Ethics of Scientific Conduct

Today’s programme

--- Copyright and authorship	Which results are covered by copyright? Authorship and Co-Authorship Author and his Employer Plagiarism – difference between scientific plagiarism and copyright plagiarism
---- IP Rights to software	Computer programme as IP, rights to other elements of software License and right to use the software Adaptation and De-Compilation of a computer program Open source software
----- Data and database rights	Rights to primary and secondary data Database as IP Protection of information
----- General responsibility towards society	Fundamental human right to knowledge and access to information Duty to disclose publicly funded research Open access vs Proprietory means of distribution Open repositories, Open data, , Open-Access, Open-Source, Public Licenses

Copyright and Authorship

Copyrighted work

- Unique result
- Creative element
- Natural person

➢ **Creative substance**

- Expressed in a way that can be percieved

➢ **Objective expression**

Copyright

Moral rights to the work

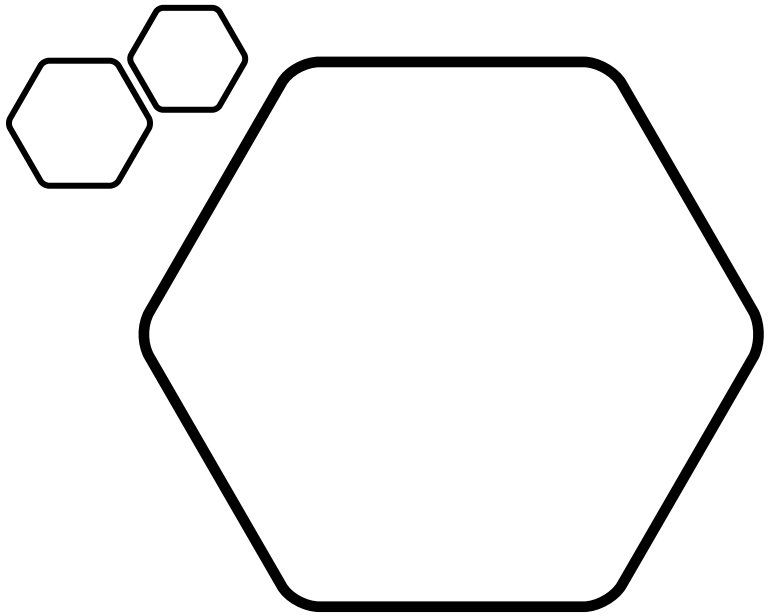
- Part of your „personality“ cannot be sold (in some European countries)
- right to claim authorship
- object to any distortion, modification of, or other derogatory action which would be prejudicial to the author's honor or reputation

Economic rights to the work

- Rights to benefits from your creativity
- Prevent anybody else to use work

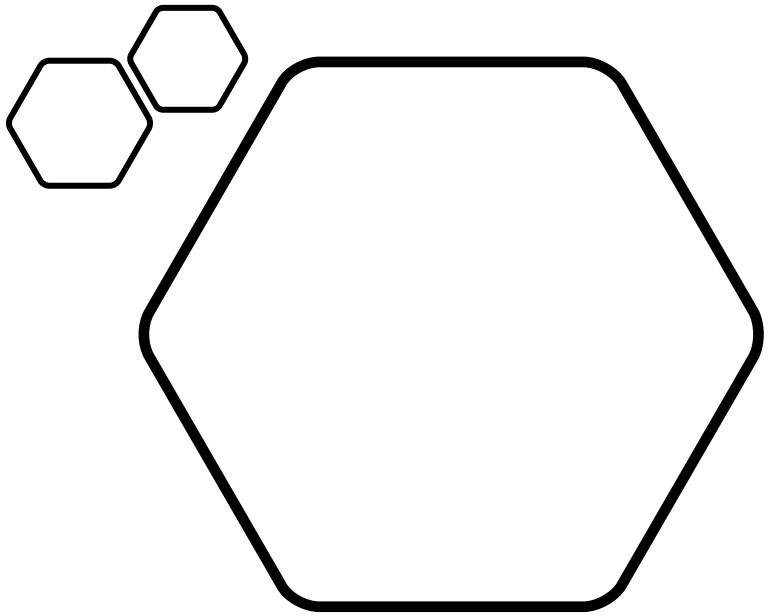
What is copyrighted?

- It really depends on the nation
  - Harmonisation through international treaties
  - Berne Convention, WIPO Copyright treaties, WTO



WIPO gives examples of what is protected in most countries

- literary works (novels, poems, newspaper articles)
- computer programs, databases;
- films, musical compositions, artistic works, drawings, photographs,
- architecture
- advertisements, maps, and technical drawings.



Berne convention (mother of all copyright treaties) - 1886

- **Minimum standards** of protection
  - works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression“
- **National treatment**
  - Each state grants foreign works same treatment as national works
- Copyright is the **need to require authorisation** to „use“ the work
  - „Use“ is a technical term, has to be defined by law
  - Positive list of „uses“ that require authorisation

What does it mean to „USE“, (typical examples)

the right to translate,
the right to make adaptations and arrangements of the work,
the right to perform in public dramatic, dramatico-musical and musical works,
the right to recite literary works in public,
the right to communicate to the public the performance of such works,
the right to broadcast,
the right to make reproductions in any manner or form,
the right to use the work as a basis for an audiovisual work

Summary

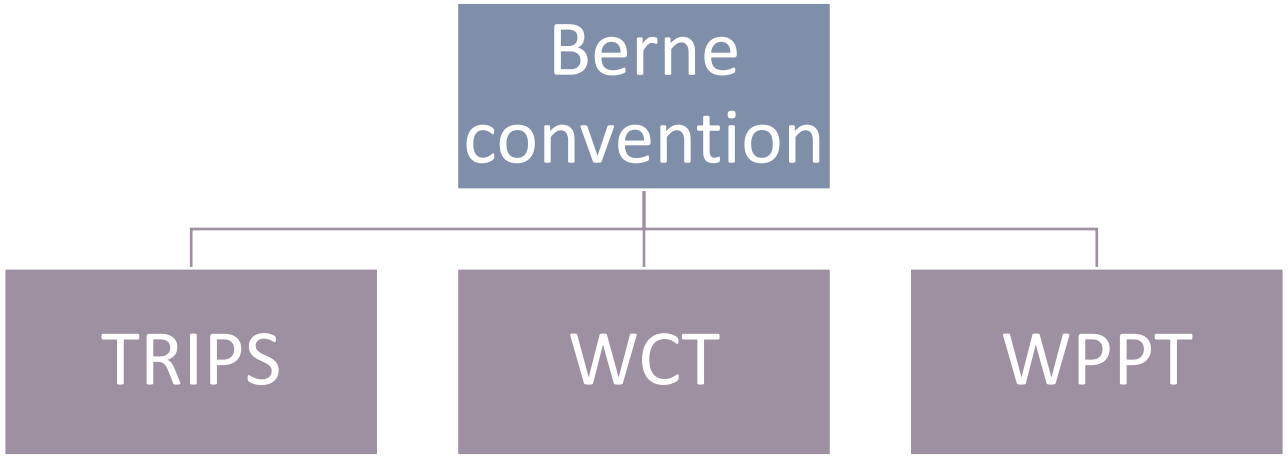
Each country has at least two „positive“ lists:

- What is considered as „protected work“
- What is considered as „use“

Most countries have the third list

- Exceptions

International treaties



European framework

Directive 87/54/EC protection of semiconductor topographies

Directive 93/83/EEC satellite and cable

Directive 2001/84/EC on the resale right

Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright

Directive 2011/77/EU on the term of protection of copyright and certain related rights

Directive 2012/28/EU on certain permitted uses of orphan works

Directive 2009/24/EC on the legal protection of computer programs

Directive 96/9/EC on the legal protection of databases

Directive 2001/29/EC on the harmonisation of certain aspects of copyright in the Information society

Directive 2019/790/EU on copyright and related rights in the Digital Single Market

Authorship

Author

- Originator – the one who gives existence
- Creative input + effort
- If two autors reach the same work independently the Copyright belongs to the first in line (usually).
- One work cannot have two authors, but can have co-authors

Co-Authors VS Collection of works

Co-Authorship means that the contributions to the final result cannot be percieved independently

- Both/all co-autors recieve equal rights to the final work

Collection of independent elements does not equal to co-authorship

- The person who collects many works can get a separate right to a collection

The Prophet's Song

Written by Brian May

Oh oh people of the earth
Listen to the warning
The seer he said
Beware the storm that gathers here
Listen to the wise men

I dreamed I saw an ancient tree
Spreading his hands on the multitude there
A man who cried for a love gone stale
And ice cold hearts of charity bare
I watched as fear took the old man's gaze
Hopes of the young in troubled graves
I see no sky, I heard him say
So grey is the face of every morrow

Oh oh people of the earth
Listen to the warning
The prophet he said
For soon the cold of night will fall
Surrounded by your own hatred

Oh oh children of the land
Quicken to the new life
Take my hand
Fly and find the new green bough
Picture like the white dove

He told of death on a bare white horse
Taking the last and the unloved babe
Like ice ran all the wrinkles out
Those kings of beasts now counting their days
From creation's love a fire was entangled
Married his own his precious girls
The earth will shake in two will break
And death all amazed will be your doxy

Oh oh people of the earth
Listen to the warning the seer he said
For those who hear and mark my words
Listen to the good plea

Oh oh — and two by two my human zoo
They'll be
running for to come
running for to come
out of the rain

Plea for your life
Who lived me big, let oh your treasure make you
Fear for your life
Deceive you not the fires of hell will take you
Should death await you

God give you grace to purge this place
And peace all around may be your fortune

Oh oh children of the land
Love is still the answer, take my hand
The vision fades, a voice I hear
"Listen to the Madness!"

But still I live and still I dare not
Laugh at the Madness

Toy Faces – Brian May

Written by Freddie Mercury

Love of my life – you've hurt me,
You've broken my heart and now you leave me,
Love of my life can't you see,
Bring it back, bring it back,
Don't take it away from me, because you don't know –
what it means to me.

Love of my life don't leave me,
You've taken my love, you now desert me,
Love of my life can't you see,
Bring it back, bring it back,
Don't take it away from me, because you don't know –
What it means to me.

You will remember –
When this is blown over
And everything's all by the way –
When I grow older
I will be there at your side to remind you
how I still love you – still love you.

Back – bury back,
Please bring it back home to me,
because you don't know what it means to me –
Love of my life
Love of my life...

Hang – Brian May

Good Company

Written by Brian May

Take good care of what you've got
My father said to me
As he puffed his pipe and duly R.
He dandled on his knee
Don't fool with fools who'll turn away
Keep oh Good Company
Oh Hoo Oo Hoo
Take care of those you call your own
And keep Good Company.

Soon I grew and happy was
My very good friends and me
We'll play all day with Sally J
The girl from number five
And very soon I begged her won't you
Keep me Company
Oh Hoo Oo Hoo
Come every one for everyone we'll
Be Good Company.

Now marriage is an institution sure
My wife and I our needs and nothing more
All my friends by a year
By and by disappeared
But we're safe enough behind our door.

