

# OPEN SCIENCE

## Funder requirements and publishers' conditions

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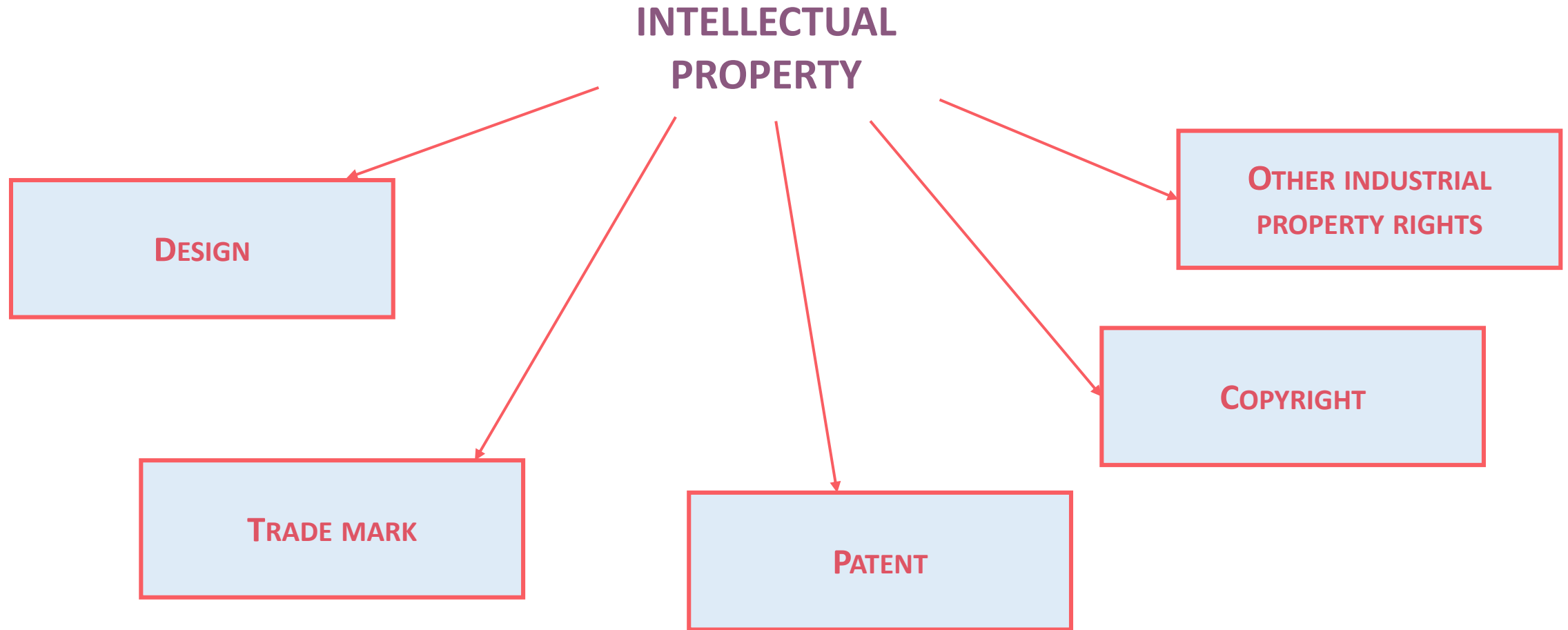
31.03.2022

