



LEGALLY PUBLISHED: COPYRIGHT ISSUES AND OPEN LICENSING IN THE HUMANITIES

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AGENDA

This session will ...

- (1) provide a very basic introduction to legal terms and issues regarding copyright and publication,
- (2) explain how open licenses work and how they can help in making our work more visible and accessible, and
- (3) showcase some of the most prominent open licensing tools aimed at scholars with no legal background.

OPEN LICENSING

- WHY?
- HOW?

INTELLECTUAL PROPERTY RIGHTS



Image Rights: Fusion Law School (<http://www.fusionlawschool.com/courses>)

“The ability to use copyrighted materials for illustration in class and for scientific research [...] is in itself a matter of course!”

- Rainer Kuhlen: Eine Kopernikanische Wende im Publikationssystem (2007)

A FUNDAMENTAL HUMAN RIGHT ...

Universal Declaration of Human Rights, Article 27

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

- (1) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

JANUS HEAD OF SCHOLARSHIP ...

(1) Scholars are (re-)users of others' works

(1) Scholars are creators of works

“Intellectual property is the legal form of the information age: all the more reason that it should not just be a matter for lawyers.”

- James Boyle: *Shamans, Software, and Spleens* (1996)

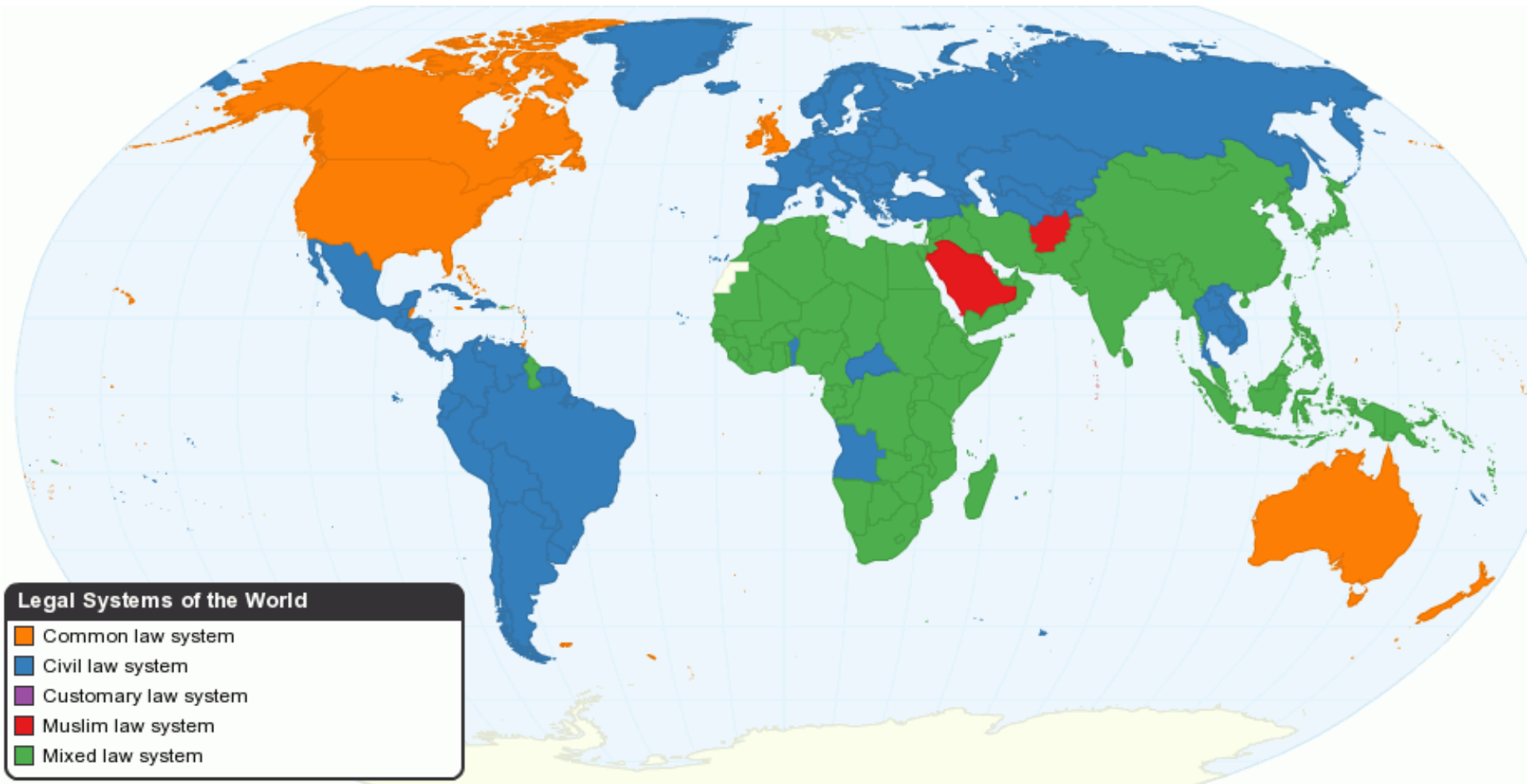
FUNDAMENTAL ISSUE:

