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LEGAL ASPECTS OF ARTS AND HUMANITIES DATA

Bild: Uni Graz/Marija Kanizaj



But we are (digital) Humanists!

Why do we need to consider legal stuff?

HUMANities

Possible Encounters with Legal Issues



- Researchers as Users
- Researchers as Authors
- Researchers as Service Providers
- Researchers as Data Controllers
- Researchers as Data Subjects

Possible Encounters with Legal Issues



- | | | |
|------------------------------------|---|---|
| ○ Researchers as Users | ➔ | Copyright (authors' rights, droit d'auteur, Urheberrecht) |
| ○ Researchers as Authors | ➔ | Copyright and Licensing |
| ○ Researchers as Service Providers | ➔ | Host Providers, Content Providers |
| ○ Researchers as Data Controllers | ➔ | Data Protection and Privacy |
| ○ Researchers as Data Subjects | ➔ | Data Protection and Privacy |

... and then some



- Data as a “Work“ ?
- Metadata as a “Work”?
- AI-generated Works?
- Beyond legal obligations: ethical best practices

So many challenges, so little time!

COPYRIGHT

authors' rights

Urheberrecht

droit d'auteur

Intellectual Property Rights

A fundamental Human Right ...

Universal Declaration of Human Rights, Article 27



1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which [s]he is the author.

➔ [Berne Convention for the Protection of Literary and Artistic Works](#) (1886)

Dual Role: Creators AND Users

- Just **balance** between public interest (access, re-use) and the interests of the author/creator (recognition, remuneration)
- Philosophical: Knowledge as **Commons**
- Political: public access to publicly funded research (tax payers)
- European and National funding agencies: “open” obligations



Federal Act on Copyright and Related Rights

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte (URG)



Article 2

1. Works are **literary and artistic intellectual creations** with individual character, irrespective of their value or purpose.

Federal Act on Copyright and Related Rights

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte (URG)



They include, in particular:

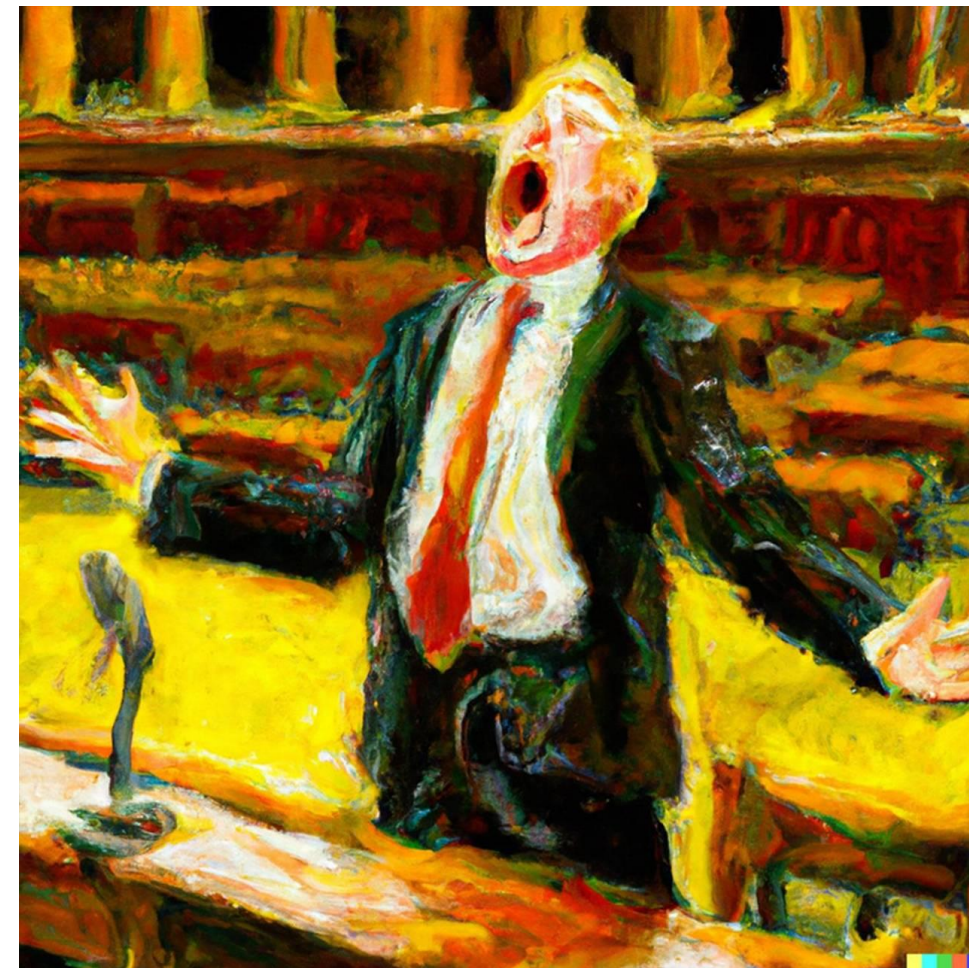
- a) literary, scientific and other linguistic works;
- b) musical works and other acoustic works;
- c) works of art, in particular paintings, sculptures and graphic works;
- d) works with scientific or technical content such as drawings, plans, maps or three-dimensional representations;
- e) works of architecture;
- f) works of applied art;
- g) photographic, cinematographic and other visual or audio-visual works;
- h) choreographic works and works of mime.