# Today's goals

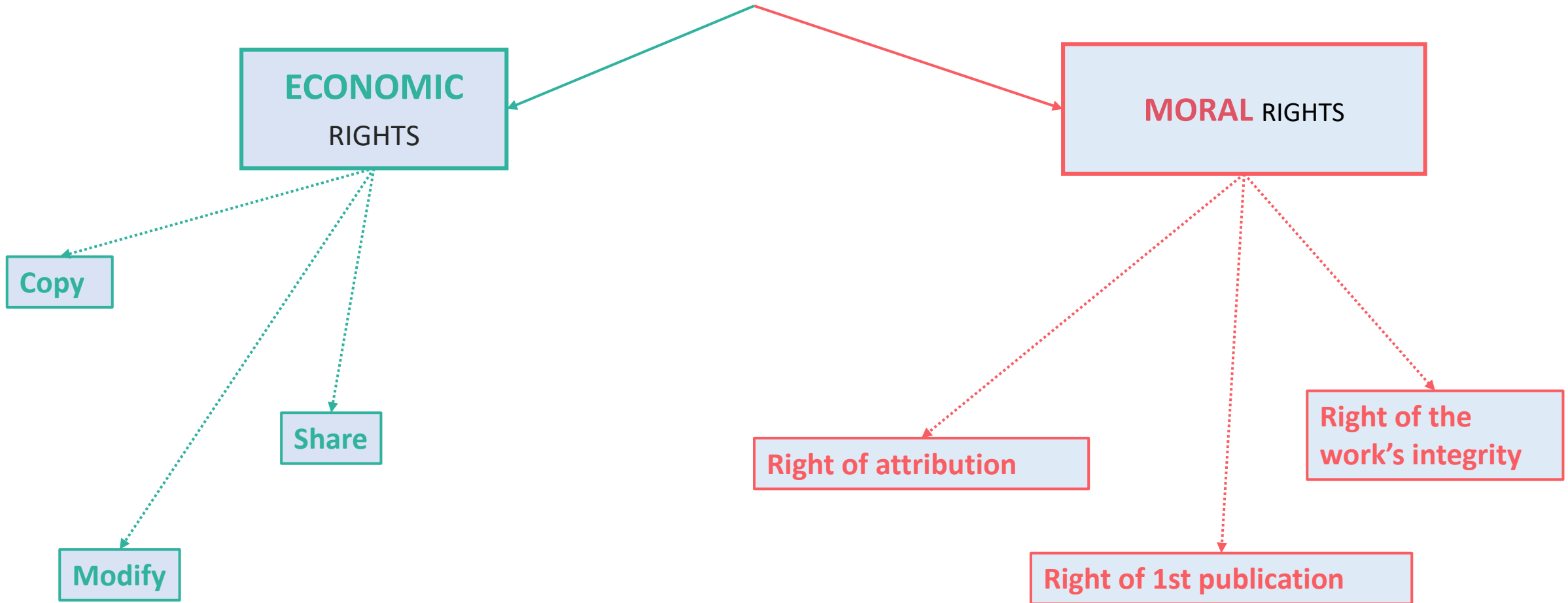
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- ❑ Introduction to copyright
- ❑ **What** is protected by copyright
- ❑ Who is the **right holder**
- ❑ Different **types** of agreements  
between the **author** and the **publisher**
- ❑ **Contents** of the agreements and  
what can be **negotiated**

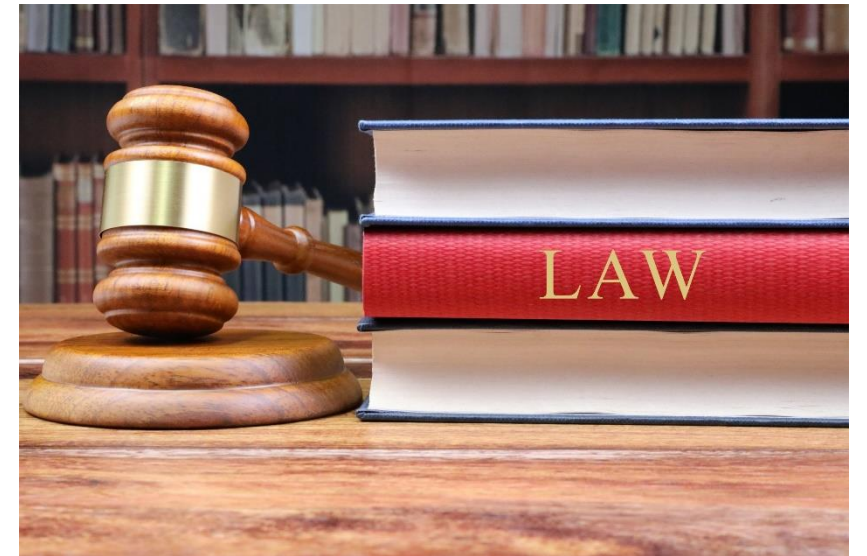




# COPYRIGHT



- Swiss Copyright Act (CopA)
- Swiss Code of obligations (CO)
- International laws



