COPYRIGHT AND OPEN LICENSES FOR DATA
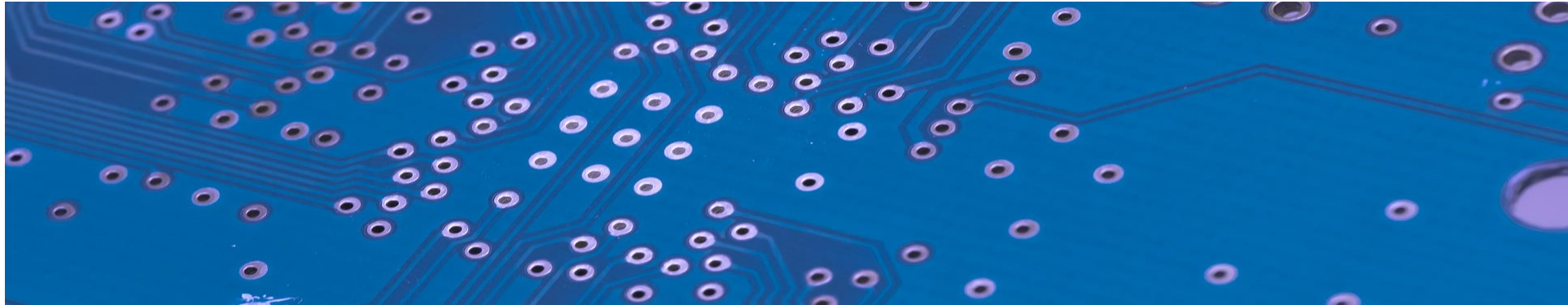
Research Data Support Network Switzerland meeting

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Bibliothèque

UNIVERSITÉ DE GENÈVE

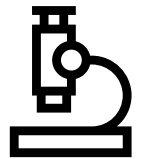# COPYRIGHT: WHAT IS A PROTECTED WORK?

Three conditions must be reunited.

A work is:

1. A creation of the mind,

2. Which has an individual character,

3. And is expressed in one form or another.

(Federal Act on Copyright and Related Rights and CCdigitallaw 2020)

The case of factual scientific data

Copyright does not protect facts, information, ideas, formulas, algorithms, scientific measurements, etc.

Those type of data are not individual works of authorship but are discovered and compiled by a researcher's methods, something that copyright does not reward.

Therefore, factual scientific data are <u>not</u> protected by copyright.

(Pantaloni 2017)

TO KEEP IN MIND WITH LICENSES

- Licenses are irrevocable.
- Licenses and data protection are two different things:
  - o Licenses refeer to copyright, which is an entirely different law than data protection laws (cantonal or federal level).

To clarify before applying a license

- Are the data protected by copyright?
  - o If yes: the data are eligible for licensing.
  - o If no: the data are into the public domain by default.

- Data are protected. Who owns the copyright?
  - o You: you can choose a license.
  - o Your institution: check if your institution authorize you to choose a license.
  - o A third party: check if there is a license or an agreement and respect its terms or ask for the author's permission.

✓Compatible with data

✓Widely used within the scientific field

✓Well known (but not always fully understood)

✕not designed for software or computer code

The Open definition

"Open data and content can be freely used, modified, and shared by anyone for any purpose (subject, at most, to requirements that preserve provenance and openness)."

(The Open Knowledge Foundation 2015)

ONLY 3 OPEN CC LICENSES

CC0

Data can be freely:
- ✓ used
- ✓ modified
- ✓ shared

by anyone and for any purpose.
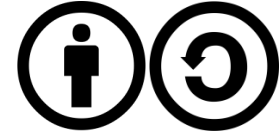
CC0 is in fact a Public Domain Dedication.

CC-BY

Data can be freely:
- ✓ used
- ✓ modified
- ✓ shared

by anyone and for any purpose, <u>but</u>:
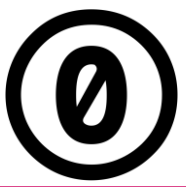- ❑ attribution is required

CC-BY-SA

Data can be freely:
- ✓ used
- ✓ modified
- ✓ shared

by anyone and for any purpose, <u>but</u>:
- ❑ attribution is required
- ❑ share alike is required

How CC0 works

CC0 is a 3 steps instrument:

1. The copyright holder waives any right to the maximum extent allowed by applicable law;

2. CC0 acts as a license to grant any of the remaining rights without any restriction or obligation;

3. The copyright holder asserts not to enforce any right that he cannot waive.

(The Open Science Training Handbook, Foster Open Science Europe, 2018, chap. 6, under CC0 License)

⊖ NoDerivatives (ND): Not open

Data licensed with a ND element cannot be:

- o Modified
- o Combined or enriched with any other data
- o Translated

→ A ND requirement forbids the creation of derivative works.

(Ball 2014 and Kreutzer 2014)

NonCommercial (NC): Not open

What is a noncommercial use is not an easy notion to establish. The NC requirement in a license could prevent:

- The use of data in a work for which the author receives a financial retribution (for example a published book)
- The use of data for the publication of an article in a journal owned by a commercial editor
- Public-private partnerships

→ Data must be allowed to be used for any purposes, even commercial ones, to be truly open.

(Ball 2014 and Kreutzer 2014)

↻ SHAREALIKE (SA): OPEN BUT PROBLEMATIC

The problem is that copyleft licenses, like CC-BY-SA, are not compatible with other copyleft licenses:

A derivative work cannot respect both licenses

→ The SA element affects the interoperability of data and increases the incompatibility of licenses.

(Ball 2014 and Kreutzer 2014)

ⓘ Attribution (by): Open but problematic

One problem is known as "attribution stacking": citing all the authors of all the reused datasets can become progressively quite difficult. (Ball 2014)

Also, it is mandatory to indicate each modification done to the original datasets and to provide a link to all of them.

Lastly, attribution cannot be legally binding by a license if the data are not protected by copyright… and therefore not eligible to licensing.

0 CC0 (PUBLIC DOMAIN): THE BEST SOLUTION

- ✓ To solve the problem of licenses' incompatibility
- ✓ To achieve legal interoperability: CC0 is an answer to the ambiguity of data copyright
- ✓ Because there is a certain logic to put publicly funded data into the public domain
- ✓ Because Open Science is easier to achieve with the least restrictions to impact data reuse

(Fortney 2016, Lämmerhirt 2017, Labastida & Margoni 2020, Murray-Rust et al. 2010)

DISCUSSION

Who's the data owner? Is it the author? The university? The funder?

- At UNIGE, the university's law states that UNIGE is the owner. But UNIGE delegates the responsability of licensing to the authors.

Who owns the data when the research is made in collaboration between several universities?

Wouldn't it be easier if universities or funders took a stand on the data licensing issue for publicly funded research?

- Like some publishers, eg. BMC (BioMed Central) that is asking CC-BY for articles and CC0 for data

Thank you for your attention!

My master's thesis (in French) is available from: https://doi.org/10.5281/zenodo.3967402 or https://sonar.ch/global/documents/315159

You can reach me at: anouk.santos@unige.ch

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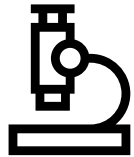OPEN KNOWLEDGE FOUNDATION, 2015. Open Definition 2.1. Available from: http://opendefinition.org/od/2.1/en/.

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