Defining a Creator/Author

Only a natural person (= human being) can claim copyright, other beings (or artificial intelligence) can not!



Pxhere: <https://pxhere.com/de/photo/1336738>



ORF: <https://orf.at/stories/3290446/>

Federal Act on Copyright and Related Rights

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte (URG)



https://www.fedlex.admin.ch/eli/cc/1993/1798_1798_1798/de

Authors' Rights (Article 9f)

- The author has the exclusive right to his own work and the right to recognition of his authorship.
- The author has the exclusive right to decide whether, when, how and under what author's designation his own work is published for the first time.
- The author has the exclusive right to decide whether, when and how his work is used.

Federal Act on Copyright and Related Rights

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte (URG)



The author has the right, in particular:

1. to **produce copies** of the work, such as printed matter, phonograms, audio-visual fixations or data carriers;
2. to offer, transfer or **otherwise distribute copies** of the work;
3. to **recite, perform or present** a work, or make it perceptible somewhere else or **make it available** directly or through any kind of medium in such a way that persons may access it from a place and at a time individually chosen by them;
4. to **broadcast** the work by radio, television or similar means, including by wire;
5. to **retransmit** works by means of technical equipment, the provider of which is not the original broadcasting organisation, in particular including by wire;
6. to make works made available, broadcast and retransmitted perceptible.

Federal Act on Copyright and Related Rights

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte (URG)



Exceptions to Copyright (Article 19f)

Published works may be used for private use. Private use means:

- a) any **personal use** of a work or **use within a circle of persons** closely connected to each other, such as relatives or friends;
- b) any use of a work **by a teacher and his class for educational purposes**;
- c) the copying of a work in enterprises, public administrations, institutions, commissions and similar bodies for internal information or documentation.

Federal Act on Copyright and Related Rights

Bundesgesetz über das Urheberrecht und verwandte Schutzrechte (URG)



Use of works for the purposes of scientific research (Article 24d)

1. For the purposes of scientific research, it is [permissible to reproduce a work](#) if the copying is due to the use of a technical process and if the works to be copied can be [lawfully accessed](#).
2. On conclusion of the scientific research, the copies made in accordance with this article may be retained for archiving and backup purposes.

Quotations (Article 25)

1. Published works [may be quoted](#) if the quotation serves as an explanation, a reference or an illustration, and the extent of the quotation is [justified for such purpose](#).
2. The quotation must be designated as such and the source given. Where the source indicates the name of the author, the name must also be cited.

LICENSING

open science

open data

open access

open methods

Open means ...



- no limitations on access of any kind
- no cost, no authentication, no national or institutional privileges
- Language?

Reasoning: Knowledge funded by (i.e. produced under a mandate from) the public must benefit the public without any limitations

→ [Berlin Declaration on Open Access](#) [to Knowledge in the Sciences and Humanities]

Open ≠ Fair

Licensing Principles



What can be licensed?

