

# IP Law

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# Subject matter

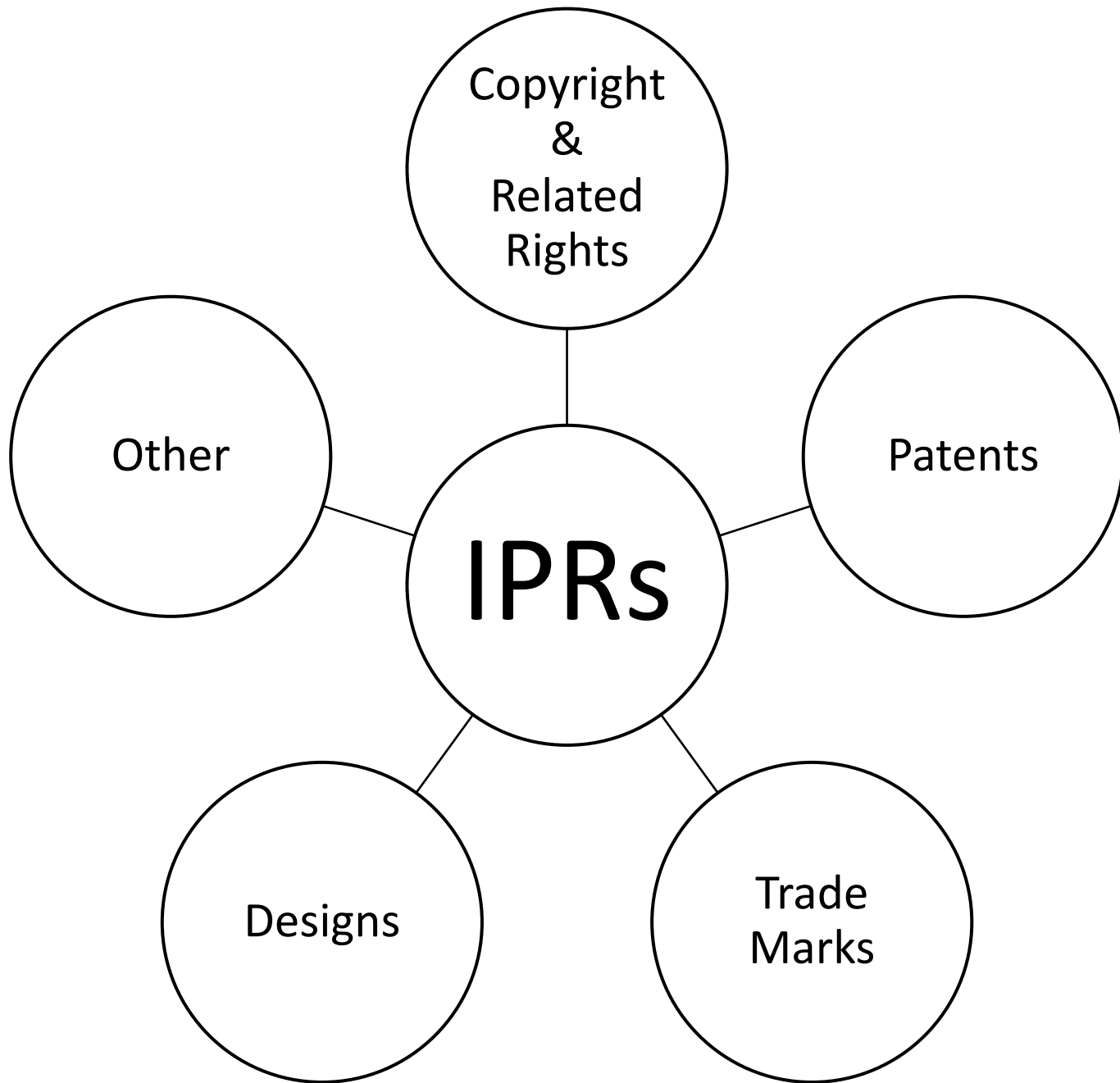
- Intangible subject matter  $\Leftrightarrow$  tangible manifestation
- Potential ubiquity (non-crowdability)
- Non-rivalry (non-depletability)
- IP rights – absolute rights in intangible subject matter

**IPRs**

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graph TD; A[IPRs] --> B[Copyright & Related rights]; A --> C[Industrial property]
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**Copyright &  
Related rights**

**Industrial  
property**



# Convention Establishing the World Intellectual Property Organization (1967)

- *literary, artistic and scientific works;*
- *performances of performing artists, phonograms, and broadcasts;*
- *inventions in all fields of human endeavor;*
- *scientific discoveries;*
- *industrial designs;*
- *trademarks, service marks, and commercial names and designations;*
- *protection against unfair competition; and*
- *all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.*

# Justification

- Non-intuitiveness => need for justification
- „Free for all“?
- Justifications
  - Personality-Based (Hegel)
    - Moral claim
  - Labour theory (Locke)
    - Fairness
  - Utilitarian (incentives-based)
    - Promotion of creativity

Moore, Adam and Himma, Ken, "Intellectual Property", The Stanford Encyclopedia of Philosophy (Winter 2014 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2014/entries/intellectual-property/>>.

# Issue of territoriality

- No “global” IPRs
- Territoriality based protection
- Overcoming territoriality
  - International treaties
    - National treatment (minimum rights)
    - Reciprocity
- Easier grant procedure
  - International, regional, national filing

# Overcoming territoriality – national treatment

- **Paris Convention (1883)**

- Article 2(1)

- *Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.*

- **Berne Convention (1886)**

- Article 5(1)

- *Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals . . .*



# Overcoming territoriality

- Minimum rights
- **Paris Convention (1883)**
  - Priority
- **Berne Convention (1886)**
  - *lura conventionis*

# From Ancient Greece to Works created by AI

- 500 B.C. – Sybaris colony – culinary recipes
- ~100 A.D. – Martial – literary piracy
- 1421 – Florentine Patent Status
- 1474 – Venetian Patent Law
- 1624 – Statute of Monopolies
- 1709 – Statute of Anne

# From Ancient Greece to Works created by AI

- 1883 – Paris Convention
- 1886 – Berne Convention
- 1967 – WIPO
- 1994 – TRIPS
- 1996 – WIPO Treaties
- 1999-2000 – Napster
- 2000s – Copyright Wars
- 2016 – Morgan Trailer

# Industrial Property Rights

Application



Examination



(Publication)



Registration



Renewal



National



Ty

Regional



International

# Life cycle

- Regulation
- Basics
- Requirements for protection
- Grant procedure
- Protection: scope protection & term & exceptions
- Enforcement
- Termination

# Regulation

- Paris Convention for the Protection of Industrial Property (1883)
- Patent Cooperation Treaty (1970)
- Strasbourg Agreement Concerning the International Patent Classification (1971)
- Patent Law Treaty (2000)
- **European Patent Convention (1973)**
  - <http://www.epo.org/law-practice/legal-texts/html/epc/2016/e/index.html>
- Unitary patent package: EU Regulations 1257/2012, 1260/2012 and Council Decision 2011/167/EU



# Basics

- Protection for inventions
  - A technical solution to a technical problem

# Requirements for protection

- Protectable subject-matter
- Novelty
- Inventive step
- Industrial applicability

# Patentable invention (subject matter)

- Inventions solving non-technical problems relying on subject matter void of any technical character are not eligible for a patent.

# A52(1)

European patents shall be granted for any inventions, in all fields of technology, provided that they are

- new,
- involve an inventive step and are
- susceptible of industrial application.

## A52(2)

The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

- (a) discoveries, scientific theories and mathematical methods;
- (b) aesthetic creations;
- (c) schemes, rules and methods for performing mental acts, playing games or doing business, and **programs for computers**;
- (d) presentations of information.

## A52(3)

Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities **as such**.

# Novelty – A54

(1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.

# Inventive step – A56

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.



# Industrial application – A57

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

# Grant procedure

- National
- European Patent (European Patent Convention) – not an EU Patent, international agreement
- Filing, Search, Examination, Grant, Opposition

# Protection: scope protection & term & exceptions

- EPC: bundle of national patents
- A69 EPC – defined by claims
- A64 EPC – *the same rights as would be conferred by a national patent granted in that State*

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- A3 (Regulation 1257/2012) Unitary patent: unitary effect
  - *limited, transferred or revoked, or lapse, in respect of all the participating Member States*
- A7 (Regulation 1257/2012)
  - *shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State*

# Protection: scope protection & term & exceptions

- 20 years from filing
- Yearly fees
- Exceptions: experimental & private use (national law)

# Biotech inventions

- [Directive 98/44/EC — legal protection of biotechnological inventions](#)
- *Inventions which concern a product consisting of, or containing, biological material\* or a process for the production of such biological material may be patented if they are new, involve an inventive step and can be applied industrially.*
- *The following are not patentable:*
  - *plant and animal varieties*
  - *essentially biological processes\* for producing plants and animals*
  - *the human body at the various stages of its formation and development.*
- *However, an element isolated from the human body or produced by a technical process may be a patentable invention.*
- *Inventions may not be patented where their commercialisation would be immoral or against public order. In particular, the following are not patentable:*
  - *processes for cloning human beings*
  - *processes that modify the human germ line genetic identity*
  - *use of human embryos for industrial or commercial purposes*
  - *processes that may cause suffering to animals when modifying their genetic identity.*
- Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l26026>

