

UZH OPEN SCIENCE  
Lunch&Learn

# Funder requirements and publishers' conditions

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# Today's goals

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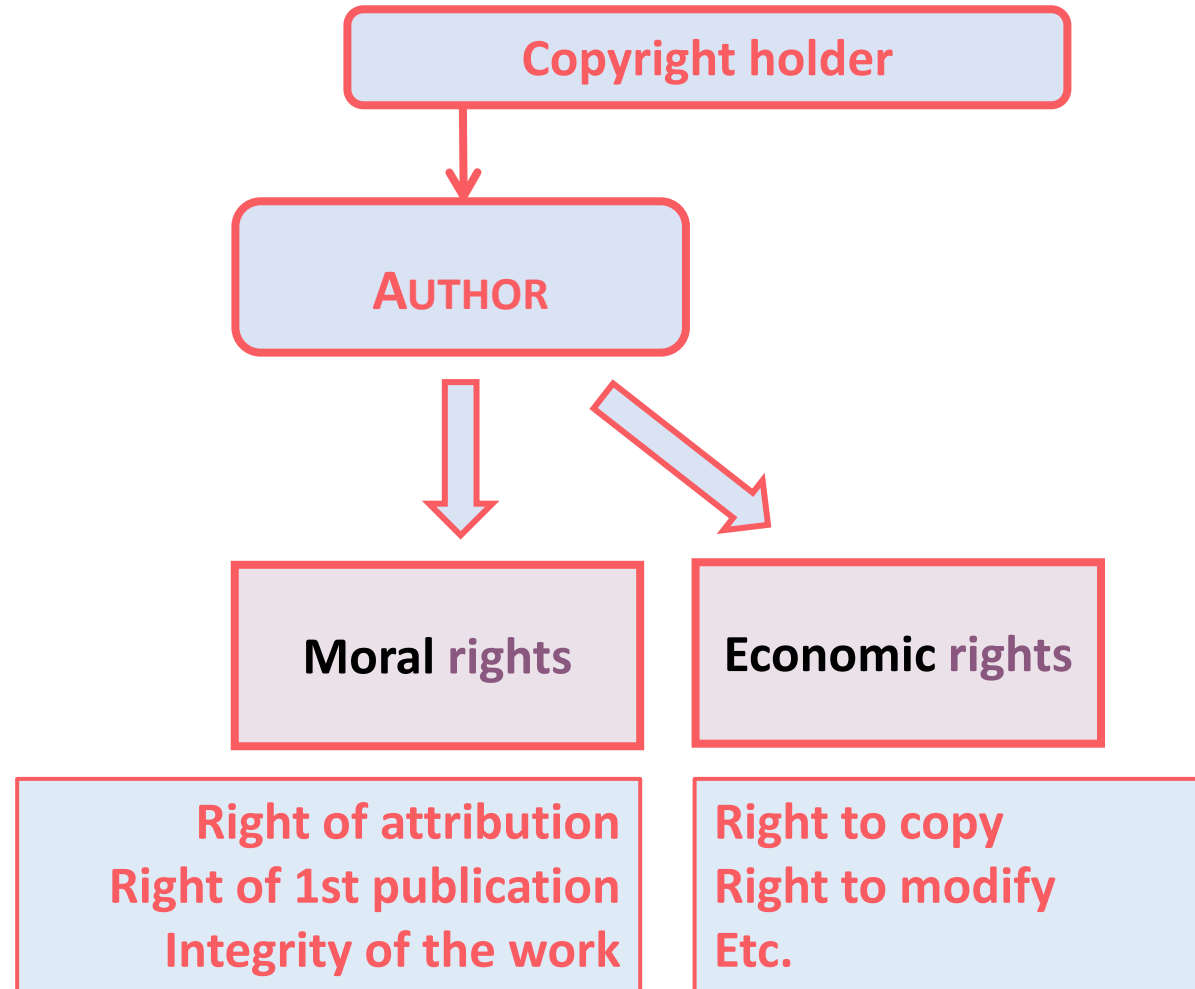
- ❑ Who is the **author** and who is the **copyright holder**?
- ❑ **Publishing contract** and **license to publish** implications
- ❑ **Which version** of the paper and **when** to re-publish
- ❑ Contents of the **agreement with publishers**
- ❑ **SNSF's requirements**
- ❑ What can be **negotiated**