I flourished in my humble trade
My reputation grew
The work devoured my waking hours
But when my love was through
Reward of all my efforts my sum
Limited Company

I hardly noticed Sally as we
Parted Company
All through the years to the end it appears
There was never really anyone but me

Written by Freddie Mercury

Is this the real life –
Is this just fantasy –
Caught in a landslide –
No escape from reality –
Open your eyes
Look up to the skies and see –
I'm just a poor boy, I need no sympathy –
Because I'm easy come, easy go,
A little high, little low,
Anyway the wind blows, doesn't really matter to me,
– to me –

Mama, just killed a man,
Put a gun against his head,
Pulled my trigger, now he's dead,
Mama, life had just begun,
But now I've gone and thrown it all away –
Mama, ooo,
Didn't mean to make you cry –
If I'm not back again this time tomorrow –
Carry on, carry on, as if nothing really matters –

Too late, my time has come,
Sends shivers down my spine –
Body's aching all the time,
Goodbye everybody – I've got to go –
Gotta leave you all behind and face the truth –
Mama, ooo –
I don't want to die,
I sometimes wish I'd never been born at all –

I see a little silhouetto of a man
Scaramouche, Scaramouche – will you do the fandango –
Thunderbolt and lightning – very very frightening me –
Galileo, Galileo,
Galileo, Galileo,
Galileo figaro – Magnifico –
I'm just a poor boy, nobody loves me –
He's just a poor boy from a poor family –
Spare him his life from this monstrosity –
Easy come, easy go – will you let me go –
Bismillah! No – we will not let you go – let him go –
Bismillah! We will not let you go – let him go
Bismillah! We will not let you go – let him go
Will not let you go – let me go
Will not let you go – let me go
No, no, no, no, no, no, no –
Mama mia, mama mia, mama mia let me go –
Beelzebub has a devil put aside for me, for me –
for me –

So you think you can stone me and spit in my eye –
So you think you can love me and leave me to die –
Oh baby – Can't do this to me baby –
Just gotta get out – just gotta get right outta here –

Nothing really matters,
Anyone can see,
Nothing really matters – nothing really matters to me.

Anyway the wind blows...

Operatic Vocals – Roger, Brian and Freddie

Cast
Freddie Mercury: vocals, vocals, Beechstein, Debenchery and more vocals
Brian May: guitars and orchestral backdrops
Roger Taylor: percussions
John Deacon: electric bass

Recorded at Sarm, Roundhouse, Olympic, Rockfield, Scorpio, Trident and Lansdowne
Mixed at Sarm Studios
Kindwater additional engineering – Gary Lyons
Equipment supervisor – John Harris
Art Direction – David Costa
Special thanks to Rick Gunn & Brian Palmer
Management (1975) – Jim Beach
Current Queen Management – Jim Beach

No Synthesizers!

Original sound recordings made by Queen in 1974 - 1975.

Collection of works (not co-authorship)

Rights of an employer/investor

Employee keeps Moral rights

Employer/Investor utilizes Economic rights

Authorship and Plagiarism

Academic and Legal perspective

What cannot be copyrighted

Laws of nature (Discovery)

Mathematical principles

Abstract ideas

Scientific theories

Factual Information

Anything that has not been expressed.

The fundamental difference

COPYRIGHT PROTECTS THE „EXPRESSION“

ETHICS PROTECTS THE „IDEA“

Who is the Author?

ACCORDING TO LAW – THE PERSON WHO WROTE (TYPED) THE TEXT

ACCORDING TO RESEARCH ETHICS- THE PERSON WHO HAD AN IDEA AND CONTRIBUTED EFFORT

What is Plagiarism?

ACCORDING TO LAW

USING SOMEONES WORK WITHOUT AUTHORISATION

ACCORDING TO RESEARCH ETHICS-

NOT GIVING CREDIT

Citation

Copyright

- Using (unsubstantial) part of someone's work
- It is allowed for research and teaching purposes
- Must be proportionate and not detrimental to the Author's interests

Research ethics

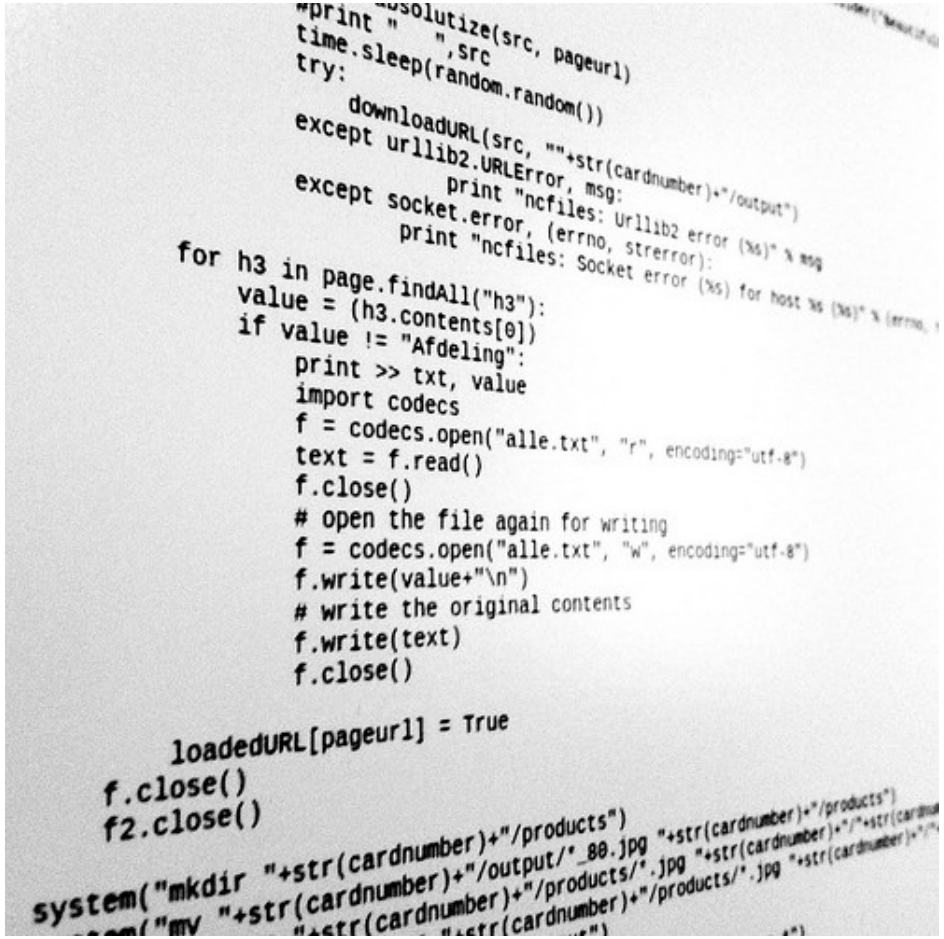
- Giving somebody credit for the contribution on which you build your research

Right to software and computer programs

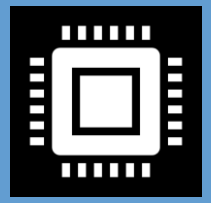
Module 2

Introduction to ……

Software



Computer program



machine-readable instructions

direct a computer to perform specific operations

Software vs. Program

Software

Broader definition

Program, Data, Documentation,

Program

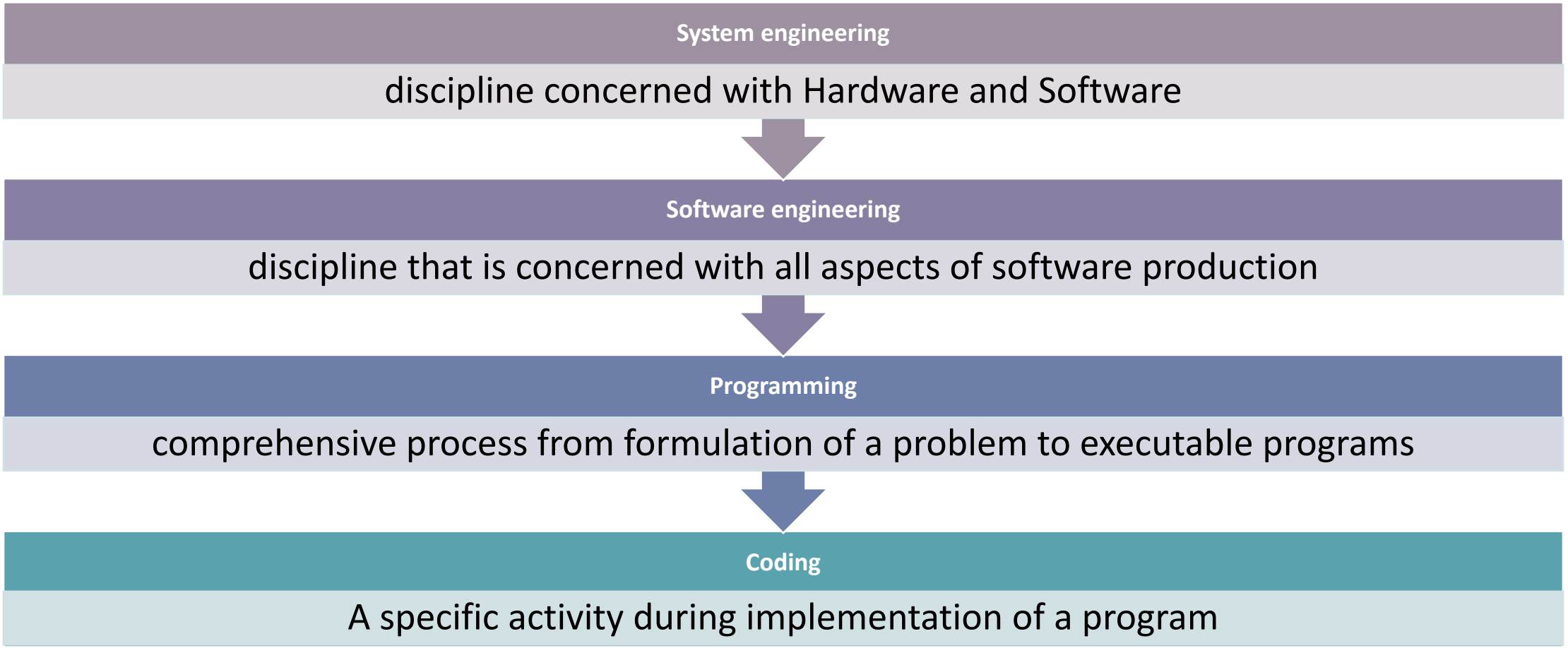
Machine language

Low level programming language (i.e. Assebler)

High level programming language

- Compiler

Coding, Programming, Engineering



Required Legal tools

What does market need?

What to protect ?

- IDEA
- FUNCTION
- GUI
- BRAND

What to protect ?

- IDEA
- FUNCTION
- GUI
- BRAND

What to protect ?

