



FISD Best Practice Recommendations for Derived Data and Non Display Applications

Approved by FISD Executive Committee: December 16, 2008

Introduction:

A critical issue for content providers, data distributors, and data consumers is the policy treatment for non-display applications and derived data products that use content provider information. A Working Group comprised of FISD members representing all member constituencies, has created these definitions and Best Practice Recommendations (BPR) to assist the market data industry in addressing the issues associated with these types of usage. These definitions and recommendations leverage earlier work done by the FISD's Business Issues Policy and Practice Standards (BIPPS) Group and an ad hoc group consisting of the Consumer Constituent Group and the Data Vendor Sub Group.

The Working Group recognizes differences of opinion regarding certain aspects of this issue. For example, some members feel no fees should be paid by consumer firms to Content Providers for the creation of derived data [or the usage of data in non-display applications] and other members feel that creation of derived data should be fee liable. However, the Working Group also recognizes that there are areas of agreement and consensus and that progress and recommendations should be made in these areas to promote greater understanding and increased consistency of policy among market data participants. This BPR represents the collaborative work of the members of the working group. It should not be assumed that it represents the contractual or policy approach of any FISD-member Content Provider.

This document is an initiative sponsored by the Financial Information Services Division (FISD) of the Software and Information Industry Association (SIIA), whose members include leading participants in all segments of the global market data industry, to improve the creation, use and understanding of derived data and non-display data among market participants.

The recommendations are grouped in three primary areas ---

- Discussion Applying to Derived Data and Non-Display Usage,
- Discussion Applying to Derived Data Usage, and
- Discussion Applying to Non-Display Usage.

Definition of Relevant Terms:

"Subscriber" is an entity that receives market data and uses or consumes it.

"End-user" is a natural person that a Subscriber permits to receive data from a Content Provider.



"Conventional market data usage" is access by an End-user to market data through a display device or devices that are generally dedicated to that user during the period which he/she is accessing the data.

"Distributor" is any organization that distributes market data to End-users or other Distributors. Market Data Distributors include both organizations that distribute data externally (i.e., vendors) and those that distribute data internally.

"Content Provider" is any organization that creates financial information content that can be redistributed. Examples include, but are not limited to, exchanges, news wires, analysis services, and credit ratings agencies.

"Information" is the data that is disseminated by the Content Provider.

"Non-Display Usage" is accessing, processing, or consumption of the Information for a purpose other than in support of its display or distribution.

"Derived Data" consists of pricing data or other information that is created in whole or in part from the Information and that cannot be (1) readily reverse-engineered to recreate the Information or (2) used to create other data that is a reasonable facsimile for the Information. While the Working Group recommends consistency in terminology whenever possible, it notes that "Derived Data" is also referred to by certain Content Providers as "New Original Works" and "Original Created Works".

"Recipient" is any organization that receives the Information and has the ability to redistribute or transform the information. Recipients include both (1) market data vendors and Subscribers with direct distribution agreements with Content Providers and (2) Subscribers that do not have direct distribution agreements with Content Providers.

Discussion Applying to Derived Data and Non-display Usage:

	Issue	Recommendation
A.1	Policies for data of different levels of timeliness	It is appropriate for Content Providers to have different policies or commercial approaches for data of different levels of timeliness (i.e., real-time vs. delayed vs. End-of-Day). Such policy differences could reflect the value differences among the different types of data.
	Issue	Recommendation
A.2	Communication of Policies	Content Provider policies should always be clear and easy to understand. It is important that Content Providers provide a clear understanding of what CANNOT be done with the data.

		Recipients should have ready access to these policies via a mainstream source (e.g. Internet website access).
	Issue	Recommendation
A.3	Consistent and transparent policy interpretation by Content Providers	<p>Content Providers should be consistent and transparent in the judgments that they make regarding whether a particular type of data transformation creates Derived Data and any policy interpretations related to Non-display usage.</p> <p>Whenever a Content Provider makes a determination that a particular type of data transformation is (or is not) Derived Data or any policy interpretations related to Non-display usage, it should make this interpretation public through its website and other policy communications without divulging any proprietary information about a particular Recipient.</p>
	Issue	Recommendation
A.4	Direct contractual relationships between Content Providers and user firms	Content Providers that have policies for Derived Data and/or Non-display Usage, especially if those policies require judgment calls by the Content Provider, should implement direct contractual relationships with the user firms who are creating the Derived Data or making Non-display Use of their Information. It is impractical to expect intermediaries, like vendors, to apply Content Providers' policies in scores of diverse usage situations.

Discussion Applying to Derived Data:

	Issue	Recommendation
B.1	Ownership of Derived Data	The Recipient that creates the Derived Data should be acknowledged as the owner of the Derived Data although the Content Provider may require the Recipient to license and pay for the use of underlying Information to create and/or distribute externally the Derived Data. Intellectual Property rights on the derived data usage, storage and dissemination should be clearly defined in the contract.

	Issue	Recommendation
B.2	Contractual Requirements on downstream recipients of Derived Data	<p>Recipients that create Derived Data from a Content Provider's Information should not be required to administer Content Provider-required Subscriber Agreements with the downstream third-parties to whom they provide the Derived Data.</p> <p>The third-party receiving the Derived Data should track and manage usage for its own purposes only. There should be no obligations or responsibilities for third-parties receiving Derived Data to adhere to terms in the contract of the original Content Provider. A Recipient's only obligations to the Content Provider should be those expressly stated in contract.</p>

Discussion Applying to Non-display Data:

	Issue	Recommendation
C.1	Pre-approval of new Non-display uses of the Information	The Recipient should be approved once to make non-display use of the Information. Recipients should be able to make additional new internal Non-display uses of the Information without explicit pre-approval by the Content Provider.
	Issue	Recommendation

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C.2	Burden of Analysis and Interpretation	<p>To minimize the administrative burden on Content Providers and Recipients, the business models and policies of the Content Providers should be simple to interpret and not be open to multiple interpretations.</p> <p>For example, significant data storage issues for Recipients could result if they are required to provide Content Providers with extensive descriptive information regarding the product and its use by their downstream clients.</p> <p>Content Providers should avoid the adoption of policies that require Recipients to identify, describe or track the internal systems and functions that have access to the Information but do not display or redistribute it externally. For legal and competitive reasons, financial institutions are often unable to share descriptive information regarding the algorithms and systems architecture supporting their non-display usage of data in proprietary “black-box” applications.</p>
C.3	Policies based on technical configuration and capabilities	<p>Content Provider policies should not be tied to a Recipient’s technical configuration and capabilities (e.g., number or size of processors, bandwidth requirements, or number of “programs” using the Information).</p> <p>Such policies cannot adapt quickly to changes in technology. They encourage Recipients to circumvent the policies by modifying their technical configurations, leading to lose-lose situations, wasted effort by Recipient and no additional revenue for Content Provider.</p>