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- Books
- Articles
- Text
- Movies
- Tutorials
- Courses
- Presentations
- Databases
- Computer programs
- Photos
- Technical drawings
- Interviews

- → Usually protected by Copyright
  - Intellectual creation
  - Form of expression
  - Individual character
- → Copyrights come with creation of work until 70 years after author's death



## Derivative works (art. 3 Swiss Copyright Act)

<sup>1</sup> *Derivative works are intellectual creations with individual character that are based upon pre-existing works, whereby the individual character of the latter remains identifiable.*

- Translations
- Adaptations
- Modifications
- ...

**Copying** vs. **inspiration**:  
you are always allowed to **get inspired!**



<https://pixabay.com/de/photos/salvador-dali-gegeben-uhr-zeit-2615717/>

## Collected works (art. 4 Swiss Copyright Act)

<sup>1</sup> *Collections are protected as works **in their own** right insofar as they are intellectual creations with **individual character** with regard to their **selection** and **arrangement**..*

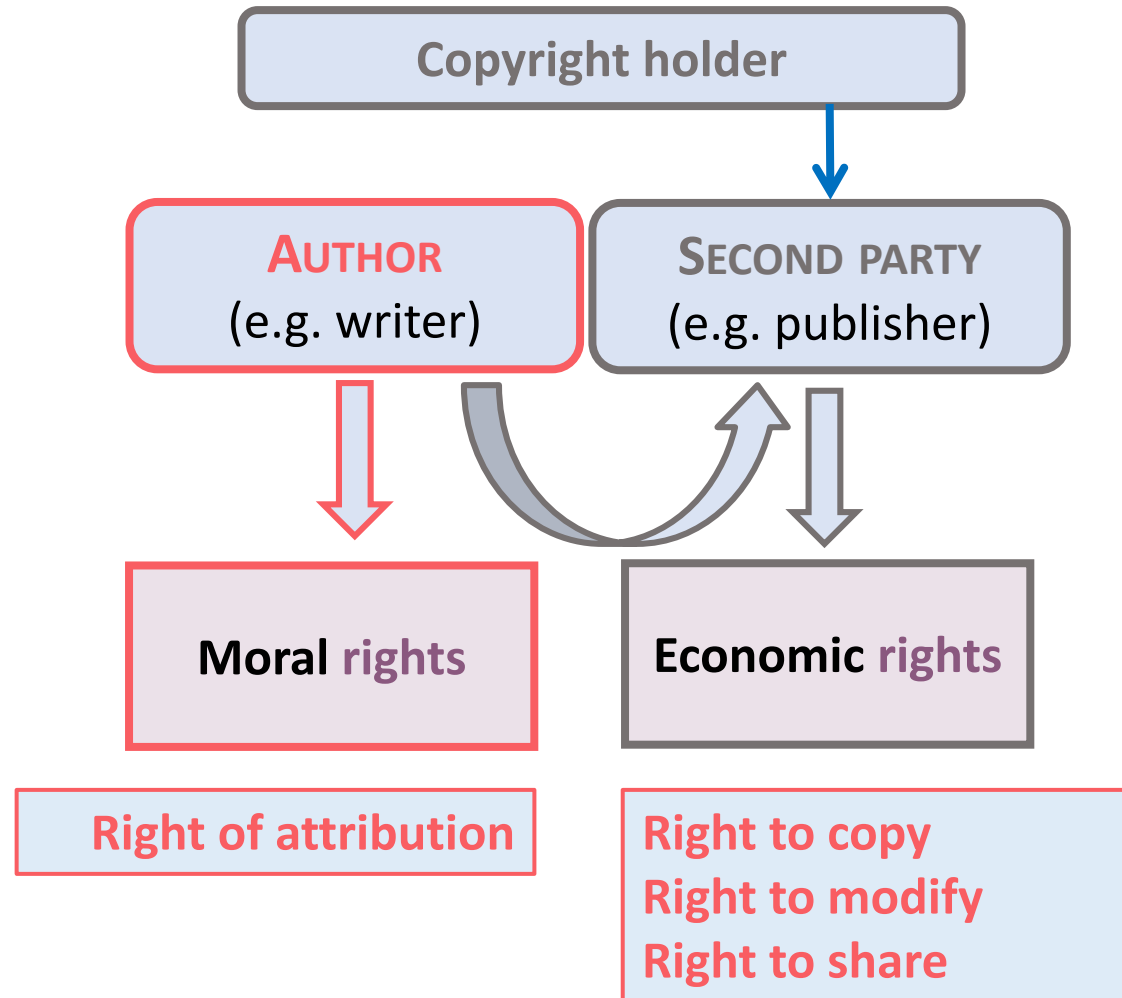
<sup>2</sup> ***Works included** in a collected work may be protected **individually**.*