- IDEA
- FUNCTION
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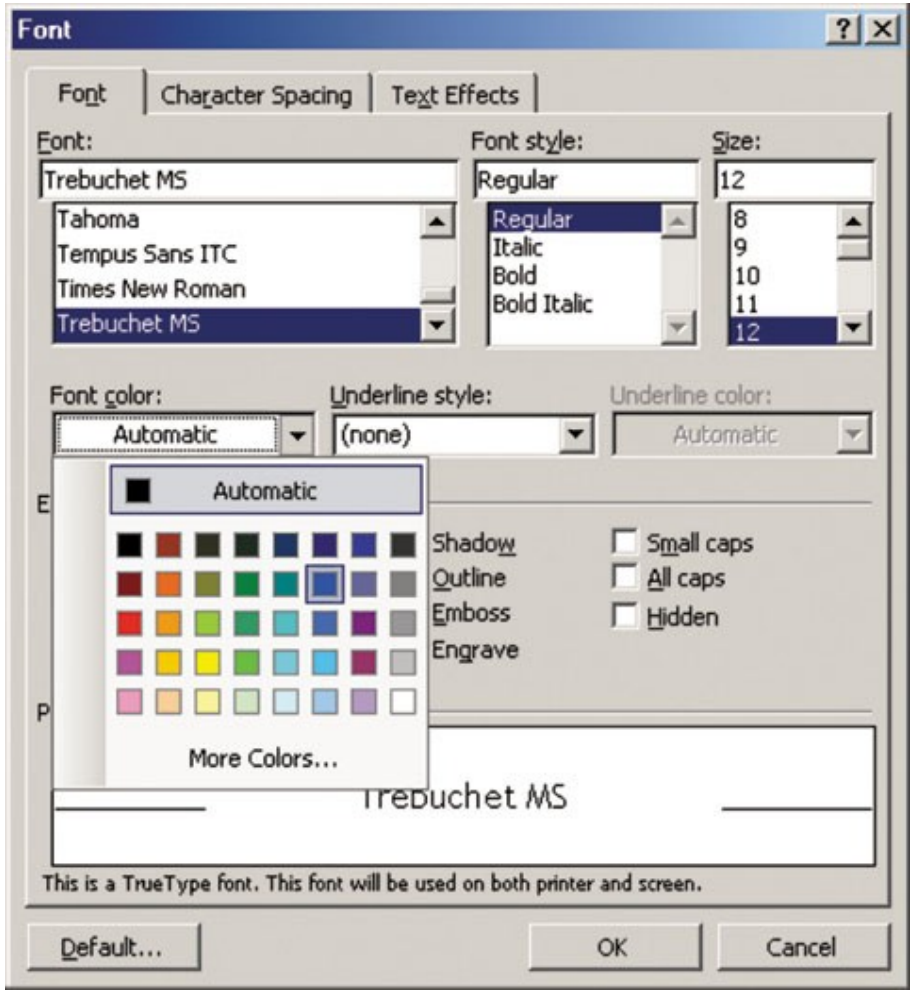

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What to protect ?

- IDEA
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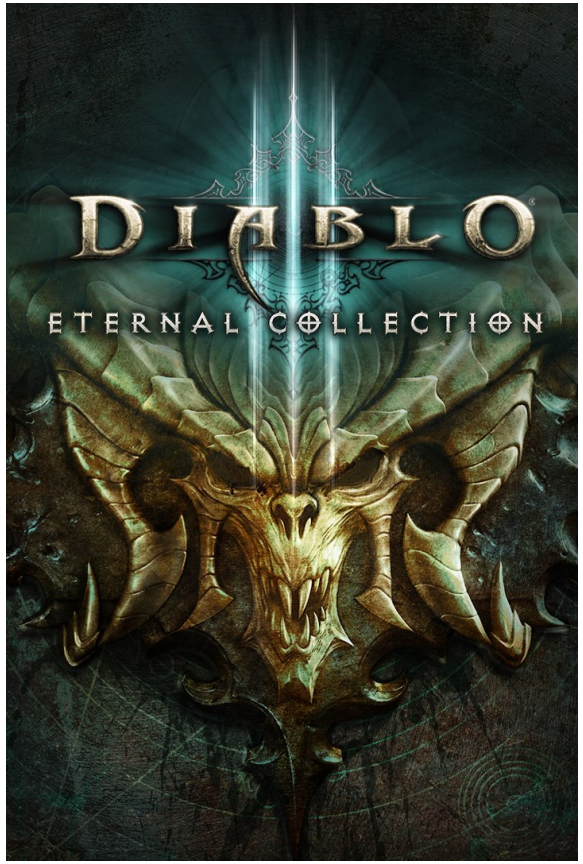
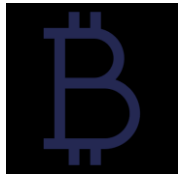
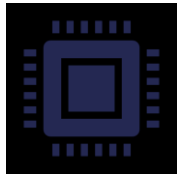


Main objectives:



Create a market

Sofware as a „product“ or „service“



Renumerate software producers

Software as intellectual property

Promote rights of a customer/consumer

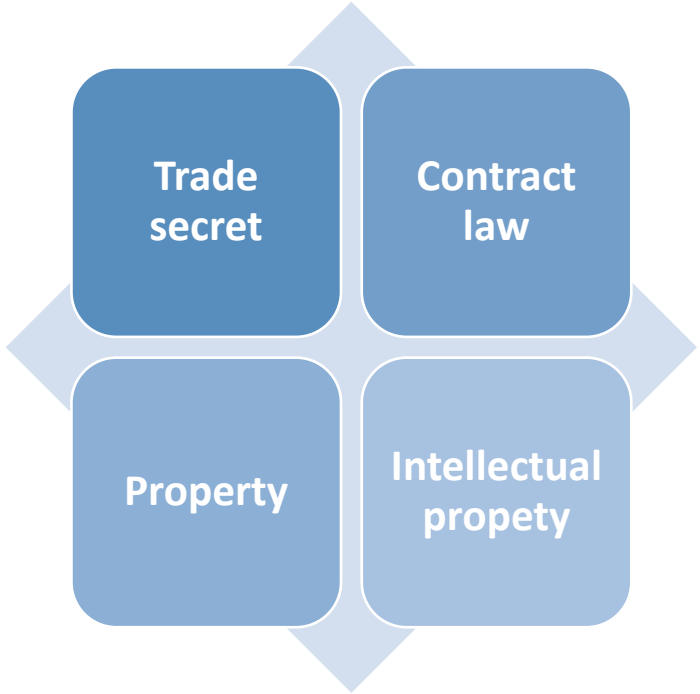
Software as a liability

Promote progress in creative art?

Software as a greater good

Software market

How to communicate value in a market?



Further Issues

- Employee-employer relations
- Agency agreements

Remuneration of software producers

Incentive

- License fee vs. Salary
- Company vs. programmer

Protection of

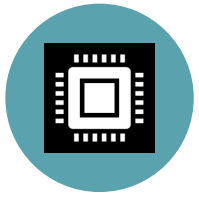
- Code
- Graphic user interface
- Idea

Legal tools for producers

Copyright

Patent

Trade secret



DRM – software protection tools?

Other specific IP rights?

Further questions

Protection of confidentiality and source code

Software patents

- Distinction between individual countries
- EU perspective

Free software concept and rules

Practical skills in contract writing EULA, SLA

Competition law perspective

Software Market

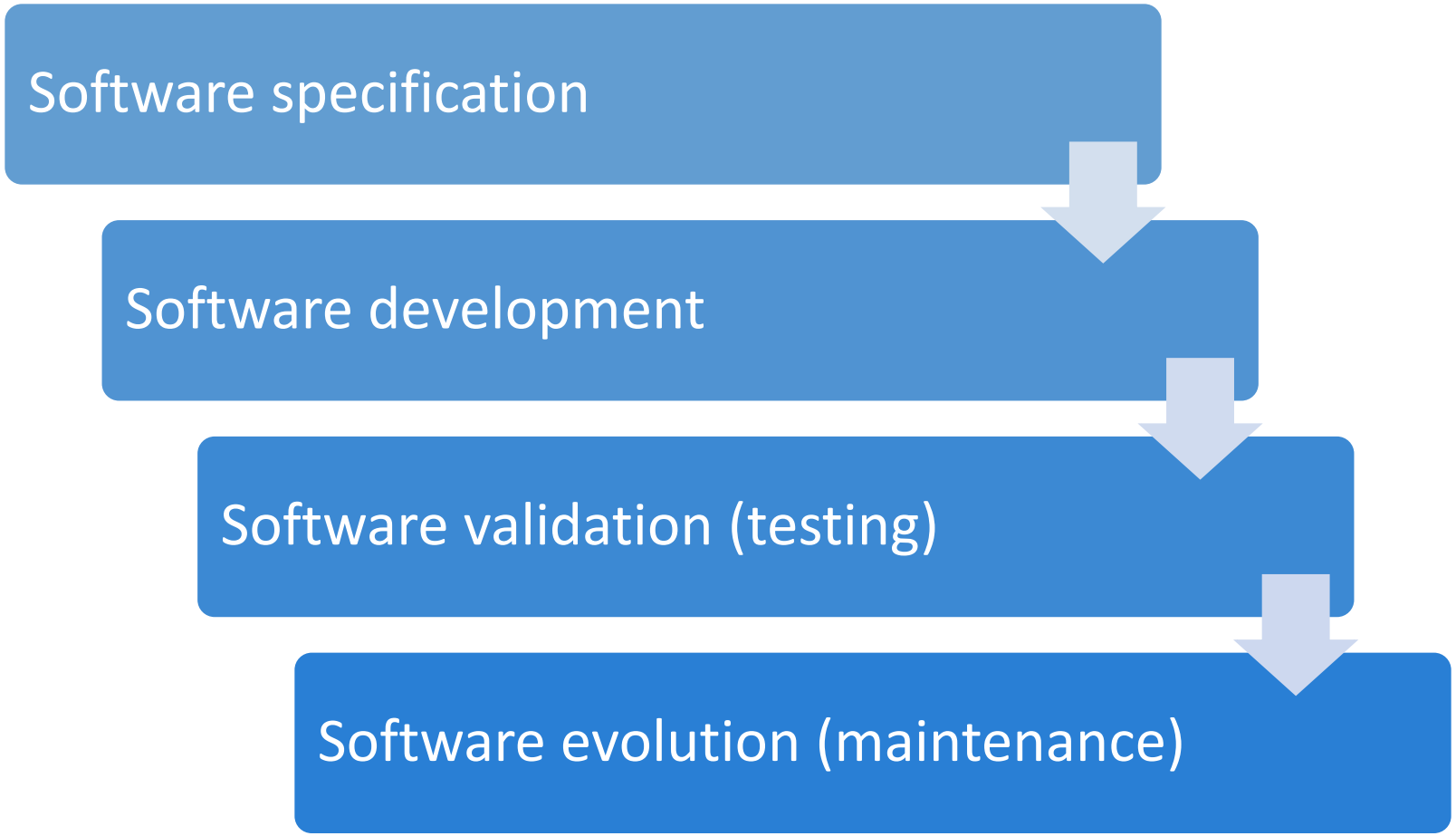
Generic copy/Service in cloud/Individual solution