LACK OF APPROPRIATE LEGISLATION

- (1) Wide support for free use of protected works for (non-commercial) education and research
 - UNESCO OER Guidelines
 - EU Digital Agenda for Europe
 - Open Access (and increasingly Open Data) obligation in National Funding Agencies

- (1) Legislation does not reflect this
 - International treaties have less value than national laws > territoriality principle
 - Different legal systems (Common Law vs. Civil Law)
 - Heterogenic definitions and provisions ("use")

LEGAL SYSTEMS



LEGAL SYSTEMS

Common Law (“case law“)

- United States, United Kingdom and (former) Commonwealth, Countries
- Utilitarianism: promoting progress and competition (widest possible variety of goods at lowest possible price)
- Primacy of Judge’s decisions (case law)
- Copyright (Copy-Right = “right to copy”)

Civil Law (“statutory law”)

- (Continental) Europe, Latin America, Central Africa
- Natural Rights: certain rights are inherent in human reason and/or human nature
- Primacy of legislation (legal codex)
- Author’s right / droit d’auteur / Urheber-Recht

MAJOR DIFFERENCES

Common Law

- Author can transfer or waive all his rights
- Work for Hire
- (usually) no “Neighboring Rights”
- *Fair Use* (Common Law) as socially and culturally valuable right

Civil Law

- Personality Rights (authorship, naming) are natural and not transferable
- Owner is always a natural person and the original creator
- Work must carry “imprint of author’s personality”, otherwise distinct Neighboring Rights (e.g. for “machine-made” or performer’s works)
- *Statutory Licenses* (Civil Law) define exceptions that are required to be clearly defined and narrow in scope and reach

COMMON PRINCIPLES OF IPR

“Work”

- Original literary and artistic works
- Expressions, not ideas, are protected

Territoriality principle

- National law stops at border
- Apply law of the place where the infringement happened

INTERNATIONAL COMMON GROUND

- **Berne Convention 1886 (Paris Act 1971)**
 - IPR do not require registration (happens at creation)
 - Limited duration of copyright (minimum of 50 years pma)
 - Quotation
- **Universal Copyright Convention 1952**
- **TRIPS 1994**
 - **Three Steps Test:** permits reproduction ...
 - “in certain special cases”
 - “if it does not conflict with normal exploitation of the work”
 - “and does not unreasonably prejudice legitimate interests”
- **WIPO 1996**
 - “*making available to the public*”
 - Certain liberties for education/private study

COMMON PRINCIPLES IN EUROPE

work

- “original” or “creative” expression (“personality of creator”)

author

- natural person
- actual creator (BE/NL: if not explicitly named and previously agreed in a contract, authorship can be claimed by an institution as employer)

attributes

- duration: 70 years p.m.a
- no registration necessary, right manifests at creation
- distinction between moral rights and economic rights

exceptions

- right to private use (non-commercial, individual): “home-copy”
- citation (scientific, criticism, news, caricature)
- non-commercial, closed circle presentation (not necessarily making available!) for education and research

WORK = ORIGINAL INTELLECTUAL CREATION

- original = individual, distinct (“creator’s personality must be recognizable”)
- intellectual = mental product (“creator must have had an intention”)
- Not the idea, but the physical expression of the idea is protected! The idea must have been expressed /given form.

MORAL RIGHTS

No waiver possible!

- Protection of Authorship
- Protection of Designation
- Protection of Integrity of the Work

> in **Common Law (US/UK)**: Work for Hire / Copyright Waiver / Public Domain

EXPLOITATION RIGHTS

EXAMPLE: AUSTRIA

- Adaptation, edition and translation
- **Reproduction**
- Distribution
- Broadcasting
- Performance and demonstration
- **Making available (to the public)**

> in Common Law (US/UK): “use” > “fair use”

THERE'S A LIGHT ...