- any “works”
- to which you own the rights
- taking into account publishing contracts, work contracts, co-authors!

What cannot be licensed?

- public domain works
- raw data (usually not sufficient originality and individual creation)

Creative Commons



<https://creativecommons.org/>

<https://chooser-beta.creativecommons.org/>

Commons are resources (cultural, natural) that should be freely available and accessible to all members of society – they are not owned individually but a common good.

- Non-Profit Organisation
- Modular licenses
- Pre-written legally valid licence text online

Licenses



[by] attribution



[by sa] attribution, share alike



[by nd] attribution, no derivative works



[by nc] attribution, no commercial use



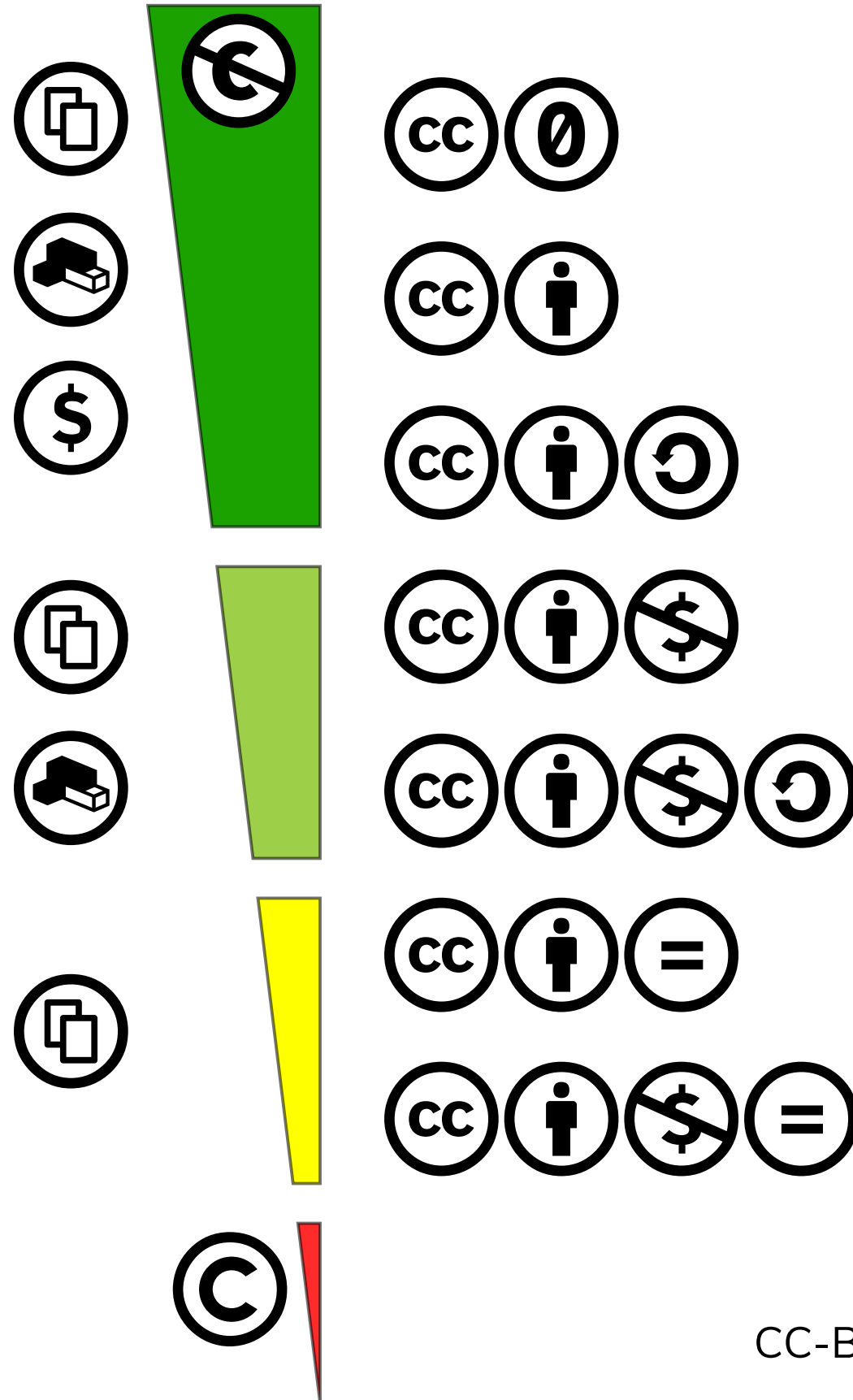
[by nc sa] attribution, no commercial use, share alike