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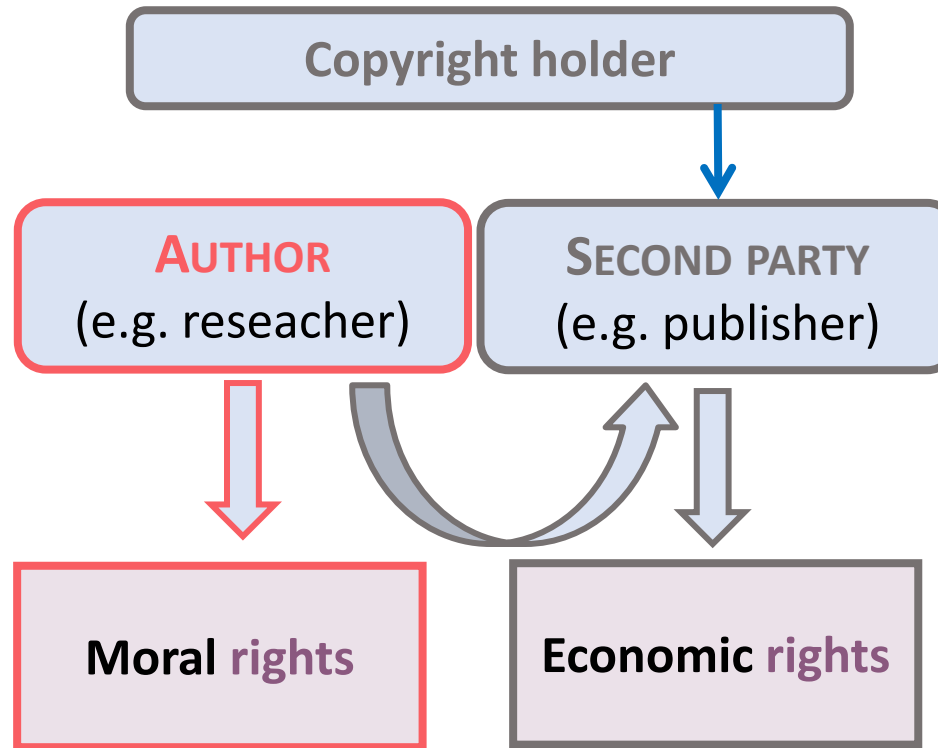
# Who is the **author** and who is the **copyright holder**

