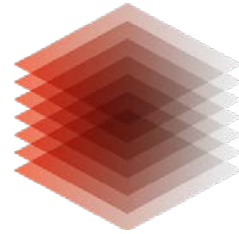

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TIB

Academic Publishing: Legal Issues

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FIT4RRI Workshop
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Agenda

1. Introduction to copyright law
2. Licences in general
3. Open-Access-Licences



Introduction to copyright law and licences in general

General notes about copyright law

Copyright law is national law: applicable law depends on facts of the case

Similarities of national copyright laws:

- scientific texts, illustrations, abstracts, etc. will **generally be protected by copyright law**
- **Fair-Use-Doctrine** or **statutory exceptions** exist

Who is the author/“creator“?

Creator is the person who **created** the work („copyright owner“).

All rights to the work belong to creator.

Exceptions:

- work was created **by several persons in close cooperation**
- work was created while fulfilling **work obligations** (right of direction of superior); not applicable for professors, doctoral students for their doctoral thesis
- obligations to publish due to **publication agreements** (third party funding)

Use of copyrightable Works published on the internet

Statutory exceptions (German Copyright Code)

Documents published online may generally only be used in part for the users „Own Use“ („eigener Gebrauch“):

Allowed e. g.: Download, store, read, cite, pass on to friends, make available small parts on password-protected platform for working group (for teaching/research purposes)

Not allowed e. g.: Make available entire text freely accessible for everyone online, create derivatives and distribute derivatives to unknown Third Parties, commercial use

Exception: Open-Access-Licenses

Publication

Scientific Texts, illustrations, Abstracts, etc. generally are subject to copyright law

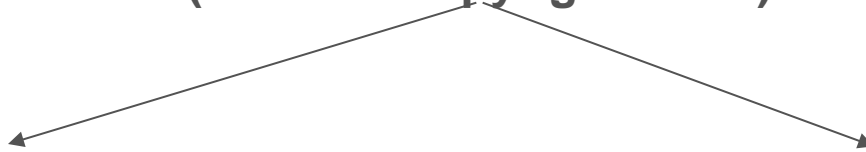
Author must consent before publication by publisher or in repository

Affected Rights of copyright owner: e. g. primary publication right, copying, distribution, online publication

Statutory exceptions (Germany) do not allow primary or online publication

→ Licence agreement compulsory

Rights of the creator – meaning of „copyright“ (German Copyright Code)



Moral Rights:

protection of author´s/creator´s
personal relationship to his/her
work

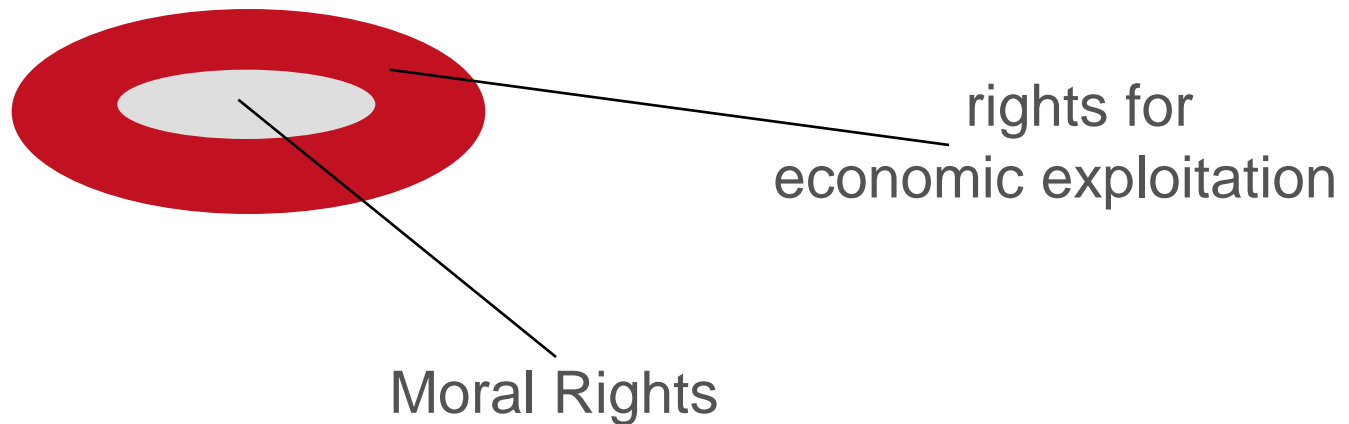
- time and place of first publication
- attribution
- prevent disfigurement, interference