- Newspaper
- Dataset
- CD
- ...





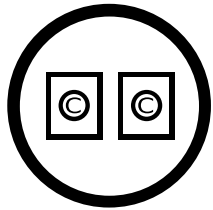
## RIGHT HOLDER



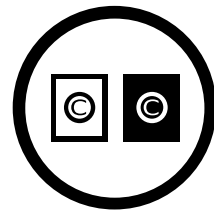
### Examples:

- Educational institution
- Employer
- Publisher
- Collecting society

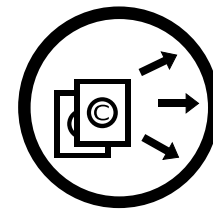
## The Right Holder



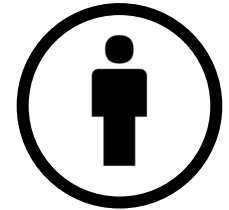
Right to copy



Right to modify



Right to share

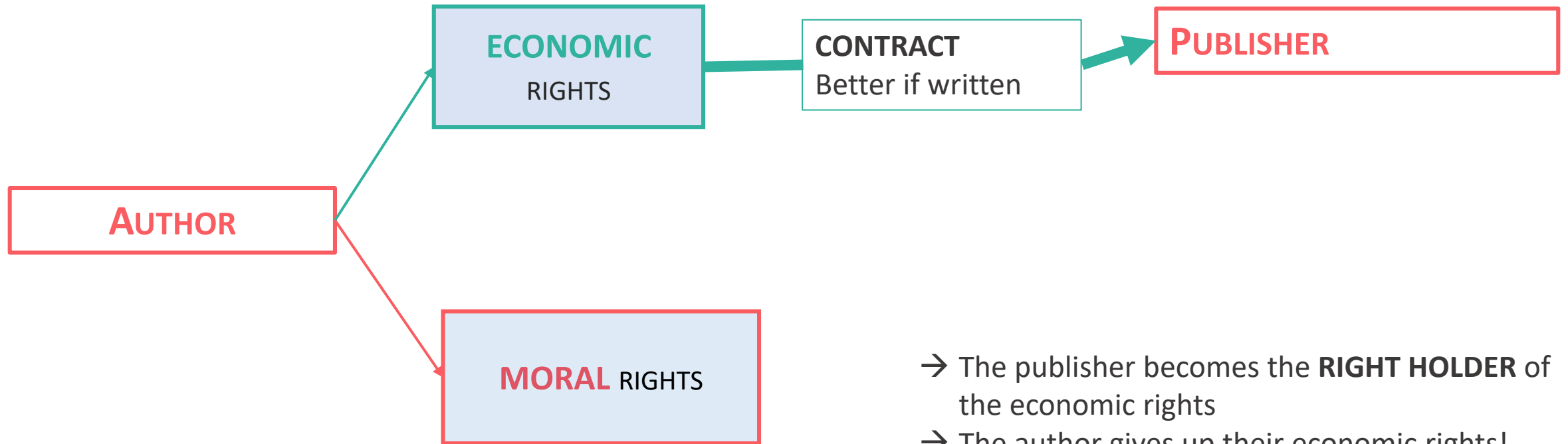


Right of attribution

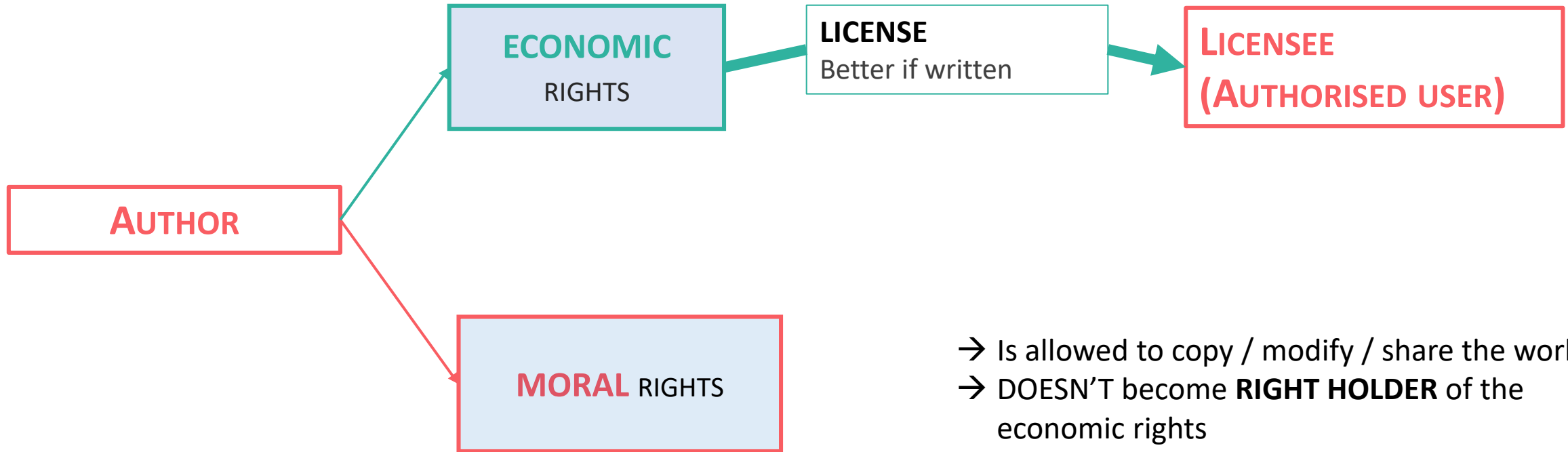
**ONLY** holders of property rights may copy, modify and share a work

All OTHERS may NOT copy, modify and share a work (with exceptions...)

**Copyright holders may grant OTHERS permission to use (= to license): e.g. you can copy my work once**



- The publisher becomes the **RIGHT HOLDER** of the economic rights
- The author gives up their economic rights!
- The publisher can re-sell or sublicense
- **≠ Sale of a copy**



- Is allowed to copy / modify / share the work
- DOESN'T become **RIGHT HOLDER** of the economic rights
- Author and linceser remain **RIGHT HOLDERS** of the economic rights
- Simple license, exclusive license

# Transferring / Assigning Rights



Author



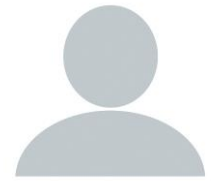
**Right to copy**



**Right to modify**



**Right to distribute copy and modifications**



RIGHT HOLDER

Not anymore allowed to copy, modify, distribute the work; see agreement

e.g. money (Royalties), other obligations, nothing (no compensation)

# Licensing – Exclusive License

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Author  
Right holder  
Licensor

May not grant  
other licenses for  
same rights



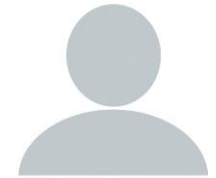
**Right to copy**



**Right to modify**



**Right to distribute copy and modifications**



Licensee

e.g. money (Royalties), specifications, other obligations,  
nothing (no compensation)

# Licensing – Simple License

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Author  
Right holder  
Licensor