# WHO IS THE AUTHOR AND WHO IS THE COPYRIGHT HOLDER?

## THE AUTHOR



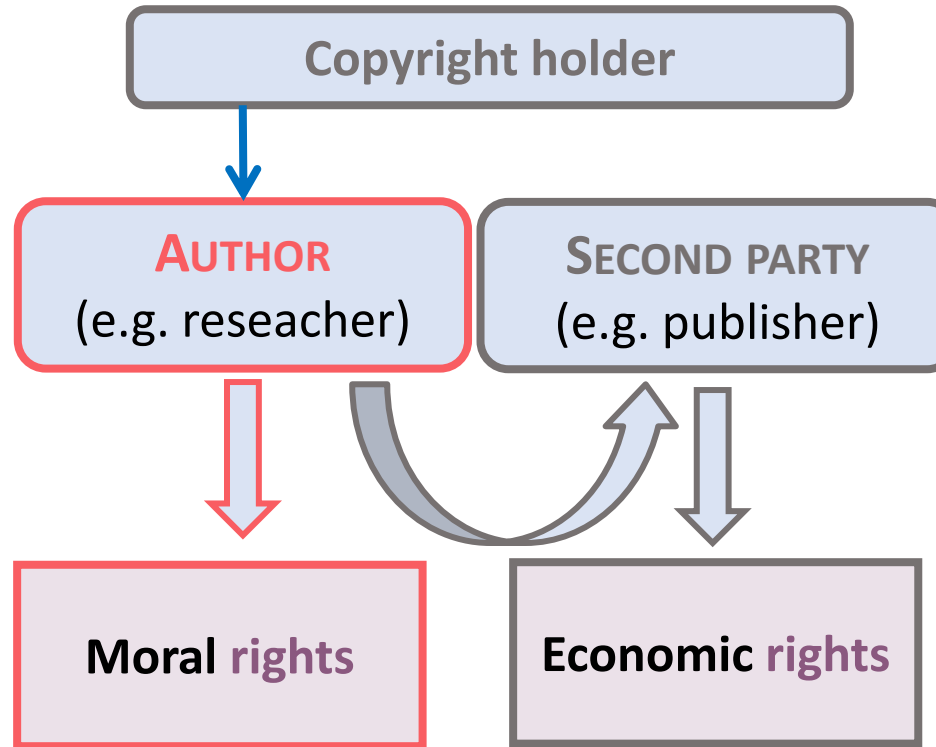
## THE RIGHT HOLDER



# WHO IS THE AUTHOR AND WHO IS THE COPYRIGHT HOLDER?

UZH

ART. 12A  
UNIVERSITÄTSGESETZ

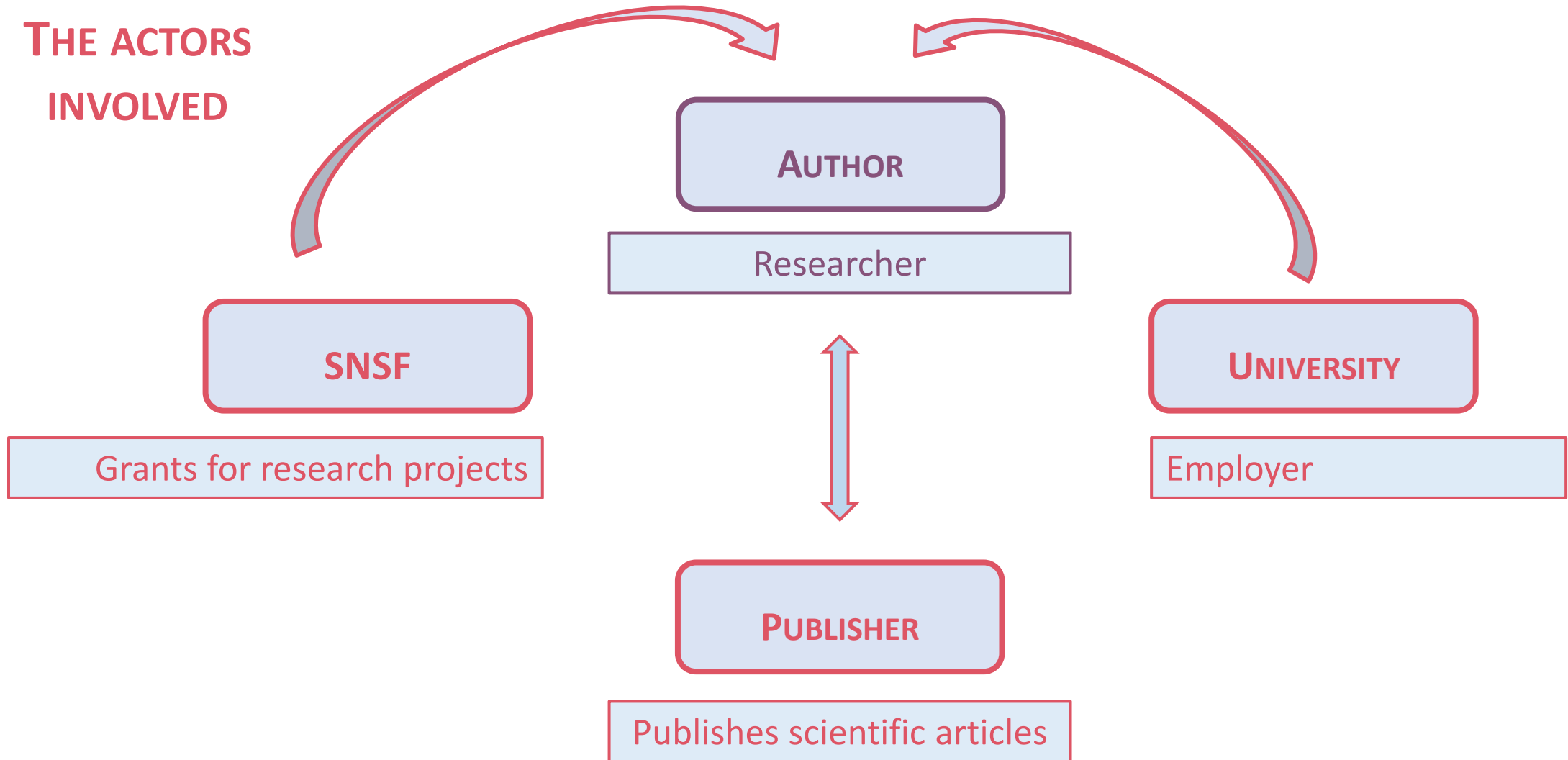


**Exception for software:**  
UZH has an exclusive right to use

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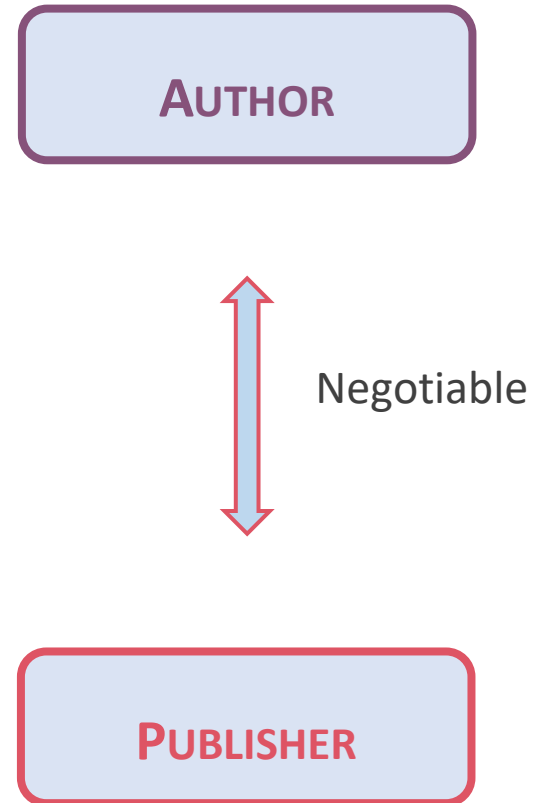
# Publishing contract and License to publish

