/data storage media/telecommunications, etc.

(2) (Mode of) Dissemination

- Sale
- Distribution

(3) Other types of use (specify)

- (Type of) Transfer
 - in full
 - in part
- Special provisions for specific types of data
 - registered names
 - other copyright holders (duty to inform)
 - non-linguistic information
 - * graphics
 - * illustrations
 - * sound
 - * film
- Full bibliographic references
- Different copyright rules for different data, etc.
- Exclusion of improper use
- ...

(4) Conditions (for each type of data, purpose,)

- Data storage medium } may be included
- Interchange procedures } in a technical annex,
- Interim procedures } if appropriate

Note: We recommend listing complex technical details in a separate technical annex (completed with notes to users, if appropriate).

(5) Insofar as transmission to third parties is permissible

- For a consideration
- Free of charge
- By exchange for other data

6 Contract details (including rights of the User with regard to the subject matter of the contract)

Subject matter as specified in 3.1 - 3.2 (for the purpose of/for re-use in)

- Exceptions
- Exclusion of improper use
- Accountability/product liability (of Supplier)
- Utilization only for own use/for specified purpose
- No transmission to third parties
- Technical precautions against improper use

7 **Data**

- Intended products and services
 - online database
 - CD-ROM
 - diskette
 - multimedia
- Data integrity (critical for multimedia)
- Exceptions to data integrity for typing errors and obvious mistakes

8 **Payment**

- Flat fee }
- Time-based fee } for third parties
- Usage-based fee }
- Free of charge in exchange-based relationships
- License fee payable to participatory interests
- Royalties payable to third parties
- Specific payment models
- Terms of payment
- Consequences of default
- Invoicing currency/exchange rate

9 **Prevention of improper use, protection of rights**

- Technical and organizational measures to prevent improper use
- No transmission to third parties above and beyond contractual provisions
- Infringements lead to:
 - disbarment from use
 - liability to claims for damages
 - termination of the agreement
 - contractual penalty

10 **Exceptions**

- *Fair use*
- Limited quotations as permitted by copyright law
- Research
- Educational purposes
- Presentations

11 **Warranties and liability**

- Rights under warranties (depending on product)
- Originators are liable for contents
- Liability limited to criminal intent and negligence
- Indemnity against third-party claims

- Subject to legal admissibility of limitation of liability
- No liability for processing errors on the part of the purchaser
- No liability for failure to meet intended purpose of the purchaser

12 Contractual period, notice of termination

- Beginning of contract
- Duration
- Renewal/prolongation
- Regular termination subject to agreed period of notice
- Immediate termination (without notice) and grounds for this (e.g. severe infringements of contract)
- Duty to return/purge data at the end of the contract (notification of purge)

13 Data protection, confidentiality

Personal data may be stored and processed to the extent required within the framework of the contractual relationship. Personal data may not be made available to third parties/may only be made available with the prior written consent of the party concerned. Any statutory obligation on the part of the partners to make the data available is not affected by this provision.

The parties to the contract agree to treat all information about each other as confidential.

If necessary, further stipulations covering the confidential use of corporate data, etc. may be added

14 Scope of the contract

The present agreement forms the whole and exclusive basis for the contractual relationship between the parties. The User's general terms and conditions are not part of the subject matter of the contract. No additional oral agreements subsist.

15 Application of national/international law

(1)

The User undertakes to observe all relevant national and international regulations when using the data/services.

(2)

Where the User culpably infringes against Paragraph (1), and where damage arises to the Supplier as a result of the User's infringement, the User shall make good the damages to the extent that such damage does not merely represent an indirect or consequential loss.

(3)

Where a third party acquires a claim or claims against the Supplier as the result of the User's infringement against Paragraph (1), the User shall indemnify the Supplier against all claims brought by the third party.

16 Written form

Alterations and additions to the contract and notice of its termination must be in writing.

If desired, notice to terminate the agreement by means of registered letter.

