

Copyright Implications in Open Access and the Role of Pro Litteris

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Today's Program

- 1. Short Presentation to Frame the Topic**
Noa Bacchetta, Attorney
- 2. Short Presentation of Pro Litteris**
Philip Kübler, CEO Pro Litteris
- 3. Questions to / Talk with Pro Litteris**
Philip Kübler and Noa Bacchetta
- 4. Open Discussion**

Open Access

- Open Access aims to provide **unrestricted access** to research results and to **promote collective knowledge**. The swissuniversities strategy is to make all publicly funded scientific publications freely accessible on the Internet, free of charge until 2024. (quoted [swissuniversities.ch](https://www.swissuniversities.ch))
- The SNSF (Swiss National Science Foundation) requires grantees to make the results of SNSF-funded projects available in an open access (OA) publication or database. (quoted [snf.ch](https://www.snf.ch))

Copyright

- is **essentially a monopoly** of the copyright holder to use protected works
- by default **excludes everybody** except the holder
- in general, **use** of protected works is permitted **only with consent** of the copyright holder

However, there are **limitations and exceptions** to this principle

Copyright Protected Works

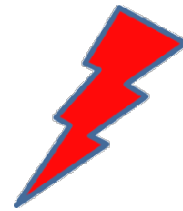
Protected are:

- literary and artistic
- intellectual creations
- with individual character
- irrespective of their value or purpose.

→ All works relevant to cultural heritage potentially fall under copyright regulation

Conflict of Goals

Open Access



Copyright

openness

vs.

restriction

collectiveness

vs.

individual right

free of charge

vs.

often commercial

Copyright Implication in OA

A scientist, researcher or author is **free in using** his **own** copyright protected **work** (e.g. to publish it under OA standards).

However, for any copyright protected **works of third parties** included, **permission is required.**

Potentially Copyright Relevant Activities

- Research and screening of copyright protected material
- Mentioning or describing copyright protected material in a research paper
- Presentation or exchange of copyright protected material in research groups
- Presentation of copyright protected material on internal websites
- Public presentation of copyright protected material
- etc.

Copyright Limitations / Exceptions

The rights of copyright owners may be restricted by law for the **benefit of the public** (e.g. culture, education, research, press etc).

1. Copyright has a **time limit** (50 or 70 years)
2. Swiss law provides for many **exceptions**

Copyright Exceptions

- Private use (art. 19)
- Use of orphan works (art. 22b)
- Archive and backup copies (art. 24)
- Temporary copies (art. 24a)
- **Use of works for the purposes of scientific research (art. 24d)**
- Inventories (art. 24e)
- **Quotations (art. 25)**
- Museum, exhibition and auction catalogues (art. 26)

Obtaining Copyright Permission

3 different ways:

By discretion of the copyright holder

- Individual contract between copyright holder and copyright user
- Copyright holder grants a CC (Creative Commons) license to the public

By legal exceptions

- The law grants permission to the users without consent of the copyright holder (e.g. private use, archive and backup copies, quotations etc.)

Via collective management

- The copyright holder appoints CMOs (collective rights management organisations) to license his work and collect fees
- The law appoints or allows CMOs to grant licenses to users

Collective rights management organisations (CMO)

- Usually copyright owners manage and negotiate their rights with users on an individual basis.
- However, individual rights management is often **impracticable** for the right holder or **undesired** because of a higher public interest
- In these cases collective management organisations (CMOs) may manage the rights

CMOs in Switzerland

Five CMOs manage rights in different areas:

- **ProLitteris** for literature, photography, visual art
- **Société Suisse des Auteurs** for dramatic works, musicals and audio-visual works
- **SUISA** for musical and non-theatrical works
- **SUISSIMAGE** for audiovisual works
- **SWISSPERFORM** for related rights

What do CMOs do?

- represent right holders
- negotiate fees with users
- establish **tarifs** for different uses
<https://prolitteris.ch/dokumente/>
- grant licenses to users
- collect license fees from users
- distribute fees to right holders

Potential Help in OA Projects

If common copyright exceptions fail and dealing with individual copyright owners is impossible or impracticable, CMOs may be involved to apply the following mechanisms:

- Orphan works (art. 22b)
- Extended collective licences (art. 43a)

Orphan Works

A work is considered to be orphaned if the right holders **remain unknown or cannot be found following an appropriate research effort**

Permission to use can be obtain from CMO if:

- work is contained in collection held by public or publicly accessible libraries, ed-ucational institutions, museums, collections and archives
- was produced, copied, or made available in Switzerland, or handed over to an institution mentioned above

Extended Collective Licences

- allows to obtain exclusive rights for a large number of published works
- even if right holders are not represented by the CMO
- the licensed use must not impair the normal (often = commercial) exploitation of the works
- use limited to Switzerland

Questions to / Talk with Pro Litteris

1. What is the general attitude of Pro Litteris towards the idea of Open Access, specifically it's aim to freely distribute information?
2. How does Pro Litteris support the distribution of Open Access?
3. What are the limitations of support by Pro Litteris?
4. Can you tell us about specific Open Access projects/cases in which Pro Litteris was involved?
5. What are/were potential remaining problems in practicing Open Access?

Questions to / Talk with Pro Litteris

6. What are your practical recommendations to our audience on how to overcome these remaining problems?
7. Do you think the current legal framework and practice by Pro Litteris is sufficient to allow and foster the Open Access idea?
8. What can be done in the practice of the CMO or on a political level to further support and enable Open Access?
9. Future perspective of development?

Audience Questions / Open Discussion

- The revised copyright law provides for an unalienable right to remuneration for audiovisual works (Art. 13a URG). How does this relate to the issue of open access? And specifically: are media covered by a CC licence exempt from the declaration obligation?
- *Das revidierte Urheberrecht sieht einen nicht veräußerbaren Vergütungsanspruch für audiovisuelle Werke vor (Art. 13a URG). Wie verhält sich das zum Thema Open Access? Und konkret: Sind Medien, die mit einer CC-Lizenz belegt sind, von der Deklarationspflicht ausgenommen?*