Legal aspects of Open Science

8 March 2021

Suzanna Marazza & Anna Picco Schwendener
CCDigitalLaw, Università della Svizzera Italiana
# Today’s Plan

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>09:00</td>
<td>Welcome &amp; Introduction to <strong>Copyright</strong></td>
</tr>
<tr>
<td>10:00</td>
<td>10 min break</td>
</tr>
<tr>
<td>10:10</td>
<td>Recap Quiz, <strong>Open Access &amp; Creative Commons</strong></td>
</tr>
<tr>
<td>11:00</td>
<td>10 min break</td>
</tr>
<tr>
<td>11:10</td>
<td>Introduction to <strong>Data Protection</strong>, Recap Quiz</td>
</tr>
<tr>
<td>12:00</td>
<td>10 min break</td>
</tr>
<tr>
<td>12:10</td>
<td>Introduction to <strong>DMLawTool</strong> (Data Management Law Tool)</td>
</tr>
<tr>
<td>12:20</td>
<td>Group Works</td>
</tr>
<tr>
<td>12:40</td>
<td>Presentation of results &amp; <strong>Discussion</strong></td>
</tr>
<tr>
<td>13:00</td>
<td>End</td>
</tr>
</tbody>
</table>
Copyright
COPYRIGHT – WHAT IS A PROTECTED WORK

1. Formulate a hypothesis
2. Design the study
3. Run the study and collect data
4. Analyse the data
5. Report the study

THE SCIENTIFIC METHOD

https://www.fosteropenscience.eu/content/open-science-training-handbook
COPYRIGHT – WHAT IS A PROTECTED WORK

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

⇒ Usually protected by Copyright
  - Intellectual creation (made by a person)
  - Form of expression (ideas are not protected)
  - Individual character (originality – not needed for photos)

⇒ Copyright comes from moment of creation until 70 years after author’s death / 50 years from creation photograph without originality
**Copyright – What is a protected work**

### Derivative works (art. 3 CopA)

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.

2. Such works include, in particular, translations as well as audio-visual and other adaptations.

3. Derivative works are protected as works in their own right.

### Collected works (art. 4 CopA)

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**.
The author is the copyright holder. The author holds both moral rights and economic rights.
COPYRIGHT - WHO IS THE RIGHT HOLDER? – RIGHT HOLDER

RIGHT HOLDER

Copyright holder

AUTHOR (for ex. writer)

SECOND PARTY (for ex. publisher)

Moral rights

Economic rights

Examples:

- Educational institution
- Employer
- Publisher
- Collecting society
Copyright:

ONLY the right holders (author and employer) (and who has got the permission from the rightholder = License) are allowed to:

- **Copy**...
- **Modify**...
- **Share**...
The right to copy

- Reproduce
- Scann
- Take a picture
- Copy out
- Pocket book version
- Copy from USB/CD/DVD...
- Record
- Download
- Upload
- Print a Pdf version
- duplicate
- “vervielfältigen”
- “reproduire”
- “riprodurre”
- ect...
• Aka «remixing», changing, editing, combining
• «to alter», «ändern», «modifier», «modificare»
• Corrections of the teaching material, inserting additions, changing, translating, filming, remaking, changing the version, (audio / hearing / e- version), editing the structure, reductions, resuming, inserting subtitles, making a collage, putting together several teaching materials, reformatting (e.g. .docx to .pdf), adding music to a video
• Delimitation of free use: the original work is no longer recognizable
Copyright...