Software Products

Generic products

Customized products

Four Fundamental activities



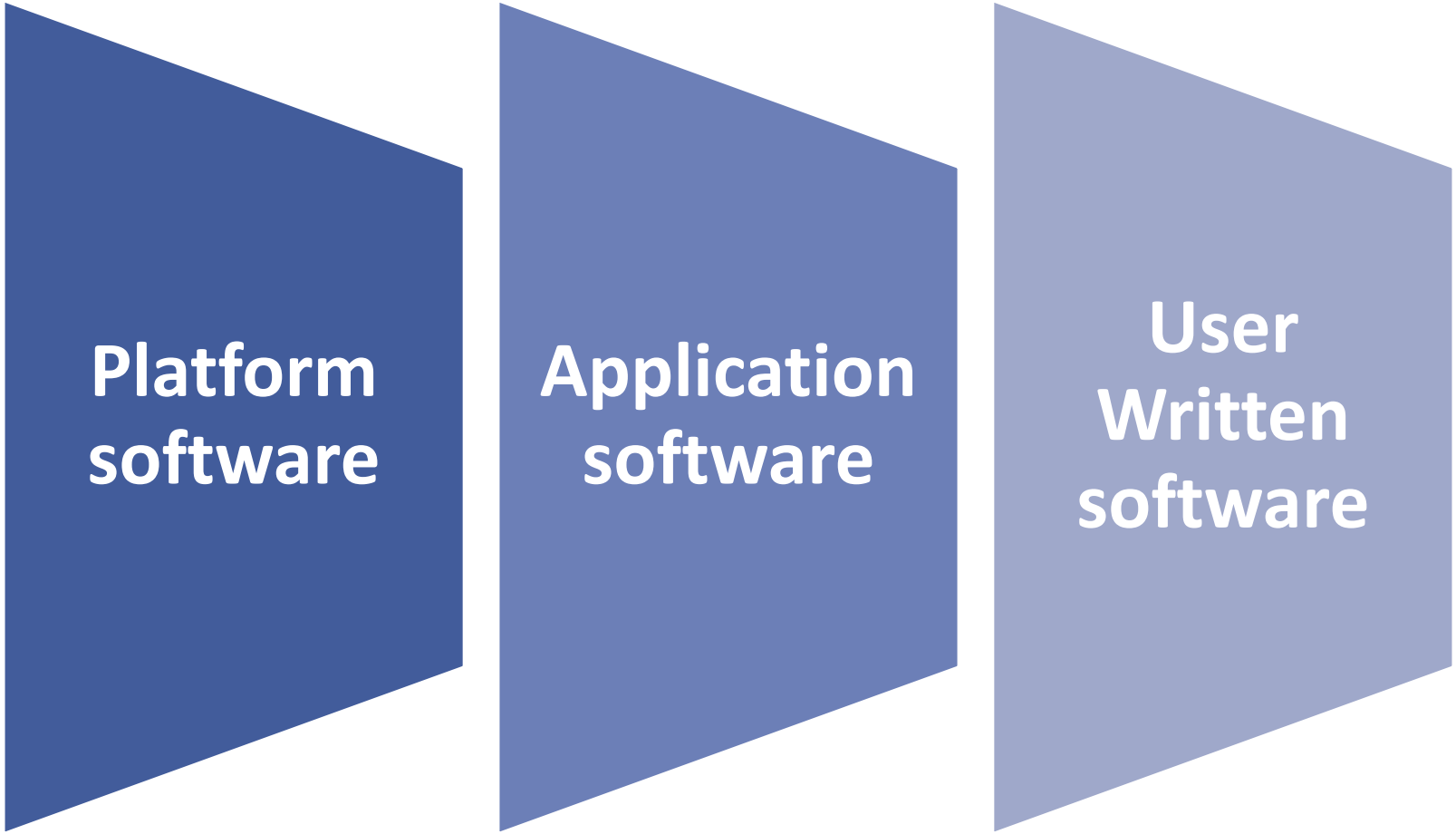
Computer programs Directive (EU)

computer program

shall include programs in any form:

- generic software
- customized software
- incorporated into hardware
- preparatory design work

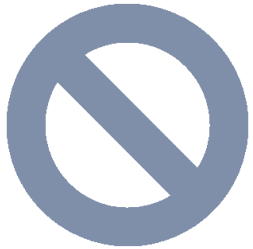
Architecture of software
- law does not make this distinction



How is the program protected?

by copyright,

as literary works within the Berne Convention



Applies to expression in any form

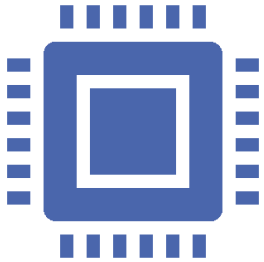
Copyright to computer program

What is protected?

YES	No
- the expression of a computer program - Binary Code - Source code	- Ideas - Principles - Logic, - Algorithms - Programming languages

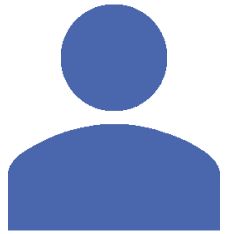
- Originator – the one who gives existence
- Creative input + effort
- If two autors reach the same work independently the Copyright belongs to the first in line (usually).
- One work cannot have two authors, but can have co-authors

Original Work?



A computer program shall be protected if it is original

no tests as to the qualitative or aesthetic merits



Author

Individual

Group

Company

Co-Authors VS Collection of works

Co-Authorship means that the contributions to the final result cannot be percieved independently

Both/all co-autors recieve equal rights to the final work

Collection of independent elements does not equal to co-authorship

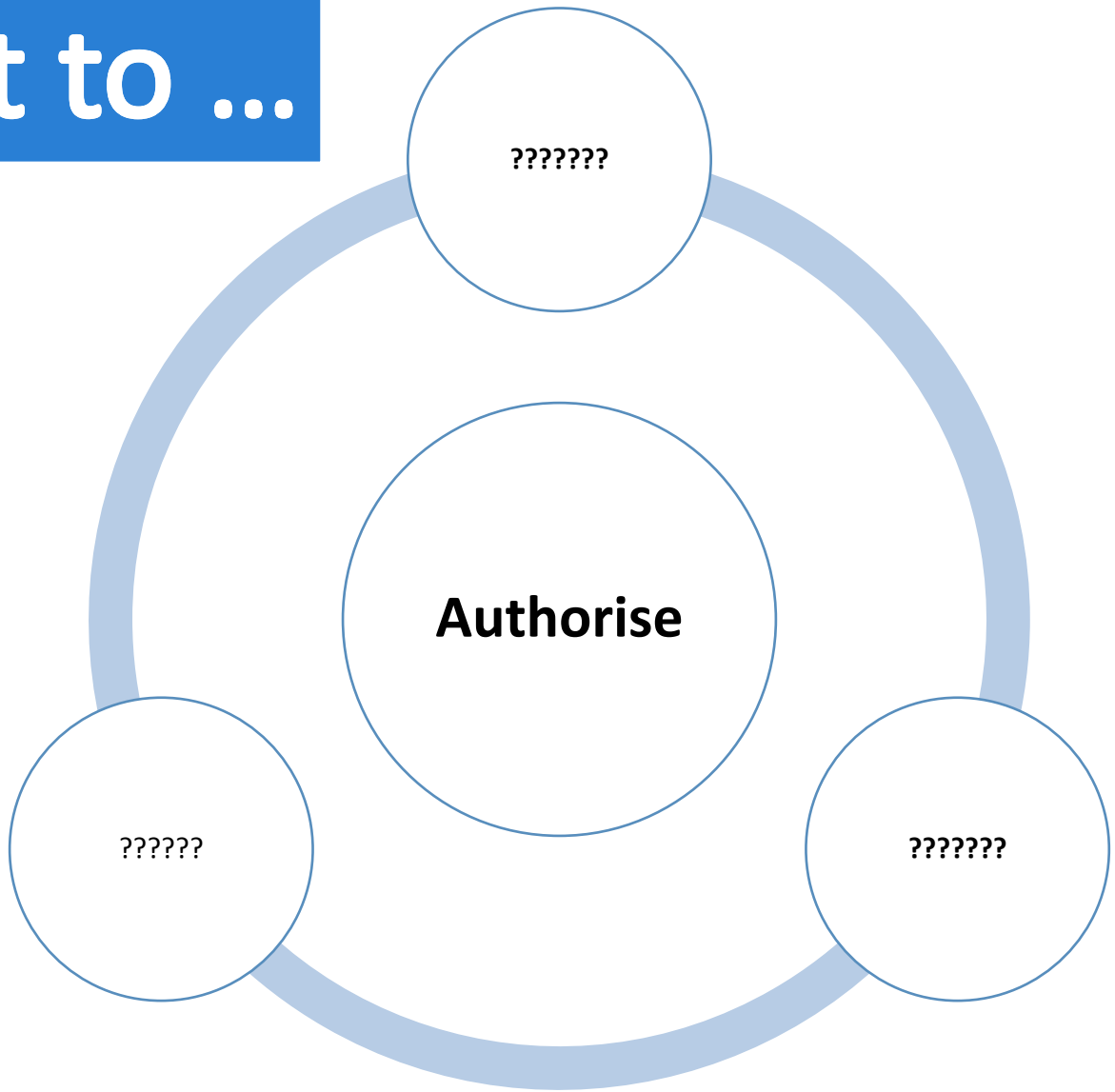
The person who collects many works can get a separate right to a collection

Cooperation – Who owns the work ??

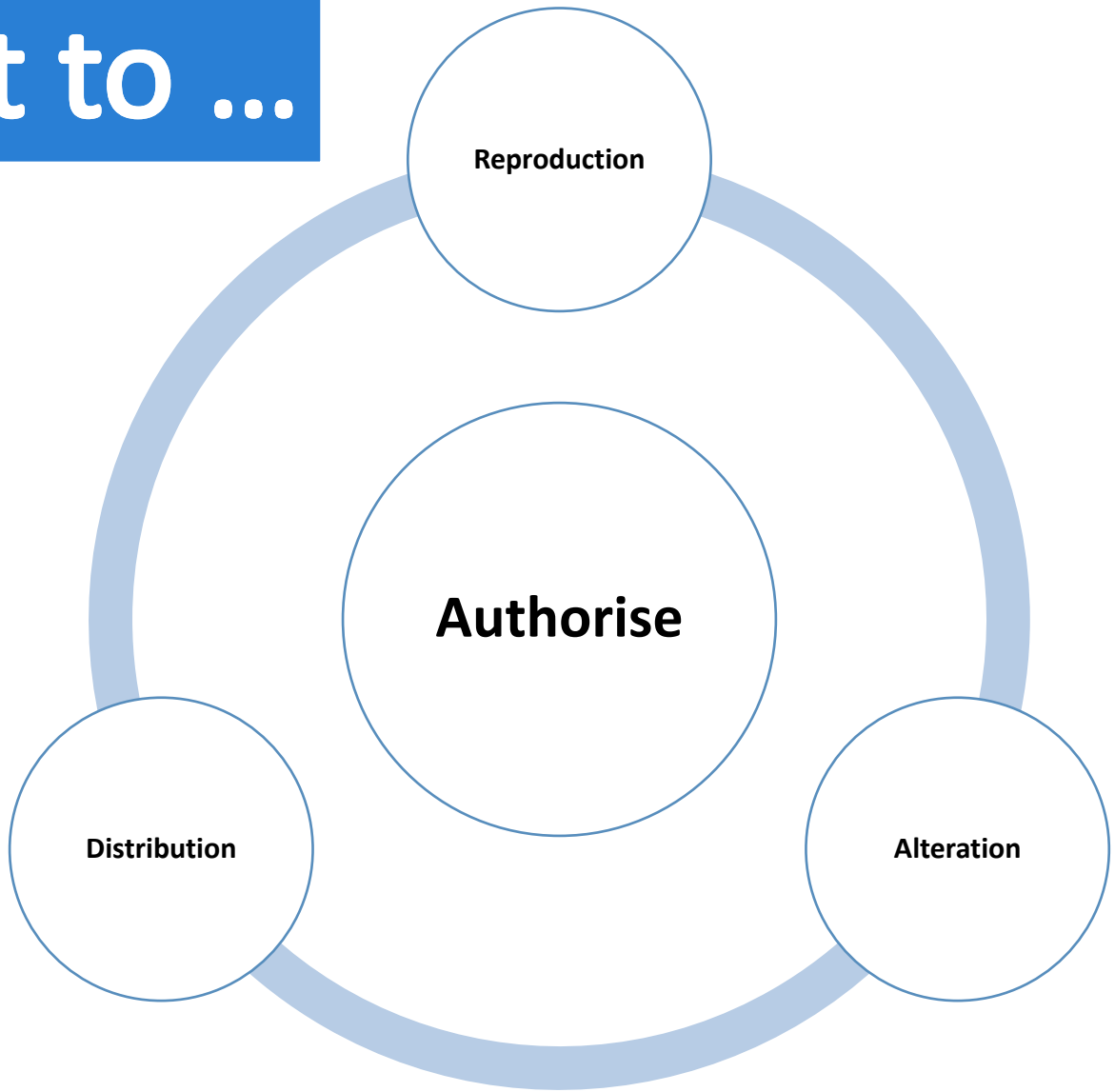
Joint cooperation	• Joint ownership
Collective work	• Usually the leading person
Employee	• Employer

What is the benefit of the authorship to a program?

