

Legally Open: Copyright, Licensing, and Data Privacy Issues

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Disclaimer

I am not a lawyer.

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uhm... OK?

what now?

...is this legally necessary?

Agenda (not necessarily in this order)

- Copyright I & II & I&II: the Janus-faced researcher
- Digital space & national borders
- So many rights, so many restrictions: usage rights, data privacy, personal rights, media law
- Content types: photographs, scans, texts, data, code, ...
- Creative Commons. Licenses, benefits, problems, pitfalls
(also: how I managed to do this presentation without violating laws)
- Why Creative Commons?, and: What else is out there?

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.
2. Everyone has the right to the **protection of the moral and material interests** resulting from any scientific, literary or artistic production of which he [sic] is the author.

author



user

researcher

International copyright treaties: As full of holes as Swiss cheese?

World Intellectual Property Organisation (WIPO):

[Berne Convention for the Protection of Literary and Artistic Works](#)

("Berne Convention", 1886 / 1979)

World Trade Organisation (WTO):

[Trade-Related Aspects of Intellectual Property Rights](#)

(TRIPS, 1994 / 2001)

World Intellectual Property Organisation (WIPO):

[WIPO Copyright Treaty](#)

(WCT, 1996)

[EU Commission proposal for a Directive on "Copyright in the Digital Single Market"](#) COM(2016) 593

What is a “work”, anyway?

Switzerland

- ... geistige Schöpfungen ..., die individuellen Charakter haben (**of individual nature**)
- Sammelwerke

Germany

- ... persönliche geistige Schöpfungen (**personal**)
- Sammelwerke und Datenbankwerke

Austria

- ... eigentümliche geistige Schöpfungen (**singular**)
- Sammelwerke und Datenbankwerke

intellectual property rights

vs

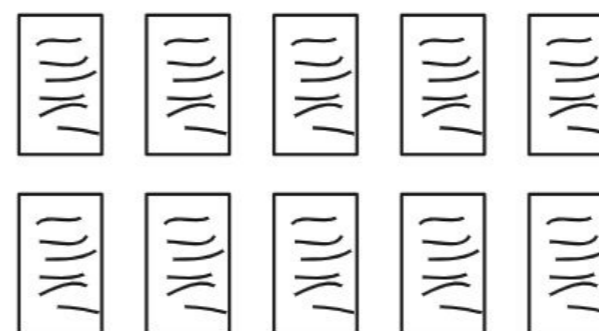
sui generis database rights

Can you translate “Urheber” for me?

Urheberrecht
droit d’auteur



VS



copyright

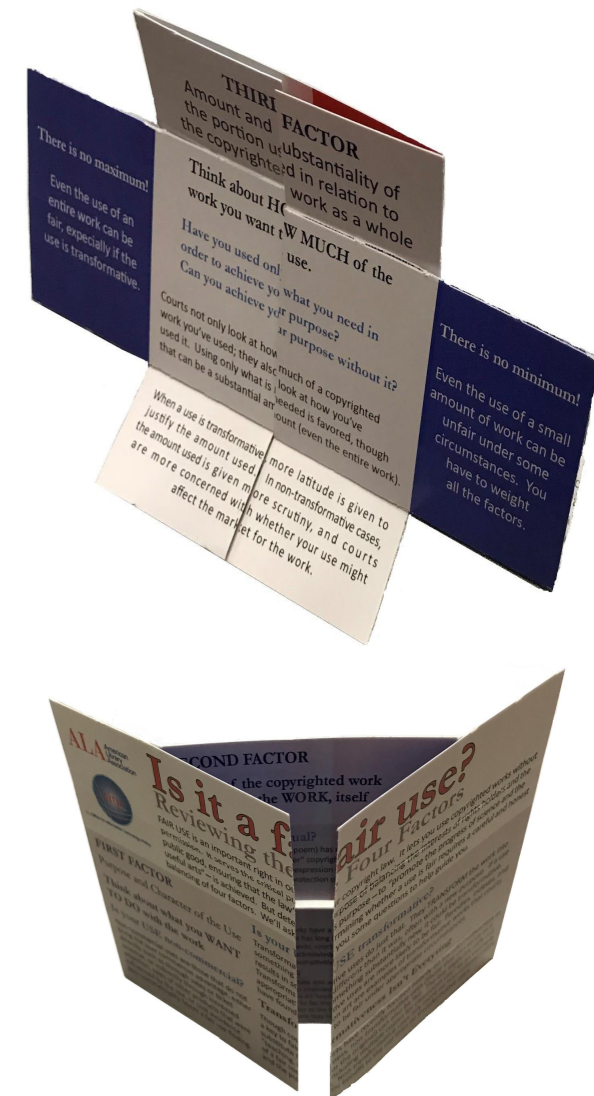
civil law (codified law)

VS

common law (case law)