# Copyright & Related Rights

# Comparison

## **Copyright SYSTEM (USA)**

- Common law
- Work for hire
- Protects the investor

## **Droit d'auteur (e.g. FRANCE)**

- Civil law
- Moral rights
- Protects the author

# Legal Framework

Berne Convention

Rome Convention

TRIPS

WCT

WPPT



# European Copyright Framework

- Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission ("[Satellite and Cable Directive](#)"), 27 September 1993
- Directive on the legal protection of databases ("[Database Directive](#)"), 11 March 1996
- Directive on the harmonisation of certain aspects of copyright and related rights in the information society ("[InfoSoc Directive](#)"), 22 May 2001
- Directive on the resale right for the benefit of the author of an original work of art ("[Resale Right Directive](#)"), 27 September 2001
- Directive on the legal protection of computer programs ("[Software Directive](#)"), 23 April 2009
- Directive on the enforcement of intellectual property right ("[IPRED](#)"), 29 April 2004
- Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property ("[Rental and Lending Directive](#)"), 12 December 2006
- Directive on the term of protection of copyright and certain related rights amending the previous 2006 Directive ("[Term Directive](#)"), 27 September 2011
- Directive on certain permitted uses of orphan works ("[Orphan Works Directive](#)"), 25 October 2012
- Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ("[CRM Directive](#)"), 26 February 2014

# FOCUS

- Directive on the harmonisation of certain aspects of copyright and related rights in the information society ("ISD"), 22 May 2001
- Directive on the legal protection of computer programs ("SD"), 23 April 2009
- Directive on the legal protection of databases ("DD"), 11 March 1996

# EU copyright development

- Decade of Directives (1991-2001)
- Consolidation Decade (2001-2009)
- Age of Judicial Activism (2009-now)

- HUGENHOLTZ, P. Bernt, 2012, Copyright in Europe: Twenty Years Ago, Today and What the Future Holds. *Fordham Intellectual Property, Media & Entertainment Law Journal*. 2012. Vol. 23, no. 2, p. 503–524.

EU Copyright principles – introduced by the ISD

- Harmonisation
- High level of protection (Recital 4)
- Appropriate reward for the use of authors' work (Recital 36)
- Communication to the public right
- Exclusive rights (broad)
- Exceptions (exhaustive)
- Three-step test

# Rights granted – ISD

- A2 Reproduction right
- A3 Communication to the public
- A4 Distribution right
- Not only for copyright, but also for related rights

# ISD – basic notions

- Missing
  - Author?
  - Work?
  - Copyright contracts?
  - Moral rights?
- Judicial activism:
  - Work – criterion of originality (not general, only for databases, computer programs and photographs)
  - “author’s own intellectual creation”
  - C-5/08, Infopaq, C-403/08, C-429/08, Premier League v. QC Leisure and Murphy, C-145/10, Painer, C-604/10, Football Dataco
  - *Work: intellectual creation of the author reflecting his personality and expressing his free and creative choices*

# Further rights

- + Rental/lending directive => fixation right, right of communication to the public, distribution right to performers
- Term directive => rights to photographs
- Resale right directive => droit de suite

# Orphan works directive

- Possibility to use (still copyrighted) work of unidentified or not located author(s) by specific beneficiaries (publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations, established in the Member States) for specific purposes



# Term

- Term directive: extended term to 70 years p.m.a. (Berne requires 50 years)
- Prolonging of performers' and sound recording rights from 50 to 70 years in 2011

# EU Copyright Acquis

- Exclusive rights (broad)
- Exceptions (exhaustive)
- Three-step test

## Art. 5(5) InfoSoc Directive

The exceptions and limitations provided for in paragraphs

1, 2, 3 and 4 **shall only be applied in**

- 1) certain special cases which
- 2) do not conflict with a normal exploitation of the work or other subject-matter and
- 3) do not unreasonably prejudice the legitimate interests of the rightholder.

# The Exceptions (overview):

## REPRODUCTION RIGHT (5)(2)

- **Mandatory** for for transient and incidental copies (5)(1)
- (a) Photocopies (no music sheets) – Fair comp.
- (b) Private copying – Fair comp.
- (c) NC – specific acts of reproductions by EDU&LIB&MUS
- (d) Ephemeral recordings by broadcasters
- (e) reproductions of broadcasts for NC social institutions – Fair comp.

## REPRODUCTION & CTP (MAP) (5)(3)

- (a) Teaching & scientific
- (b) Disabled
- (c) Reporting of current events
- (d) Quotations
- (e) Public security
- (f) Political & public speeches
- (g) Religious & off. celebrations
- (h) Freedom of panorama
- (i) Incidental inclusion
- (j) Advertising of Art
- (k) Parody
- (l) Repair & Demonstration
- (m) Reconstruction
- (n) Terminal access
- (o) Other minor cases

# One mandatory

- **transient or incidental**
- integral and essential part of a technological process
- whose sole purpose is to enable:
  - (a) a transmission in a network between third parties by an intermediary, or
  - (b) a lawful use of a work or other subject-matter to be made,
- **no independent economic significance**

# Meltwater (C-360/13)

- Browsing is ok...
- *„copies on the user’s computer screen and the copies in the internet ‘cache’ of that computer’s hard disk, made by an end-user in the course of viewing a website, satisfy the conditions that those copies must be temporary, that they must be transient or incidental in nature and that they must constitute an integral and essential part of a technological process, as well as the conditions laid down in Article 5(5) of that directive, and that they may therefore be made without the authorisation of the copyright holders.“*

# The New Directive (2019/790/EU)

- Not yet implemented
- Set of new exceptions
  - Teaching
  - TDM
  - Cultural Heritage
- Varia

# Where does the TDM come in play?

- TDM slides: Courtesy of Jakub Míšek



# Text and Data Mining (TDM)

- Getting the information from a vast number of documents
- Finding new contexts, models and patterns
- The standard procedure:
  - Access
  - Mining (Copying)
  - Analysis (Reuse)

# TDM and IP rights

- Data as such are not protected
- Copyright protection
  - Analysed works
  - Copyright protection of a database
  - A broad application of a reproduction right
- Sui generis database right
  - Extraction right
- Necessary condition
  - Exactness and clarity of legal regulation and publication conditions
  - A risk of a chilling effect
  - Applicable exceptions?

# Exceptions in Directive 2001/29/EC

- Exceptions from the reproduction right
  - Art. 5 para. 1 – temporary reproduction (online transfers)
  - Art. 5 para. 3 letter a) – use for sole purpose for scientific research
- Exceptions from the extraction right
  - Art. 8 of directive 96/9/EC – Rights of lawful users (only insubstantial parts of DB)
  - Art. 9 letter b) of directive 96/9/ES - extraction for the purposes of scientific research
- Official work?
- Old exception – insufficient for TDM

# DSM Directive (EU 2019/790)

- Exceptions apply to both copyright and sui generis database right
- Exceptions are mandatory
- Art 3 – TDM exception for the purposes of scientific research
  - Narrow application:

“reproductions and extractions made by research organisations and cultural heritage institutions in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access.”
  - Narrowing: possibility of “measures to ensure the security and integrity of the networks and databases”
  - The exception applies only to reproduction and extraction rights
- Art 4 – General TDM exception

# DSM Directive (EU 2019/790)

- Art 3 – TDM exception for the purposes of scientific research
- Art 4 – General TDM exception
  - Any purpose, any person
  - Lawful access to the content is necessary
  - Problem No. 1: Reproductions and extractions may be retained only for as long as is necessary for the purposes of text and data mining
    - Future analyses? Validation? Repeatability?
  - Problem No. 2: Right holders can exclude TDM
    - Para. 3: “The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.”
- Better than before, but still insufficient

# Plagiarism: Intersection Law/Ethics

- Expression/idea dichotomy
- **MU academic and professional employee code of ethics**
- <https://www.muni.cz/en/about-us/official-notice-board/mu-academic-and-professional-employee-code-of-ethics>
- Types of plagiarism
- Academic misconduct X Copyright infringement
- Internal mechanisms (damage to reputation) X Legal proceedings

# Software Protection

# Outline

- Historical overview
  - What form of IP protection?
- IP Basics
- Legal Framework
  - Berne Convention, TRIPS, WIPO World Copyright Treaty
  - European Software Directive (“SD”)



# Development of protection I

- 1960s – software as accessory
- 1969 – Unbundling – IBM 360-series
- 1970s and 1980s – the Great Debate USA – Commission on New Technological Uses of Copyrighted Works (CONTU)
  - Contract clauses
  - Trade secret
  - Patent Law
  - Copyright Law

# Development of protection

- 1991 – EU Software Directive
- 1996 – WIPO World Copyright Treaty
- 2002 – Proposal for Directive on the protection by patents of computer-implemented inventions - FAIL
- 2009 - Recodification

# IP Basics - repetition

## Copyright Law

- › Idea-Expression dichotomy
- › Sufficient level of creativity or originality (!)
- › Original works of authorship
- › 70y p.m.a.

## Patent Law

- › Defined by claims
- › new, non-obvious, and useful or industrially applicable implementation (innovative step) of ideas
- › 20y since filing

# The Difference

- Droit d'auteur
  - Civil Law
  - Author

- Copyright
  - Common law
  - Rightholder

# Legal framework I

- Berne Convention
  - A2 – Definitions – literary works
  - A9 – Right of Reproduction
- The Agreement on Trade-related Aspects of Intellectual Property Rights (“TRIPS”)
  - Article 10 –
    - *Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention.*

# Legal framework II

- WIPO World Copyright Treaty (A4)
  - *...are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression.*
- Directive on the legal protection of computer programs (“SD”)  
2009/24/EC

# Copyright protection

- Computer programs as literary works

# European Patent Convention

- A52
- The following in particular shall not be regarded as patentable inventions:
  - *(c) schemes, rules and methods for performing mental acts, playing games or doing business, and **programs for computers**;*



# Software patents in EUROPE

Software patents in EUROPE

# Technical effect

<b>further technical effect</b>	<b>no further technical effect</b>
control of a brake in a car	aesthetical effects of music or a video
faster communication between mobile phones	new rules for an auction scheme
secure data transmission (encryption of data)	selling and booking sailing cruise packages
resource allocation in an operating system	calculation of a pension contributions

As defined in: MACHEK, Jörg. Computer Implemented Inventions at the EPO

Available at: <http://www.pks.rs/SADRZAJ/Files/Biro%20za%20saradnju%20sa%20EU/Inovacije%20u%20kompjuterskoj%20tehnicima%20u%20EPZ.pdf>

# No business methods patents

- Pure business methods as such are not patentable (Article 52 (2) (c) and (3) EPC, e. g. T 931/95 "PBS").
- An auction method carried out by means of the Internet
  - Denied - no technical contribution to the prior art (T 258/03 "Hitachi") => technical implementation of the improved auction rules was done by the conventional means of a computer and a computer network

Jinseok Park: Has Patentable Subject Matter Been Expanded? -A Comparative Study on Software Patent Practices in the European Patent Office, the United States Patent and Trademark Office and the Japanese Patent Office. I. J. Law and Information Technology 13(3): 336-377 (2005), p. 341.