May grant as many licenses as wanted/needed



**Right to copy**



**Right to modify**



**Right to distribute copy and modifications**



Licensee 1

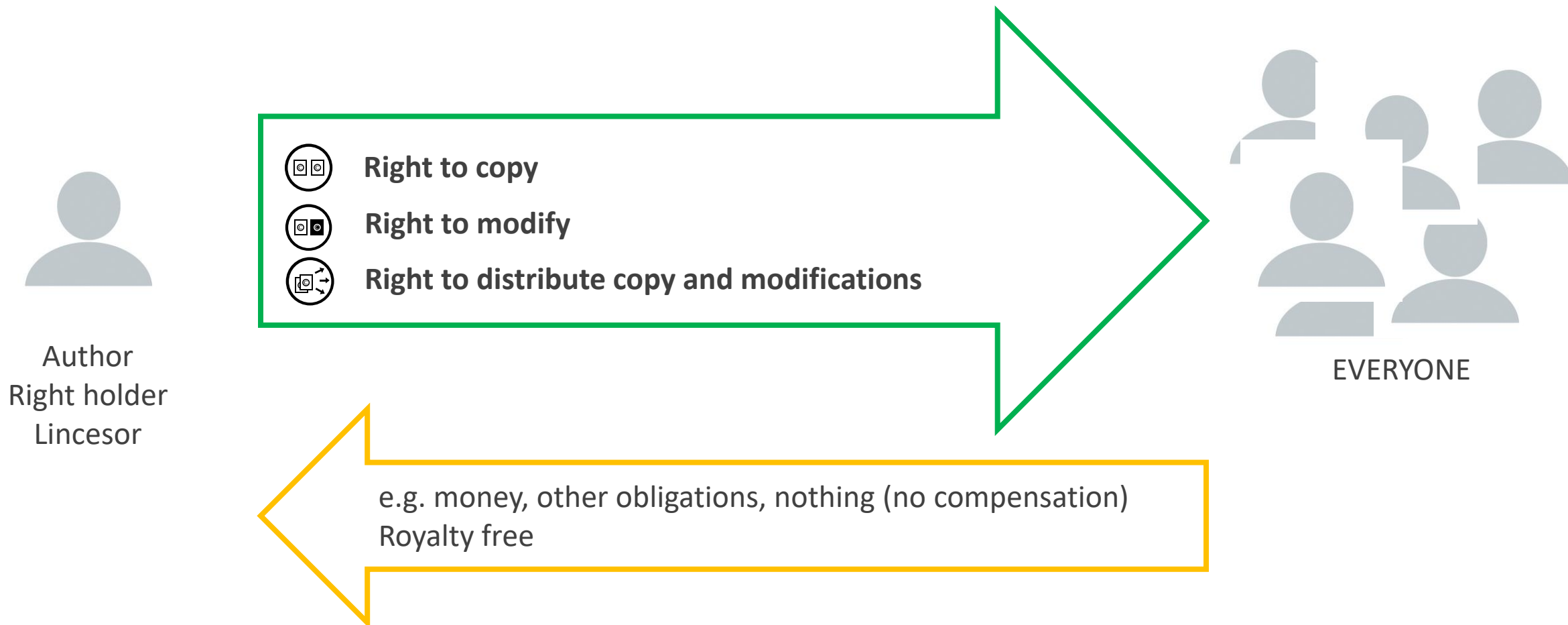
Licensee 2

Licensee 3

e.g. money (Royalties), specifications, other obligations,  
nothing (no compensation)

Everybody has to be allowed to use, re-distribute, modify, separate and compile an existing resource with other resources for any purpose (opendefinition.org)

# Licensing – Open License





### Opendefinition.org

**Everybody** has to be **allowed** to **use, re-distribute, modify, separate** and **compile** an existing resource with other resources **for any purpose**