Economic exploitation of the work:

- copy
- distribute (~pass on digital or analogue copies)
- exhibition
- „public representation“:
presentation, performance,
making publicly available
(~online-publication)

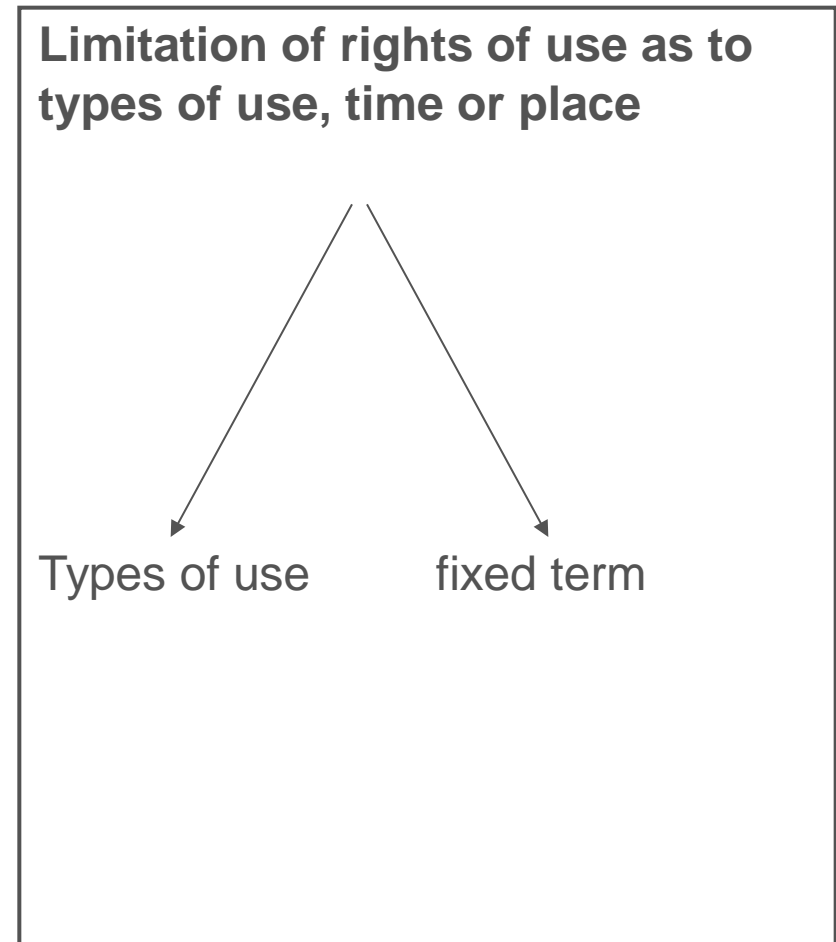
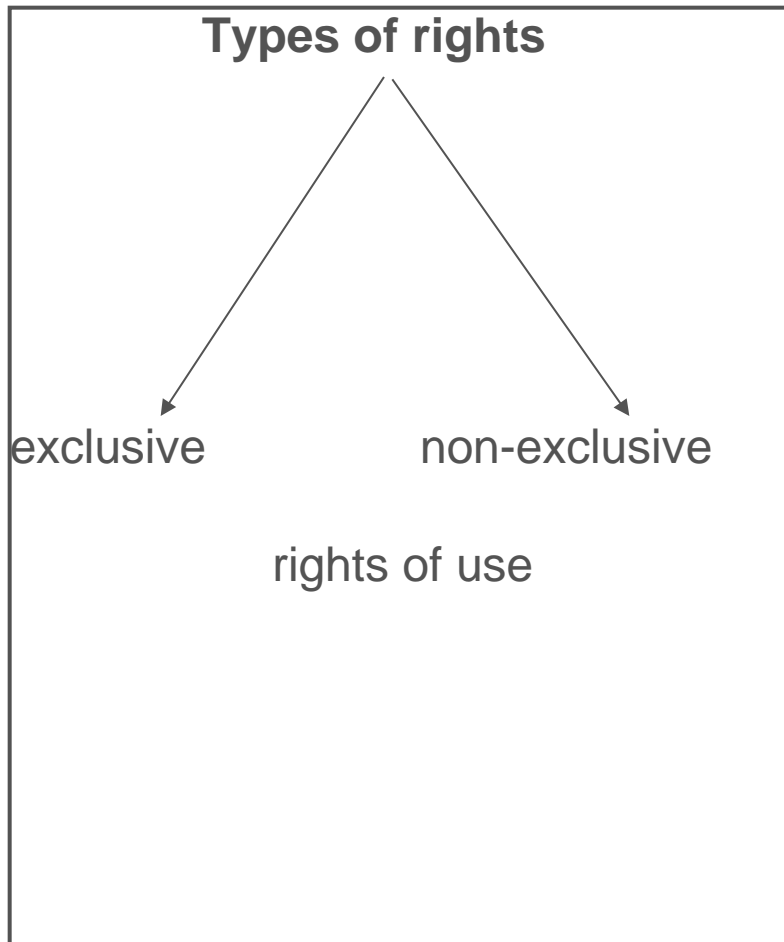
Licence contracts