Right to …



Right to …

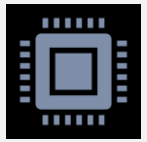


Rights for geeks – adapting the computer program to your needs

- The unauthorised adaptation is an infringement
  - Exemption - to achieve the interoperability with other program
- Back-up copy is permitted
- Right to observe, study or test the functioning of the program

Decompilation
When it is permitted

Right to use a copy program



Needs it for interoperability

It is necessary (not available otherwise)

Not for purposes of creating similar product

Decompilation is possible when

- Right to use a copy program
- Needs it for interoperability
- It is necessary (not available otherwise)
- Not for purposes of creating similar product

Exhaustion of rights

- The first sale in the Community of a copy of a program by the rightholder … shall exhaust the distribution right within the Community of that copy,
- with the exception of the right to control further rental of the program or a copy thereof.

http://whatculture.com/wp-content/uploads/2012/05/UsedGames.jpg

CASE LAW

SAS software - C-406/10

SAS software - C-406/10

- SAS INSTITUTE
  - developer of analytical software
  - Base SAS – enables users to write their own programs
- WPL
  - Competitor
  - Programmed something identical to Base SAS
  - the same inputs would produce the same outputs
  - Says it is OK to study programme
  - Says it is OK to emulate functionality

Argument of the SAS

- WPL did not have the right to acess the source code !
- WPL violated copyrights in manuals
- WPL copied certain „components“ if not the whole program

Court of justice (SAS software)

- to accept that the functionality of a computer program can be protected by copyright would amount to making it possible to monopolise ideas, to the detriment of technological progress
- protection covers only the individual expression of the work and thus leaves other authors the desired latitude to create similar or even identical programs provided that they refrain from copying
- WPL did not make a decompilation, they reproduced functionality

Conclusion no. 1

- 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 in computer programs for the purposes of that directive.

CJEU – Licence to explore

A licensee is entitled to observe, study or test the functioning of a computer program in order to determine the ideas and principles which underlie any element of the program.

It is enough to have a license to use

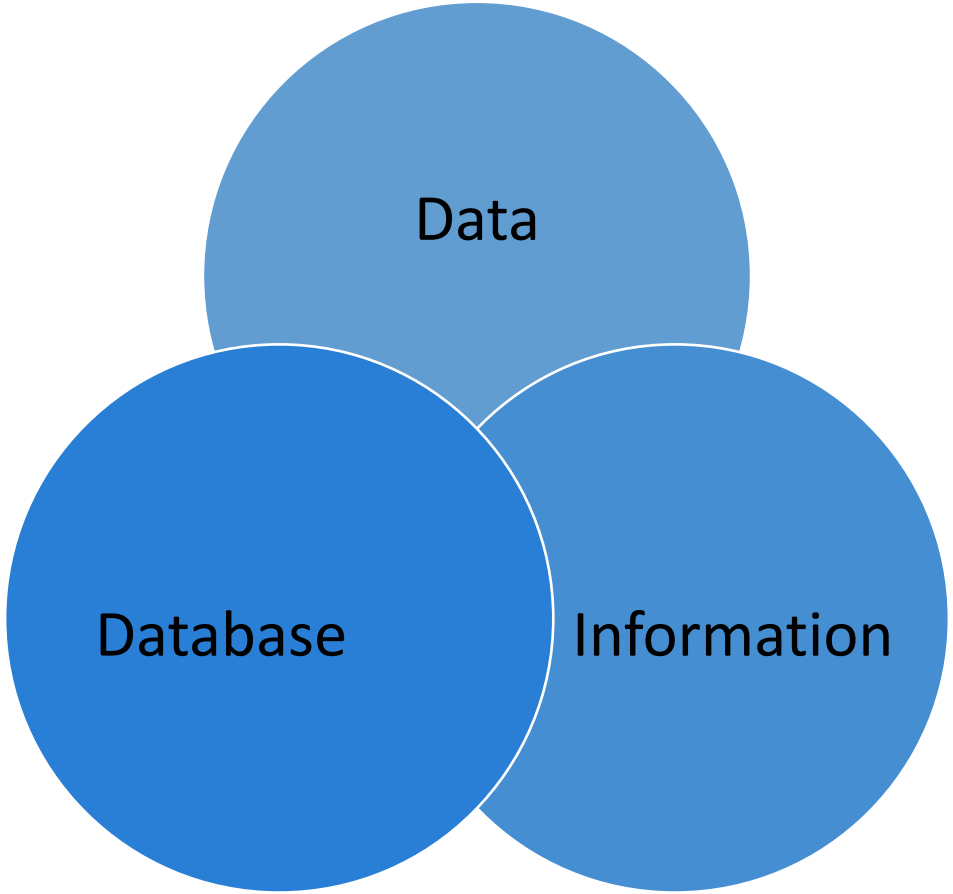
Does not need an expressed license to observe, study and test

Discussion

- If the functionality is not protected by software (comp. Programme directive), is it protected by something else?

Legal protection of data and databases

What is the difference



WHO OWNS THE DATA ?

Is a very inaccurate question

Ownership is possession of the storage medium

Does not grant the exclusive rights

Better question is “who owns IP rights to the data”

IP RIGHTS TO THE DATA

Database Authorship

Protects creative input to collection of the data

Sui generis database rights

Protects the investment

Database

da·ta·base (dā′tə-bās′, dăt′ə-) *Computer Science*

n. also **data base**

A collection of data arranged for ease and speed of search and retrieval. Also called *data bank*.

tr.v. **da·ta·based**, **da·ta·bas·ing**, **da·ta·bas·es**

To put (data) into a database.

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database (ˈdeɪtəˌbeɪs)

n

1. (Computer Science) a systematized collection of data that can be accessed immediately and manipulated by a data-processing system for a specific purpose

2. (Communications & Information) any large store of information: *a database of knowledge.*

Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 1991, 1994, 1998, 2000, 2003

DATABASE – legal definition

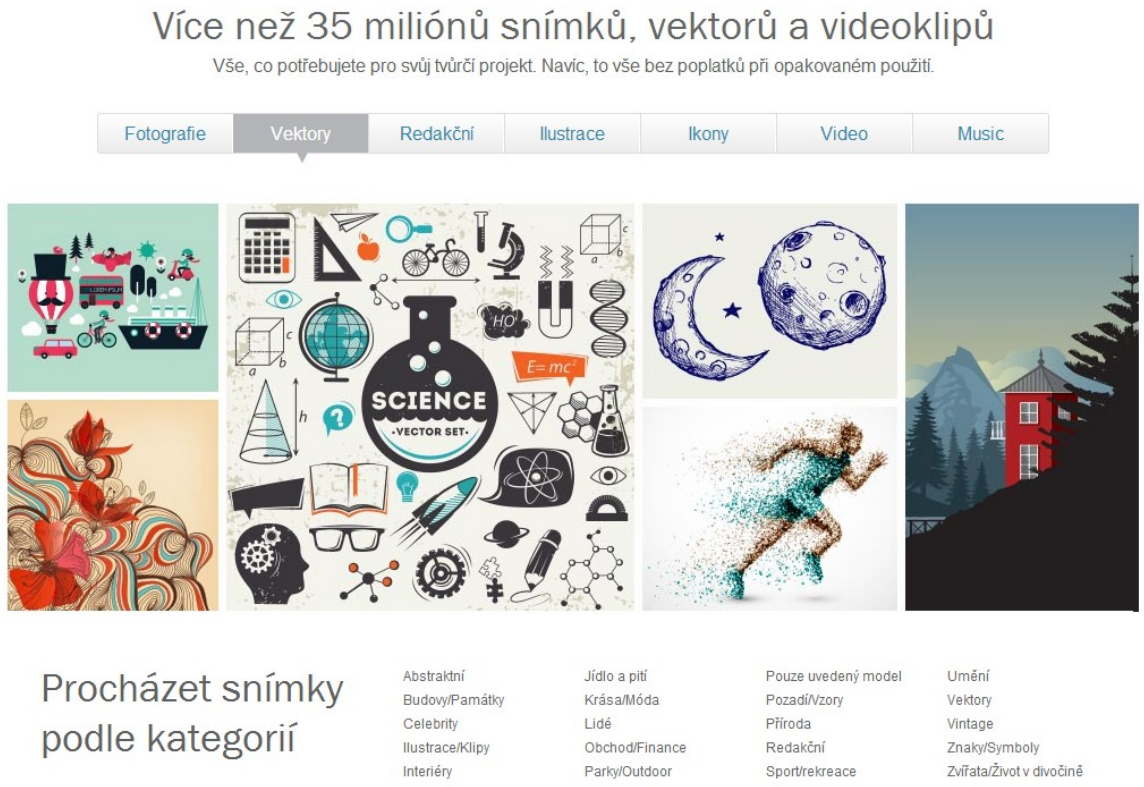
1) Collection of independent elements

2) systematically or methodically arranged

3) Individually accessed

DATABASE AS A COPYRIGHTED WORK

What about …


Více než 35 miliónů snímků, vektorů a videoklipů
Vše, co potřebujete pro svůj tvůrčí projekt. Navíc, to vše bez poplatků při opakovaném použití.
Fotografie
Vektory
Redakční
Ilustrace
Ikony
Video
Music
SCIENCE
VECTOR SET
Procházet snímky podle kategorií
Abstraktní
Budovy/Památky
Celebrity
Ilustrace/Klipy
Interiéry
Jídlo a pití
Krása/Móda
Lidé
Obchod/Finance
Parky/Outdoor
Pouze uvedený model
Pozadí/Vzory
Příroda
Redakční
Sport/rekreace
Umění
Vektory
Vintage
Znaky/Symboly
Zvířata/Život v divočině

Awarded by European regulation no **96/9/EC**

The aim was also to safeguard the investment of database makers

To ensure that the legitimate interests of users of information contained in databases were secured.

