



联合国
粮食及
农业组织

Food and Agriculture
Organization of the
United Nations

Organisation des Nations
Unies pour l'alimentation
et l'agriculture

Продовольственная и
сельскохозяйственная организация
Объединенных Наций

Organización de las
Naciones Unidas para la
Alimentación y la Agricultura

منظمة
الغذية والزراعة
للأمم المتحدة

E

PROGRAMME COMMITTEE

Hundred and Thirtieth Session

22-26 March 2021

**Update on FAO policies on Protection of Data and Intellectual Property
Rights**

Queries on the substantive content of this document may be addressed to:

Donata Rugarabamu

Legal Counsel

Tel: +39 06570 5132

Email: donata.rugarabamu@fao.org

EXECUTIVE SUMMARY

- As a knowledge-based Organization with a technical mandate, FAO processes a large volume of data and information, including personal data. At the same time, FAO continues to embark upon a number of significant digital and other initiatives. This raises important concerns and challenges regarding security and privacy.
- The update report provides the Programme Committee with an overview of frameworks and practices governing data protection that exist at the international, regional and national level, together with an update on progress made and plans going forward concerning FAO's policies on data protection and intellectual property rights.

GUIDANCE SOUGHT FROM THE PROGRAMME COMMITTEE

- The Programme Committee is invited to review the content of the document and provide guidance as deemed appropriate.

Draft Advice

The Committee:

- **took note of the status of the work undertaken to strengthen FAO's data protection and intellectual property rights frameworks, and welcomed the issuance of the Personal Data Protection Principles; and**
- **recommended that the Committee on Constitutional and Legal Matters be updated on these matters, from time to time, having regard to any legal issues that might arise in this context.**

I. Background

1. At its 165th Session, the Council requested that FAO's data protection and intellectual property rights frameworks be strengthened and recommended accelerating progress on a policy on data protection and intellectual property, particularly within the context of the Hand-in-Hand Initiative¹, the new Strategy for Private Sector Engagement², the new Strategic Framework, and FAO's response to the COVID-19 pandemic: Building to transform³.
2. At its 129th Session, preceding the 165th Session of the Council, the Programme Committee, in the context of the Hand-in-Hand Initiative, "*stressed the need to develop a cross-cutting data policy to ensure data governance, data integrity and privacy, as well as intellectual property rights, and to adhere to international standards and protocols, and requested FAO to report to Members on this*"⁴. The Committee also "*emphasized the importance of issues related to digital technology applications and data, including management, data protection, intellectual property rights and privacy and requested that these are included in the Plan of Action*" in the context of the International Platform for Digital Food and Agriculture⁵.
3. The present document provides an update on the work ongoing in response to the requests of the Council and the Programme Committee.

II. FAO's existing frameworks for data protection and intellectual property rights

A. Data Protection

4. FAO's data protection provisions are scattered across several provisions of its internal legal framework⁶. The Organization does not have an easily accessible and comprehensive framework for the protection of data.
5. Moreover, due to the broad scope of its activities, FAO processes large volumes of highly diversified data and information, including personal data. This data is generated through the technical activities of the Organization or is entrusted to it by third parties. Data generated, collected, stored, or shared by FAO includes, for example, statistical information and related data provided by Members and others related to areas in the Organization's mandate, personnel files of employees and their dependents, personal data of FAO project beneficiaries and other data related to FAO's technical assistance activities, data of Permanent Representations and visitors, and data collected from or provided to vendors and service providers.
6. In light of technological intensification towards data-driven agriculture, as well as FAO's commitment to digitalization and agricultural innovation, the value of agricultural data to contribute to sustainable innovation is rapidly increasing. Agricultural data covers and connects, among others, both genetic information derived from crop germplasm as well as other data from and for smart farming.
7. As defined in FAO's confidentiality policy, FAO data includes data that is public and non-sensitive, as well as confidential internal data, and sensitive or personal data. Data falling into these various categories is collected and managed in every single office of the Organization.

¹ CL 165/REP, paragraph 14 i).

² CL 165/REP, paragraph 11 j).

³ CL 165/REP, paragraph 13 c).

⁴ CL 165/10, paragraph 11 k).

⁵ CL 165/10, paragraph 16 c).

⁶ For example, Manual Sections 340 (Confidential Personnel Files), 505 (Information Technology), 601 (Records and Archive Management), 702 (Cash Transfers), AC 2008/23 (Policy on the use of the Organization's Information Technology Resources), AC 2013/23 (Confidentiality Policy), FAO's Open Access Policy, and FAO's Open Data Licensing for Statistical Databases policy.