EU Digital Agenda for Europe

- EU Directives (Information, PSI, Orphan Works)
- Green Paper “Copyright in the Knowledge Economy”, COM(2008) 466/3
- FP7 pilot OpenAIRE (Open Access Infrastructure for Research in Europe: www.openaire.eu)
- Commission communication “Towards a modern, more European copyright framework”, COM(2015) 626
- Commission proposal for a Directive on “Copyright in the Digital Single Market” COM(2016) 593

Open Science

- Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities (2003)
- Open Data/Open Access obligation by national funding agencies (Horizon2020, DFG, FWF, SWF, RCUK, US Memorandum)
- Open Educational Resources: UNESCO recommendations

European Commission proposal for a Directive on “Copyright in the Digital Single Market”

“[...] researchers will benefit from a clearer legal space to use innovative text and data mining research tools, teachers and students will be able to take full advantage of digital technologies at all levels of education and cultural heritage institutions [...] will be supported in their efforts to preserve the cultural heritage, to the ultimate advantage of EU citizens.”

3 areas of intervention:

- digital and cross-border uses in the field of education (Art. 4)
- text and data mining in the field of non-commercial research (Art. 3)
- preservation of cultural heritage (Art. 5)

European Commission proposal for a Directive on “Copyright in the Digital Single Market”

Article 11

Protection of press releases with regard to digital uses

> Link tax (news no longer "free")

Article 13

Use of protected content by service providers who store or have access to large quantities of works and other content uploaded by their users.

> Upload filters (will not recognize fair use / copyright exceptions?)

OPEN ACCESS (AND FRIENDS...)



Image rights: UNC Charlotte (<https://library.uncc.edu/openaccess>)

OPEN MEANS ...

... no limitations on access of any kind!

- No cost, no authentication, no national or institutional privileges
- Language?

Reasoning: Knowledge funded by (i.e. produced under a mandate from) the public must benefit the public without any limitations-

OPEN DATA - OPEN SOURCE - OPEN SCIENCE

- DH makes extensive use of **non-traditional forms of publication** (papers, monographies) > open in a much broader sense
- **Open Data**: free and public access to and availability of data
- **Open Source**: free and public access to and availability of code
- **Open Science**: ideal incorporating Open Access, Open Source and Open Data, but moves above and beyond that by making the entire research process public and transparent (Open Methodology, Open Peer Review etc.)

WHY OPEN SCIENCE?

- Free access to research data
 - ... encourages the creation of new knowledge
 - ... improves the quality of research (transparency, discourse)
 - ... improves the sustainability and availability
 - ... improves impact and reach
- Authors (rights holders) alone control what may happen with their data and works
- Users know what they may do with others' data and works
- National and international funding agencies promote or require open data and open access

WHAT IS OPEN ACCESS?