17 Choice of law, court of jurisdiction, arbitration

- Statement of the law to be used in cases of dispute and to supplement the provisions of the contract
- Insofar as permissible: stipulation of a court of jurisdiction
 - in the case of international organizations, the International Court of Justice (ICJ)
 - in the case of European institutions, the Court of Justice of the European Communities
- Alternatively: implementation of an arbitration procedure (in which an appropriate body acts as the arbitrator)
- Other provisions

(1)

The contracting parties undertake that, in the case of all differences of opinion in connection with this contract which they cannot resolve themselves, they will call on Infoterm's arbitration services to settle these differences in whole or in part, provisionally or finally.

(2)

The parties proceed on the assumption that the arbitration procedure is fair and balanced, that the arbitrators are unbiased, that the arbitration procedure does not represent a legal finding of fact and that the parties' right of recourse to the public courts is not affected. Information about arbitration procedures can be obtained at any time from: Infoterm, Mariahilfer Strasse 123/3 1060 Vienna, Austria.

(3)

The arbitration procedure suspends the periods of limitation and preclusion for all claims arising from the matter under dispute during the period laid down in the arbitration rules.

18 Concluding clause

Should individual provisions of this contract be or become null and void or inoperable, this shall not affect the validity of the rest of this contract in any way. The contracting parties undertake to fill any lacunae that may arise in such a case with a provision which reflects as closely as possible the original economic intent and purpose of the provision in question, and of the contract as a whole.

PART 2

CODE OF GOOD PRACTICE FOR COPYRIGHT IN TERMINOLOGY

General observations

The importance of terminologies

Terminological data are important in a number of basic scientific and technical areas, such as

- Specialized communication
- Technical writing
- Subject field-specific education and training
- Recording, indexing and retrieval of specialist information, etc.

The preparation of reliable terminological data – a task worth promoting

As a rule, high-quality, reliable terminological data are prepared by teams of experts (e. g. working groups or subcommittees attached to learned societies, scientific and technical associations, research institutions or in terminology standardization bodies). Such preparation of terminological data in the areas of science and technology aims at unifying terminological usage in order to achieve clarity and consistency. In the social sciences and humanities, on the other hand, terminology work is more likely to aim at making conceptual differences transparent.

Co-operation in terminology work

Terminology work - and especially terminology standardization - is very labour-intensive and time-consuming. Co-operation between institutions and organizations active in the production of terminological data should therefore be encouraged as much as possible. Exchanging terminological data helps prevent duplication of effort and create consistent terminologies across national, linguistic and subject field boundaries.

Co-operation in terminology preparation, and the exchange of terminological data in particular, may entail:

- Taking over a greater or smaller number of terminological entries or subsets of data from one or more terminological entries;
- Exchanging terminological data for use as raw material for systematic terminology work;
- Merging terminological data from different sources to prepare new entries/ records, etc.

These activities should take place within the context of the requirements of copyright laws and other laws concerning intellectual property. They should aim both to avoid unduly impeding the exchange of ideas and to give due acknowledgement of the intellectual property of the originator of the data.

Applicability of intellectual property rights to terminology

While concepts, as “units of knowledge”, should be regarded as the intellectual property of all mankind, their representations as terms and definitions (or other kinds of concept description), as

graphical symbols, or as other kinds of non-linguistic representation must be considered to be the intellectual property of the originator (i.e. a single expert, group of experts or institution/organization), if this information has been conceived or prepared by the respective originator in the form of a terminological entry, a specific sub-section of an entry, or a collection of terminological data.

Call for the provision of terminologies

All institutions/organizations which prepare terminologies or which own terminological data should regard these as an important contribution to the intellectual property of mankind and should make them available to outside users on terms and conditions which reflect the nature of the terminologies in each case.