**THE ACTORS INVOLVED**



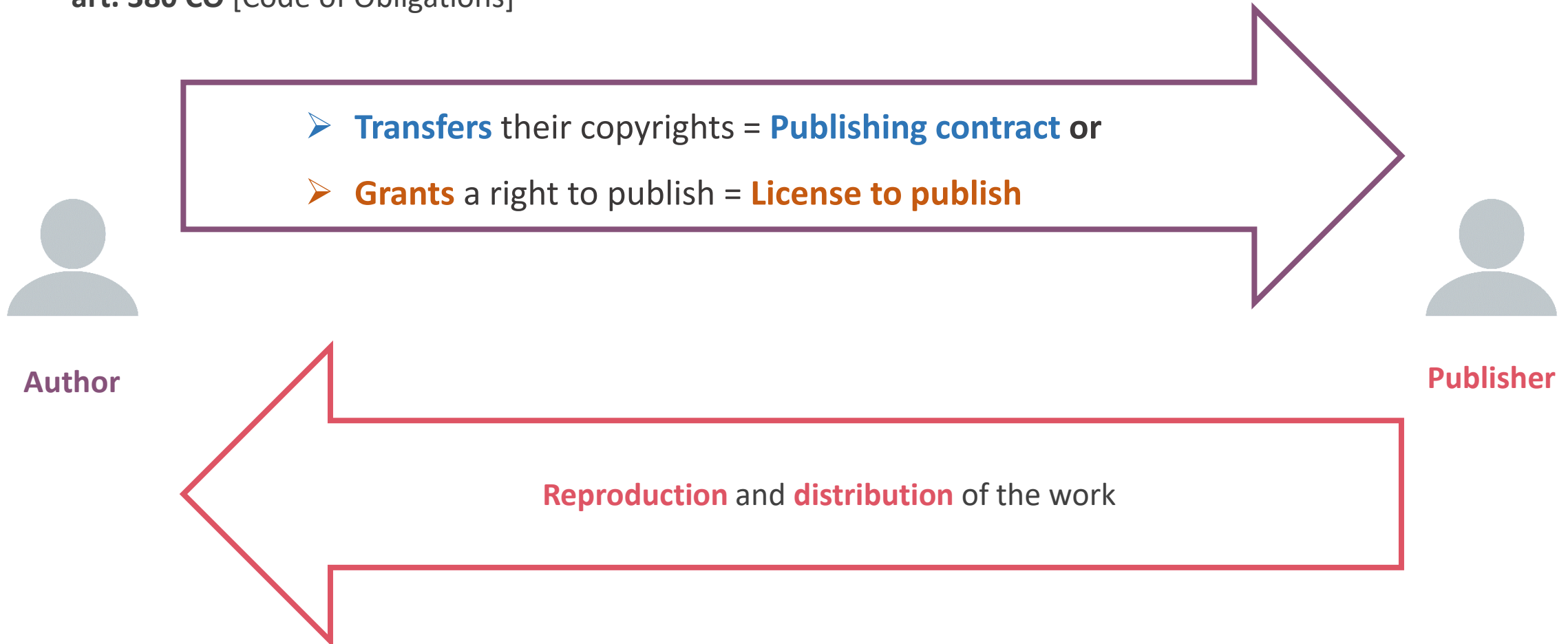


**THE ACTORS  
INVOLVED**



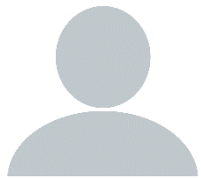
## What does the law state?

art. 380 CO [Code of Obligations]



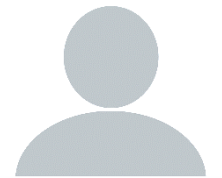
## What does the law state?

art. 380 CO [Code of Obligations]



Author

- 
- A large, hollow purple arrow pointing from left to right, containing two bullet points.
- **Transfers** their copyrights = **Publishing contract** or
  - **Grants** a right to publish = **License to publish**



Publisher

Art. 381 para 1 CO: only **necessary** copyrights for the **purpose of publication**

→ no sublicense, no right to translate, no filming right IF not specified

## Which copyrights can be transferred or licensed?

- **Law:** only necessary copyrights for the purpose of publication (principle of the purpose, art. 381 para 1 CO)  
→ no sublicense, no right to translate, etc. **if** not specified
- **Individual agreement:** ANYTHING is possible:  
Right to reproduce (paper and/or digital), right to share (where), right to modify, sublicense, etc.

# Transfer of copyrights

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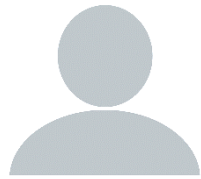


Author gives up their economic rights!  
Not anymore allowed to copy, modify,  
distribute the work; agreement with  
Publisher required to use the work

Publisher becomes the **RIGHT HOLDER**  
Publisher can re-sell, sublicense and decide how can  
others use the work

# Licensing – Exclusive License

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Author



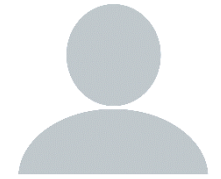
Right to copy



Right to modify



Right to distribute copy and modifications



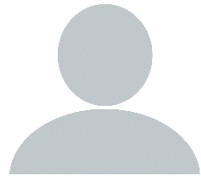
Licensee

Author remains the **RIGHT HOLDER** of the economic rights  
May not grant other licenses for same rights

Is allowed to copy / modify / share the work  
DOESN'T become **RIGHT HOLDER** of the economic rights

# Licensing – Simple License

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Author



Right to copy



Right to modify



Right to distribute copy and modifications



Licensee 1

Licensee 2

Licensee 3

Author remains the **RIGHT HOLDER** of the economic rights

May grant other licenses for same rights

Are allowed to copy / modify / share the work  
DON'T become **RIGHT HOLDERS** of the economic rights

## Essential elements of an agreement:

- **What:** object of the agreement (which work, versions, formats,...)
- **Which rights** (to what extends) are assigned or granted
- **Where:** territoriality limit or world-wide
- **When:** contract term (fixed term or until expiry of copyright or when contractual obligations are fulfilled)



## What else is usually regulated?

- **Publisher's** rights and obligations:
  - Number of (printed) copies (art. 383 CO)
  - Where and how to sell / distribute (who has access)
  
- **Author's** rights and obligations:
  - Right of second publication = publication by means other than the publisher (e.g. university's repository, on social networks, ect.)
  - Free copies available for the author
  - OA costs (→ usually the author must pay for OA publishers publication)

**→ Requirements of SNSF must be met!**

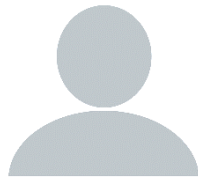
## Is a second publication possible?