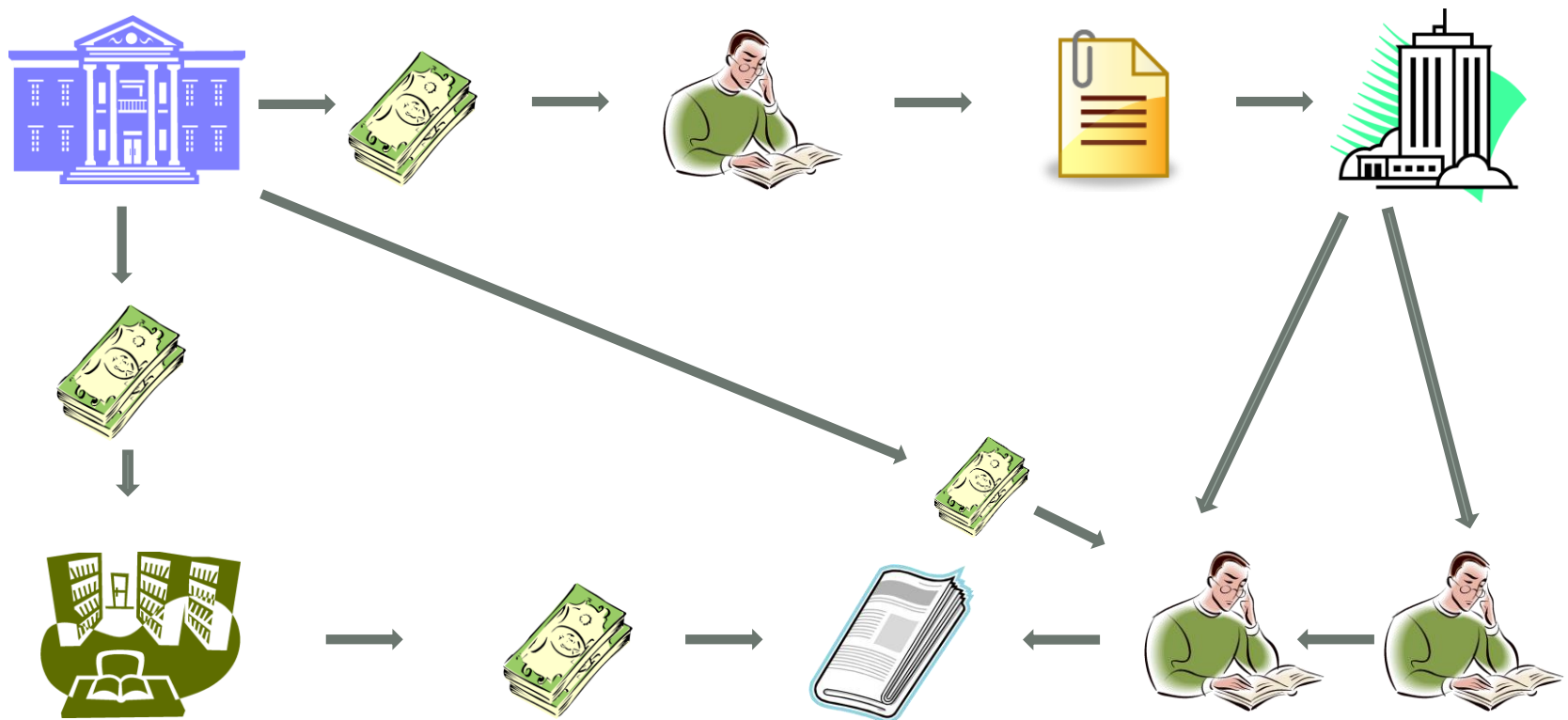
Berlin Declaration (2003)

“...free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose....”

Mandate or Recommendation

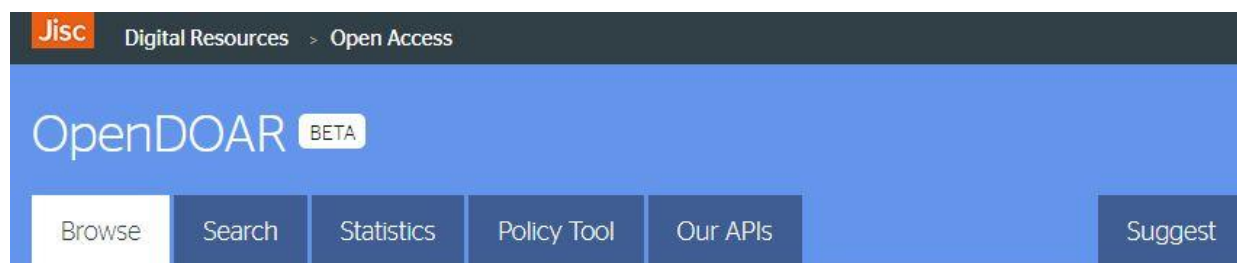
Gold or Green

TRADITIONAL PUBLICATION PROCESS



OPEN ACCESS REPOSITORIES

- Open DOAR (Directory of Open Access Repositories)
- More than 3700 repositories
- Search FOR and IN repositories
- Search by disciplines
- <http://v2.opendoar.sherpa.ac.uk> (new site as of May 2018!)