- in Germany copyright cannot be transferred to others completely



- author/creator can transfer rights for economic exploitation
- licence contracts are bilateral agreements

Licence contracts to distinguish:



Publication

Licence contract

Content e.g.:

- title of publication and contractual parties
- scope of granted rights (exclusive – non-exclusive, limitations of time, place and types of use)
- exemption from liability for violation of rights of Third Parties

Form of the contract: Written form (handwritten signature) only compulsory in special cases

But: Legal proof in court of law – email has low probative value

→ written form is recommended.

How to change standard form contracts

Before signing:

- cross out and amend text of contract in standard form
- add additional standard form and refer to it in standard form contract
- confirm verbal agreements in written form

After signing :

- Sherpa/Romeo: Open-Access-Policy of the publisher?
- Review stipulated contract (prevails over policy of publisher)
- Renegotiate contract – stipulated contract must be altered

Publication

Primary publication: first-time publication of work


Secondary publication: Publication of work, which has already been published e. g. in institutional or subject specific repository or publisher

What needs to be considered

Secondary publication: author must still be able to grant necessary rights

Example:

For publication in repository of university at least **non-exclusive rights** for copying, distribution and online publication need to be granted to university

 In case these rights were granted to publisher as exclusive rights, secondary publication is not possible.

Special case: **indispensable secondary publication right - § 38 Abs. 4 German copyright code**

- „exclusive rights of use“ were granted to publisher, „scientific article“, „published“
 - **„research activity must have been publicly funded by at least 50 %“:**
 - *only research financed with third-party funding or research performed at institutes of German research funding organisations e. g. MPG, HGF, Leibniz, etc.*
 - *not included: research financed with regular budget of publicly funded university*
 - **publication in collection which is published at least 2x / year**
 - **12 months embargo**
- ➔ **online-publication** (accepted manuscript version, incl. citation of primary publication) for non-commercial purposes allowed; multiple publications allowed
- ➔ **no Open-Access-Licences**

Other legal basis for secondary publication

- Some **national consortia** and **licences of the German „Alliance of research funding organisations“** contain Open-Access-clauses (libraries)

<https://www.nationallizenzen.de/open-access>

<https://www.nationallizenzen.de/open-access/open-access-rechte.xls/view>

- Some publishers allow secondary publication in authors agreements – contract design very heterogeneous
- **Renegotiation of rights** with publisher: Sherpa/Romeo gives insight into publishers policy
- Open Access Transformation

Scientific citation right

- **Any type of work:** Pictures, texts, music, videos, scientific graphs
- For scientific purposes: **entire work** can be cited
- Citation must be **marked distinctly**
- Content of cited work **must not be modified**
- Must serve the purpose of annotating the content of the citing work, scientific discourse
- Citation must be limited to essential excerpt
- Complete citation of primary work (z. B. author, publisher, etc.)