Case	Claimed Invention	Main Holding	Patentable
<i>Koch &amp; Sterzel</i> X-ray Apparatus T 0026/86 - 3.4.1	A data processing unit to control x-ray apparatus to achieve optimum exposure while protecting against overloading of the x-ray tubes	- 'An invention must be assessed as a whole. The use of non-technical means does not detract from the technical character of the overall teaching.' - 'If the computer program controls the operation of a conventional general-purpose computer so as technically to alter its functioning, the unit consisting of program and computer combined may be a patentable invention'	Yes
<i>Vicom</i> Digital Image Processing T 0208/84 - 3.5.1	A method of digitally processing images in the form of two-dimensional data array having elements in rows and columns...	'Even if the idea underlying an invention resides in a mathematical method, the invention may be patentable so long as the claim is directed to a technical process and does not seek protection for the mathematical method as such.'	Yes
<i>IBM</i> Text Processing T 65/86 -	A method for automatically detecting and correcting contextual homophone errors in a text document...	'The processing of abstract data, for a non- technical purpose, by means of computer programs running on conventional hardware' is not patentable.	No
<i>Sohei</i> General-purpose Management System User Interface T 769/92 - 3.5.1	A method for processing of both financial and inventory data in a system which used a single, common form, 'transfer slip', which was displayed to the user on a computer screen for the input of data	'An otherwise patentable computer program would not be rejected merely because of additional features that are excluded under Article 52 (2) of the EPC.'	Yes
<i>Phillips</i> Picture Retrieval System T 1194/97	A picture retrieval system comprising a record carrier and a read device, a coded picture composed of...	'A record carrier characterised by having functional data recorded thereon is not a 'presentation of information as such' and hence not excluded from patentability.'	Yes

Jinseok Park: Has Patentable Subject Matter Been Expanded? -A Comparative Study on Software Patent Practices in the European Patent Office, the United States Patent and Trademark Office and the Japanese Patent Office. *I. J. Law and Information Technology* 13(3): 336-377 (2005), p. 342.

<b>Case</b>	<b>Claimed Invention</b>	<b>Main Holding</b>	<b>Patentable</b>
<i>IBM</i> Recovery from Resource Failure T 1173/97	A computer program product stored on a computer usable medium, comprising computer program means for causing the computer to control...	- 'A computer program is not excluded from patentability, irrespective of whether it is claimed by itself or as a record on a carrier.' 'A computer program is within the definition of Article 52 EPC if the program is capable of bringing about a 'further technical effect' going beyond normal physical effects when running on a computer.'	Yes
<i>PBS Partnership</i> <i>Controlling Pension</i> <i>Benefit Systems</i> T931/95-3.5.1	A method of controlling a pension benefits program by administering at least one subscriber employer account...	'Specifying the technical means for a purely non-technical purpose and/or for processing purely non-technical information does not necessarily confer a technical character on any such individual step of use or on the method as a whole.'	No
<i>COMVIK</i> Two Identities T 641/00	GSM type mobile telephone systems involving subscriber identity modules that are inserted by a user into his mobile unit to activate service in the respective telephone system by a subscriber identity IMSI	The features that make no technical contribution cannot be considered for the assessment of inventive step of the invention	No

# To sum up...

- „Further technical effect“
  - Not the „inevitable psychical effect” – i.e. running of the program (current changes)
  - „*what is achieved beyond this normal technical effect*”
- [EP0771280](#) – „ABS” patent
  - METHOD AND SYSTEM FOR DETECTING THE PROPER FUNCTIONING OF AN ABS CONTROL UNIT UTILIZING DUAL PROGRAMMED MICROPROCESSORS

## „The Little Man test“

*“The question to ask should be: is it (the artefact or process) new and non-obvious merely because there is a computer program? Or would it still be new and non-obvious in principle even if the same decisions and commands **could somehow be taken and issued by a little man at a control panel**, operating under the same rules? For if the answer to the latter question is 'Yes' it becomes apparent that the computer program is merely a tool, and the invention is not about computer programming at all.”*

CFPH LLC, Patent Applications by [2005] EWHC 1589 (Pat) (21 July 2005) URL:  
<http://www.bailii.org/ew/cases/EWHC/Patents/2005/1589.html>

# Terminology

- Proprietary Software
- Shareware
- Freeware
- Abandonware
- Adware
- Public Domain Software



# Proprietary Soft

- “Traditional”
- Non-free
- Closed source code
  - Only binaries distributed
  - Source code – how could it be protected?
- Licensing

# Shareware

- Proprietary software
- Business model
- Trialware, demoware, added functionality (levels)

# Freeware

- “Fully” copyrighted
  - i.e. no modification, redistribution possible
- Available for use at no cost or for an optional fee
- No disclosure of source code

# Public Domain Soft

- Disclaimed copyright
- Not possible under Berne Convention
- Quasi public domain Software
  - After 70y – Free work

# Abandonware

- Copyrighted software
- Copyright infringement (!)
- No enforcement
- [www.abandonia.com](http://www.abandonia.com)
- *"When we become aware of these instances of piracy, we go to these sites and pursue our IP (intellectual property) rights," "It's not something we go after on a day-to-day basis, but if it's our IP, then it's our IP."*

Nancy Bushkin, (former) Infogrames  
vice president of corporate communications

# SD

- Overview
  - **A1 Object of protection**
  - A2 Authorship
  - A3 Beneficiaries of protection
  - A4 Restricted acts
  - A5 Exceptions
  - A6 Decompilation
  - A7 Special measures of protection
  - Term of protection

# SD A1

- (1)

- *In accordance with the provisions of this Directive, Member States shall protect computer programs, by copyright, as **literary works** within the meaning of the Berne Convention for the Protection of Literary and Artistic Works.*
- *For the purposes of this Directive, the term "computer programs" shall include their **preparatory design material**.*

# SD A1

- (2)
  - *Protection in accordance with this Directive shall apply to the **expression in any form** of a computer program.*
  - *Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, **are not protected** by copyright under this Directive.*



# SD A1

- (3)
  - *A computer program shall be protected if it is original in the sense that it is the author's own intellectual creation.*
  - ***No other criteria shall be applied to determine its eligibility for protection.***

# What is protected?

**YES**

- Expression of a computer program
- Binary Code
- Source code
- Preparatory underlying materials

**No**

- Ideas
- Principles
- Logic
- Algorithms
- Programming languages
- Data formats
- GUI

# C-406/10, SAS v WPL

- [39] *„Neither the functionality of a computer program nor the programming language and the format of data files used in a computer program ... constitute a form of expression of that program*
- *and*
- *as such, are not protected by copyright“.*

## C-393/09, BSA v Ministerstvo kultury

- [38] *„any form of expression of a computer program must be protected from the moment when its reproduction would engender the reproduction of the computer program itself*
- [40] *graphic user interface is an interaction interface which enables communication between the computer program and the user*
- [42] *does not constitute a form of expression of a computer program*
- [42] *cannot be protected specifically by copyright in computer programs by virtue of that directive“*

## C-393/09, BSA v Ministerstvo kultury

- [46] *„graphic user interface can, as a work, be protected by copyright if it is its author’s own intellectual creation.“*
- [44] *„graphic user interface of a computer program can be protected by the ordinary law of copyright“*
- [49] *„where the expression of those components is dictated by their technical function, the criterion of originality is not met, since the different methods of implementing an idea are so limited that the idea and the expression become indissociable“*

# Originality

- Eligibility criterion for copyright protection
- skill, labour, and judgment doctrine (UK)
- sweat of the brow (US)
  - After ***Feist Publications, Inc., v. Rural Telephone Service Co.***, 499 U.S. 340 (1991)
    - a program may not be a copy of another program, and it must be possible to demonstrate a minimum degree of creativity
- Author's mark (France)
- Kleine Münze (Germany)

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# SD A2,3

- Authorship

1. natural person, group of natural persons, legal person designated as the rightholder, collective works
2. group of natural persons jointly
3. employee – employer

- Beneficiaries



# SD

- Overview
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  - A3 Beneficiaries of protection
  - **A4 Restricted acts**
  - A5 Exceptions
  - A6 Decompilation
  - A7 Special measures of protection
  - Term of protection

# SD A4

- (1) Exclusive acts (rights)
  - Reproduction (a)
  - Integrity (b)
  - Distribution (c)
- (2) Exhaustion of Rights
  - UsedSoft GmbH v. Oracle International Corp..