Browse by Country and Region

Countries by Region (3721)

Africa (164)

Americas (1015)

Asia (723)

Europe (1715)

Oceania (104)

EU AND OPEN ACCESS

- OpenAire and OpenAire+
 - Infrastructure and platform for Open Access
<http://www.openaire.eu>
- Open Access Policy in Horizon2020
 - All results MUST be published OA (Green or Gold)
 - Costs for Gold OA are covered by EU grant
 - Open Access Manual:
http://ec.europa.eu/research/participants/docs/h2020-funding-guide/cross-cutting-issues/open-access-data-management/open-access_en.htm



BENEFITS OF OPEN ACCESS

- **Availability** of the own scientific work for the entire scientific community.
- **Free access** to scientific work worldwide.
- More scientific **exchange** and more feedback.
- Better **visibility** and thus increasing citation numbers.
- The **public** will have access to the results of scientific research.
- More exploitation rights remain with the **authors**.
- Less dependence on **publishers**, more transparency and competition in publishing.
- Lower production and distribution **costs**.

CHALLENGES TO OPEN ACCESS

- (still) rather **low impact factor** for many OA journals.
- Research evaluation does not yet attribute sufficient **credit** to OA publications.
- long-term **archiving** of (purely) electronic publications.
- different **versions** of a work in circulation.

- **Mandatory disclosure** of all results is a restriction on the author?
- **Control** of the work is lost?
- Too much available information leads to **quantity over quality**?
- Endangering **freedom of publication**?

LICENSING



Image Rights: Exceed IT Services (<http://www.exceedgulf.com/site/index.php/services/licensing/>)

PRINCIPLES

What can be licensed?

- any “works“
- ... to which you own the rights
- ... taking into account (exclusive) publishing contracts, work contracts, co-authors!

What cannot be licensed?

- public domain works
- raw data (usually not “work”: originality and individual creation)

PRINCIPLES

“A license is a formalized promise not to sue!”
- Pawel Kamocki

- Only the rights holder can license!
- Common categories:
 - attribution
 - re-use
 - non-commercial
- Public Domain Mark
 - < <https://creativecommons.org/choose/mark/?lang=de> >

LICENSING TOOLS

- Creative Commons

<http://creativecommons.org/>

- Europeana Available Rights Statement

<https://pro.europeana.eu/page/available-rights-statements>

<http://rightsstatements.org/page/1.0/?language=en>

- CLARIN LINDAT License Selector

<https://ufal.github.io/public-license-selector/>

CREATIVE COMMONS

The screenshot shows the Creative Commons website interface. At the top is a green navigation bar with the Creative Commons logo and links for About, Licenses, Public Domain, Support CC, Projects, and Blog. Below this is an orange banner with the text "Keep the internet creative, free and open." and a "Donate to Creative Commons" button. The main content area features a central text block with links for new users and license exploration. Two panels are highlighted with white boxes and arrows: the "License Features" panel on the left and the "Selected License" panel on the right.

License Features
Your choices on this panel will update the other panels on this page.

Allow adaptations of your work to be shared?



Yes No

Yes, as long as others share alike


Allow commercial uses of your work?

Yes No

Selected License
Attribution 4.0 International

This is a Free Culture License!



CREATIVE COMMONS

- <http://www.creativecommons.org/>
- **Commons** are resources (cultural, natural) that should be freely available and accessible to **all members of society** – they are not owned individually but a common good.
- “Creative Commons helps you **share your knowledge and creativity** with the world.”
- “universal access to research and education and full participation in culture for a new era of development growth, and productivity.”
- for licensing “creative content”
- since 2001
- current version 4.0 (up to 3.0: national versions)

CREATIVE COMMONS LICENSES



[by]

attribution



[by sa]

attribution – share alike



[by nd]

attribution – no derivatives



[by nc]

attribution – non-commercial



[by nc sa] attribution – non-commercial – share alike



[by nc nd]