Creative input

Sweat of the brow?

Original

- Enjoy copyright protection
- Have creative element

Non-Original

- Lack creative element
- Require substantive investments to produce
- Need sui generis protection

What do we protect

Copyright to the database

Sui generis database right

Scope

This Directive concerns the legal protection of databases in any form.

- Electronic
- Non-electronic

Without prejudice to provisions relating to:

- the legal protection of computer programs;
- rental right, lending right and certain rights related to copyright in the field of intellectual property;
- the term of protection of copyright and certain related rights.

Databases which, by reason of the selection or arrangement of their contents, **constitute the author's own intellectual creation shall be protected as such by copyright**.

The copyright protection of databases provided for by this Directive **shall not extend to their contents** and shall **be without prejudice to any rights subsisting in those contents** themselves.

Author

- The author of a database shall be the **natural person** or group of natural persons **who created the base** or, where the legislation of the Member States so permits, the legal person designated as the rightholder by that legislation.

expression of the DB protectable by COPYRIGHT

The author of a database shall have the exclusive right to carry out or to authorize:

- temporary or permanent reproduction by any means and in any form, in whole or in part;
- translation, adaptation, arrangement and any other alteration;
- any form of distribution to the public of the database or of copies thereof.
- any communication, display or performance to the public;

Co-Authorship

Where collective works are recognized by the legislation of a Member State,

the economic rights shall be owned by the person holding the copyright.

In respect of a database created by a group of natural persons jointly,

the **exclusive rights shall be owned jointly.**

In addition, with respect to online materials, protected databases include: (T. Alexander Kley - The European Database Directive In Perspective)

- collections of company registers,
- movie schedules,
- news articles and headlines,
- real estate information,
- job records and markets,
- financial information,
- poems, medical lexicons,
- weblinks,
- ticketing event data,
- advertisements,
- addresses, and sporting event information.
- websites in general, as collections of webpages, are presumptively protected under the Directive so long as there was substantial investment in their content.
- collections of self-help groups,
- public exhibition catalogues,
- collective bargaining agreements, hit music titles, and magazines. F
- inally, in the case of electronic materials, protection may extend to collections of email addresses, demographic information, and map derivations. ADV-Firmenbuch, Austrian Supreme Court (Oberste Gerichtshof) (Apr. 9, 2002).

Sui generis Rights

NON original databases

Right for the maker of a database which shows that:

substantial investment

- qualitatively and/or
- quantitatively

in either the:

- obtaining,
- verification or
- presentation of the contents

Content of the right

prevent extraction

- shall mean the permanent or temporary transfer of the contents of a database to another medium by any means or in any form

prevent re-utilization

- any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.

Sui generis right can be exhausted

- The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;

Difference between original and non-original protection

Term of protection

Copyright

- Regular copyright

Sui generis right

- fifteen years from the first of January of the year following the date when the database was first **made available to the public** or
- 15 years after the **completion** (if never made public)

What about any update of the database ?

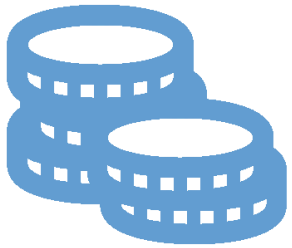
Commercialization

Sale/transfer	License
• Only sui generis.	• Sui generis right • Copyright

Computer program associated with the database

- Protection under this Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

Trade secret



Information with commercial value

Protected by law

Employees

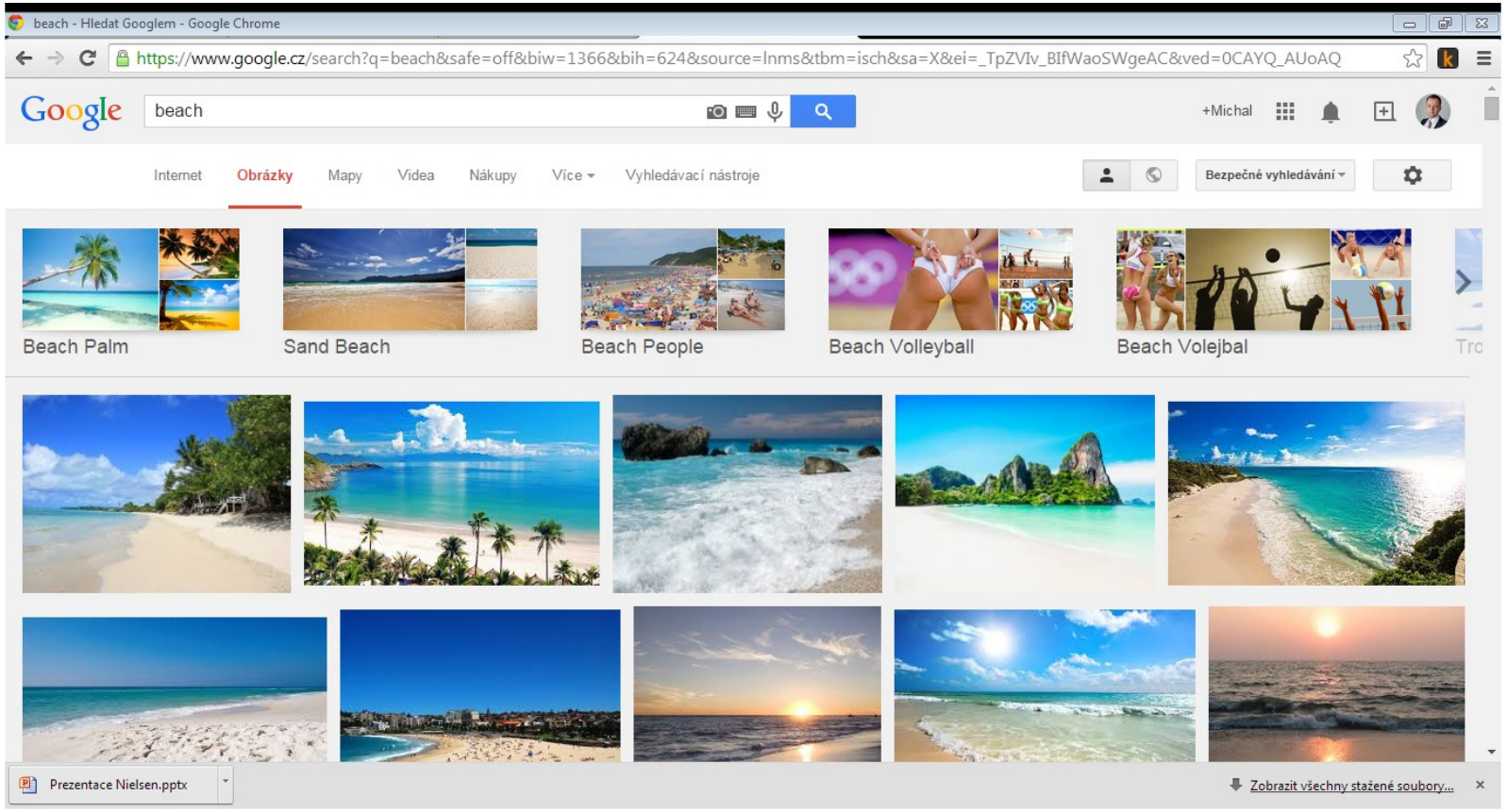
Confidential information

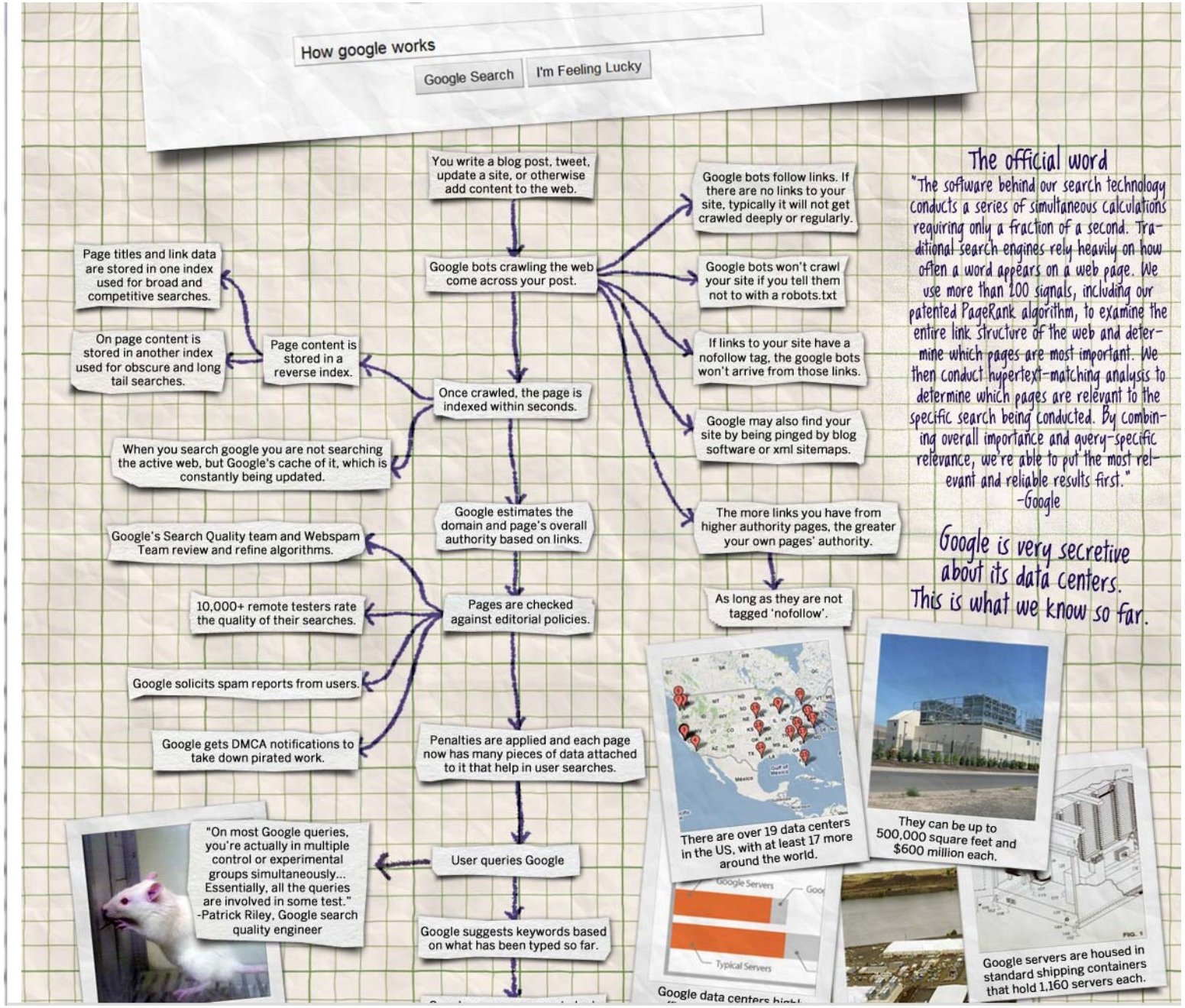
Contractual clause

Non disclosure agreement

At the beginning of cooperation

Taksk no. 1: what is google search?