- According to the law: **art. 382 CO** [Code of Obligations]  
3 different situations
  
- Agreed in the contract

## Second Publication Right

state of the art according to Swiss Code of obligations

Art. 382 para 1 CO

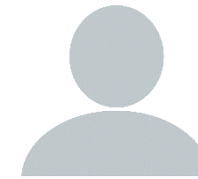


**Author**

No competition with publisher  
(no use that competes with the interests of the publisher)



**Books / Larger Works**



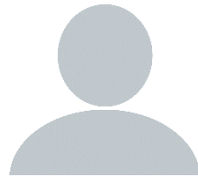
**Publisher**

Exclusivity on the work  
(exclusive right to publish/distribute the work)

## Second Publication Right

state of the art according to Swiss Code of obligations

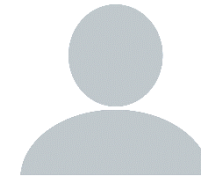
Art. 382 para 2 CO



**Author**



**Newspaper Articles  
Short Articles**



**Publisher**

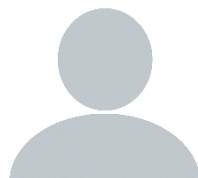
Author can always re-publish

Non-exclusivity on the work

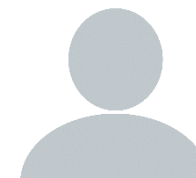
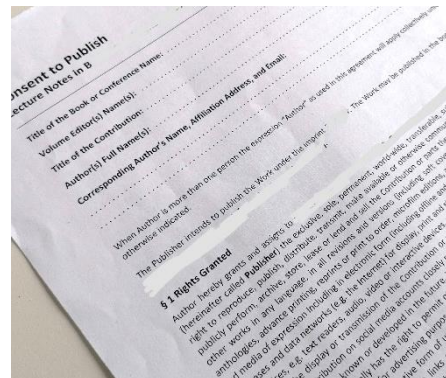
## Second Publication Right

state of the art according to Swiss Code of obligations

Art. 382 para 3 CO



Author



Publisher

Author can re-publish after **3 months**

Exclusivity on the work only for the **first 3 months**

**Scientific Articles**  
**Contributions to Collections**

## Second Publication Right

state of the art according to Swiss Code of obligations

Art. 382 para 3 CO



**In my contract with the publisher an embargo period of 12 months is determined. Am I allowed to re-publish my paper after 4 months by applying art. 382/3 CO?**

- a) Yes
- b) No
- c) Not clear

## Second Publication Right

state of the art according to Swiss Code of obligations

Art. 382 para 3 CO



**In my contract with the publisher an embargo period of 12 months is determined. Am I allowed to re-publish my paper after 4 months by applying art. 382/3 CO?**

a) Yes

b) No

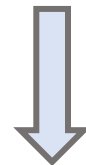
**c) Not clear**

## Second Publication Right

state of the art according to Swiss Code of obligations

Art. 382 para 3 CO

Generally artt. 380 – 393 CO are considered as **not imperative law**  
(contract prevails over law)



Allows to regulate things differently in contracts



**Second Publication Right**  
**state of the art according to Swiss Code of obligations**  
Art. 382 para 3 CO

However, there are arguments in favor of the embargo period of 3 months **prevailing** over a longer period defined in a publishing contract:

→ Grégoire Geissbuhler, L'Open Access dans le Code des obligations, in: Jusletter 17 mai 2021  
<https://jusletter.weblaw.ch/fr/juslissues/2021/1067/l-open-access-dans-l-7b71339175.html> ONCE

## PUBLISHING CONTRACT AND LICENSE TO PUBLISH

Did the author **transfer the copyrights** so that the publisher is the right holder?

↓  
*No*

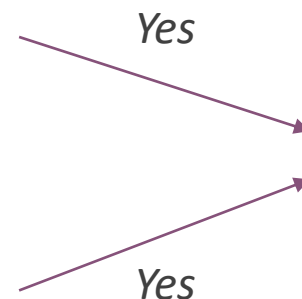
Did the author grant the publisher the right to publish through an **exclusive license**?

↓  
*No*

The publisher has a **non-exclusive license** to publish the work.



Authors can **immediately** re-publish the work.



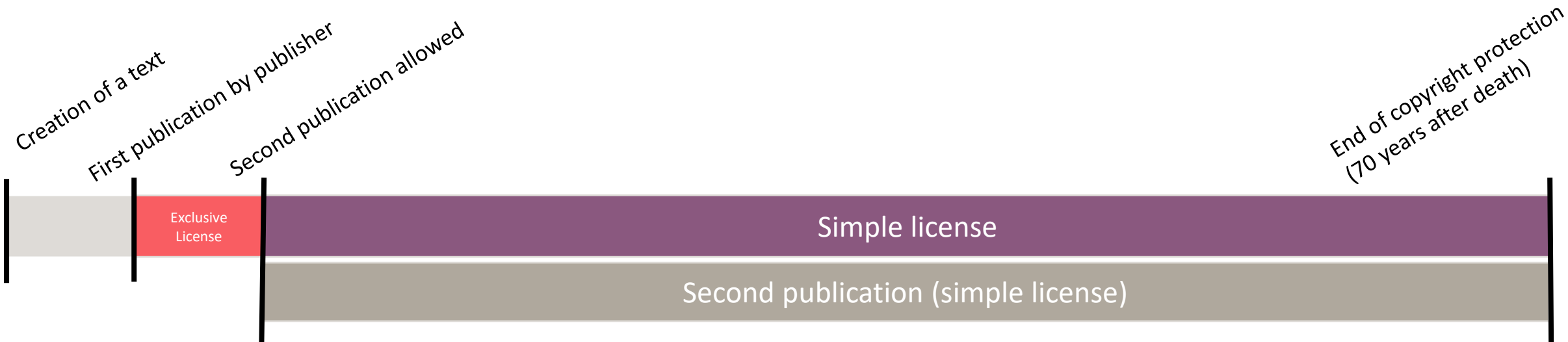
The publisher has **exclusivity** on the work.