Right to share

- To sell a work, to give, to upload online, to make available, to add to a repository
- «to distribute», «verbreiten», «mettre en circulation», «mettere in circolazione»
- **ONLY applies to share a copy or a modified version**
- It is allowed to distribute a non-modified work, if it is **not duplicated** or modified
  - I sell a book I bought: ok
  - I upload a digital work on a blog: not ok
  - I forward an ebook: controversial
• «Right to recognition of authorship», «Recht auf Anerkennung der Urheberschaft», «droit de faire reconnaître sa qualité d’auteur», «diritto di far riconoscere la sua qualità di autore»
• incl. Right to remain anonymous or to use a pseudonym
• Right of quotation (Art. 25 para. 2 CopA)
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
Copyright

The **rule** is:

**Always ask** the rights holder for **permission** to use a protected work

There are **exceptions**:

- Private use
- Educational purposes
- Professional purposes
- Right of quotation
- Text & data mining for research purposes
Art. 19 Swiss Copyright Act

For **private use** (very small circle of persons):
• Anything (read, watch, view, see, copy, modify, etc.)

For **educational purposes**:
• Included in the collecting societies joint tariffs
• Only for my students
• Any use (also modifications): complete work
• Distribution of a **copy**:
  • Text, movie, music, video: only an excerpt (if work available in commerce)
  • Article of a newspaper, photo, images, prints: complete copy

For **professional purposes**:
• Included in the collecting societies joint tariffs
• Distribution of a **copy** (the extension is same as educational purposes)
• Purpose of internal information and documentation
Art. 25 Swiss Copyright Act
Right of quotation

Published works may be quoted if the quotation serves as:
• an explanation,
• reference or an
• illustration,
• and the extent of the quotation is justified for such purpose.
Art. 24d Swiss Copyright Act
Text & Data mining

- the work used must be **lawfully accessible**, 
- its reproduction and copy is due to the use of a **technical process** and **necessary** for the research activity, 
- the copy must not be done so to avoid supplement costs of the purchase of works, 
- the source must be mentioned.
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
10’ break
Recap quiz

1. Book borrowed from a library, Am I allowed to scan it and upload it in internet?

   a. No, the book is protected by copyright.
   b. Yes, I will then give it back.
   c. Yes, if I have the permission to do so (= license).
Recap quiz

1. Book borrowed from a library, Am I allowed to scan it and upload it in internet?

   a. No, the book is protected by copyright.
   b. Yes, I will then give it back.
   c. Yes, if I have the permission to do so (= license).
2. A student of yours wants to share the slides of your lecture with his/her classmates/friends by sending the ppt file in their WhatsApp chat. Is he allowed to do so?

a) Yes, as long as he only shares it with his closest friends.

b) Not without the teacher’s permission, because classmates are not considered “private circle”.

c) Yes, they are all in the same school.
Recap quiz

2. A student of yours wants to share the slides of your lecture with his/her classmates/friends by sending the ppt file in their WhatsApp chat. Is he allowed to do so?

a) Yes, as long as he only shares it with his closest friends.

b) Not without the teacher’s permission, because classmates are not considered “private circle”.

c) Yes, they are all in the same school.
Recap quiz

3. The author of the famous story “Le Petit Prince” died during a mission in 1944. Am I allowed to distribute the whole original French text to the citizens of Geneva?

a) No, it’s a work protected by copyright and I can’t distribute it without the permission of the right holder.

b) Yes, because it’s a famous story already published long ago.

c) Yes, because it entered into the public domain in Switzerland.
3. The author of the famous story “Le Petit Prince” died during a mission in 1944. Am I allowed to distribute the whole original French text to the citizens of Geneva?

a) No, it’s a work protected by copyright and I can’t distribute it without the permission of the right holder.
b) Yes, because It’s a famous story already published long ago.
c) Yes, because it entered into the public domain in Switzerland.
Recap quiz

4. I want to do the same in Zurich with the German translated version, am I allowed to do so?

a) No, because the translation is still protected by copyright even if the original text already entered into the public domain in Switzerland.

b) Yes, because the story itself entered into the public domain.

c) Yes, I can distribute the copies as long as I have purchased them.
4. I want to do the same in Zurich with the German translated version, am I allowed to do so?

a) No, because the translation is still protected by copyright even if the original text already entered into the public domain in Switzerland.

b) Yes, because the story itself entered into the public domain.