8. In the specific case of personal data collected through surveys for statistical purposes, the Office of Chief Statistician developed protocols (Statistical Disclosure Control Protocol and Microdata and Metadata Dissemination Protocols) and a Statistical Standard and Microdata Dissemination which define specific steps and processes to anonymize disseminated statistical microdata without undermining confidentiality of data subjects. It is noted that corporate policies regarding the dissemination of statistical microdata incorporate the standards and best practices defined by the United Nations Committee for the Coordination of Statistical Activities, the Fundamental Principles of Official Statistics and the seminal work of Managing Statistical Confidentiality & Microdata Access: Principles and Guidelines of Good Practice by the United Nations Economic Commission for Europe.

9. It is also to be noted that, in light of its decentralized nature, while there are mechanisms to address any breaches of applicable rules, the day-to-day responsibility of ensuring compliance with data protection policies and rules lies with each FAO unit and employee.

10. In light of the above, the work to be undertaken in developing a comprehensive data protection policy is complex. Any future policy will have to be flexible, accommodate the many types of data and processing operations in question, and relevant to all activities, irrespective of the location and nature of data collection. Data protection is, therefore, being addressed as a matter of priority. That is why this is the area of focus of this document.

B. Intellectual property rights

11. By contrast intellectual property rights do not – as a matter of practice – currently raise significant difficulties. Issues addressed in this regard mainly arise in respect of FAO's ownership of intellectual property.

12. The defence or protection of intellectual property rights is to be undertaken by the owner of those rights.

13. The Organization does not claim ownership of the intellectual property rights in any product owned by any other entity and which is shared with FAO, for example, in the context of its research or technical assistance activities. It is not normally involved, therefore, in matters relating to the intellectual property rights of its partners or other entities.

14. There is an established FAO position that all intellectual property rights in materials developed by or with FAO – such as information, software and designs – are public goods and that FAO's ownership of those rights will ensure that these products can be made publicly available. Thus, normally, agreements with partners related to technical collaborations establish that FAO will own the intellectual property rights in any products from the collaboration or, where the partner is a Member or an intergovernmental organization, that the intellectual property rights will be jointly owned by FAO. In cases where FAO is the sole owner of the rights – and particularly in the case of partners who are non-state actors, FAO will generally grant a perpetual license to the partner to use the product for non-commercial purposes.

15. In light of the limited number of issues that arise in this regard, and the clarity of FAO's position – which mirrors that of other UN System agencies – Management considers that a framework related to intellectual property rights is not as urgent as that related to data protection.

16. In this context, it is observed that, while FAO may have expertise in very specific types of intellectual property⁷, other institutions such as the World Intellectual Property Organization (WIPO) are mandated to address such matters on a broader basis.

III. Sources of guidance on data protection and privacy frameworks

⁷ Such as matters falling within the scope of the International Treaty on Plant Genetic Resources for Food and Agriculture.

17. There is no “one-size-fits-all” model or approach for data protection. On the contrary, the existing frameworks are highly fragmented in terms of subject matter and scope, degree of envisaged protection, and available controls. A core set of principles and good practices appear, however, in almost all data protection frameworks. These principles require that data is processed in a manner that maintains its confidentiality, integrity and availability, and is protected through controls from unauthorized access, use, loss, or destruction, taking into consideration the right to privacy and protection of personal data of individuals concerned. These principles are to be found in the frameworks set out below.

C. *Data protection in the UN System and other intergovernmental organizations*

18. At the UN System-wide level, there have been a number of initiatives⁸ and strategies⁹ concerning – or which impact upon – data and personal data protection and, in 2018, the United Nations High Level Committee on Management (HLCM) adopted a set of “*Personal Data Protection and Privacy Principles*”¹⁰. As regards individual UN System organizations, the UN’s data protection framework is set out under several resolutions of the UN General Assembly, Secretary-General’s Bulletins, policies and procedures¹¹. A number of other UN System organizations have, moreover, adopted and strengthened their internal policies concerning the protection of the personal data of specific categories of individuals¹².

19. Other intergovernmental institutions have also adopted instruments concerning data protection such as, amongst others, the Organisation of Economic Co-operation and Development (OECD) and the Council of Europe. Other entities with international mandates have similarly taken steps in this regard¹³.

D. *Data protection at the regional and national level*

20. The European Union (EU) has been active in this context, particularly following the entry into force of its General Data Protection Regulation¹⁴ (the “GDPR”) in 2018.¹⁵

21. Similarly, many countries have enacted data protection legislation and the number which have done so has grown significantly in recent years. As far as Management is aware, amongst the membership of FAO, 126 Member Nations have legislation in force to secure the protection of data and privacy, 20 Member Nations have developed draft legislation, 36 Member Nations have no legislation in place while, for 12, no further data is available¹⁶. However, whilst certain common data protection principles can be identified in these national and regional measures, there appear to be some incompatibilities between the many national data protection regimes.