# SD

- Overview
  - A1 Object of protection
  - A2 Authorship
  - A3 Beneficiaries of protection
  - A4 Restricted acts
  - **A5 Exceptions**
  - A6 Decompilation
  - A7 Special measures of protection
  - Term of protection

# SD A5 (1)

- Intended use

- *In the absence of specific contractual provisions...(reproduction+alternation)...*

*shall not require authorisation by the rightholder where they are necessary for the use of the computer program by the **lawful acquirer** in accordance with its **intended purpose**, including for error correction.*

## SD A5 (2)

- Back-up copies

- *The making of a back-up copy by a **person having a right to use the computer program** may not be prevented by contract in so far as it is necessary for that use.*

**X**

- ISD A5 (2)(b)

- *made by a natural person for private use*

## SD A5(3)

- *The **person having a right to use a copy of a computer program** shall be entitled, without the authorisation of the rightholder, to observe, study or test the functioning of the program in order to determine the **ideas and principles** which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is **entitled to do**.*

# SD

- Overview
  - A1 Object of protection
  - A2 Authorship
  - A3 Beneficiaries of protection
  - A4 Restricted acts
  - A5 Exceptions
  - **A6 Decompilation**
  - A7 Special measures of protection
  - Term of protection

# SD A6

## › Decompilation

### › Interoperability

### › Only:

- › Independent program

- › Person having a right to use a copy of a program

- › No necessary information available

### › Gained result

- › Any other purpose

- › Three-step test

- › in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program



# SD

- Overview
  - A1 Object of protection
  - A2 Authorship
  - A3 Beneficiaries of protection
  - A4 Restricted acts
  - A5 Exceptions
  - A6 Decompilation
  - **A7 Special measures of protection**
  - Term of protection

# SD A7

- Special measures of protection
  - Infringing copies
  - Technical protection measures (measures)
    - Act of circumvention not illegal
    - Any act of putting into circulation, or the possession for **commercial purposes** of, any means the **sole intended** purpose of which is to facilitate the unauthorised removal or circumvention of any technical device which may have been applied to protect a computer program.

# SD

- Overview

- A1 Object of protection
- A2 Authorship
- A3 Beneficiaries of protection
- A4 Restricted acts
- A5 Exceptions
- A6 Decompilation
- A7 Special measures of protection
- **Term of protection**

# Term of protection

- WAS 50y
- Council Directive **93/98/EEC** harmonising the term of protection of copyright and certain related rights
- NOW **70y** p.m.a.
- Justification X life-span
- New versions? – derivative works

Database protection

# Outline

- Regulation
- Protection of databases and exceptions/limitations thereof
- CJEU Case Law: exploring the boundaries of protection
- Ryanair v PR Aviation case and its consequences – Less is more or more is less?

# Regulation

- No international instrument for mere amassments of data
- Berne Convention
- Protection of **collections (works)**
  - *2(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.*
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases

# Database

“Database” shall mean:

1. a collection of independent works, data or other materials
2. arranged in a systematic or methodical way and
3. individually accessible by electronic or other means.



## Ratio: 31996L0009 Rec. (6)

- *(5)...copyright remains an appropriate form of exclusive right for authors who have created databases;*
- *(6)...in the absence of a harmonized system of unfair-competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;*
- => two-tier protection

# Requirements for protection

- Chapter II – Copyright + limitations on the scope
  - *“by reason of the selection or arrangement of their contents, constitute the **author's own intellectual creation**”*
- Chapter III – Sui generis rights + exceptions
  - *“qualitatively and/or quantitatively a **substantial investment** in either the obtaining, verification or presentation of the contents”*

# Restricted acts

- Copyright: reproduction, translation, adaptation arrangement, alteration, distribution to the public, communication, display or performance to the public of the original or altered database
- Sui generis: extraction + re-utilization

Exceptions

Exceptions – © – A6(1)

*The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall*

## Exceptions – SGDR – A8(1)

*The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever.*

# CJEU CASE LAW

# CJEU – protected subject matter

- Investment
  - Obtaining
  - Verification
  - Presentation



# Obtaining I

- NO spin-off databases (C-203/02 (BHB), C-46/02, C-338/02 (Fixtures/Svenska), C-444/02 (Fixtures/OPAP))
- British Horseracing Board: aim of the directive: *„promote the establishment of storage and processing systems for existing information and not the creation of materials capable of being collected subsequently in a database.“* (C-203/02 (BHB). Also: C-444/02 (Fixtures/OPAP))

# Obtaining II

- No obstacle for the creator of the elements that would hinder the acquiring of SGDR protection
- IF
- *he establishes that the obtaining of those materials, their verification or their presentation, [...], required substantial investment in quantitative or qualitative terms, which was independent of the resources used to create those materials.*
- C-444/02 (Fixtures/OPAP), C-338/02 (Fixtures/Svenska)

# Verification

- AIM: ensuring the reliability of the information contained in that database, to monitor the accuracy of the materials collected when the database was created and during its operation.
- Correction of duplicities, removal of typing errors and keeping the contents up-to-date => ensuring the reliability of the data in their long-term use
- C-338/02 (Fixtures/Svenska), also: C-46/02

# Presentation

- Structure and arrangement of the data in communication to the public
- *„Resources used for the purpose of giving the database its function of processing information, that is to say those used for the systematic or methodical arrangement of the materials contained in that database and the organisation of their individual accessibility.“*
- C-338/02 (Fixtures/Svenska)

# Substantial investment

- R7: *„considerable human, technical and financial resources“*
- R39: *„results of the financial and professional investment“*
- R40 *„investment may consist in the deployment of financial resources and/or the expending of time, effort and energy“*

C-30/14, Ryanair

# PR Aviation - service

- PR Aviation: comparison of flight ticket prices – screen scraping of other websites
- E.g. – Ryanair Ltd.
- Ryanair required an explicit consent with T&C:
  - NO screen-scraping + „*right of distribution of flight tickets reserved exclusively to Ryanair* “
- PR Aviation allegedly infringed these conditions - no contract with Ryanair
- Previous case law: Innoweb, C-202/12

# National courts

- **Gerechtshof te Amsterdam** – PR Aviation - no infringement PR Aviation, its acts were covered by standard exceptions
- **Hoge Raad der Nederlanden** – reference for a preliminary ruling – According to the DD does a database exist that is not protected by any of the protection regimes?



## C-30/14, Ryanair

- Database *per se* does not fulfill the requirements of protection => no protection and exceptions thereof
- IF no tier of the protection => Directive as such does not preclude the author/maker of such database from laying down contractual limitations on its use by third parties

# Privity of the Contract

- precludes the imposition of the contractual obligations on third parties
- information extracted from a contractually protected database => further disseminated online – no claim for breach against the third party by the producer/author
- absolute rights to information? (no ©/SGDR) – only contract

# Substantial investment

- Waiving SGDR to get more protection?
- Substantial investment – cannot claim that there is none?
- Unfair contract clauses? Unfair protection?

# Copernican Revolution

- 39: “ ..it is clear from the purpose and structure of Directive 96/9 that Articles 6(1), 8 and 15 thereof, **which establish mandatory rights for lawful users of databases**, are not applicable to a database which is not protected either by copyright or by the sui generis right under that directive, so that it does not prevent the adoption of contractual clauses concerning the conditions of use of such a database”.

# Copernican Revolution

- 40: „**directive sets out to achieve a balance between the rights of the person who created a database and the rights of lawful users of such a database, that is third parties authorised by that person to use the database....**”.

X

ACI Adam BV and Others v Stichting de ThuisKopie Stichting  
Onderhandelingen ThuisKopie vergoeding ruling, Case C-435/12 –  
restrictive interpretation

# Further consequences

- “Spin-off” database is again alive = contract
- “Public” databases (PSI databases) = stronger contractual protection?
- Less is more or more is less?

## Related rights

Performers

Producers of phonograms

Broadcasters

Audiovisual fixation producers

# Related rights

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)
- WPPT
- Rights granted
  - Fixation
  - Reproduction
  - Re-broadcasting
- 50 y †



In “legalese”

## UN Convention on the Law of the Sea

- *a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:*
  - *(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
  - *(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;*
- *(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;*
- *(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b)*

# Litigation: Communication to the public

- 1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
- **New public**

## Linking after *GS Media*, C-160/15

Accessibility of content	Content published with rightholder's consent	Profit-making intention	Knowledge that content linked to is unlawful	Act of communication to the public	Potential infringement
Freely accessible	Yes	n/a	n/a	No ( <i>Svensson, GS Media</i> )	No
Not freely accessible	Yes	n/a	n/a	Yes ( <i>BestWater, GS Media</i> )	Yes
Freely accessible	No	No	No	No ( <i>GS Media</i> )	No
Freely accessible	No	No	Yes (eg because notified)	Yes ( <i>GS Media</i> )	Yes*
Freely accessible	No	Yes	Presumed (rebuttable presumption)	Yes ( <i>GS Media</i> )	Yes*
Not freely accessible	No	n/a	n/a	Yes	Yes

