

Copyright and Open Access in Switzerland

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Training

- What is protected by **copyright** and **related rights**
- Who are the **Author** and the **Right holder** of a work
- How** can a user **re-use** a protected work, according to Swiss legal licenses
- How is the **second publication right** currently regulated in Switzerland
- How can an author publish **open access**
- Q&A

What is protected by copyright?

WHAT IS PROTECTED BY COPYRIGHT?

- 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



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- Intellectual creation
- Form of expression
- Three-dimensional object



Bundesarchiv, Bild 183-14059-0005
CC-BY-SA 3.0

WHAT IS PROTECTED BY COPYRIGHT?

- Performing a work
- Performing an expression of folklore



→ Usually protected by Copyright

- Intellectual creation
- Form of expression
- Tradition



Derivative works (art. 3 Swiss Copyright Act)

¹ *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)

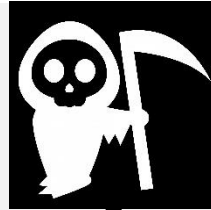
¹ *Collections are protected as works **in their own** right insofar as they are intellectual creations with **individual character** with regard to their **selection** and **arrangement**..*

² ***Works included** in a collected work may be protected **individually**.*

- Newspaper
- Dataset
- CD
- ...



HOW LONG IS A WORK PROTECTED FOR?



Lifetime from creation

+ 70 years

Creation of a work (art. 29 para. 1 CopA)

→ Copyright protection starts **automatically** from the creation of the work. No registration procedure needed.

- 70 years after the author's death

- 50 years from **production** for photos lacking of originality
- 70 years from **performance**



→ **Public Domain**

HOW LONG IS A WORK PROTECTED FOR?



Lifetime from creation

+ 70 years

Date to take into account:
31.12.2010

Death's date:
05.03.2010

Protection lasts until:
31.12.2080



→ **Public Domain Day**

01.01.2081

What is NOT protected by copyright?

Art. 5 CopA: Copyright does not protect:

- a) acts, ordinances, international treaties and other official enactments;
 - b) means of payment;
 - c) decisions, minutes and reports issued by authorities and public administrations;
 - d) patent specifications and published patent applications.
-
- Mere information, facts, data, dispatches
 - Ideas



Case study

Antoine de Saint-Exupéry, author of *Le petit prince*, died during a mission in 1944.

- Am I allowed to **print 100 copies** of the original manuscript with drawings and **distribute** them to people in **Geneva**?

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Case study

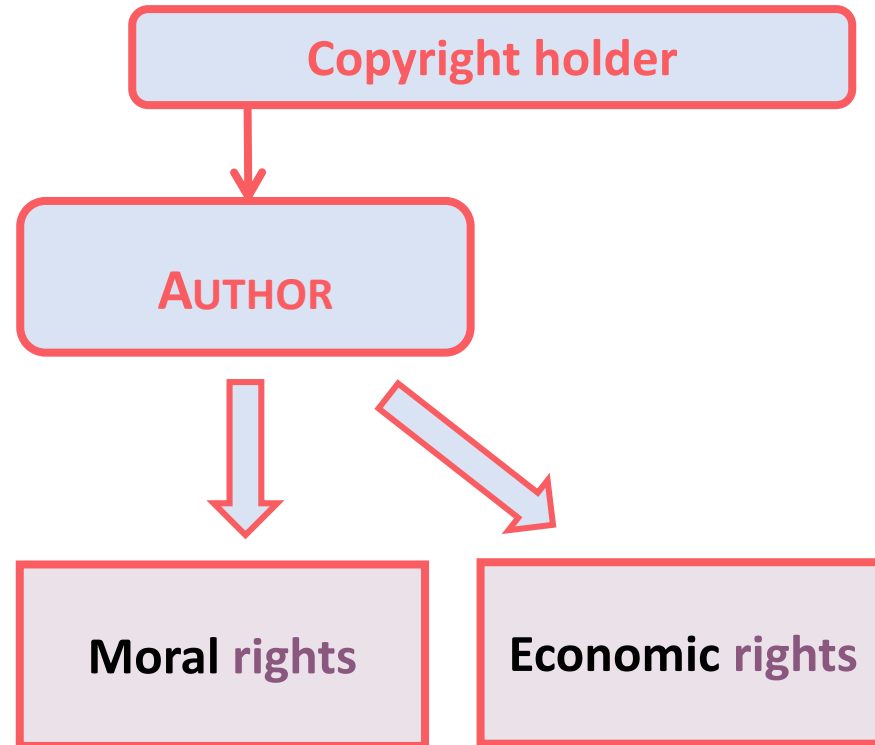
Antoine de Saint-Exupéry, author of *Le petit prince*, died during a mission in 1944.