How google works
Google Search
I'm Feeling Lucky
You write a blog post, tweet, update a site, or otherwise add content to the web.
Google bots crawling the web come across your post.
Google bots follow links. If there are no links to your site, typically it will not get crawled deeply or regularly.
Google bots won't crawl your site if you tell them not to with a robots.txt
If links to your site have a nofollow tag, the google bots won't arrive from those links.
Google may also find your site by being pinged by blog software or xml sitemaps.
The more links you have from higher authority pages, the greater your own pages' authority.
As long as they are not tagged 'nofollow'.
Page titles and link data are stored in one index used for broad and competitive searches.
On page content is stored in another index used for obscure and long tail searches.
Page content is stored in a reverse index.
Once crawled, the page is indexed within seconds.
When you search google you are not searching the active web, but Google's cache of it, which is constantly being updated.
Google estimates the domain and page's overall authority based on links.
Google's Search Quality team and Webspam Team review and refine algorithms.
10,000+ remote testers rate the quality of their searches.
Pages are checked against editorial policies.
Google solicits spam reports from users.
Google gets DMCA notifications to take down pirated work.
Penalties are applied and each page now has many pieces of data attached to it that help in user searches.
"On most Google queries, you're actually in multiple control or experimental groups simultaneously... Essentially, all the queries are involved in some test."
-Patrick Riley, Google search quality engineer
User queries Google
Google suggests keywords based on what has been typed so far.
The official word
"The software behind our search technology conducts a series of simultaneous calculations requiring only a fraction of a second. Traditional search engines rely heavily on how often a word appears on a web page. We use more than 200 signals, including our patented PageRank algorithm, to examine the entire link structure of the web and determine which pages are most important. We then conduct hypertext-matching analysis to determine which pages are relevant to the specific search being conducted. By combining overall importance and query-specific relevance, we're able to put the most relevant and reliable results first."
-Google
Google is very secretive about its data centers. This is what we know so far.
There are over 19 data centers in the US, with at least 17 more around the world.
They can be up to 500,000 square feet and $600 million each.
Google Servers
Typical Servers
Google data centers
Google servers are housed in standard shipping containers that hold 1,160 servers each.

EXCEPTIONS

- 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 reutilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever.

Database and software

Almost every software contains certain database

- Files, libraries, data, fonts, images
- Could be either copyrighted if they are unique and expressed
- Could be protected by sui generis, if they are acommpanied by sufficient investment

Future

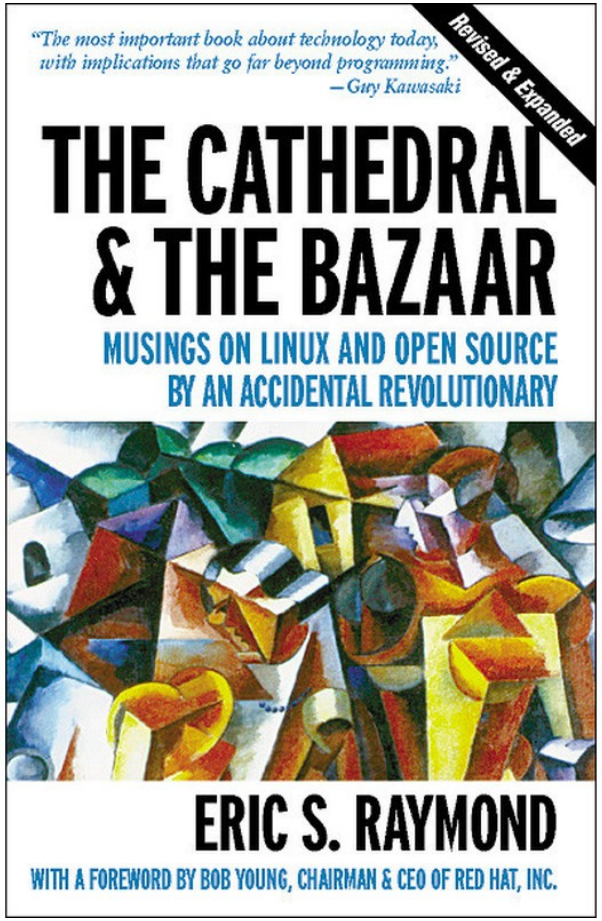
- Big data applications, data analytics applications