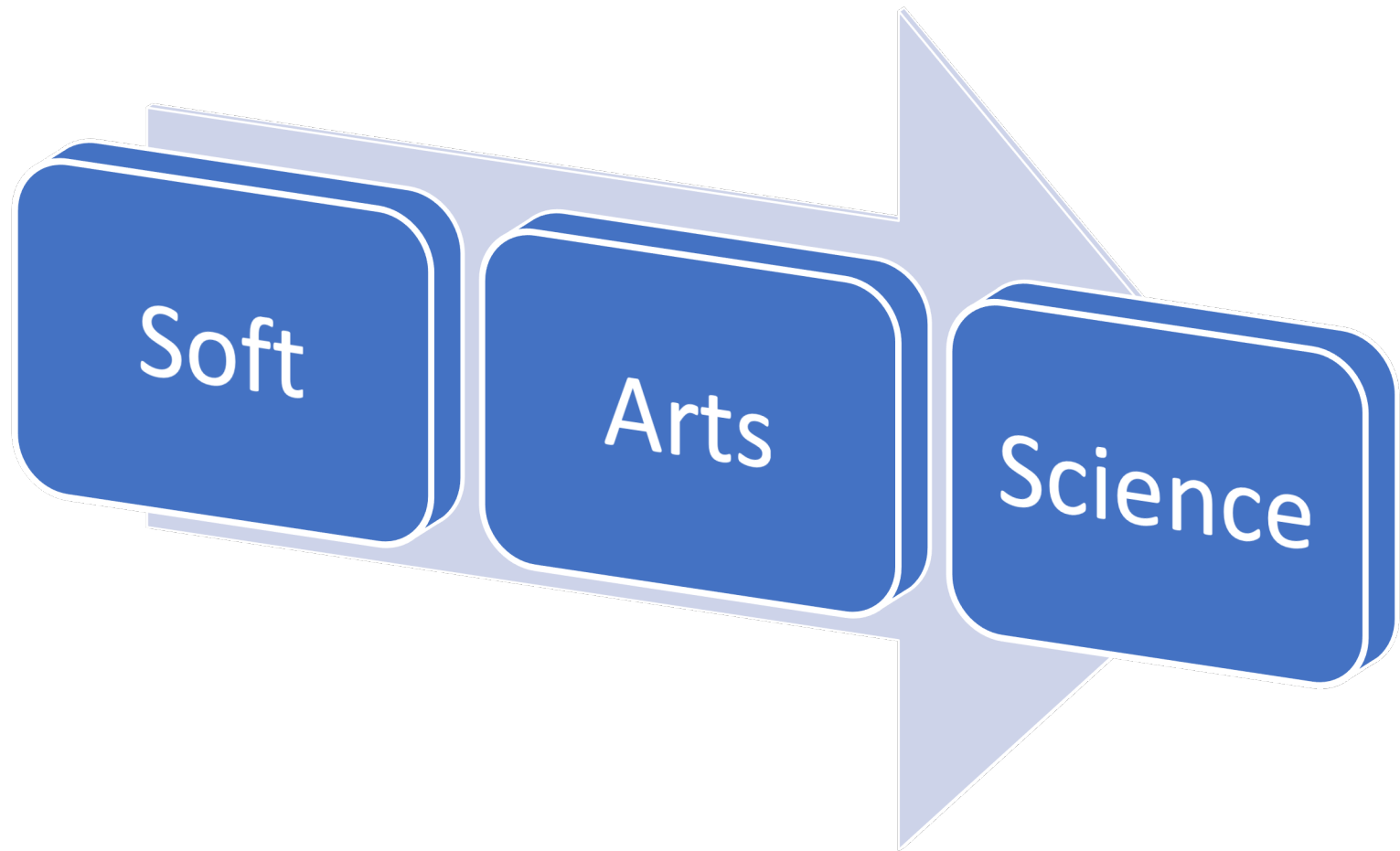
\*If rightholder notifies link provider (without prior knowledge of unlawfulness) that content linked to is unlawful and he refuses to remove the link, and exceptions in Article 5(3) InfoSoc Directive are inapplicable.

# Self-help: DRM (Art. 6 ISD)

- DRM – digital rights management
  - TPM – technological protection measures
  - RMI – rights managements information
- TPM protected by law
- Copy control
- Access Control

Alternative approaches

# Open Content



# Open Content Definition v2

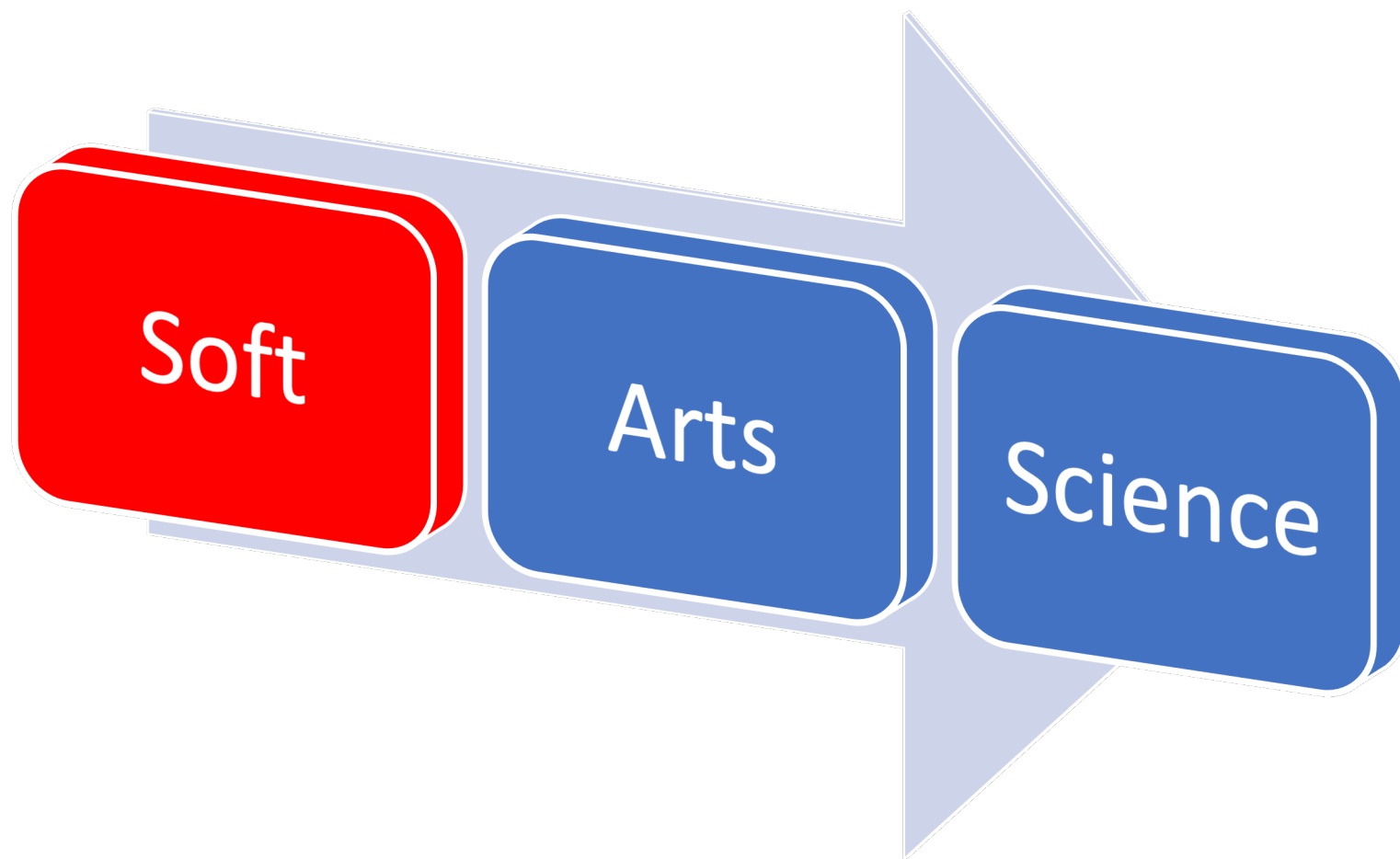
- RETAIN
  - REUSE
  - REVISE
  - REMIX
  - REDISTRIBUTE
- 
- David Wiley, <http://opencontent.org/definition/>

# Open Definition

- *“A piece of data or content is open if anyone is free to use, reuse, and redistribute it — subject only, at most, to the requirement to attribute and/or share-alike.”*
- Open Knowledge Foundation



# Open Content - Software



- Free / Open Source Software

# The Idea of FS

4 essential freedoms: [youtube.com/watch?v=uJi2rkHiNqg](https://www.youtube.com/watch?v=uJi2rkHiNqg)

- run the program, for any purpose,
- study how the program works (through access to the source code) and change it at will,
- copy and share the program with others
- share modifications with others

# Idea of OSS

- Business oriented
- No ethical call
- System of software development
  - Cathedral
    - "carefully crafted by individual wizards or small bands of mages working in splendid isolation"
  - Bazaar
    - "a great babbling bazaar of differing agendas and approaches."

- *“The fundamental difference between the two movements is in their values, their ways of looking at the world. For the Open Source movement, the issue of whether software should be open source is a practical question, not an ethical one.”*
- <http://www.gnu.org/philosophy/free-software-for-freedom.html>

# Legal Aspects

- Copyright
- Licences
  - Copyleft effect / Share-alike
- Various types of licences
  - [opensource.org/licenses/alphabetical](https://opensource.org/licenses/alphabetical)

# Copyleft Effect

- *GNU GPL v2.0*
- *“Art. 2 b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, **to be licensed** as a whole at no charge to all third parties **under the terms of this License.**”*

# Legal typology

- Strongly protective licences
  - “viral licences”
  - GNU General Public License
- Weakly protective licences
  - Lesser General Public License (LGPL)
- Permissive licences
  - Author’s crediting
  - BSD License, MIT License



