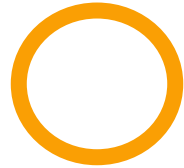

Change your mind

The legal aspects of making cultural assets
freely available in the digital world

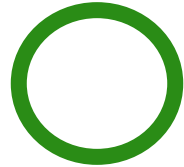
An introduction by:



What awaits you?



1. Motivation & background



2. Theory



3. Application

Starting situation



- The institutions inventory is being documented digitally.
 - Metadata about the institutions inventory exist in digital format.
 - Products from the institution, such as texts, images, audio material and video material, are available digitally.
-

Goals



- The institution committed to its responsibility as a conveyor of knowledge in the digital arena.
 - The institution wishes to make its inventory and works as easy as possible to use, wherever possible.
 - The institution and its inventory and works should have high online visibility.
-

Task



To make the institutions digitized inventory and works easy to use

- Technically
 - Legally
-

The formula for success in the Wikiverse

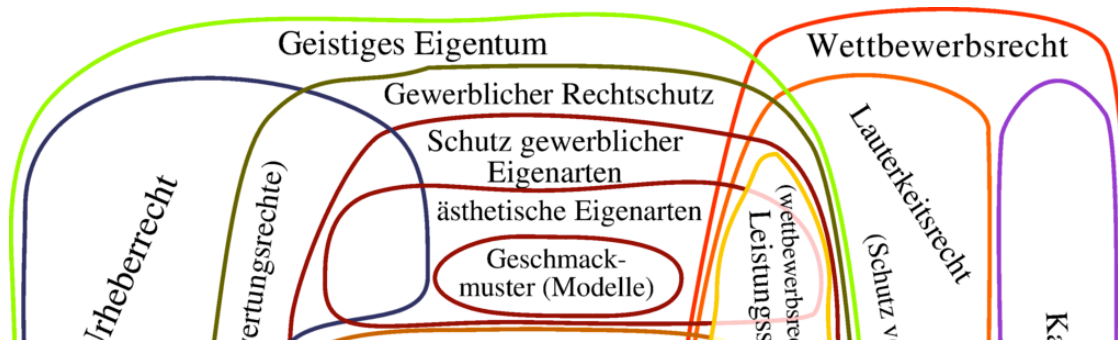


The three main reasons behind Wikipedia's success:

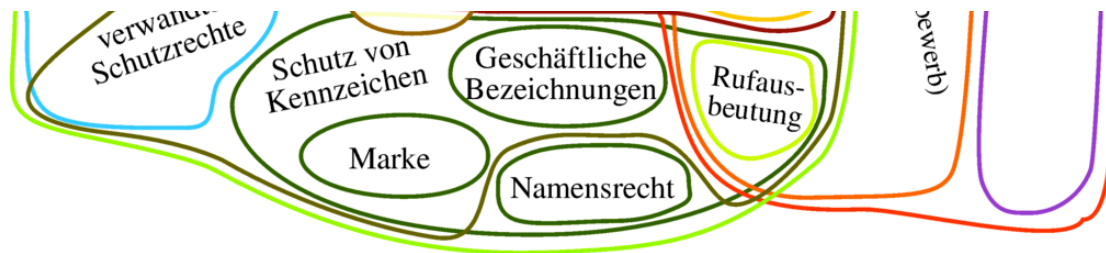
- Volunteers
- Free access
- **Free licenses**



WIKIPEDIA
Die freie Enzyklopädie



Intellectual property is touching many laws and regulations



Graph by 3247, [CC BY SA](#) via Wikimedia Commons

The various forms of intellectual property rights; the area outside corresponds to the public domain.