- Am I allowed to **print 100 copies** of the original manuscript with drawings and **distribute** them to people in **Geneva**?
- Am I allowed to **upload** the manuscript with drawings on my blog and **share** them with an open license?
- I **bought** a **translated** and **edited** version of the book; am I allowed to **sell** it?

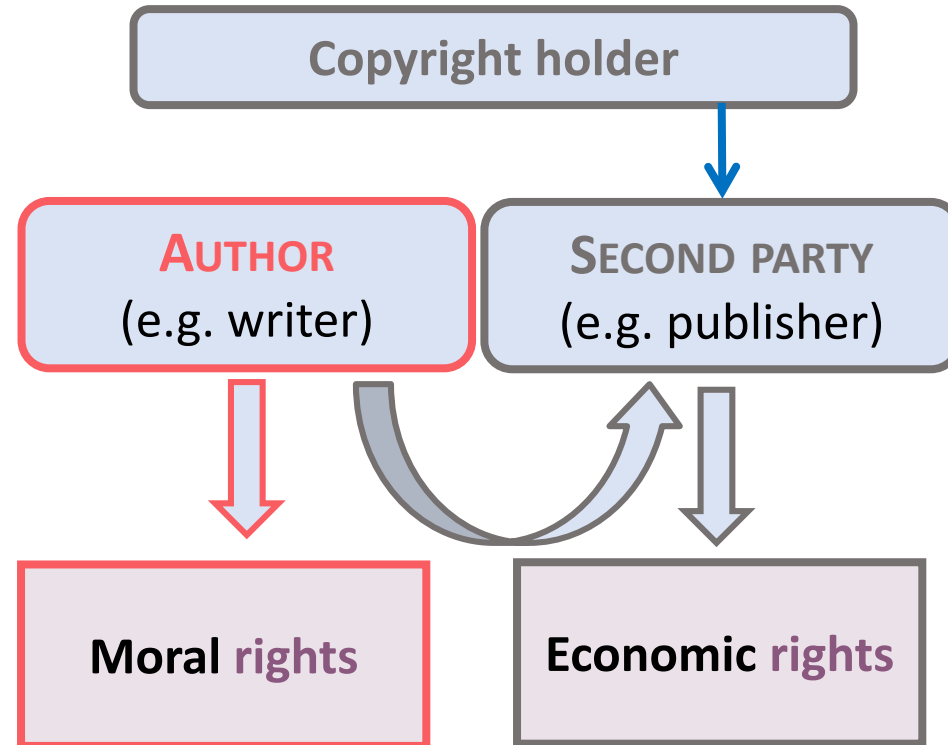
Who are the **Author** and the **Right holder**?

WHO OWNS THE COPYRIGHTS?