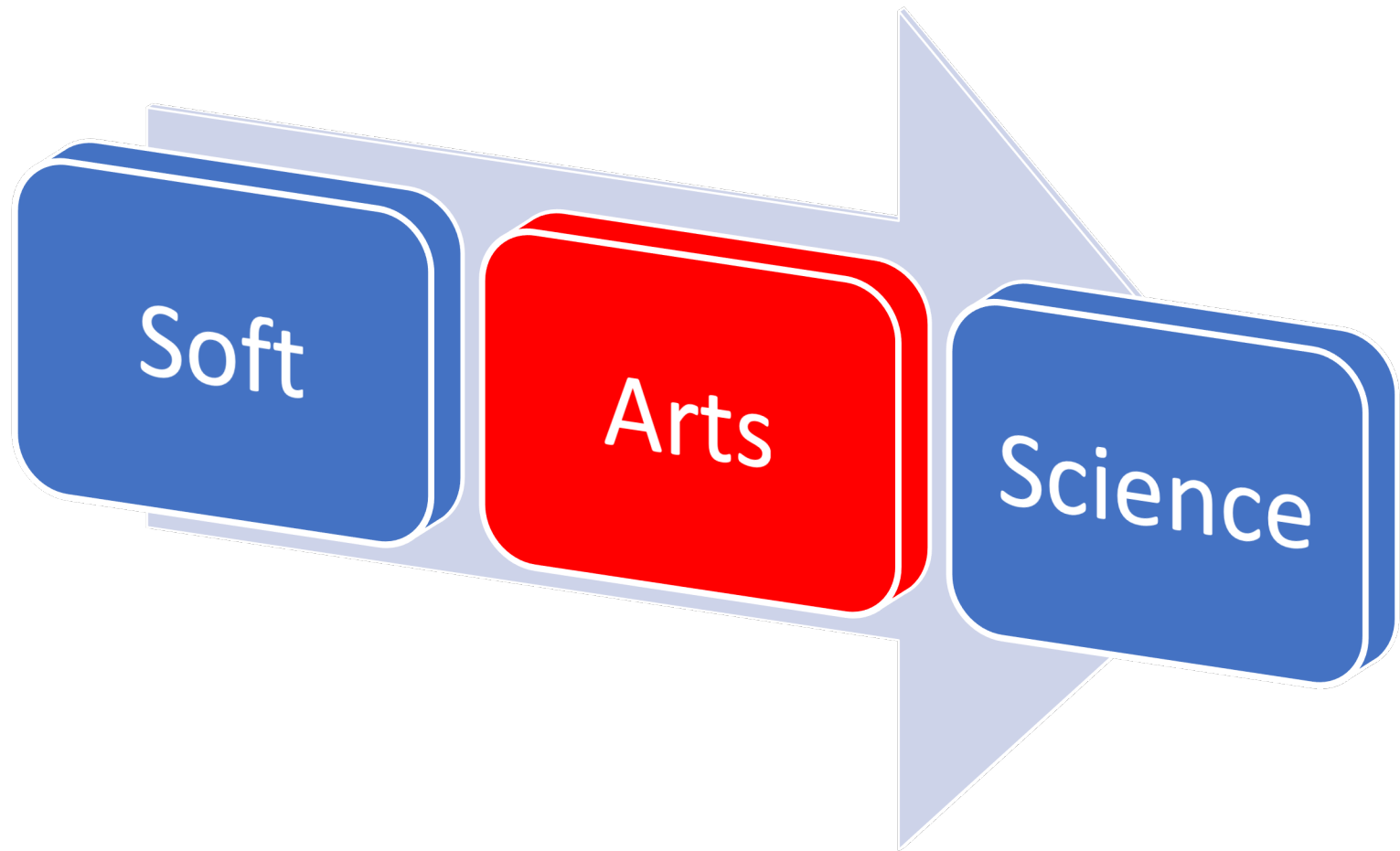
# GNU LICENCES

- GNU GPL
- LGPL
- GNU Free Documentation License

# Legal Issues

- Enforceability
- Multi-licensing
  - Mozilla Suite / tri-license
- Liability and Warranty Disclaimers
- Copyright / Droit d'auteur
- Dynamic linking
  - GNU GPL no – derivative works?
  - LGPL yes

# Open Content – Arts

























# Public licences – characteristics

- Allow sharing (modification)
- Under specific conditions
- Always attribution
- Irrevocable
- Automatic termination upon breach
  
- Creative Commons
- <https://creativecommons.org/choose/>

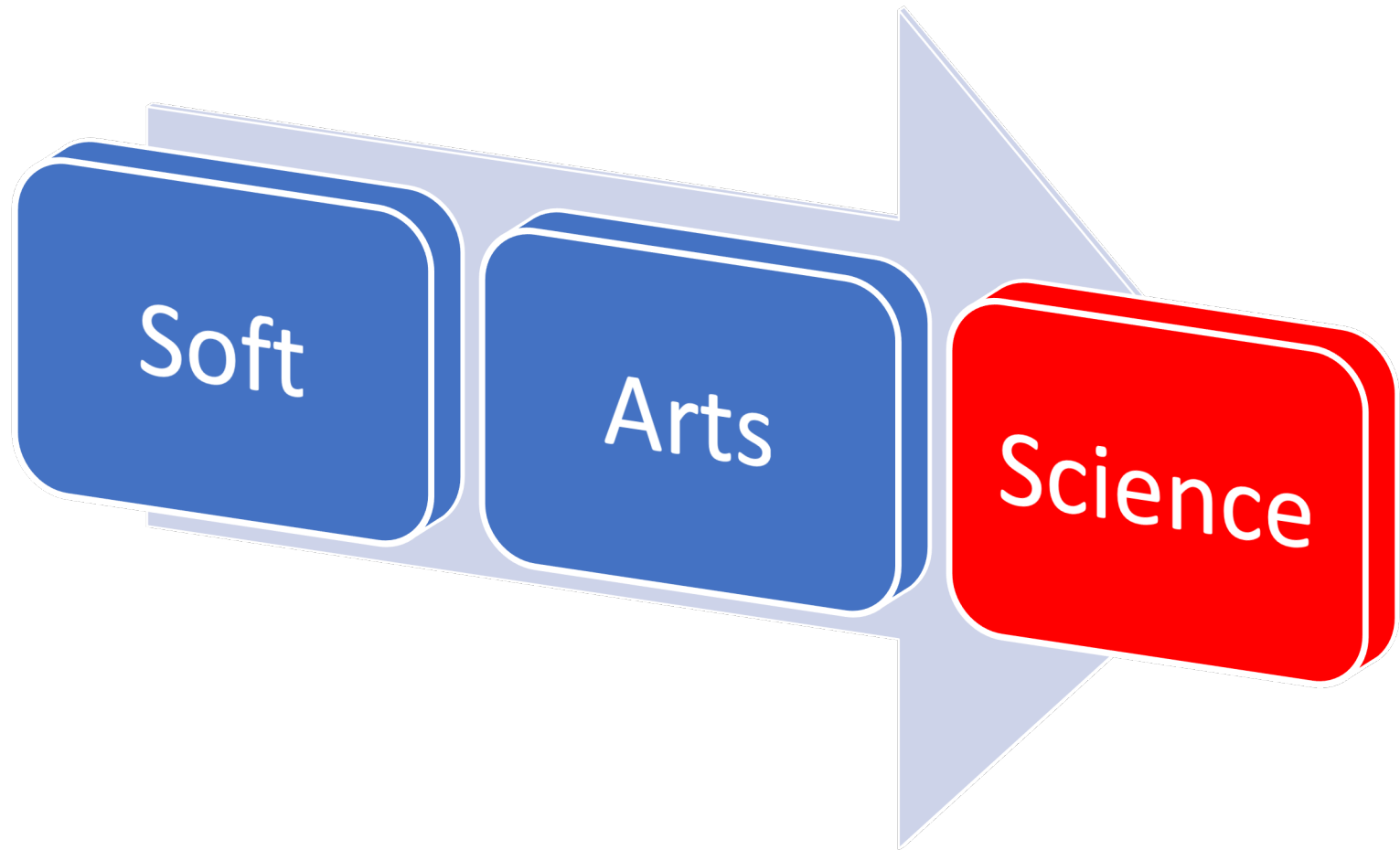
# Creative Commons

# CC overview

- 2001 in USA
- 2009 in CZ
- Public license
- Sec. 2371 CzCA
- Source:  
<https://i.pinimg.com/736x/fc/37/0b/fc370bc5c135416e38821dd630d2d0f3--copyright-license-creative-commons-images.jpg>

		Can someone use it commercially?	Can someone create new versions of it?
Attribution			
Share Alike	 		Yup, AND they must license the new work under a Share Alike license.
No Derivatives	 		
Non-Commercial	 		Yup, AND the new work must be non-commercial, but it can be under any non-commercial license.
Non-Commercial Share Alike	  		Yup, AND they must license the new work under a Non-Commercial Share Alike license.
Non-Commercial No Derivatives	  		