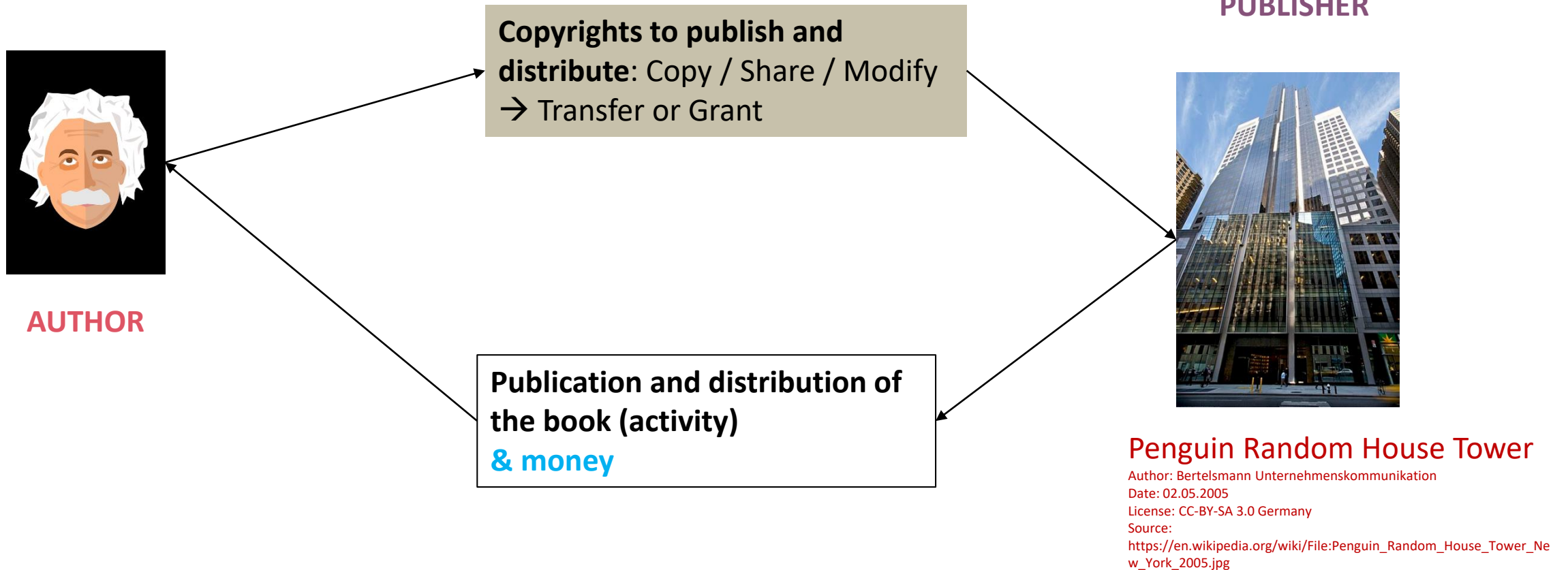
### Copyright law

*Nobody* except owner of the Copyrights is **allowed** to *copy, re-distribute* or *modify* for *any purposes* (exceptions: restricted copying in businesses, schools and for private use)

### Creative Commons

*Everybody* is allowed to *reproduce, share* in whole or part and *modify* (except: ND licenses) in a manner requiring permission under copyright law, for *any purposes* (except: NC licenses)

- Contract between **Author** and **Publisher** (art. 380 CO [Code of Obligations])
- Content of the publishing contract:
  - The **Publisher** :
    - is committed to **reproduce**, edit and put the work into sales/**disseminate**
  - The **Author** :
    - **Transfers** their copyrights (or part of them) to the publisher (also art. 16 CopA) or
    - **grants** only a right to use/publish (**License**)



## Art. 380ff. CO

*A publishing contract is a contract whereby*

- *the originator – the **author** of a literary or artistic work or his legal successor – undertakes to **entrust** the work to a publisher;*  
= to hand over, but no unanimous opinions
- *Who (the **publisher**) undertakes to **reproduce** and **distribute** it.*

## Which copyrights can be transferred or licensed?

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

## Art. 380ff. CO

**NON MANDATORY LAW** = it is possible to **mutually change** the agreement

→ Contractual parties are **free to decide** what is written in the contract

→ Most publishing contracts regulate differently

→ Licenses, permission to use

**= Contractual autonomy!**

### Essential elements of a publishing contract:

- **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 or unlimited (= until the end of copyright protection)

### What else is usually regulated?

- Number of copies (art. 383 CO)
- Right of second publication = publication by means other than the publisher (e.g. university's repository, on social networks, ect.)
- Fees (→ usually the author must pay for OA publishers publication)
- Free copies
- Who has access and under what conditions?