c) Yes, I can distribute the copies as long as I have purchased them.
Recap quiz

5. In a Canton there is a cantonal law that assigns the Cantonal authority the economic rights of works created by public employees during their working functions. May a teacher at a public school use the material he elaborated while working at that school also for the lectures he holds at a private school?

a) Yes, because he’s the author, thus he’s the right holder and he can decide what to do with his works.

b) Yes, because the cantonal law applies also to private schools.

c) No, because the cantonal law applies only to public schools.
Recap quiz

5. In a Canton there is a cantonal law that assigns the Cantonal authority the economic rights of works created by public employees during their working functions. May a teacher at a public school use the material he elaborated while working at that school also for the lectures he holds at a private school?

a) Yes, because he’s the author, thus he’s the right holder and he can decide what to do with his works.

b) Yes, because the cantonal law applies also to private schools.

c) No, because the cantonal law applies only to public schools.
Recap quiz

6. May I use a work...?

a. If it’s published Open Access in internet, we can take for granted that the author accepted its re-use.

b. Even without the author’s permission, in order to make an article more attractive.

c. In my article, if it serves as explanation, reference or illustration.

d. In principle, as long as I give proper credit to the author.
Recap quiz

6. May I use a work...?

a. If it’s published Open Access in internet, we can take for granted that the author accepted its re-use.

b. Even without the author’s permission, in order to make an article more attractive.

c. In my article, if it serves as explanation, reference or illustration.

d. In principle, as long as I give proper credit to the author.
Open Access
“By "open access" to this literature, we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.”
Open Access and institutional regulations...

• Research funding organisations may pretend that the results are shared Open Access;

• For Horizon 2020 projects, EU requires that access methods and conditions of funded scientific publications are stated;

• SNF politics: open access of results

• Examples: Uni Genève, Uni Neuchatel, USI and SUPSI’s law: they are right holders of research results
There are several ways of publishing Open access. Among them...

**Gold road**
Publishing OA right from the start: “researchers publish directly in an Open Access scientific journal, as an OA book or book chapter.”

**Green road**
The author decides not to immediately publish OS: “researchers self-archive their scientific articles, contributions or books in an institutional or disciplinary repository, usually after an embargo period.” [https://oa100.snf.ch/en/context/open-access/versions-of-open-access/](https://oa100.snf.ch/en/context/open-access/versions-of-open-access/)

**Hybrid OA journals**: “contain a mixture of open access articles and closed access articles. A publisher following this model is partially funded by subscriptions, and only provide open access for those individual articles for which the authors (or research sponsor) pay a *publication fee.*” Wikipedia
Gold road License contract

I hereby grant to Journal Owner an **exclusive publishing and distribution license** in the manuscript identified above and any tables, illustrations or other material submitted for publication as part of the manuscript (the “Article”) in print, electronic and all other media (whether now known or later developed), in any form, in all languages, throughout the world, **for the full term of copyright**, and the right to license others to do the same, effective when the Article is accepted for publication. This license includes the right to enforce the rights granted hereunder against third parties.

The publisher will apply the *Creative Commons Attribution 4.0 International License* (CC BY) to the Article where it publishes the Article in the journal on its online platforms on an Open Access basis. *(Elsevier, license agreement)*
Open definition.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).
• Non-profit organisation
• 7 Licenses
• License icons: https://creativecommons.org/about/downloads/
• 4 License elements (BY-SA-NC-ND)
• Pre-formulated
• Licenses can be used gratis
• For copyright protected material
  (for software better use Free & Open Source Software Licenses)
• Often used for research data and open educational resources

Source Icons: https://creativecommons.org/about/downloads/
All Creative Commons Licenses:

• Grant permission to
  • Copy
  • Modify (apart from ND)
  • Share
  • all interested persons
• Some have conditions (BY & SA)
• Some limit the purpose (NC)

Source Icons: https://creativecommons.org/about/downloads/
License elements

CC0
Zero / public domain
No conditions
→ everything allowed
(apart from respect personality author)