Many technical terms

Public domain

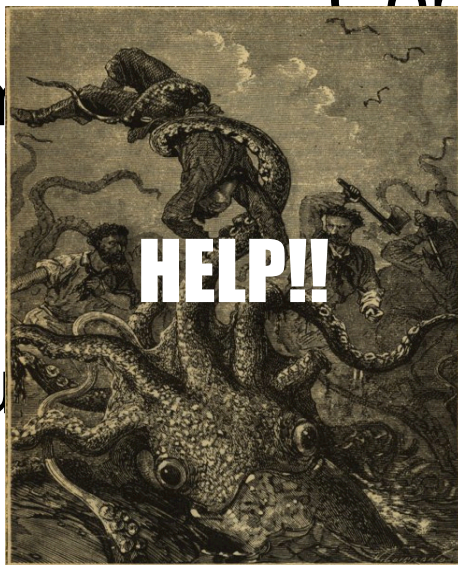
Creative Commons

Re-useability

Free licenses

Commercial purposes

Barriers



Copyright

Intellectual property

rights

Large copyright

Personal right

Legal protection

Degree of creativity

Legal framework conditions



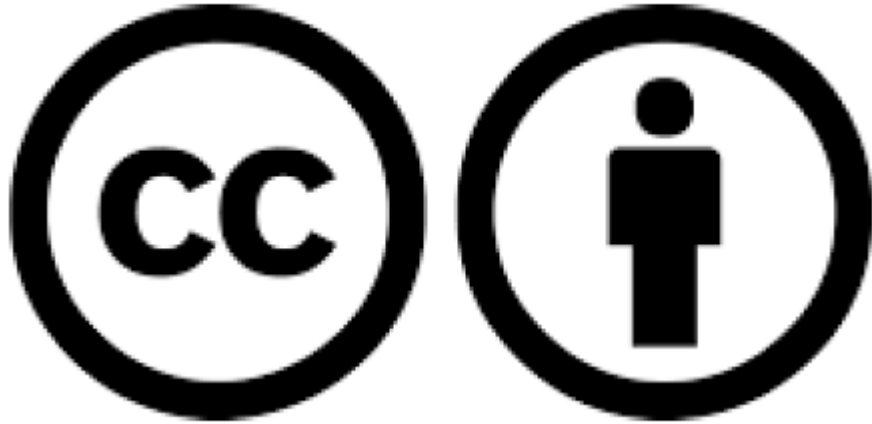
§

Enable the Public to “play”



CC By Sa 2.0. // Ed Schipul // <https://www.flickr.com/photos/eschipul/4239849264/>

License the content!



Property rights versus Copyright



Property rights



The right of ownership serves to ensure material control of the **tangible** object.

The owner of an object can do as he or she wishes with the object and exclude others from exerting any influence.

FOR AN INDEFINITE PERIOD

Copyright



Copyright serves to protect the intellectual **intangible** content of objects.

An author can make decisions on the use of the intellectual content of an object (that can be characterized as a “work”) created by him or her.

FOR A FINITE PERIOD

Equitable remuneration

Section 32 (3) UrhG



“The author may, however, grant a non-exclusive right to use anyone free of charge.”



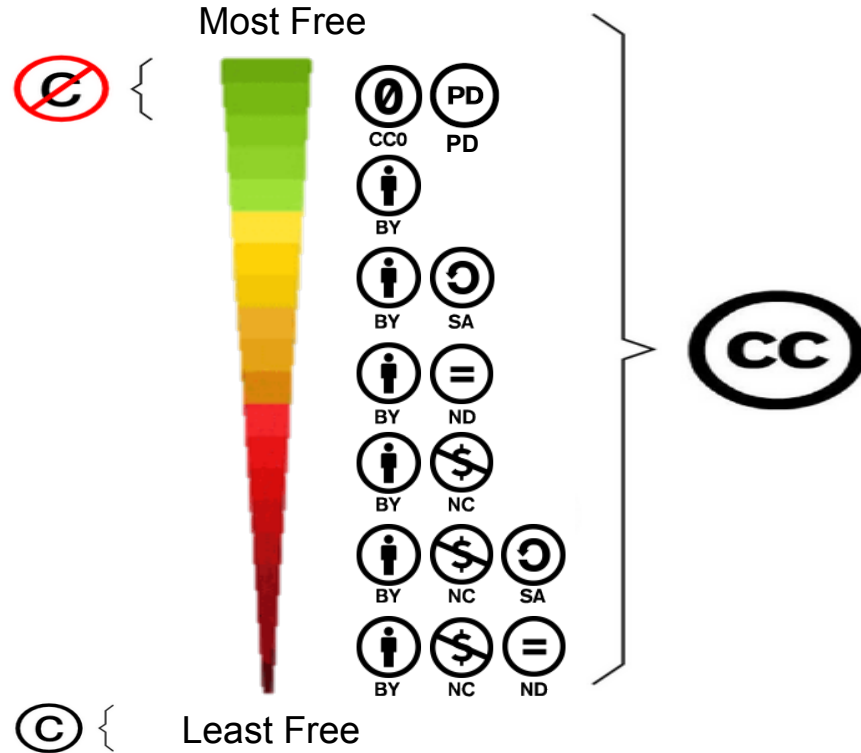
- Internationally adapted to national legal regulations
- Multilingual
- Machine-readable and -searchable
- Designed especially for culture and knowledge