→ For course work, bachelor, master or doctoral thesis, scientific presentations, e. g. entire graphs may be cited.

Additional considerations:

- Boundaries of **right to cite other publications** for scientific purposes
- **Patent law:** No publication before official application to patent authorities
- **Data protection:** Publication of information about specific identifiable individuals only with their explicit consent or in anonymised form; **Exception:** distinguished persons of contemporary history

Open-Access-Licences

Open-Access-Licences

Creator can grant additional usage rights to the user which exceed statutory exemptions or Fair Use, e. g. ...

- to distribute work
- to create derivatives of work, distribute derivatives
- commercial use

They adhere to the recommendations of the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities
<http://oa.mpg.de/lang/de/berlin-prozess/berliner-erklarung/>

Generally legally sound, have been subject of legal disputes in Germany

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Open-Access-Licences

Valid stipulation by ...

Citing the entire name of the specific licence including a link to entire legally binding licence text

- in the work **and**
- in online catalogue/on the website/in the repository

User must be informed of the specific licence conditions before the download.

What licence to use

For the **international community** we recommend:

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If the video is **published in Germany and/or addresses the German community** we recommend:

Creative Commons Attribution 3.0 Germany



<https://creativecommons.org/licenses/by/3.0/de/deed.en>

Obligation to Open Access Publishing for EU-Projects

Partners must be informed about planned publications in advance – see grant and cooperation agreements.

Publication:

- at the latest upon publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications
- must aim to deposit at the same time the research data
- Ensure free access to it within six months of publication

Obligation to Open Access Publishing for EU projects

Research data:

- deposit in freely accessible research data repository with possibility to mine, exploit, reproduce and disseminate the data & associated metadata, as soon as possible
- provide information about tools and instruments necessary for validating the results, possibly provide the tools and instruments themselves
- License CC0 1.0 Universal

Software:

- Open Source license should be in use worldwide and comply with the standards of the Open Source Definition (<https://opensource.org/osd>) of the Open Source Initiative, e. g.

Collection Agreement with German collecting society „VG Wort“

By signing the **unchanged** collection Agreement with VG Wort the following rights are transferred to VG Wort:

- Right to **collect remuneration** for Use based on statutory exceptions also outside Germany;
- all usage rights mentioned in the contract
- as exclusive rights, including consent to sublicense these rights to third parties worldwide;
- comprises **literary works, collections of literary works, illustrations of scientific or technical nature** (drawings, plans, maps, sketches, tables and plastic representations) and others
- **published in the past or the future**
- for the **duration of copyright**;

Management of rights by VG Wort can be limited to specific rights or single countries by manually completing § 13 of the contract.



Research Data

Research Data

Can be ...

- Data produced by machines (big experimental plants, measurement data)
- graphs
- audiovisual media
- textcorpora
- interview data
- health data
- user generated use data
- ...

Rights in research data

Protection of research data...

...can be derived from...

- data protection
- copyright
- personality rights
- non-disclosure agreements
- data management plans
- Agreements with data providers
- cooperation agreements with partners

status of protection may change in the course of the research process

Protection of the data

Status of protection has consequences regarding

- the obligation to prepare the data for publication
- possibilities for publication and
- reuse of the data

➔ Status of protection must be examined in the planning stage of the project to be able to validate agreements that need to be concluded during the following research process

➔ individual case study necessary!

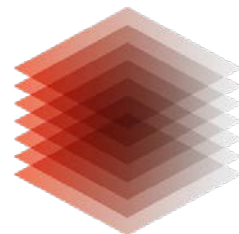
Licences for research data

Depend on the content of the research data:

- **CC By**
- **CC0**
- **Public Domain Mark**
- Open-Source-Licence for **softwarecode** needed for data analysis

Possibly not one single licence can be chosen for all data of a project if the status of protection of the data differs, possibly only links to parts of the data can be published.

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