THE AUTHOR



THE RIGHT HOLDER

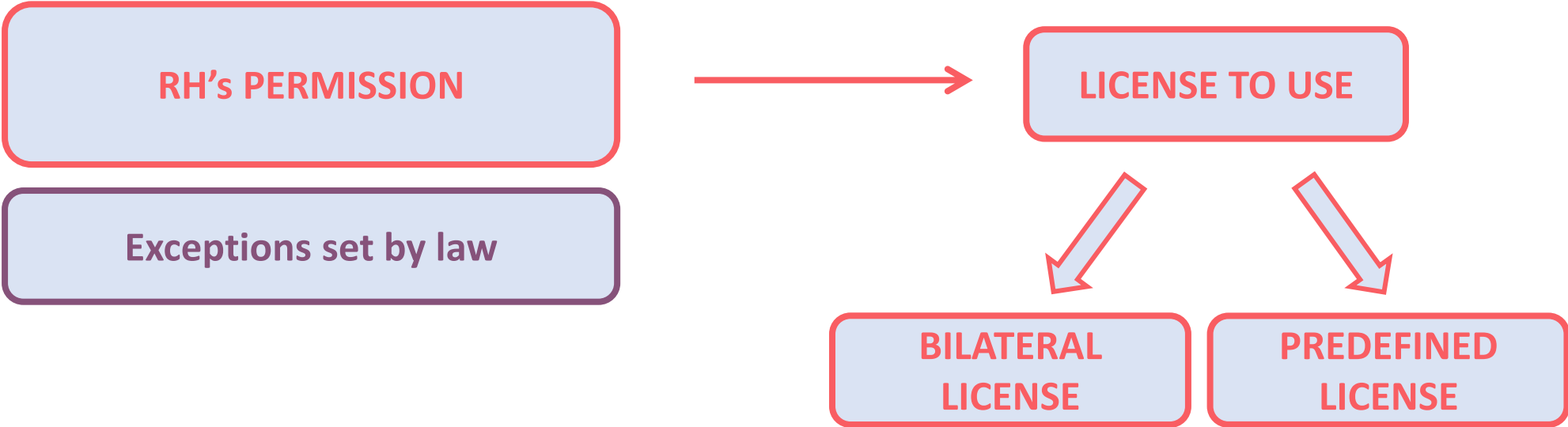


Examples:

- Educational institution
- Employer
- Publisher
- Collecting society

How can a user **re-use** a protected work?

HOW CAN OTHERS USE A PROTECTED WORK?



Copyright

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Always ask the rights holder for **permission** to use a protected work (= license to use)

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There are **exceptions**:

- Private use
- Educational purposes
- Professional purposes
 - Right of quotation
- Text & data mining for research purposes
 - ...

Private use Art. 19/1/a CopA

- **Anything** (read, watch, view, see, copy, modify, ect.) to use **alone**
- When **sharing**: only with very small circle of persons



For educational purposes Art. 19/1/b CopA

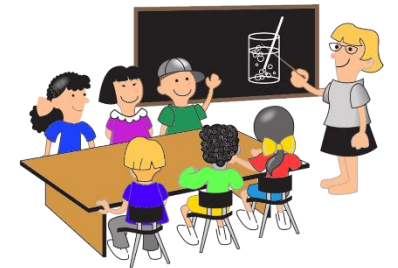
- ✓ Only between teacher and their students
- ✓ **Distribution** of a **copy** (also modifications):
 - Text, movie, music, video: only **excerpts**
 - Article of a newspaper, photo, images, prints: **complete copy**
- ✓ Purpose of education

Included in the collecting societies joint tariffs:

in French: https://prolitteris.ch/wp_update2020/wp-content/uploads/TC_7_ecoles_2022-2026.pdf

in German: https://prolitteris.ch/wp_update2020/wp-content/uploads/GT_7_Schulen_2022-2026.pdf

in Italian: https://prolitteris.ch/wp_update2020/wp-content/uploads/TC_7_scuole_2022-2026.pdf



For professional purposes Art. 19/1/c CopA

- ✓ **Distribution** of an **excerpt**
- ✓ **Only** within the same institution
- ✓ Purpose of internal information and documentation

Included in the collecting societies joint tariffs



Right of quotation Art. 25 CopA



- ✓ Published works
- ✓ the quotation serves as:
 - **explanation,**
 - **reference** or
 - **illustration,**
- ✓ the **extent** of the quotation is **justified** for such purpose.