Conclusion



A **license** is, for an intangible work, the functional equivalent to the **property** of a tangible piece of work.

Creative Commons licenses



Making Impact with small measures

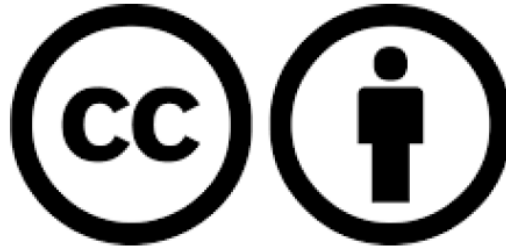


CC By 2.0 // See-Ming Lee // <https://www.flickr.com/photos/seeminglee/8720695784/>

Licensing in application: 3 categories



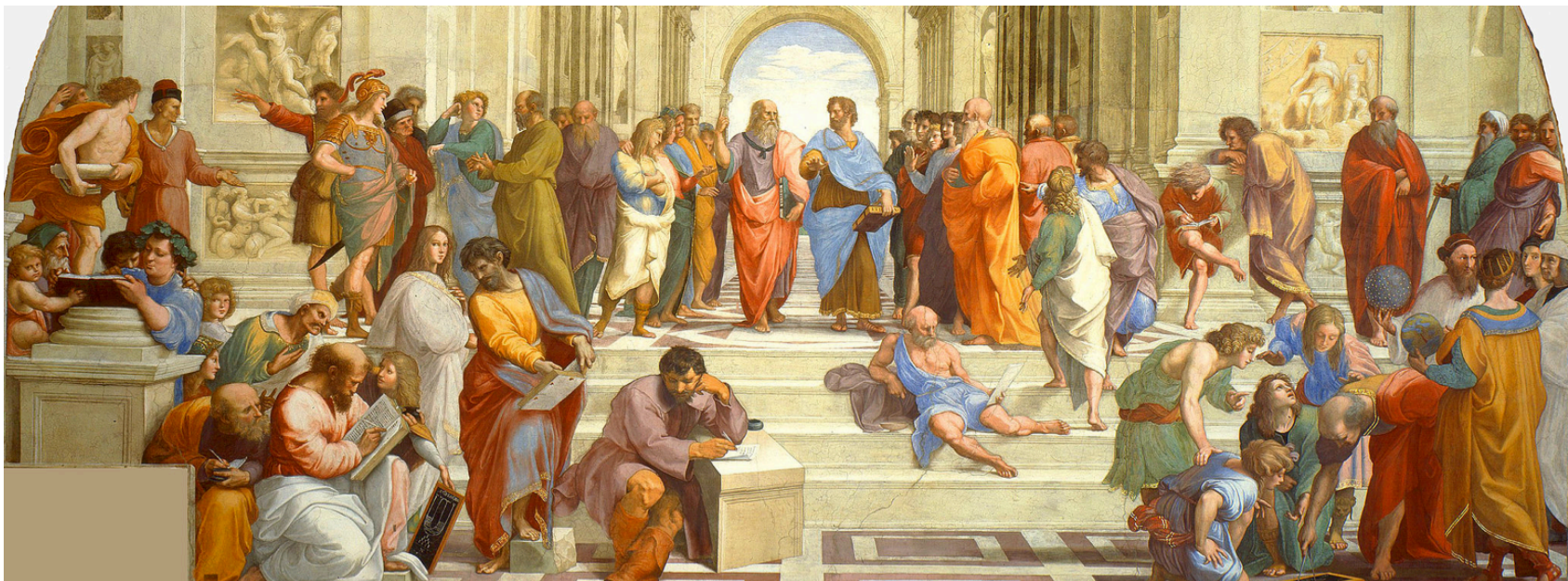
1



2



3



Artwork by Raffaello Sanzio, Die Schule zu Athen (1509), PD via Wikimedia Commons

Public domain



When is something in the public domain?

Goods that are in the public domain can be used by anyone without consent or payment obligations for any desired purpose.

In accordance with *lex loci protectionis*, legal protection is always determined by the particular national legal regulations in the context of which protection is desired.

=> In Germany, content is in the public domain if either the degree of creativity pursuant to Section 2 of the UrhG has not been reached or copyrights are exhausted.

Public domain What do I need to know?

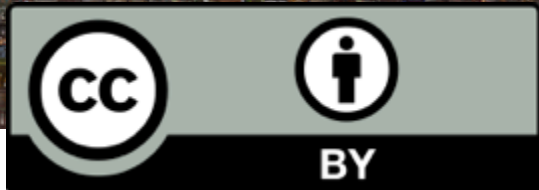


1. The original digital work is not or **is no longer copyright-protected**, or the starting work was in the public domain, or not copyright-protected, prior to digitization.
 2. No ancillary copyrights arose through digitization
-

Why is this work in the public domain?



- The starting work was no longer protected prior to the digitization process. Digitization was an automatic book-scanning process and no new rights arose.



Collage "Wiki loves Monuments" 2014 by Fuzzypiggy
[CC BY-SA 3.0](https://commons.wikimedia.org/wiki/File:Wiki_loves_Monuments_2014_Collage) via Wikimedia Commons

CC BY What do I need to know?