Authors can re-publish the work **after an embargo period**.

**Rechtseinräumung**

Ich übertrage hiermit der Vereinigung X an meinem Beitrag ein Jahr ab Erscheinen das ausschliessliche und danach für die Dauer der gesetzlichen Schutzfrist einschliesslich zukünftiger Verlängerungen das nichtausschliessliche Recht zu weltweiten Vervielfältigung und Verbreitung einschliesslich folgender Rechte: Vorabveröffentlichung, Nachdruck, übersetzung in andere Sprachen, Nutzung durch andere Vervielfältigungsformen wie insbesondere Fotokopie, Erstellung, Speicherung und Verbreitung elektronischer Formen, ...(usw.).



Researcher



Publisher

**Art. 380 CO**

Contractual freedom

- Transfer of copyrights
- ...
- Right of second publication
- Open Access

Content of Art 382 para. 3 CO  
not needed

Researcher



Publisher

**Art. 380 CO**

Contractual freedom

Content of Art 382 para. 3 CO applies



Transfer of copyrights



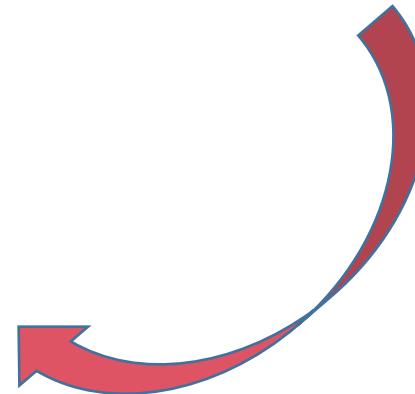
...