BY
Attribution
Condition
→ Where can the original be found and the author
→ Several attribution obligations

SA
Share alike
Condition
→ Preservation of openness

NC
Non-commercial
Limit
→ Not for commercial purposes

ND
No-derivatives
Limit
→ No modifications
**CHART 2: WHAT USES ARE ALLOWED UNDER ND LICENCES?**

<table>
<thead>
<tr>
<th>Use Case</th>
<th>Permitted under ND?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mashup video</td>
<td>No</td>
</tr>
<tr>
<td>Image or text in newspaper or journal</td>
<td>Yes</td>
</tr>
<tr>
<td>Music remix</td>
<td>No</td>
</tr>
<tr>
<td>Sampling</td>
<td>No</td>
</tr>
<tr>
<td>Image or text on website, blog or social media posting</td>
<td>Yes</td>
</tr>
<tr>
<td>Translation</td>
<td>No</td>
</tr>
<tr>
<td>Music synching</td>
<td>No</td>
</tr>
<tr>
<td>Screen adaptation (e.g. of a novel, music)</td>
<td>No</td>
</tr>
<tr>
<td>Images in catalogue</td>
<td>Yes</td>
</tr>
<tr>
<td>Article in text collection</td>
<td>Yes</td>
</tr>
<tr>
<td>Image Collage</td>
<td>Depends (generally No) 92</td>
</tr>
<tr>
<td>Parody</td>
<td>Depends on the jurisdiction 93</td>
</tr>
<tr>
<td>“Kitchen-Video” with background music</td>
<td>No</td>
</tr>
<tr>
<td>Documentary film integrating sound footage</td>
<td>No</td>
</tr>
</tbody>
</table>

**ND**

No-derivatives

KREUTZER, Till, 2014. *Open Content: a practical guide to using Creative Commons*, p. 51

### Chart 1: Who Can Use NC Content in What Use Case?

<table>
<thead>
<tr>
<th>User type</th>
<th>Company</th>
<th>Public institution</th>
<th>Non-profit NGO</th>
<th>Freelancer</th>
<th>Private person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sell hardcopies</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Licence content against payment</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Use for advertising</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Use to make money</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Use for the job</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
<td>No</td>
<td>n.a.</td>
</tr>
<tr>
<td>Use on a website that displays ads to recover hosting costs</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Use on a platform, where the platform provider (not the content provider) displays ads</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Use for inhouse education and information</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>n.a.</td>
</tr>
<tr>
<td>Use for private entertainment and to entertain friends/family of the user</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
<td>n.a.</td>
<td>Yes</td>
</tr>
<tr>
<td>Use to inform/entertain customers/clients/audience</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Use in tuition-free courses for educational purposes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Use in tuition-based courses for educational purposes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Use for corporate-funded research</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>n.a.</td>
</tr>
<tr>
<td>Use for tax-funded research</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>n.a.</td>
</tr>
<tr>
<td>Use for inhouse corporate research</td>
<td>No</td>
<td>n.a.</td>
<td>n.a.</td>
<td>No</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

**NC** Non-commercial

KREUTZER, Till, 2014. *Open Content: a practical guide to using Creative Commons*, p. 46

All Creative Commons Licenses

OER definition from opendefinition.org (also Berlin Declaration of Open Access).

NOT «open» in the sense of opendefinition.org

Source Icons: https://creativecommons.org/about/downloads/
Question

7. I use materials of someone else. Their licenses are a CC-Zero, CC-BY or CC-BY-SA. May I copy, modify and share my copies?

a. Yes, I may absolutely use these materials since they are «open».

b. Yes, the licenses let me do that, as long as I respect their requirements.

c. No, these materials are copyright protected and I need the permission.
Question

7. I use materials of someone else, which licenses are a CC-Zero, CC-BY or CC-BY-SA. May I copy, modify and share my copies?

a. Yes, I may absolutely use these materials since they are «open».

b. Yes, the licenses let me do that, as long as I respect their requirements.