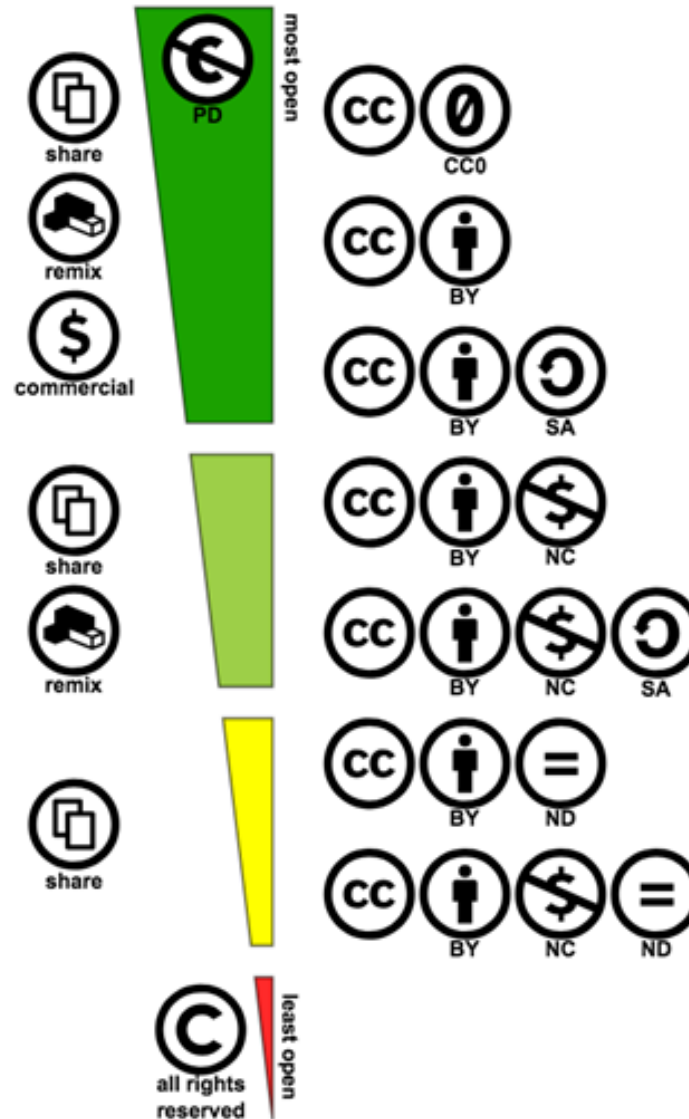
attribution – non-commercial – no derivatives



[0]

no rights attached (~ public domain)

CREATIVE COMMONS LICENSES



THE THING WITH CC0 ...



- = complete waiver by the rights holder (~ **Public Domain**)
- In continental European law: **not applicable!**
No waiver of **moral rights** possible (just exploitation rights)
 - CC0 License **does** provide for this (*"Should any part of the Waiver for any reason be judged legally invalid or ineffective under applicable law, then the Waiver shall be preserved to the maximum extent permitted"*), but that produces legal insecurity and transfers responsibility to the user ...
 - Use **CC-BY** instead!

HOW DOES IT WORK?

- Visibility through inclusion of **icon**
- **Hyperlink** pointing towards the full license text
 - in human-readable text
 - in RDF/XML
- Use of specific *Rights Expression Languages*
 - METS
 - MPEG-21

LICENSES: ALTERNATIVES

- **Open Data Commons**

- <https://opendatacommons.org/>
- How to make your data open: <https://opendatacommons.org/guide/>
- Open Knowledge Foundation

- **DPPL (Digital Peer Publishing Lizenzen)**

- <https://www.hbz-nrw.de/produkte/open-access/lizenzen/dppl>
- DPPL
- m-DPLL (modular)
- f-DPLL (free)

EUROPEANA RIGHTS STATEMENT

Posted on Friday February 6, 2015

[Legal standards](#) [Cultural Heritage Institutions](#) [rightsstatements.org](#)

Available rights statements

Rights statements express the copyright status of a Digital Object, as well as information about how you can access and re-use the objects. Europeana supports 14 rights statements.

Before you get started

Before you apply rights statements, you should know:

- The list of available rights statements will be updated from time to time. Read: [Change log for pro.europeana.eu /available-rights-statements](#)
- All Creative Commons licences and legal tools can only be applied by, or with the permission, from the rights holder.

CLARIN LINDAT LICENSE SELECTOR

Choose a License

Answer the questions or use the search to find the license you want

Start again



What do you want to deposit?

Software

Data

Search for a license...

Public Domain Mark (PD)

The work identified as being free of known restrictions under copyright law, including all related and neighboring rights.

Publicly Available 

Public Domain Dedication (CC Zero)

CC Zero enables scientists, educators, artists and other creators and owners of copyright- or database-protected content to waive those interests in their works and thereby place them as completely as possible in the public domain, so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright or database law.

Reading

- Darling, Kate. “Contracting About the Future: Copyright and New Media.” *Northwestern Journal of Technology and Intellectual Property* 10/7 (2012): 485–530. <http://scholarlycommons.law.northwestern.edu/njtip/vol10/iss7/3>
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THANK YOU & HAPPY SHARING!

*“To freely use and make available
resources for the purpose of
education and scientific research,
is a matter of course.”*