⁸ See UNDG’s “[Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda](#)” and UN Global Pulse’s “[Principles on Data Protection and Privacy](#)”.

⁹ See the “[Data Strategy of the Secretary-General for Action by Everyone, Everywhere](#)”.

¹⁰ See the “[Personal Data Protection and Privacy Principles](#)”.

¹¹ See, for example, General Assembly resolution 45/95 “[Guidelines for the Regulation of Computerized Personal Data Files](#)”, while general policies concerning data protection can be found, *inter alia*, ST/SGB/2007/6 “[Information sensitivity, classification and handling](#)”, and ST/SGB/2007/5 “[Record-keeping and the management of United Nations archives](#)”.

¹² See, for example, International Organization for Migration’s “[Data Protection Manual](#)”, United Nations High Commissioner for Refugees’ “[Policy on the Protection of Personal Data of Persons of Concern to UNHCR](#)” and World Food Programme’s “[Guide to Personal Data Protection and Privacy](#)”.

¹³ See OECD’s “[Privacy Guidelines](#)”, “[Convention 108](#)” approved by the Council of Europe, and the International Committee of the Red Cross’ “[Handbook on data protection in humanitarian action](#)”.

¹⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

¹⁵ The provisions of the GDPR have posed significant challenges to UN System organizations, including FAO, particularly with respect to the transfer of personal data and this is the subject of on-going discussions between the UN System, represented by the UN Legal Counsel and the EU. It is the position of the UN System that the GDPR, and any other regional or national laws, do not govern their activities.

¹⁶ These numbers has been developed on the basis of a comparison between FAO membership and the information concerning data protection and privacy legislation available on the United Nations Conference for Trade and Development’s “[Global Cyberlaw Tracker](#)”.

E. Industry standards and good practices

22. There are, furthermore, several operational, technical good practices and standards issued by business and industry associations¹⁷ concerning data protection, information technologies (IT) management and governance, information security, and security and privacy controls.

23. FAO will continue to review the frameworks and guidance that exist at the various levels described above, and will draw upon them in the development of the new FAO data protection framework.

IV. FAO's Future plans on data protection

24. Mapping exercises to understand the scope of work that would be involved in developing a data protection framework for FAO were undertaken in 2018 and 2019, led by IT Services. This exercise identified, *inter alia*, the types of data managed by FAO and how they were being managed. The outcome of this extensive exercise will serve as a useful reference point going forward.

25. In 2020, the Legal Office was requested to address personal data protection; an area of sensitivity and urgency, especially in light of potential legal risks. Following extensive consultations across various concerned units, on 18 January 2021, FAO promulgated the Personal Data Protection Principles ("the Principles"). The Principles constitute one of the fundamental pillars of a comprehensive data protection framework. The document is aligned with the UN HLCM's "*Personal Data Protection and Privacy Principles*" and wider UN practice. The Principles now apply to all activities of the Organization, and all units are required to ensure alignment of their activities and processes with the Principles. Units are, therefore, currently reviewing their processes to assess compatibility with the Principles.

26. In 2020, the Legal Office, jointly with the Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture, formulated and commissioned a study on agricultural data policy and management, undertaken in partnership with the Global Open Data for Agriculture and Nutrition Initiative (GODAN)-and the University of Ottawa. The study under preparation, develops knowledge and insights into existing legal and policy structures of agricultural data ownership, control and management, including intellectual property rights. The study has a dual focus on open data to expedite research and innovation in food and agriculture, and equity issues related to developing country capacities and collaborations. This initial study is intended as a first conceptual analysis to initiate a reflection on a strategic vision and policy leadership of the management of agricultural data for digital agriculture innovation and, accordingly, the possible exercise of a normative function by the Organization, subject to the guidance of its Governing Bodies.

27. In 2021, work on the over-arching data protection framework will be initiated. It will be necessary to further review and, where required, strengthen FAO's current data protection framework so as to ensure that appropriate standards, safeguards and controls are fully integrated into FAO's corporate rules, processes, policies, and information systems. Therefore, the Principles will be followed by (i) a comprehensive data protection policy, and (ii) operational guidance which will address how the policy – including the Principles – should be applied to each activity undertaken by the Organization.

28. The area of data protection is a highly technical and complex area and, in order to advance this work within 2021, resources have been made available to retain external expertise, working under the supervision of the Legal Office. The new policy and guidance will pay due regard to the new initiatives and new areas of activity of FAO. Issues related to intellectual property will also be examined, as appropriate.

¹⁷ For example, the Information Systems Audit and Control Association.