1. I am the copyright owner of the digital or digitised work
 2. The work is not Public Domain
 3. No third-party rights are violated through the process of providing public access.
-

Why may this photo be subject to CC BY?



Foto by Volker Agueras Gäng [CC BY 3.0](#) via Wikimedia Commons

- The author licensed the photo to him- or herself and uploaded it to Commons.
- No third-party rights are violated.



If in doubt, shelve it



When is caution appropriate?

There are works for which caution with regard to free use is appropriate. This category includes all digital object representations that are not (or are not yet) in the public domain and also cannot be *legitimately* published under CC BY. It also includes digital object representations for which the institution does hold rights of re-use but other justified reasons speak against publication (e.g. objection by the donor/giver, unclear research findings, family members' need for reverence, etc.).

Pitfalls What do I need to watch out for?



- Author is still living, or died after 1944
- More than one author is involved
- Author is unknown or not all authors are known

Ask your curator or a Lawyer

- The work's year of origin is after 1900
 - Year of origin is uncertain

 - Personal rights or rights of third parties
 - Objection by lender or donor
 - New ancillary intellectual property rights that arose, for example, through digitization (3D)
-

Why is caution called for?



- A photographer's copyright
- A child's personal rights
- Coca Cola's trademark rights in case of commercial use

image: <http://mrsgoresdiary.com/>

Workflow for use of analogue works (e.g. digitization pursuant to Section 16 UrhG)



Analog Object
copyright-protected?