Right of second publication



Open Access



# WHICH NATIONAL LAW APPLIES?



## WHICH NATIONAL LAW APPLIES?

AUTHOR

FUNDER

If nothing defined, generally  
the law of the publisher's  
country is applied

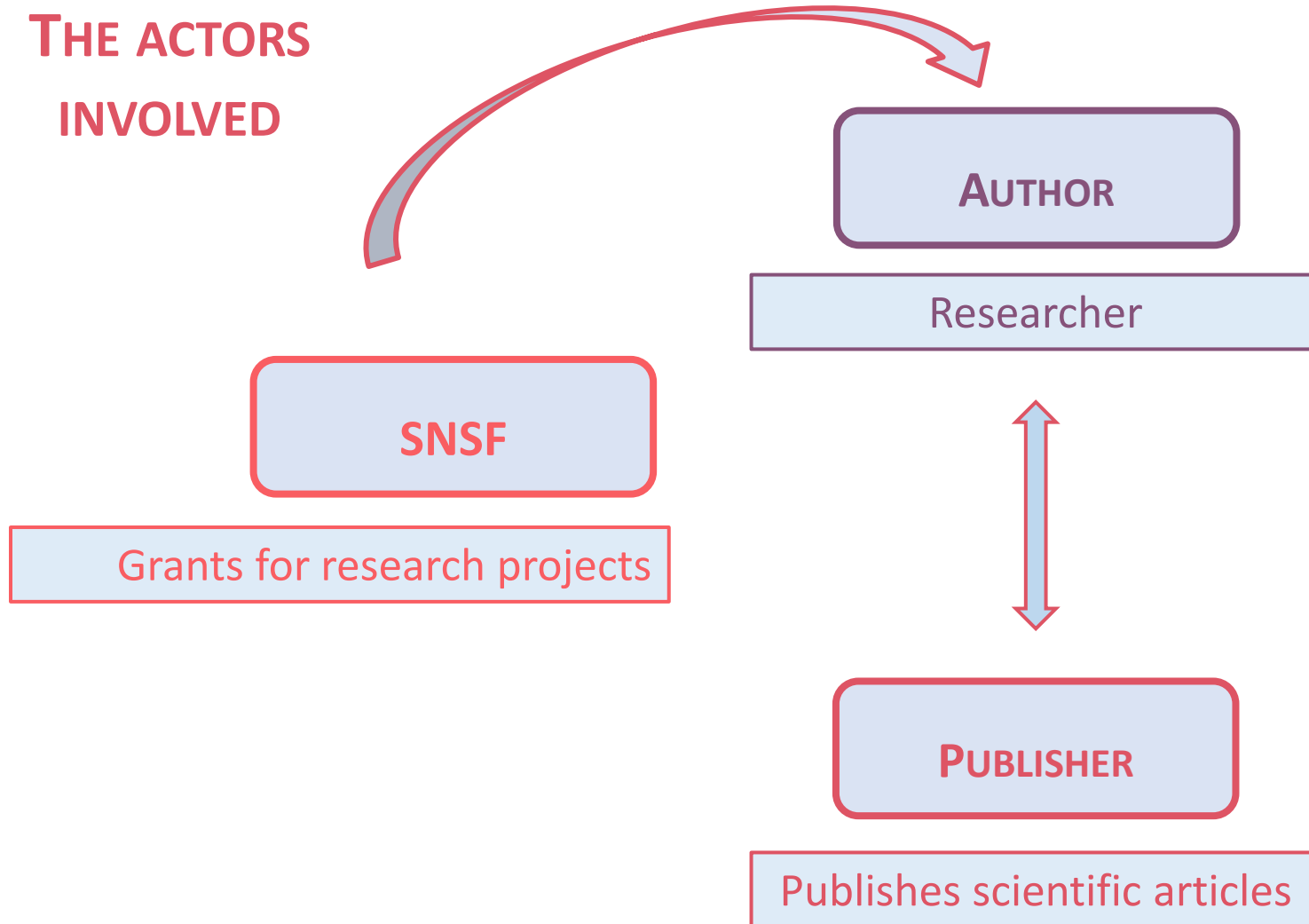
UNIVERSITY

PUBLISHER



# Funder requirements



**THE ACTORS INVOLVED**



## SNSF grants requirements (since 1.1.2023 – cOAlition S)

- Scientific articles
  - **Immediately** available publicly
  - With a **CC-BY** license 
- All other publications
  - Publicly available after a period of **12 months**
  - With a **CC-BY** license 

Exceptions: disproportionately high costs for image rights

→ **Agreement with publisher is necessary!**

## Rights Retention Strategy

(<https://www.coalition-s.org/resources/rights-retention-strategy/>)

- Use the following standard statement in the acknowledgement field **when submitting your work to publisher:**

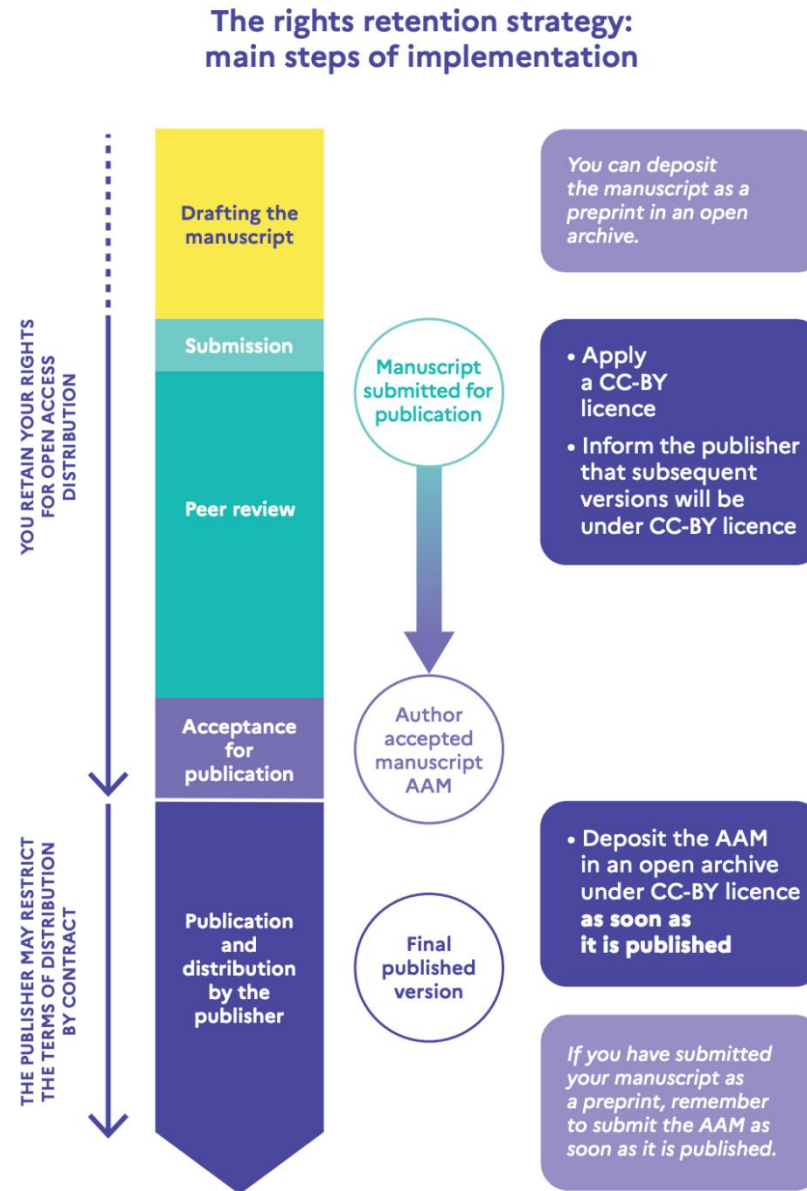
*“This research was funded in whole or in part by the Swiss National Science Foundation (SNSF) [Grant number]. For the purpose of Open Access, a CC BY public copyright licence is applied to any Author Accepted Manuscript (AAM) version arising from this submission.”*

Clause 11.13 para. 3 of the Implementation Regulations

→ Immediately publish the pre-print on a digital repository with a CC-BY license



# Rights Retention Strategy



Author unknown

Source: <https://open-science.it/-/rrs-guide>

### Which version can be re-published?

- You may publish a preprint **before submitting** it to a journal.  
Important to **inform** the publisher!

However, some publisher may refuse preprint-published articles. Check their policies.

- When publishing a preprint, **don't assign copyrights**. Better to release it under a CC license.

...**submission is already accepted** by journal but in the **meanwhile** you would like to publish the preprint?