# Open Content – Science

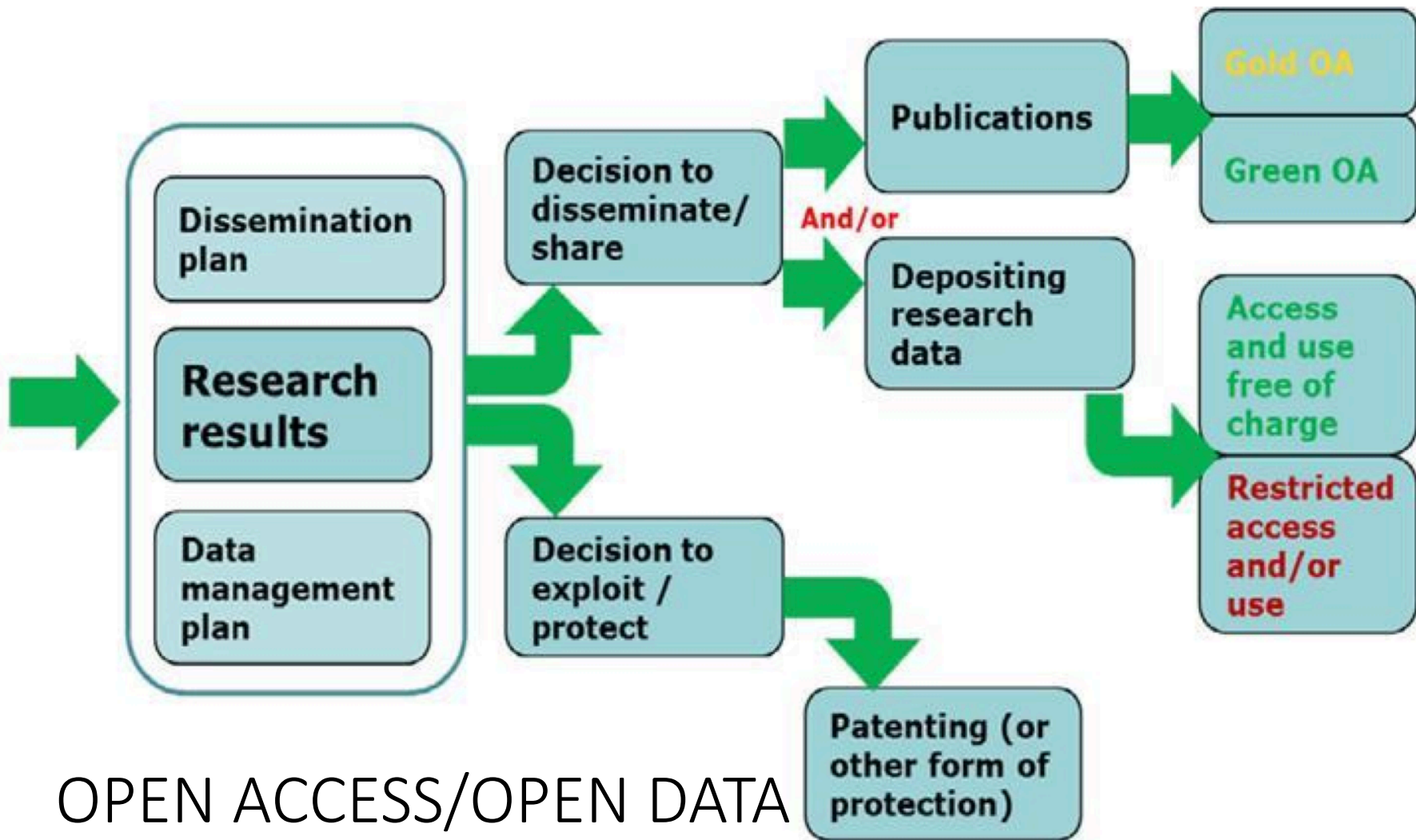


# Science

- Open Access
  - Green – auto-archiving of post-prints (after reviews)
  - Golden – publications of journal versions of the text
- Legal Issues
  - Who can license?



# Research



Source: Guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020, p. 4. Available from: [http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/hi/oa\\_pilot/h2020-hi-oa-pilot-guide\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-pilot-guide_en.pdf)

IP in Science

# IPR Related Terminology

What do all the specific terms such as *background/foreground* in the project documentation mean?

Specific (non-binding) terms

- Results (foreground)
- Background
- Access rights
- Dissemination
- Exploitation - Commercialization

# IP AT MU

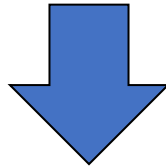
How do we deal with results/IP on MU? How can/shall I share my scientific results?

# Fundamental Document

- MU Directive No. 10/2013: Intellectual property at Masaryk University
- [https://is.muni.cz/auth/do/1487/46569012/MU\\_Directive\\_revision\\_reviewed\\_final.pdf](https://is.muni.cz/auth/do/1487/46569012/MU_Directive_revision_reviewed_final.pdf)
- Sets out rights and obligations associated with:
  - creating,
  - notifying,
  - registering,
  - protecting and using
- of intellectual property.

# HIERARCHY

Grant Conditions + Other  
Agreements shall prevail



MU Directive 10/2013

# INFRASTRUCTURE FOR IP

- MU Technology Transfer Office ("TTO")
- University Economic Units of MU ("UEU")
  - Contact person for IP and TT
    - Full-list: <https://www.ctt.muni.cz/en/intellectual-property/contact-persons>
- Masaryk University Publishing House ("MUPH")
- YOU! (should cooperate:)



# VERY BASIC LAYMEN INFO ABOUT IP

- IF you are an employee the rights are regularly vested in the MU.
- IF you are a student of MU the rights are regularly yours, however MU is entitled to ask you for a license.

# SLIGHTLY MORE SOPHISTICATED INFO ABOUT USE OF INTELLECTUAL PROPERTY

## **INTERNAL**

- general use of intellectual property for the needs of MU

## **EXTERNAL**

- use of intellectual property by an entity distinct from MU:
  - (1) transfer of rights
  - (2) licence
  - (3) another contract
  - (4) transferring a MU share in a spin-off
  - (5) providing services
- COMMERCIAL
- NON-COMMERCIAL (gratuitous)

# Dealing with INDUSTRIAL PROPERTY

- As an employee **you are obliged to notify MU** in writing about anything created that may be a subject of industrial property
- Report of Invention (Art. 5 MU-IP-DIR Notification about the creation of industrial property)
- Assessment of an invention – TTO
  - "Opinion on exercising a MU right to industrial property"
- Rector (or TTO Director) decides about exercising the right to the subject of industrial property
- Cooperation with patent attorney in filing an application- TTO

# DEALING WITH COPYRIGHTED WORKS

# Dealing with Copyrighted Works

- MU exercises, in its own name and on its own account, author's economic rights to copyrighted works, which are employee works.
  - HEAD of the UEU decides
- Works that were created for the purpose of
  - publication in scientific journals or
  - conference proceedings –
- exercise of economic rights left to the author – AUTHOR (Employee) decides

# LAYMEN SUMMARY

- Journal articles, conference proceedings – you are the one in charge, you decide, you sign the licensing agreement
- BEWARE – Joint authorship! (i.e. other authors)
- Other works: head of the UEU (dean) is the one who decides about everything
- Institutional repository for realizing Open Access
  - <http://is.muni.cz/repozitar/?lang=en>
- DATABASES: All rights vested in MU

# COMMERCIALIZATION OF Results

This part has been prepared by modification of the presentation "Process and conditions of establishing a spin-off company and other forms of commercialization" by Pavel Koukal and Pavel Loutocký with their kind consent.  
(Workshop: Protection and Commercialization of Scientific Outcomes at MU)

# The Forms of Commercialization of Research Results

- **A) Licensing/Transfer**
- **B) Contractual research**
- **C) Collaborative research**
- **D) Commercialization through the established legal entity** (spin– offs)



## A) Licensing

- ☞ Third party obtains permission to use IP of MU for remuneration
- ☞ Costs of any research connected with the results => MU
- ☞ License: exclusive or non-exclusive license

## B) Contractual Research

- ❏ Conducted for a third party upon her order and at her expenses
- ❏ Ordering party pays the costs of research in full
  - ❏ including the costs of labour
- ❏ Results => entirely: ordering party

## **C) Collaborative Research**

- ❏ Conducted in collaboration with third party
- ❏ Costs are usually borne by two cooperating entities together
- ❏ Both subjects: access rights to background
- ❏ Results: both parties

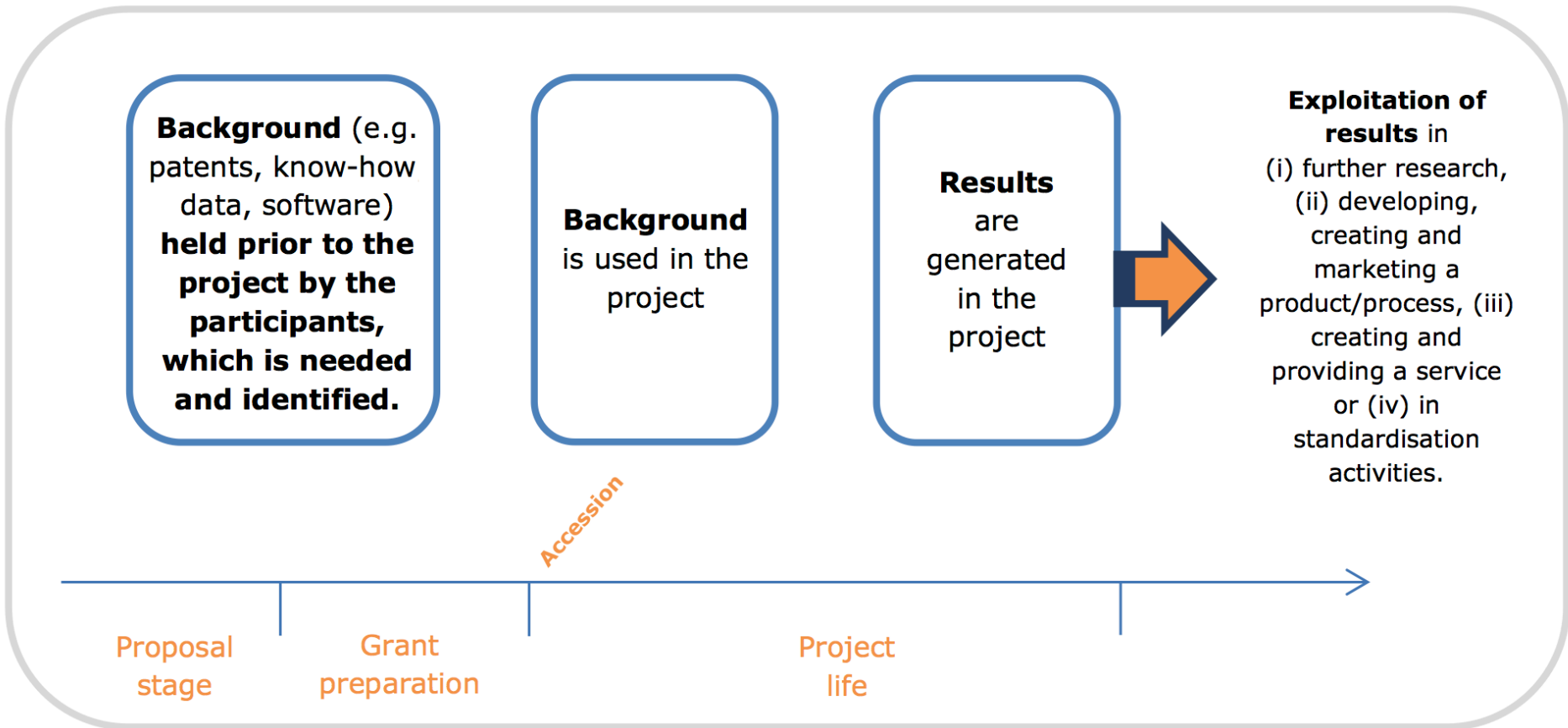
## **D) Commercialization through the Established Legal Entity (spin-offs)**

- ❏ Established for the purpose of better use of the results of MU
- ❏ Improve efficiency of the production or development activities
- ❏ **Joint Venture Company** – MU and other company create new company to cooperate and to support mutual interests.