YES



Consent to digitization
required from holder of rights

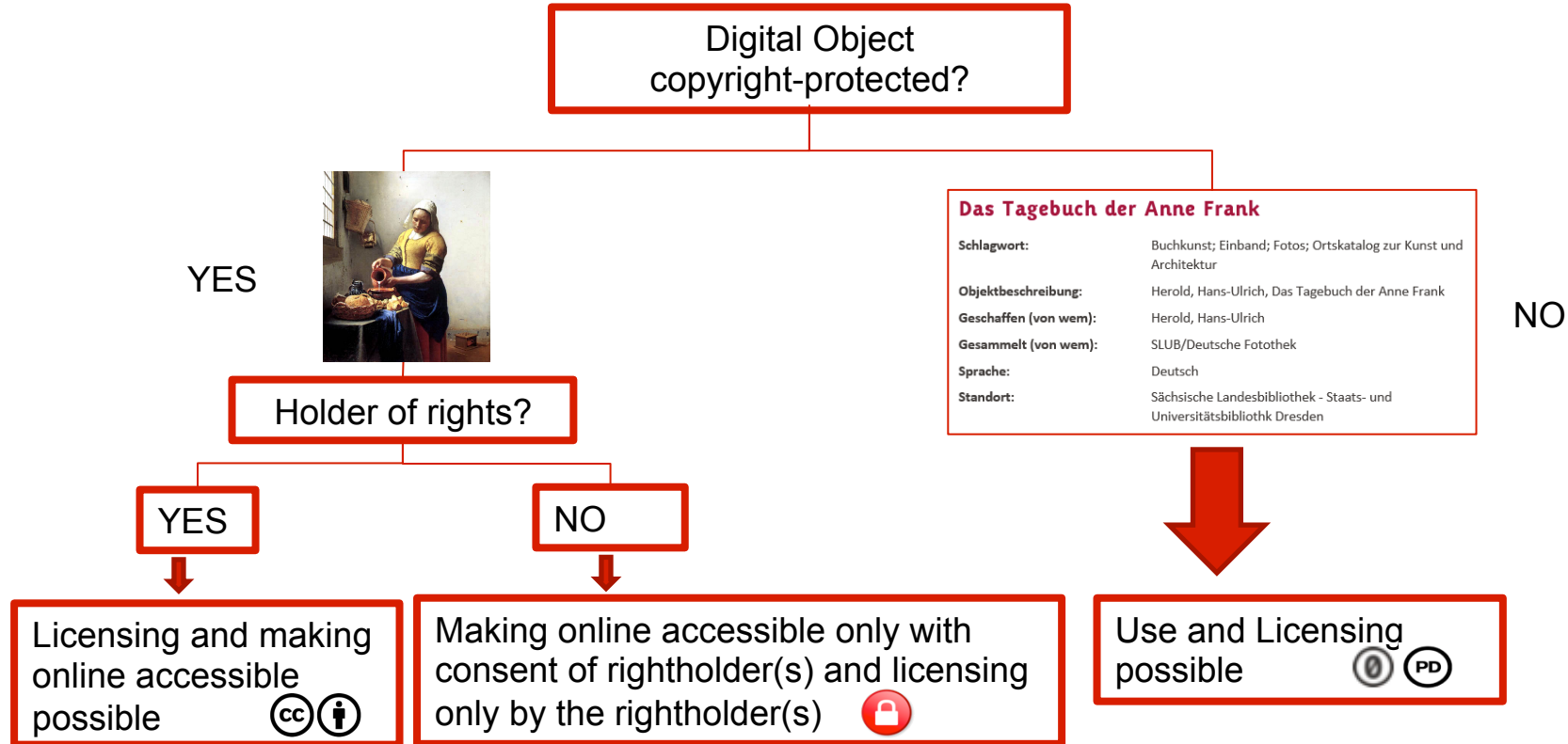


NO



Digitization possible without further requirement
New rights may arise from
digitization process!

Workflow for use of digital material (e.g. making online accessible pursuant to Section 19a UrhG)



No risk, no fun



If you don't risk anything you risk even more



CC By 2.0. // Kool Cats // <https://www.flickr.com/photos/katsrcool/8685850221/>

Your formula for success



1



2



3



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Presentation during the cultural transformation workshop at the Jewish
Museum Berlin on May 12, 2015
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