[by nc nd] attribution, no commercial use, no derivative works



[0] no rights claimed





- complete waiver by the rights holder (~ Public Domain)
- In continental European law: not really applicable! No waiver of moral rights possible (just exploitation rights)
- CC0 License does provide for this ("Should any part of the Waiver for any reason be judged legally invalid or ineffective under applicable law, then the Waiver shall be preserved to the maximum extent permitted"), but that produces legal insecurity and transfers responsibility to the user ...
- Why not use CC-BY instead?
- Pandora's Box: Metadata and Licensing



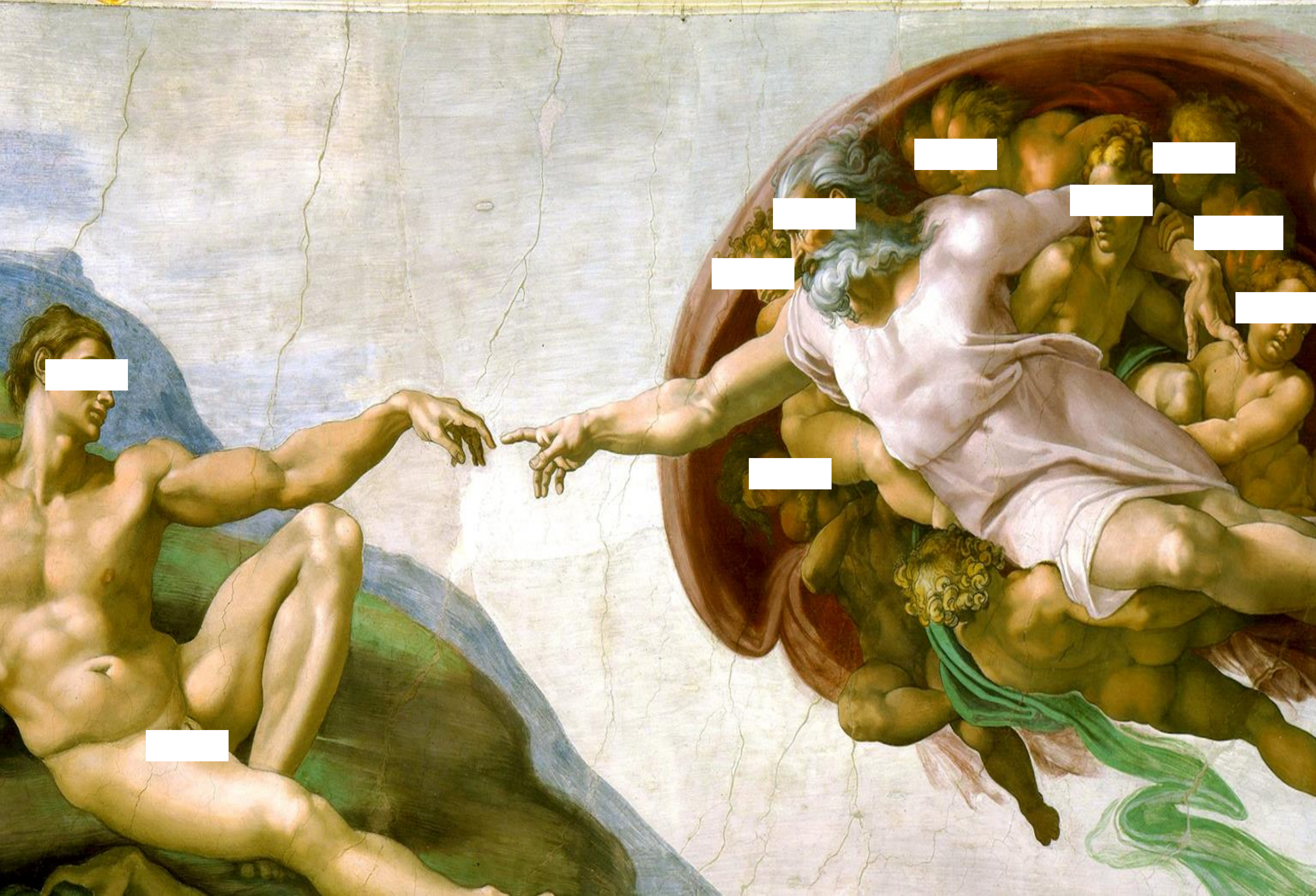
DATA PROTECTION

data subject

data controller

sensitive data

public interest



Processing ...



... means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

... of Personal Data



... means any information relating to an identified or identifiable natural person

An identifiable natural person is one who can be identified, directly or indirectly, by reference to an identifier such as a name, an identification number, location data or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Anonymization = not identifiable = not subject to the GDPR!

... but isn't that the EU-GDPR ?



Yes, but ...

- GDPR applies to data processing of data subjects from the European Union, regardless of location of processing
- Swiss Act on Data Protection (Bundesgesetz über den Datenschutz) as of 1 September 2023 is essentially based on the GDPR regulations and uses the same vocabulary and principles

Principles (Article 5, GDPR)



- lawfulness, fairness and transparency
- purpose limitation
- data minimisation
- accuracy
- storage limitation
- integrity and confidentiality (security)
- accountability

Principles (Article 6, DSGVO)



1. Personal data must be processed lawfully ([Lawfulness](#)).
2. The processing must be carried out in good faith and be proportionate ([Fairness and Transparency](#)).
3. Personal data may only be obtained for a specific purpose that is apparent to the data subject; it may only be processed in a manner that is compatible with that purpose ([Purpose limitation and data minimization](#)).
4. They are destroyed or anonymized as soon as they are no longer required for the purpose of processing ([Storage limitation](#)).
5. Anyone who processes personal data must ensure that it is accurate ([Accuracy](#)).

Rights of the data subject (Art. 12-23)