# IPR in H2020 PROJECTS

## **PRACTICE:**

2) What are the frequently used IP terms in H2020, why do I need to consider IP in projects and how does it affect me?



Source: European IPR Helpdesk Fact Sheet: IP Management in Horizon 2020: project proposal, p. 5. Available from: [https://www.iprhelphdesk.eu/FS\\_IP\\_Management\\_H2020\\_proposal](https://www.iprhelphdesk.eu/FS_IP_Management_H2020_proposal)

# BASIC DOCUMENTS

- Rules for Participation – Art. 41 – 49 - RfP
- Grant Agreement (MGA, AMGA)  
(Part 3: Art. 23a-31)
- Consortium Agreement => Art. 41.3 MGA
- [www.desca-2020.eu](http://www.desca-2020.eu)

General:

- IPR Helpdesk H2020 - <https://www.iprhelpdesk.eu/>

# Frequently used IPR terms in H2020 Projects

Background

Results

Access Rights

Exploitation

Dissemination



# BACKGROUND – Art. 2/1/4 RfP

- *“any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights, which is:*
  - *held by participants prior to their accession to the action;*
  - *needed for carrying out the action or for exploiting the results of the action;*  
*and*
  - *identified by the participants.”*
- Positive list – our “input” into the consortium
- Obligation to inform about restrictions

## RESULTS – Art. 2/1/19 RfP

- *“any tangible or intangible output of the project, such as data, knowledge or information, that is generated in the project, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights.”*

# RESULTS

- Joint ownership – Art. 26 MGA, 8 DESCA
- Protection – Art. 42 RfP, Art. 27 MGA – best effort
- Exploitation (Art. 43 RfP, 34 MGA) & Dissemination (43, RfP, 29 MGA, 8.4 DESCA)
- Transfer and Licensing – Art. 44 RfP, 30 MGA, 8.3 DESCA)

## EXPLOITATION – Art. 2/1/9 RfP

- *“use of results in further research activities other than those covered by the action concerned, or in developing, creating and marketing a product or process, or in creating and providing a service, or in standardisation activities.”*

## DISSEMINATION – Art. 2/1/9 RfP

- *“public disclosure of the results by any appropriate means (other than resulting from protecting or exploiting the results), including by scientific publications in any medium.”*

# ACCESS RIGHTS

- Granting access for Partners/Affiliated Entities to
  - Background
  - Results
- For
  - Implementation (Art. 47 RfP, 31.2 MGA, 9.3 DESCAs) – Always royalty free
  - Exploitation of own Results (Art. 48 RfP, 25.3 MGA, 9.4 DESCAs) – Royalty free or Fair and Reasonable Conditions

# NEEDED

- “Needed” means:
- For the implementation of the Project:  
*“Access Rights are Needed if, without the grant of such Access Rights, carrying out the tasks assigned to the recipient Party would be technically or legally impossible, significantly delayed, or require significant additional financial or human resources.”*
- For exploitation of own Results:  
*“Access Rights are Needed if, without the grant of such Access Rights, the Exploitation of own Results would be technically or legally impossible.”*
- Requesting party has to prove
- Disputes– čl. 11.8 DESCA

# IP PLANNING/MANAGEMENT

- **Proposal Stage**

- Criterion Excellence - Background
- Criterion Impact – Results – COST! (Also for OA)
- Plan for the Exploitation and Dissemination of Results (PEDR) - Draft

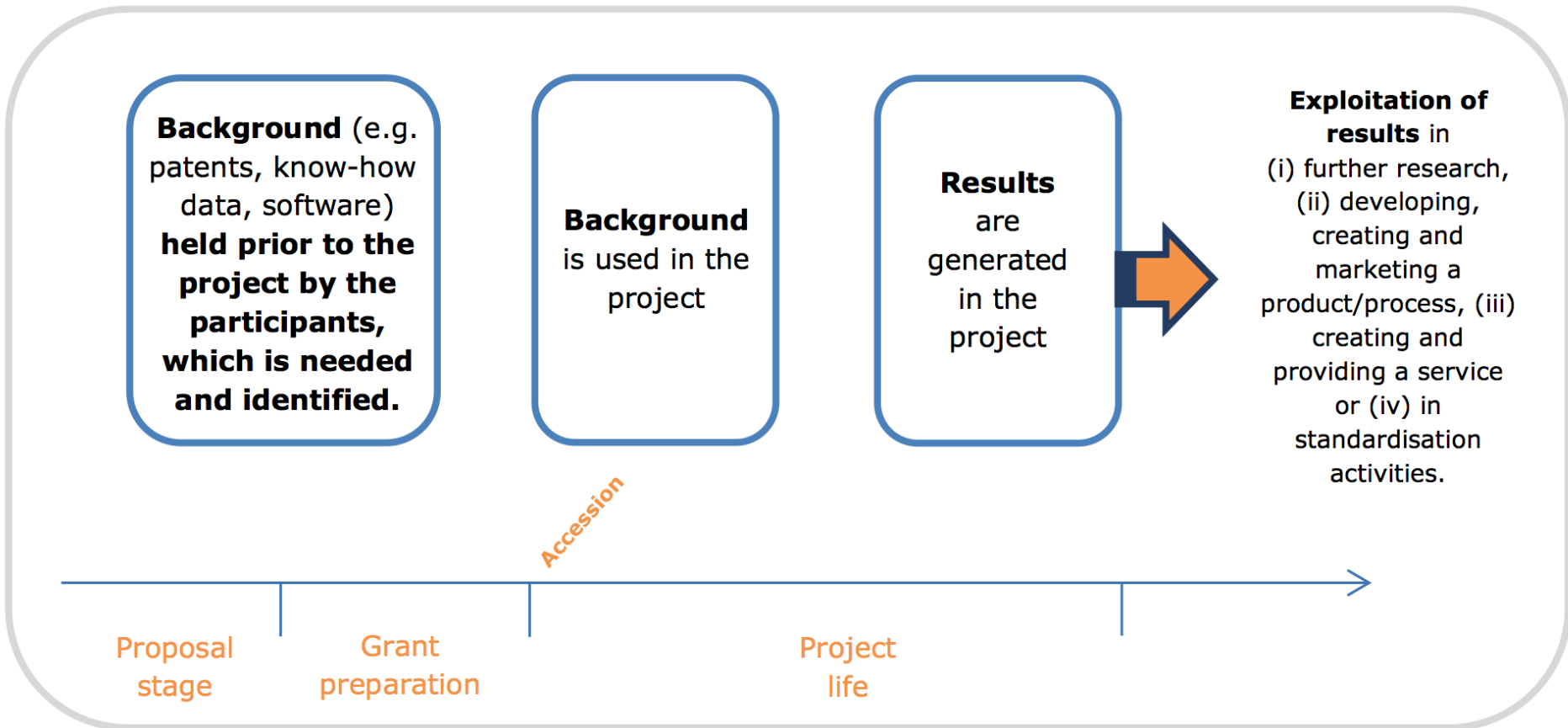
- **Grant Preparation stage**

- Putting it to on paper: CA – Background, Results, Access Rights (Confidentiality)
- PEDR – Annex I
- Data Management Plan Proposal

- **Project Implementation**

- Data Management Plan (Deliverable)
- Exploitation and Dissemination According to the Plan (+Revision)





Source: European IPR Helpdesk Fact Sheet: IP Management in Horizon 2020: project proposal, p. 5. Available from: [https://www.iprhelphdesk.eu/FS\\_IP\\_Management\\_H2020\\_proposal](https://www.iprhelphdesk.eu/FS_IP_Management_H2020_proposal)

Draft PEDR in the project proposal

PEDR in the Annex I Grant Agreement

PEDR

Final report

Periodic review of the PEDR during the project implementation

# SUMMARY – what to consider?

- Existing IP to share
- Existing IP needed
- Resulting IP
  - Exploitation and Dissemination
- Open Access + Open Data Pilot
  
- **FURTHER HELP**
- H2020 IPR website:  
<https://www.iprhelppdesk.eu/taxonomy/term/149>

# MASARYK UNIVERSITY IP SUPPORT

FINALLY:

Who can help me with all that?

# Who and when can help you

- Writing project proposal:
  - Contact the Research & Development Office - Rector's Office
    - IPR issues – TTO
- Exploitation of results:
  - IP Contact person
  - TTO
- Dissemination
  - IP Contact person
  - MUPH

# University Economic Unit

- IP Contact Person
- Helps with communication with TTO

# Technology Transfer Office

- [www.ctt.muni.cz](http://www.ctt.muni.cz)
- In detail:

## **Technology Transfer Office**

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601 77 Brno

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ctt@ctt.muni.cz

# CONCLUSION

## **DO's**

- Follow the Directive 10/2013
- Contact the IP Contact Person
- Contact TTO

## **DON'Ts**

- Sign anything
- Publish (!) without prior consultation IP Contact Person/Partners
- Present (!) commercially interesting inventions without contacting TTO



Thank you for your attention!

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