

5th Scientific Symposium

Open Access and Copyright Who owns the rights?

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What we'll see

- No antagonism between Open Access and Copyright
- Only few problems in Open Access publishing result from Copyright
- Open Access advocates are not lawless
- Copyright and licensing contracts are essential when implementing Open Access business models

Open Access as cross-border issue

- Open Access intrinsically tied to global access
- Differing national Copyright regimes
- International agreements promote approximation of laws
- Yet details left to national legislator
=> no harmonization
- This presentation based on German law

Author's ownership

- Author obtains copyright automatically by creating the work
- Author is free to contractually license his works
- Free to chose scope of license
 - exclusive / non-exclusive
 - duration
 - territory
 - kind of use

Limitations to author's ownership

- Works made for hire
 - employer has right to be granted a contractual license
- Academic staff doing research or teaching without being constrained by directives:
no work for hire
- License for future works
- Statutory limitations (e.g. fair use)

Securing the rights for Open Access

- No explicit statutory rules for Open Access
- Rules should be established by contract
- Model contracts available, e. g.
 - GNU Free Documentation License
<http://www.gnu.org/licenses/fdl.txt>
 - Centrum für eCompetence in Hochschulen NRW
(CeC - <http://www.cec.nrw.de>)
 - Creative Commons
(<http://creativecommons.org>)

Securing the rights for Open Access

- When there already is a publisher

- Print journal publishers usually demand exclusive rights
- Publisher's consent required for additional placement in OA journal / archive
- rebuttable presumption for non-exclusive right one year after publication (§ 38 Abs. 1 UrhG)
- Online usage unknown before approx. 1995
- Preprints / Postprints

Securing the rights for Open Access

- When there's an employer to account for

- Employer's rights are limited to the intended purpose of the employment contract (§ 31 Abs. 5 UrhG)
- Similarly: Research funded by third party
- Inventions by academic staff: notice prior to publication required (§ 42 ArbNErfG)

Creating Open Access Business Models

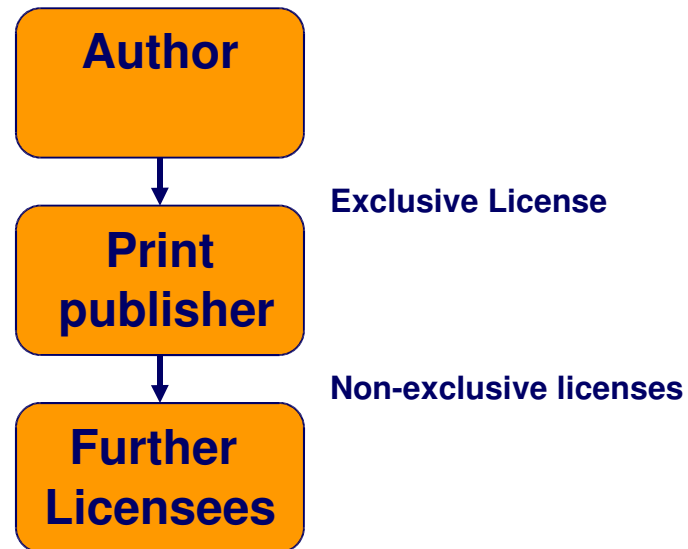
- Standardization
 - Policies
 - Model contracts
- Clarify relations between different means of publication
- Black list for standard clauses in publishing contracts
- White list for replacing black listed clauses

Creating Open Access Business Models

– Legal problems to consider

- Easier to start from scratch than to build on published works
- Subsequent change of model contract requires consent by all authors of existing works
- Constitutional freedom of scholarship, research and teaching
- Preserve novelty for patent applications
- Multi-national institutions: adapt policies and model licenses for each country

The owner is... anyone down the chain



...or tree