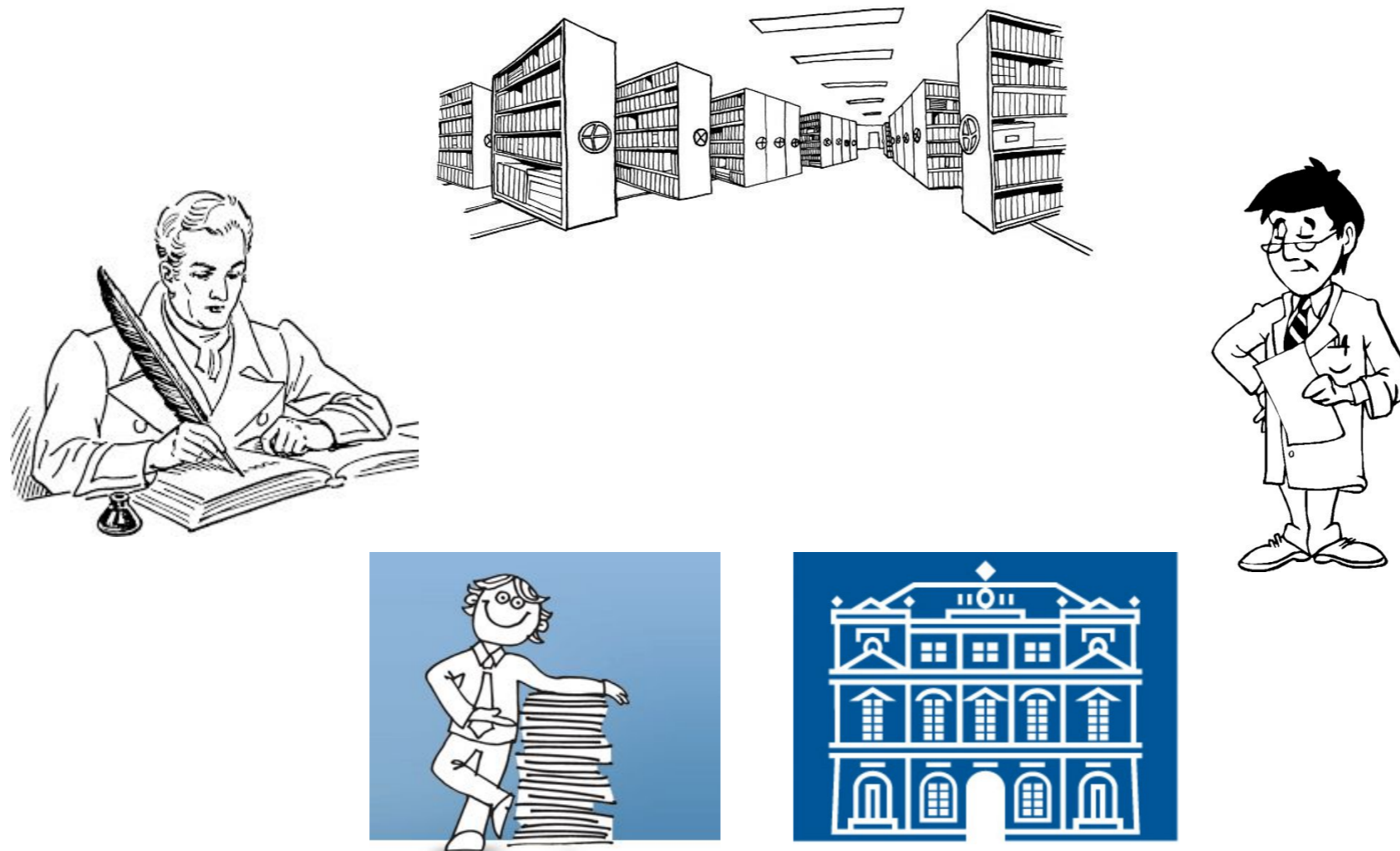
Fair use - that makes things simpler, doesn't it?

- purpose of use - non-commercial, teaching purposes, transformative works
- nature of work - factual, published, orphan work
- amount used - necessity of use, transformation
- market effects - minimal harm, transformative markets



...is this a fair use
of a flyer about fair use?

Copyright stakeholders





OK, copyright, got it.

That's all I need to know, right?

- verwandte Schutzrechte (UrhG) (related rights)
- Recht am eigenen Bild (GG / EU-GRC) (personal rights)
- General Data Protection Regulation (GDPR)
- Anbieterkennzeichnungspflicht (§5 TMG) (provider identification obligation)

Content types and their legal specifics

- scientific text (papers, articles, books, blog posts, ...)
- data(bases)
- code
- photographs
- facsimiles / scans
- other images & graphics
- audio
- (literary) texts
- hardware

Too many laws!

Can I ever legally open up my research?