- Information (at data collection)
- Access
- Rectification
- Erasure
- Restriction of processing
- Data portability
- Objection

Rights of the data subject



- Information (Article 25)
- Access
- Rectification
- Erasure
- Restriction of processing
- Data portability (Article 28)
- Objection

Transparency is Key



Data Controller has the **Duty to Inform**

Data Subject has the **Right to Information**

GDPR Exceptions: Article 89



"... for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes."

Union or Member State law may provide for derogations from the rights [of access, rectification, restriction of processing or the right to object] in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes (...), providing that appropriate safeguards are applied.

Justifications (Article 31, DSGVO)



A violation of privacy is unlawful if it is not justified by the consent of the data subject, by an overriding private or public interest, or by law.

[...]

- e. The data controller processes personal data for non-personal purposes, in particular for research, planning or statistics, subject to the following conditions:
 1. It shall anonymize the data as soon as the purpose of the processing permits; if anonymization is impossible or requires a disproportionate effort, it shall take appropriate measures to prevent the identifiability of the data subject.

ELDAH

ETHICS AND LEGALITY IN THE DIGITAL ARTS AND HUMANITIES



Ethics and Legality in the Digital Arts and Humanities



Established with the aim to address the needs of the DH research and education community regarding the topics of legal issues and research ethics

Scope of expertise:

- Intellectual Property Rights and Licensing
- Data Protection and Privacy
- Research Ethics and Scholarly Conduct

Outputs:

- recommendations, training, information materials
- workshops to scholars
- digital tools



Consent Form Wizard Tool (CFW)



An intuitive, questionnaire-based online tool that enables users to quickly and easily obtain **standardized consent forms** in a research context

- which conform to the General Data Protection Regulation
- which satisfy both the **Lawfulness** Principle of Data Processing and the **Information** Right of the Data Subject
- which is a **legal** tool but also establishes an **ethical standard** which can be (and is) applied outside the GDPR area of effect



<https://consent.dariah.eu/>



What are you planning to do?