**→ Requirements of the university or of SNF (or other) must be met!**



### Is a second publication possible?

- **Law:**
  - **Newspaper articles** and **short essay** in journals (art. 382 para. 2 CO) ✓
  - **Contributions to collective works** or **larger contribution to journals**: can be published elsewhere after a period of **3 months** (art. 382 para. 3 CO) ✓
  - All other texts: author may **not** dispose of his work to the detriment of the publisher = exclusive distribution by publisher (art. 382 para. 1 CO) = no right to second publication!! ✗
- **Individual agreement**: it is possible to regulate differently!  
→ **Always read the contract!**

- Version of Record = **derivative work** of **preprint** version?
- Law: the right holder **is allowed** to publish a preprint **before submitting** it to a journal. Important to **inform** the publisher about the released preprint. However, some publisher may refuse preprint-published articles. Check their policies.
- If/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 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!**

EXAMPLES of agreements



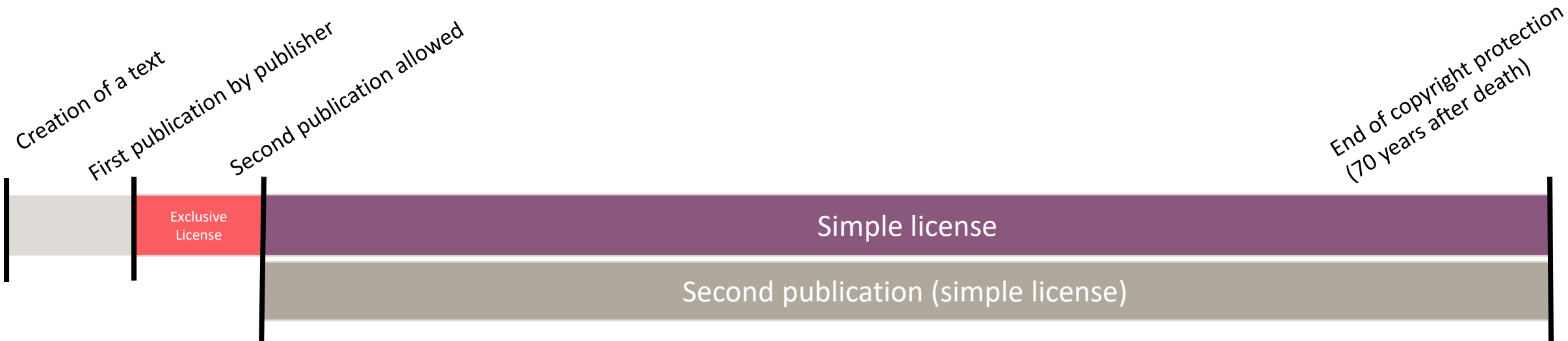
## **§ 1 Rights Granted**

*Author hereby grants and **assigns** to Publisher the exclusive, world-wide, transferable, sub-licensable right to reproduce, publish, distribute, make available or otherwise communicate to the public, translate in any language, archive, store, the Work in all revisions and versions, in all forms and media of expression including in electronic form for display, print, ...(and any other right).*

*The copyright shall be vested in the name of Publisher.*

### Rechtseineräumung

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.).



## 2. Grant of Rights

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(b) In connection with software and [redacted]s, Owner grants [redacted] **non-exclusive permission to publish, reproduce and distribute** in any and all forms of media, now or hereafter known, including in the above publication and in the [redacted]

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(d) If your paper is withdrawn before it is published in the [redacted], the rights revert back to the author(s).

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- b. to create and reproduce Derivative Works;
- c. to distribute copies or phonorecords of, display publicly, perform publicly, and perform publicly by means of a digital audio transmission the Work including as incorporated in Collective Works;
- d. to distribute copies or phonorecords of, display publicly, perform publicly, and perform publicly by means of a digital audio transmission Derivative Works.

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URL: <https://creativecommons.org/licenses/by/2.0/legalcode>





## Go for it!

- 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

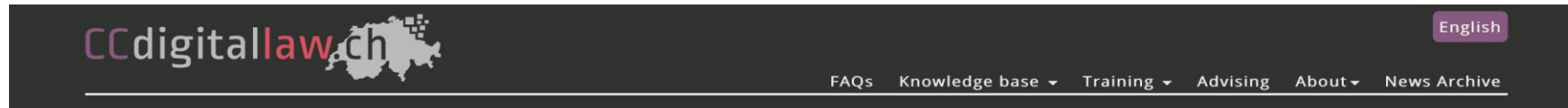


### Give it a try!

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

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

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




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



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