c. No, these materials are copyright protected and I need the permission.
CC zero/CC0

CC-0 License:
- All people of the world
- Copy
- Modify
- Share
- For any purpose
- No requirements of attribution
- No requirements to write the source
- No requirements to provide its license
- No requirements to release the modified version under a license

Source for Icons: [https://creativecommons.org/about/downloads/](https://creativecommons.org/about/downloads/)
CC zero works:
CC-BY license

- All people of the world
- Copy
- Modify
- Share
- For any purpose
- Requirement of attribution!!! (Element BY)
- No requirements to provide the modified version under a license

Source for Icons: https://creativecommons.org/about/downloads/
CC-BY-SA license

• All people of the world
• Copy
• Modify
• Share
• For any purpose
• Requirement of attribution!!! (Element BY)
• Requirement for the modified version (Element SA)
  ➔ Share Alike, “Copyleft”

Source of icons: https://creativecommons.org/about/downloads/
Attribution of unmodified Photo

**Author:** inefekt69
**Title:** Star Trails - Lake Dumbelyung, Western Australia
**License:** CC BY-NC-ND 2.0 ([https://creativecommons.org/licenses/by-nc-nd/2.0/](https://creativecommons.org/licenses/by-nc-nd/2.0/))
«Copyright is a type of intellectual property that gives its owner the exclusive right to make copies of a creative work, usually for a limited time. The creative work may be in a literary, artistic, educational, or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself.»
**HOW DO I LICENSE?**

**License name:** CC-BY-SA

**License symbol:**

„Commons Deed“: https://creativecommons.org/licenses/by-sa/4.0/deed.en

**License text (legal full text):** https://creativecommons.org/licenses/by-sa/4.0/legalcode

→ **It must be read before use!**

→ **Reference to license text**

→ **Similar to: «Our general conditions and terms apply»**

Where should I attach it?

→ **Where best visible**

→ **CC license chooser:** https://creativecommons.org/choose/

Source of icons: https://creativecommons.org/about/downloads/
About

CCdigitallaw is a national Competence Center in Digital Law that supports Swiss Higher Education Institutions (students, academic and administrative staff) in dealing with legal questions related to the digitization process and the use of new media and technologies. To do so, the Center offers various services such as a detailed knowledge base, FAQs, a wide range of on- and offline training activities and an advising service.

Partners

CCdigitallaw has been created through a project funded by swissuniversities. The center is the result of a collaboration between the Università della Svizzera Italiana (USI), University of Basel (UNIBAS), University of Neuchâtel (UNINE), University of Geneva (UNIGS), and the Conference of Swiss Libraries (CSU-KUB).

Contacts

The team of legal experts working for the Center will be more than happy to answer your questions personally, by e-mail, phone or chat.

https://ccdigitallaw.ch/index.php/english
WHERE CAN I FIND OPEN MATERIAL IN INTERNET?

Websites with (mostly) free to use images:
- https://www.pexels.com
- https://picography.co
- https://pixabay.com
- https://pixy.org;

The collection of the Metropolitan Museum of Arts (https://www.metmuseum.org)

Or by searching in Google

Websites with OER:
- https://ccsearch-dev.creativecommons.org
- https://www.oercommons.org/oer
- https://www.europeana.eu/en
WHERE CAN I FIND OPEN MATERIAL IN INTERNET?

Always read the license before use!
Question

8. I combine materials that are licensed CC-Zero with my own material. Am I allowed to provide a CC-BY license to the resulted combination?

a. No, I can only provide another CC0 license to distribute my combination.
b. Yes, I can provide my combination under a CC-BY license.
c. Yes, I can provide my combination under a CC-BY license as long as I include the attribution requirements.
Question

8. I combine materials that are licensed CC-Zero with my own material. Am I allowed to provide a CC-BY license to the resulted combination?

a. No, I can only provide another CC0 license to distribute my combination.

b. Yes, I can provide my combination under a CC-BY license.

c. Yes, I can provide my combination under a CC-BY license as long as I include the attribution requirements.
Combination of two or more OER?