Code of Good Practice

Where no bilateral agreements have been concluded to the contrary, the following general provisions shall apply as a code of good practice when importing, entering, or exchanging terminological data:

1 Originators' intellectual property

- 1.1 Reference to the origin of terminological data shall be explicitly made whenever (all or subsets of) the data are reproduced (output) or passed on to third parties. This applies equally to individual items and to subsets of data from terminological entries or records.
- 1.2 Where the origin of large volumes of data is to be documented, a single reference to it may be all that is required when the data are reproduced or transferred. In this case, however, the provider must ensure that the recipient of the data agrees to give due acknowledgement to the originator of the data in all cases.
- 1.3 Where terminological data have been obtained from an originator who also markets the data him/herself, the originator's agreement shall be obtained where the data exchanged or taken over are made available to a third party in the form of complete entries or as parts of entries.
- 1.4 Data under copyright must not be passed on without the agreement of the originator. This does not refer to individual entries or a limited set of individual entries which are to be used for research or teaching purposes.
- 1.5 Agreements on licenses and royalties must be observed.
- 1.6 Institutions and organizations in which large numbers of users have access to terminological data from an external originator are responsible for taking all necessary measures against uncontrolled downloading/copying which violates any rights claimed by the originator.

2 Data integrity

- 2.1 Measures to protect data integrity must be strictly observed and must not be deliberately violated (e.g. by introducing minor changes or by taking certain data out of context).

However, the correction of typographic errors and obvious mistakes is permissible where justified.

- 2.2 In the case of highly sensitive terminological data (e.g. where safety issues are involved) the strict observance of data integrity with respect both to individual items of information and to data structures shall be obligatory.
- 2.3 Data marked as private or confidential must not be passed on without the prior consent of their owners in each case.

3 *Standardized terminology*

- 3.1 The exchange of terminological data among standards bodies and between standards bodies and relevant specialist institutions and organizations, in order to increase the volume and to improve the quality of standardized terminology, is not only permissible but should be encouraged.
- 3.2 In the case of terminological records, where no other agreement to the contrary has been made, the originating standards body shall be indicated in every individual item or set of terminological information taken over.
- 3.3 Standards bodies should promote active co-operation in terminological data by assigning authoritative foreign language equivalents (and - if possible - also definitions as well) to the entries received from sister organizations. If possible, this service should be provided free of charge (or on a reciprocal basis).
- 3.4 Standardized terminological data should be exchanged among standards bodies and between standards bodies and other institutions involved in terminology harmonization as much as possible.
- 3.5 Where one standards body markets its own terminology, and another standards body would like to market these or parts of it (whether as whole or partial entries or integrated into its own entries), then the latter standards body must negotiate an appropriate license agreement with the former.

4 *Limited quotations of terminological data for scientific, research, teaching and training purposes*

As a rule, these provisions

- need not be applied absolutely strictly in cases involving very limited extracts of individual terminological data,
- and
- do not apply to the use of individual items of terminological data or entries in scientific publications (limited quotation) and for teaching and training purposes, provided that no data integrity rules are violated and that correct citation is ensured wherever possible and applicable.

PART 3

GLOSSARY

Associated information:

Information pertaining to terminological data, e.g. creator/reviser, experts (e.g. standards bodies), (bibliographic and other source) references, date of preparation/revision.

Copyright holder:

Strictly speaking (i.e. in contrast to common usage), the holder of a copyright according to Anglo-American law.

Database:

A collection of data organized according to a conceptual structure describing the characteristics of these data and the relationships among their corresponding entities, supporting one or more application areas.

Data usage:

The use of terminological data (and additional information) for the User's own (or internal) and/or external commercial or non-commercial purposes, in the form of (selective or comprehensive):

- publication
- downloading
- retrieval
- printing out
- conversion
- electronic dissemination (e.g. via mailbox)
- dissemination

Originator:

The creator of an original intellectual work

Where the author is an expert interested in the free dissemination of his or her work, s/he is generally interested in being cited, although this is not always the case.

Where a number of people are involved in the production of a work, these can be joint originators, either as a group, or as an institution.

Organizations which are the originators of data are generally interested in complete control of copyright for both commercial and non-commercial reasons.

Quality of data:

The volume of data expressed via the types of data, data elements and data relationships selected.

Quantity of data:

The volume of data as expressed via the number of entries, from the entire database right down to small subsets of the data (including the use of specific software or parts of software programmes).

Subject field:

A section of human knowledge, the order lines of which are defined from a purpose-related point of view.

Supplier:

Supplier of terminological data and additional information to the User or re-user/supplier; the Supplier may be the author/originator or the copyright owner.

Terminology database:

A database containing terminological data.

PART 4

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ANNEX

**DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT
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