- Publishers' policies or agreement may require **specific conditions**.
  - **check** the publisher's policies  
E.g. acknowledgment that *"This article has been accepted for publication in [JOURNAL TITLE], published by Taylor & Francis."* (<https://authorservices.taylorandfrancis.com/research-impact/sharing-versions-of-journal-articles/>)

Publishing **regardless** of agreement with publisher = **violation of copyright** and of **publishing contract!**

# RECAP QUIZ

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**What shall I do if my funder requires immediate open access publication of my scientific article and I have a publishing contract which sets an embargo period of 12 months?**

- a) I immediately publish it as open access
- b) I re-publish it after 12 months
- c) Either way I would need to pay the consequences for breaching one of the two contracts

# RECAP QUIZ

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**What shall I do if my funder requires immediate open access publication of my scientific article and I have a publishing contract which sets an embargo period of 12 months?**

- a) I immediately publish it as open access
- b) I re-publish it after 12 months
- c) **Either way I would need to pay the consequences for breaching one of the two contracts**



# Negotiating with the Publisher

### Before concluding a publishing contract

- Authors should tell the publisher about SNSF's requirements
- Authors should retain their copyrights → only grant a **license to publish**
  - Exclusive license for a period of time (embargo), upon expiry of which the license becomes non-exclusive.
- Better would be a **non-exclusive license to publish**  
(try to negotiate lower APC costs)



### Go for it!

- No **embargo** (SNSF requirements)
- Shorter **embargo** (= simple license after an exclusive license)
- Possibility to publish elsewhere, after embargo, with credit to publisher
- Possibility to publish **preprint**, under some conditions required by publisher
- Possibility to choose whether and how to translate and publish these translations.



### Why not?

- Possibility to retain copyrights and only grant the permission to use/publish (exclusive/simple license)  
→ avoid transfer of copyrights
- Possibility to publish **preprint** elsewhere/before end of embargo



### Give it a try!

- Possibility to completely eliminate **embargo**
- Possibility to publish **preprint** elsewhere without notice of publisher
- Lower OA costs

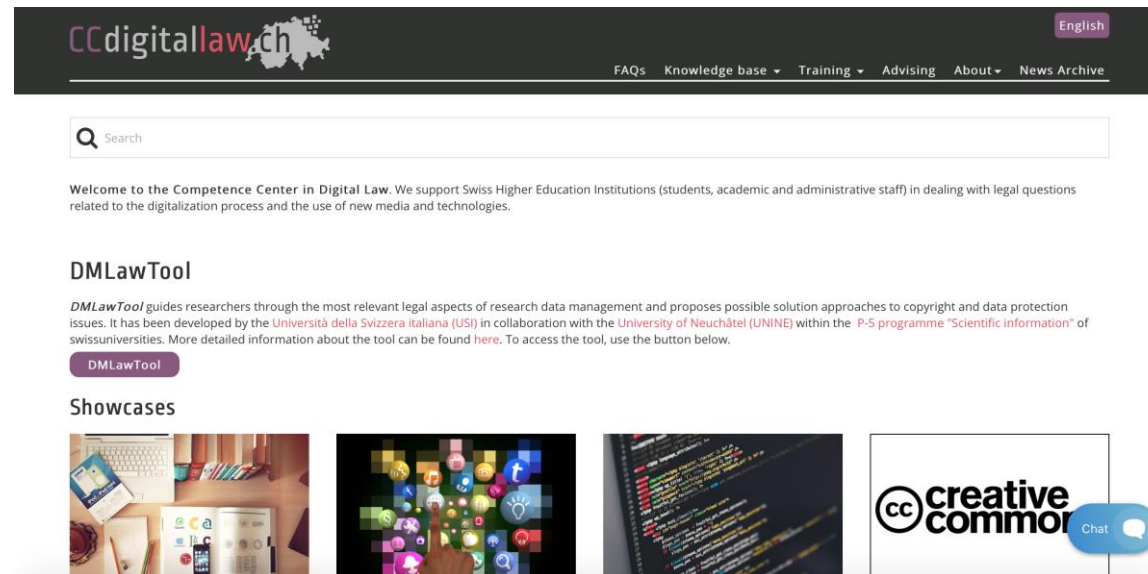
### After having concluded a contract with Publisher

- Check what are the **penalties** set by SNSF and/or what demands the publisher
- Explain your circumstances (public research field, no profits,...)
- If you committed a contractual violation, you will need to pay the consequences!

**Thank you very much for your attention!**

# More information @ [www.ccdigitallaw.ch](http://www.ccdigitallaw.ch)

Follow us on our social networks



The screenshot shows the website's header with the logo, a search bar, and a navigation menu. Below the header is a welcome message and a section for 'DMLawTool' with a button to access it. At the bottom, there is a 'Showcases' section with four images: a desk with books, a hand pointing at colorful icons, a screen with code, and the Creative Commons logo with a chat button.

CCdigitallaw.ch English

FAQs Knowledge base Training Advising About News Archive

Search

Welcome to the Competence Center in Digital Law. We support Swiss Higher Education Institutions (students, academic and administrative staff) in dealing with legal questions related to the digitalization process and the use of new media and technologies.

### DMLawTool

*DMLawTool* guides researchers through the most relevant legal aspects of research data management and proposes possible solution approaches to copyright and data protection issues. It has been developed by the *Università della Svizzera italiana (USI)* in collaboration with the *University of Neuchâtel (UNINE)* within the P-5 programme "Scientific information" of swissuniversities. More detailed information about the tool can be found [here](#). To access the tool, use the button below.

DMLawTool

### Showcases