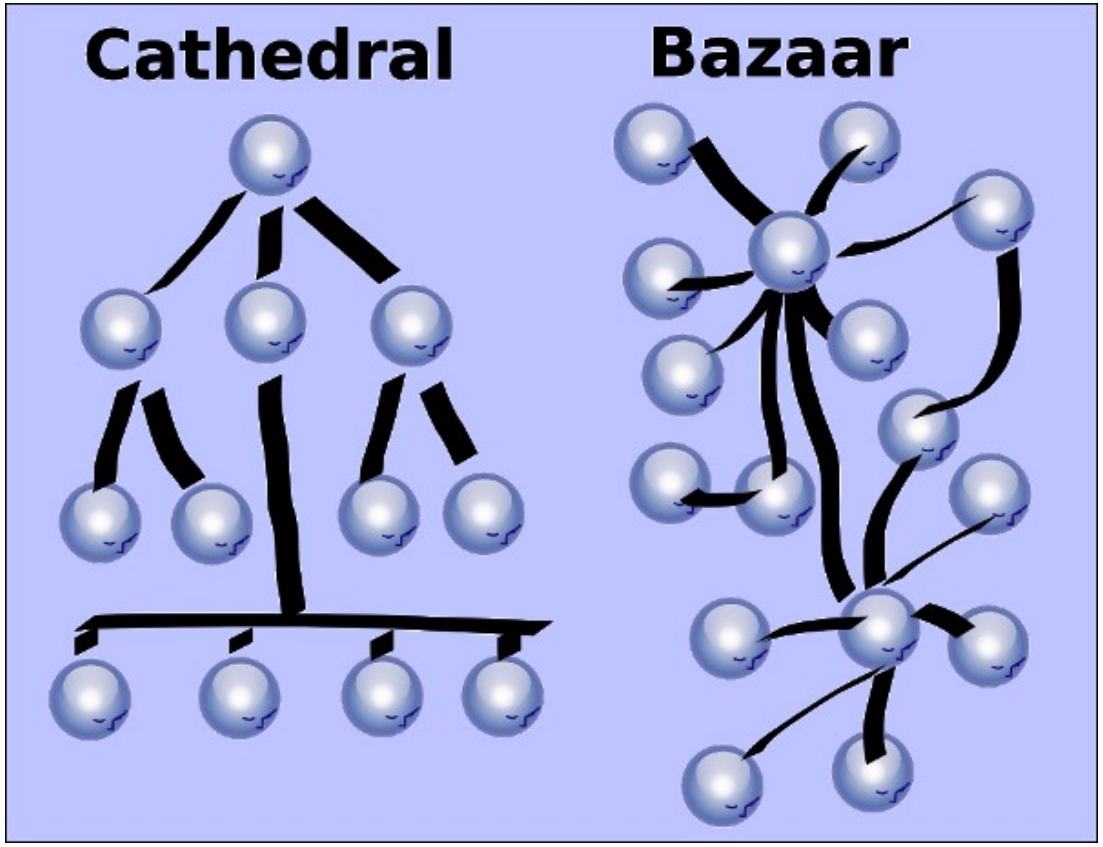
Questions

Module 4

Sharing your work and building on the works of others

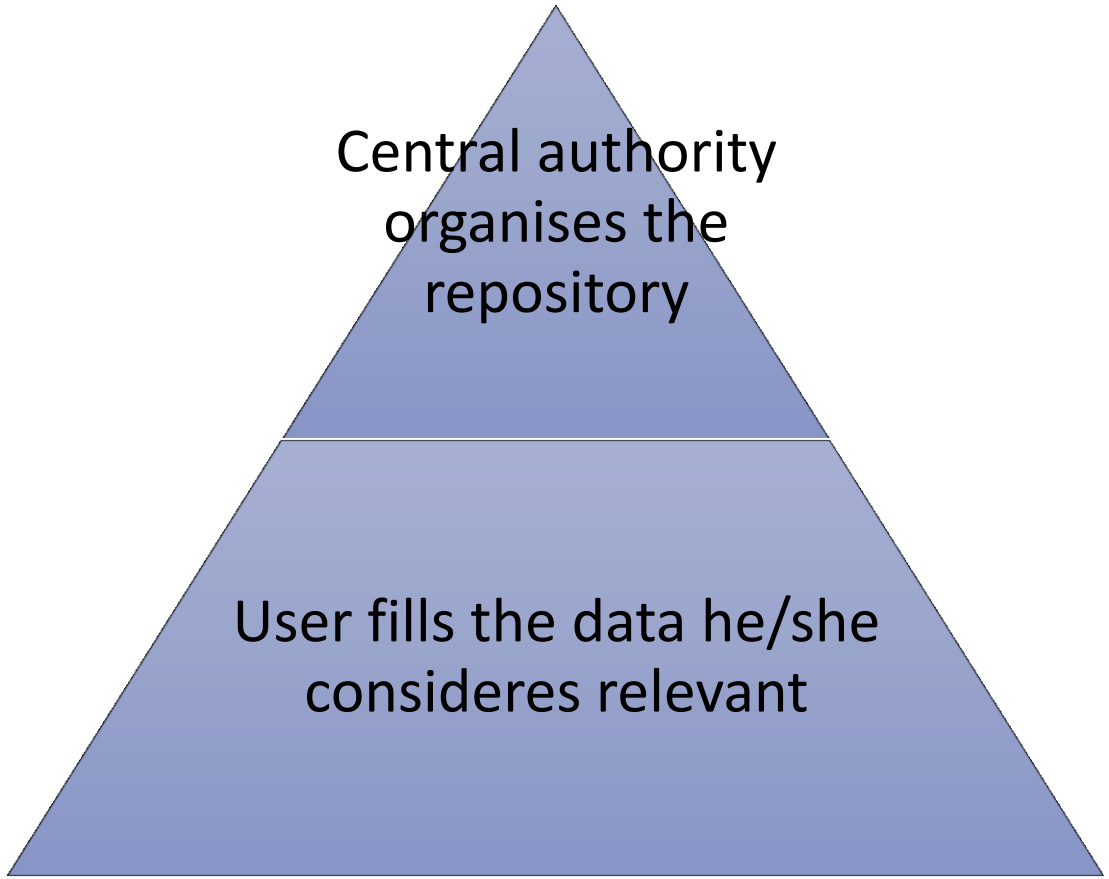
How to share information and knowledge



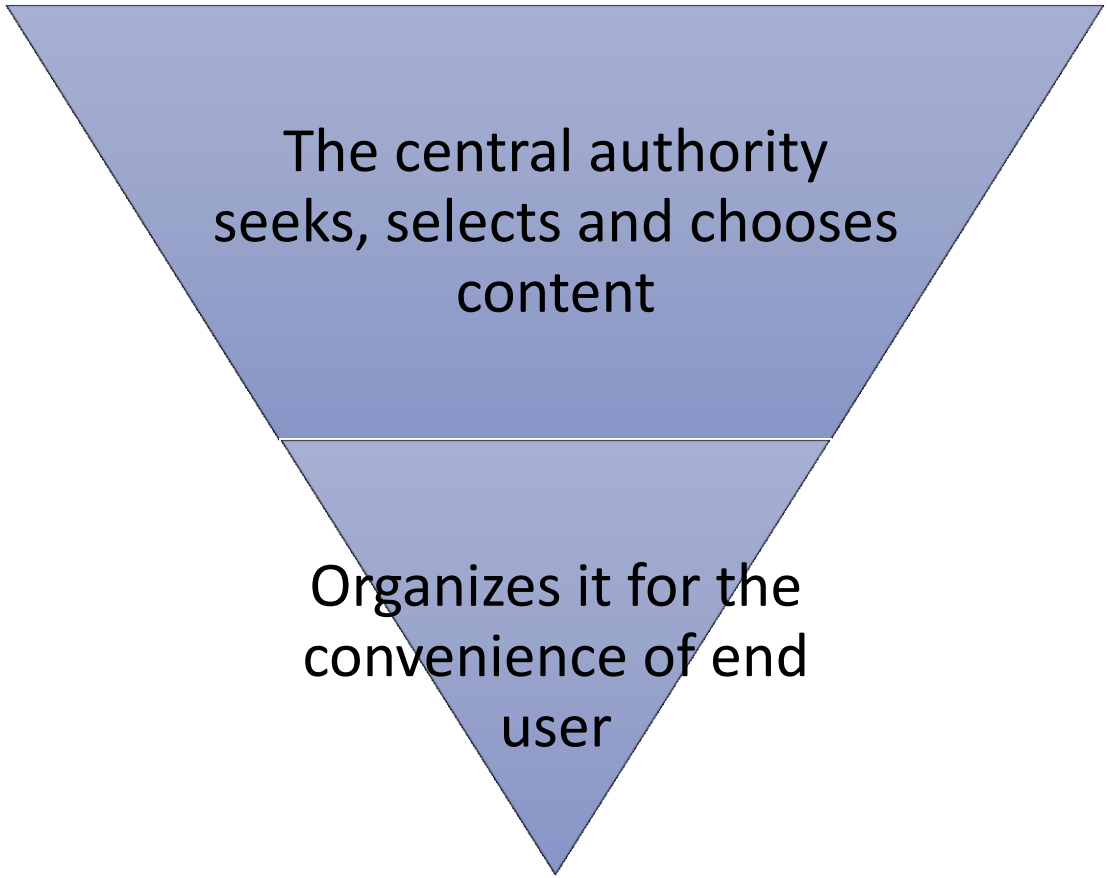


The lessons for data-sharing infrastructure

- BOTTOM UP



- TOP DOWN

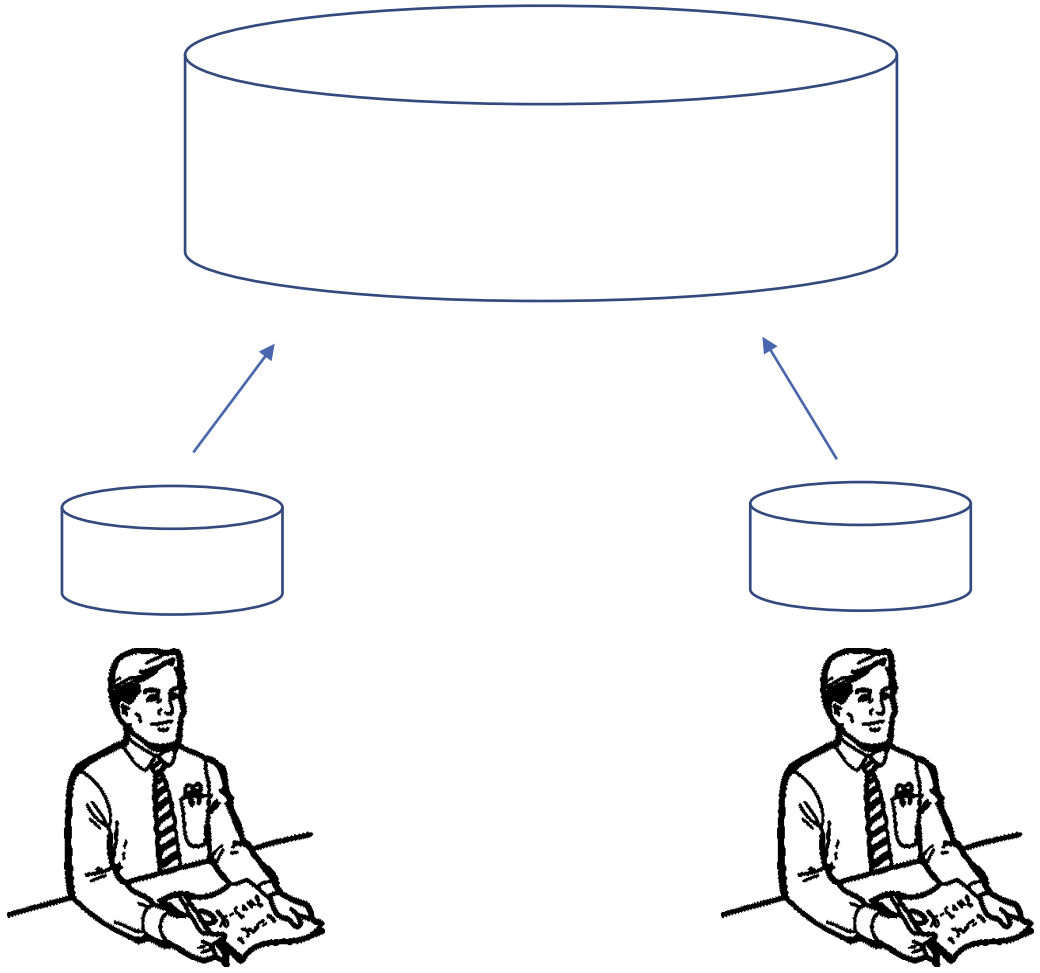


Data sharing design and law

IP law and DP law is predominantly based on the presumption of "top down" design

- It is easy to identify person with responsibility/liability
- It is easy to attribute "ownership"

Bottom up approach is a challenge



Possible outcomes

1+1=1 – desired outcome – merging two databases into one „joint database “

1+1=0 – merging two databases without substantial investment might create dataset without „database right protection“

1+1=2 – mere process of merging two databases does not constitute a substantial investment or original element. Therefore the two database rights exist independently

1+1=3 – the newly created database gains protection but the two original databases are still protected

0+0=1 – ideal situation – the datasets which would not be protected individually are protected as a whole

KEEP LEFT

The emergence of “bottom up” in IT brings us new tools, that we are still learning to use

- Safe harbor regimes
- Codes of conducts
- Free licenses

Main legal issues in data-sharing

Intellectual property rights

- Authorship of database
- Sui generis database rights
- Rights to primary data (maybe in the future)

Data protection rights, Privacy

- GDPR, general privacy rules

Right to access to information

- Public sector information
- Knowledge rights
- Data-mining exceptions

Right to know (?) and information access

There are other rights that have to be balanced towards “restrictive rights”

Freedom of speech

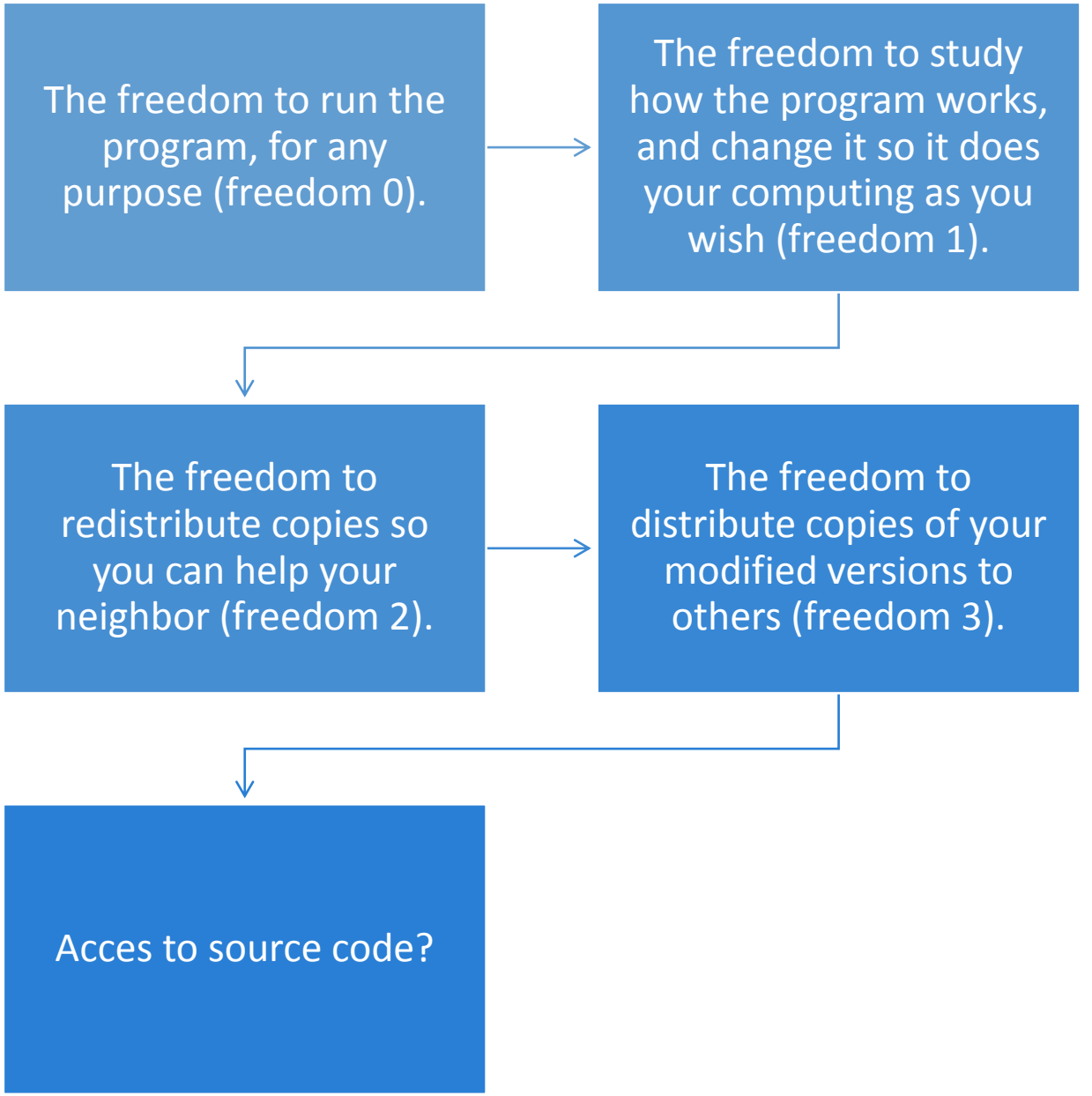
Freedom of information

Freedom of the arts and sciences

Transparency of public sector

It is not desirable to monopolize rights to mere information.

Free software



Open software

- 1. Free Redistribution
- 2. Source Code
- 3. Derived Works
- 4. Integrity of The Author's Source Code
- 5. No Discrimination Against Persons or Groups 6. No Discrimination Against Fields of Endeavor
- 7. Distribution of License
- 8. License Must Not Be Specific to a Product
- 9. License Must Not Restrict Other Software
- 10. License Must Be Technology-Neutral

- 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