- Combineers must use the most restrictive license on the combination.
- The more compatible, the easier it is to continue using it.
- Original material can be distributed under several licenses. Further users can choose which license they prefer.

Picture: CC_License_Compatibility_Chart, [https://creativecommons.org/faq/#can-i-combine-material-under-different-creative-commons-licenses-in-my-work](https://creativecommons.org/faq/#can-i-combine-material-under-different-creative-commons-licenses-in-my-work), CC-BY 4.0 International

Modification made by Melanie Graf: Transparent green layers to indicate «open» vs. non-open CC licenses
WHAT LICENSE TO CHOOSE?

1. Do you have the right to license the work?  
   - Yes
   - No (You must not license)

2. Do you want to publish it according to opendefinition.org?  
   - Yes
   - No (Choose any license)
     - CC0; CC-BY; CC-BY-SA

3. Do you or your organization want to be named?  
   - Yes
     - CC-BY; CC-BY-SA
   - No
     - CC0
     - You can also use CC-BY and CC-BY-SA and waive to be named

4. Do you want it to be kept open?  
   - Yes
     - CC-BY-SA
   - No (I don’t care)
     - CC0; CC-BY
10’ break
Data Protection
**Personal data (data):** all information relating to an identified or identifiable person.

**Sensitive personal data:** data on:
1. religious, ideological, political or trade union-related views or activities,
2. health, the intimate sphere or the racial origin,
3. social security measures,
4. administrative or criminal proceedings and sanctions

**Processing:** any operation with personal data, irrespective of the means applied and the procedure, and in particular the collection, storage, use, revision, disclosure, archiving or destruction of data.
Personal data may only be **processed lawfully**.

Its processing must be carried out in good faith and must be **proportionate** (minimization).

Personal data may only be processed for the **purpose indicated** at the time of collection, that is **evident from the circumstances**, or that is provided for **by law**.

If the **consent** of the data subject is required for the processing of personal data, such consent is valid only if **given voluntarily** on the provision of **adequate information**. Additionally, consent must be given **expressly in the case of processing of sensitive personal data** or personality profiles.
Data protection rules *don’t* apply to anonymised data.

But *when* is a dataset *anonymised enough* to be exempt from data protection law?

- An ID card?
- Fingerprints?
- An personal story?
- A liver image?
→ Data are enough anonymised, when the **effort** to identify the subject is too big:

- Technique needed is **professionally specific** / specific knowledge is needed;
- **Expensive**;
- Takes a lot of **time**...

...for an average person.
Judgment of the Federal Supreme Court on Google Street View

→ When are personal data really (enough) anonymized?

PRINCIPLES OF DATA PROTECTION

Exception for research art. 13 FADP

1 A breach of privacy is unlawful unless it is justified by the consent of the injured party, by an overriding private or public interest or by law.

2 An overriding interest of the person processing the data shall in particular be considered if that person:

... 

e. processes personal data for purposes not relating to a specific person, in particular for the purposes of research, planning and statistics and publishes the results in such a manner that the data subjects may not be identified; 

9. I published an article with a publisher many years ago. During our discussions we had no idea of publishing online nor of what Open Science is. Am I allowed to republish the article on an open journal today?

a) Yes, as the author, I decide what to do with my work.

b) The publisher is the only one who can decide about this publication.

c) As during the agreement there was no mention about an online publication, I remain entitled of the right to publish the article online and thus, I may decide to do so.

d) The publishing contract probably foresees the transfer of my economic rights for any kind of format of my article, both analogic and digital.

e) The legislation decided to advance with its Open Access politic. Therefore, the publishers are forced to re-negotiate their contracts in order to allow at least the archiving of articles in open repositories.
Recap Quiz

9. I published an article with a publisher many years ago. During our discussions we had no idea of publishing online nor of what Open Science is. Am I allowed to re-publish the article on an open journal today?