**© creative
commons**

... version 4.0



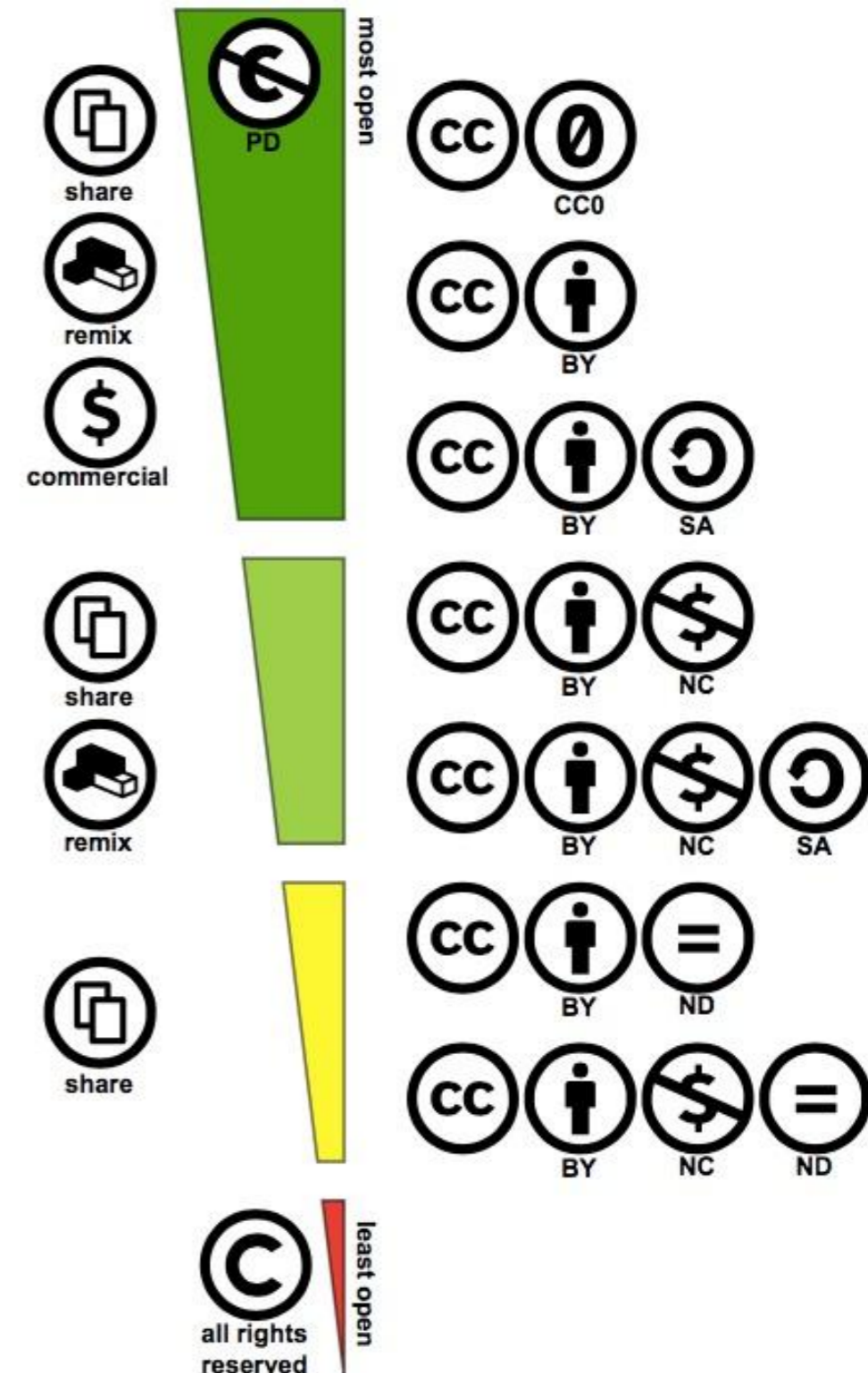
CC, CC benefits and CC pitfalls

My employment contract says that my university owns all economic rights to whatever I do at work. But if I use CC, I can make that go away, right?



Economy is evil, so I'll use the NC module. That's a good idea, right?

I'm working with historical sources about Nazi Germany. I'll use the ND module to prevent abuse by people with questionable political agendas, right?

I'm an Open Science advocate, so I'll use the SA module to ensure everyone shares their content as openly as I do. Ain't that smart?



Credits (I)

- Fonts used: Alegrya, Alegrya sans, Actor
- images: all  via [Wikimedia Commons](https://commons.wikimedia.org/) or 
- parts of this presentation were copied from or inspired by previous presentations prepared together with Walter Scholger and/or Pawel Kamocki (CC-BY)
- the “Swiss cheese” joke was inspired by The Big Bang Theory

Everyone is using CC.

Isn't there something more fancy?

- [Open Data Commons](#) (ODC)
- [Digital Peer Publishing Licenses](#) (DPPL)
- my super-fancy individual license written up by my personal team of 20 very expensive international copyright lawyers

Where to turn

- [Europeana Available Rights Statement](#)
- [Public License Selector](#)
- [Creative Commons](#)
- [CLARIN](#) Legal Issues Committee (CLIC)
→ [CLARIN Legal information platform](#)
- [DARIAH](#) WG on Ethical and Legal Issues in the Digital Arts and Humanities (ELDAH) (under construction)
- [OANA](#) WG on Legal Aspects of Open Science (under construction)

Thank you!

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<https://www.oeaw.ac.at/acdh/>
<https://vanessahannessschlaeger.wordpress.com/>

Credits (II)

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