- ☐ Gather data from and/or about living people for research purposes
- ☐ Communicate through mailinglists or other (digital) communication media
- ☐ Gather data and/or consent from participants as the host of an academic event

Continue

What types of data do you collect from the participants?

Please be aware that the GDPR requires you to minimize the personal data collected to only what is absolutely necessary for the purpose you are pursuing. Please do not collect data you don't need just because you feel a need for completion.

Generic data categories

- ☒ Name, surname
- ☐ IP address
- ☐ E-mail address
- ☐ Age / date of birth
- ☐ Address / place of residence
- ☐ Gender

[Rohtext herunterladen](#)

Informationen zur Datenverarbeitung und
Einwilligungserklärung

Einführung

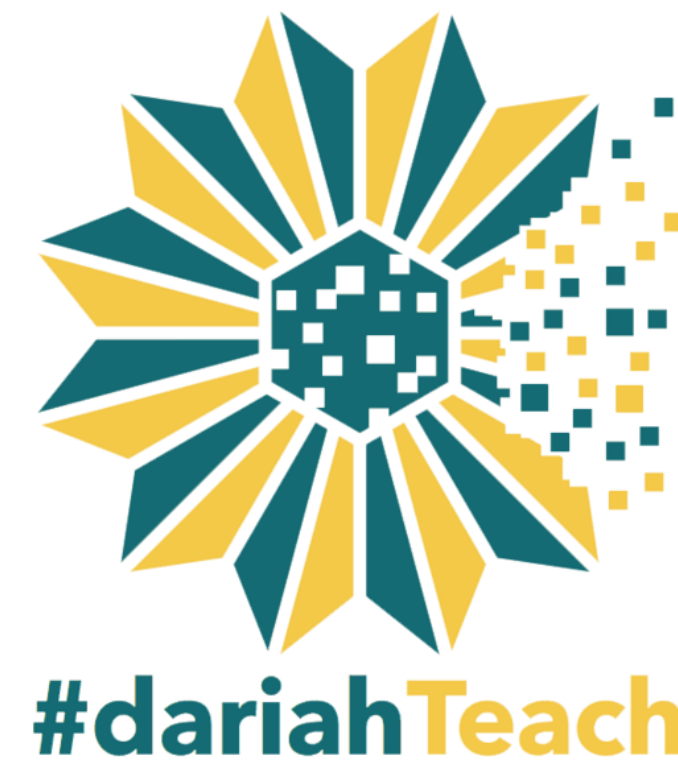
Social Justice in the Digital Humanities

DARIAHteach module



Moodle Course consisting of several modules:

- Social Justice
- De-Colonization
- Ethics Toolkit



Soon on <https://teach.dariah.eu/>

Some starting points...



- Swiss Copyright Act https://www.fedlex.admin.ch/eli/cc/1993/1798_1798_1798/
- Swiss Data Protection Act: <https://www.fedlex.admin.ch/eli/cc/2022/491/>
- DARIAH-EU platforms for teaching materials and modules:
<https://teach.dariah.eu/> and <https://campus.dariah.eu/>
- Klimpel, Paul: In Bewegung. Die Rechtsfibel für Digitalisierungsprojekte in Kulturerbe-Einrichtungen (2022).
https://www.digis-berlin.de/wp-content/uploads/2022/11/Handreichung_Recht_2022_DDF_digiS.pdf
- Maier, Philipp: Digitization of Cultural Heritage: Copyright Guidelines, 2018.
<https://gams.uni-graz.at/o:coop-digitization>
- Creative Commons: <https://creativecommons.org/> and <https://chooser-beta.creativecommons.org/>



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- DARIAHcampus: [Data Protection in Research Practice](https://dariahcampus.org)
- DARIAH-EU ELDAH Consent Form Wizard: <https://consent.dariah.eu/>