a) Yes, as the author, I decide what to do with my work.

b) The publisher is always the only one who can decide about this publication.

c) As during the agreement there was no mention about an online publication, I remain entitled of the right to publish the article online and thus, I may decide to do so.

d) The publishing contract probably foresees the transfer of my economic rights for any kind of format of my article, both analogic and digital.

e) The legislation decided to advance with its Open Access politic. Therefore, the publishers are forced to re-negotiate their contracts in order to allow at least the archiving of articles in open repositories.
Recap Quiz

10. I want to share my dissertation openly, and I want it to be kept open also by future potential users. What license shall I choose?

a) CC0
b) No license needed as long as I share it into an open journal.
c) CC BY SA
d) CC BY NC SA
10. I want to share my dissertation openly, and I want it to be kept open also by future potential users. What license shall I choose?

a) CC0  

b) No license needed as long as I share it into an open journal.  

c) CC BY SA  

d) CC BY NC SA
Recap Quiz

11. Is the information 36.2°C (the body temperature) itself a personal data?

a) Yes, because it refers to a person.
b) Yes, if a person is identifiable.
c) No, as long as a person is not identifiable.
d) No, because a person is not directly identifiable.
Recap Quiz

11. Is the information 36.2°C (the body temperature) itself a personal data?

a) Yes, because it refers to a person.

b) Yes, if a person is identifiable.

c) No, as long as a person is not identifiable.

d) No, because a person is not directly identifiable.
Recap Quiz

12. I use materials of someone else. The used licenses are CC-BY and CC-BY-ND. Am I allowed to modify and share the new versions of the work?

a) Yes, I can use these materials as there is one «open».

b) No, these materials are copyright protected and I need the permission of the right holder.

c) Only the material under the CC-BY license, excluding other material.
Recap Quiz

12. I use materials of someone else. The used licenses are CC-BY and CC-BY-ND. Am I allowed to modify and share the new versions of the work?

a) Yes, I can use these materials as there is one «open».

b) No, these materials are copyright protected and I need the permission of the right holder.

c) Only the material under the CC-BY license, excluding other material.
Recap Quiz

13. Do I need the subject’s consent to collect data about the life of deans working at Swiss universities?

a) No, because they may be considered public figures and often their CV is available online.

b) No, because the Swiss law allows to process personal data for research purposes.

c) Yes, because the personality of the subject is relevant for my research and it is not covered by the research exception.

d) No, because when they answer to my questions, they implicitly authorize me to collect their data.
Recap Quiz

13. Do I need the subject’s consent to collect data about the life of deans working at Swiss universities?

a) No, because they may be considered public figures and often their CV is available online.

b) No, because the Swiss law allows to process personal data for research purposes.

c) Yes, because the personality of the subject is relevant for my research and it is not covered by the research exception.

d) No, because when they answer to my questions, they implicitly authorize me to collect their data.
14. A researcher has a dataset composed of data he created by himself and data he found online made by another researcher and wants to archive the dataset into a repository. Who is responsible for the content (copyright, anonymization,...)?

a) A researcher
b) The platform / the archive
c) Both researchers
14. A researcher has a dataset composed of data he created by himself and data he found online made by another researcher and wants to archive the dataset into a repository. Who is responsible for the content (copyright, anonymization, …)?

a) A researcher
b) The platform / the archive
c) Both researchers
10’ break
DMLawTool

https://dmlawtool.web.app
Case: Sharing research data as open access

I am a psychology researcher and have just concluded a study about psychological reactions to emergency calls. Within the study I produced an interesting video recording of a focus group with people who have done an emergency call in the past. I am sure that this material could be useful also for other researchers and teachers and thus I would like to share it with others as open access material. To do so I have transcribed the recording and fully anonymized it.
Thank you very much for your attention!
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.

Showcases

- How to avoid Plagiarism
- Publishing on Social Media
- Free & Open Source SW
- Creative Commons