Works placed on public grounds Art. 27 CopA

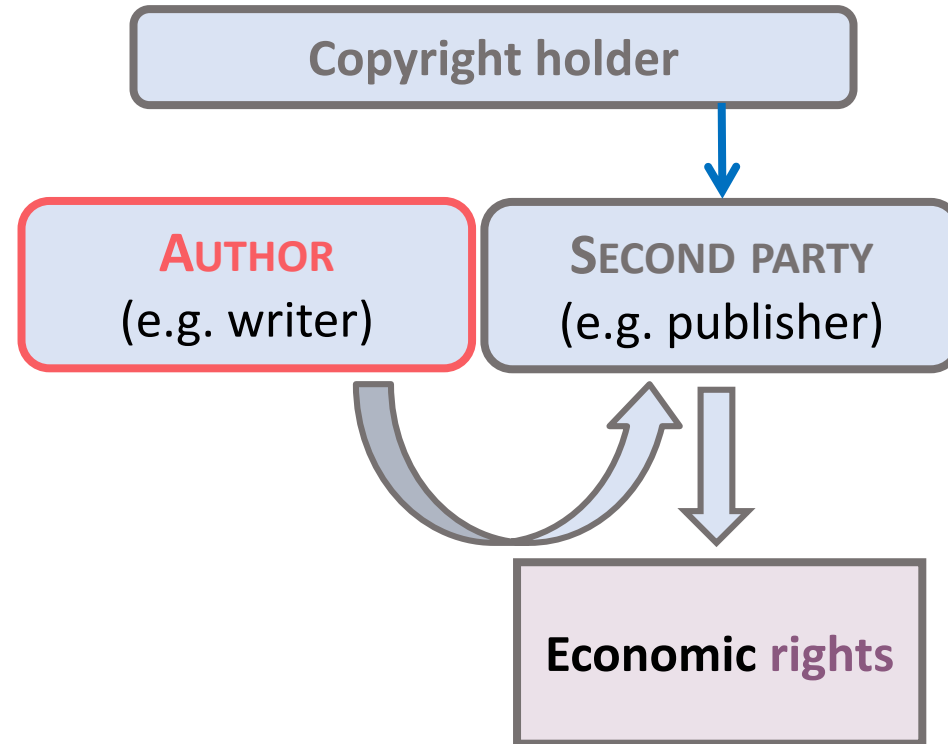
- Work **permanently** situated in a place **accessible to the public**
- No 3D reproduction



Some countries may have a limit because of cultural heritage protection (also for public domain works)!

How is the **second publication right** currently regulated in Switzerland?

THE
RIGHT HOLDER



Case 1:

Publishing contract = assignment of copyrights

- **Publisher is the right holder**
- Publisher's rights: how to exploit the work
- Author's rights: only moral rights
- Publishing contract may foresee secondary publication after an embargo period
- No competition between Author and Publisher

Case 2:

License to publish

- **Author** remains the **right holder**
- Publisher's rights: publish the work
- Author's duties: no competition with Publisher

Case 2:

License to publish

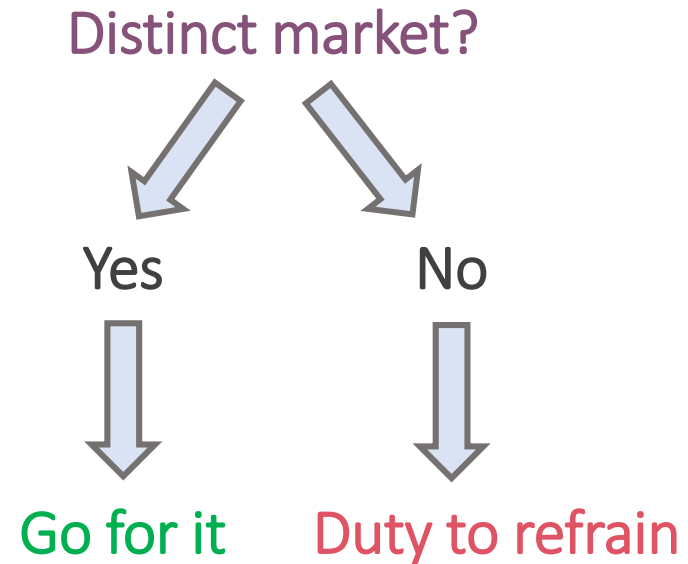
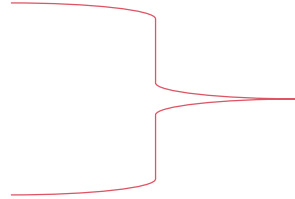
- Contribution of a collective work → **Right to second publication** after embargo of 3 months

(Art. 382 para 3 CO)

➤ But it's **not** mandatory law = may be regulated differently in agreement

Specific cases:

- Translation
- Excerpt



Opendefinition.org

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

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)

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)

Thank you very much for your attention!

More information @ 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

