


# Publishing and Open Access

## Part II: Hands on

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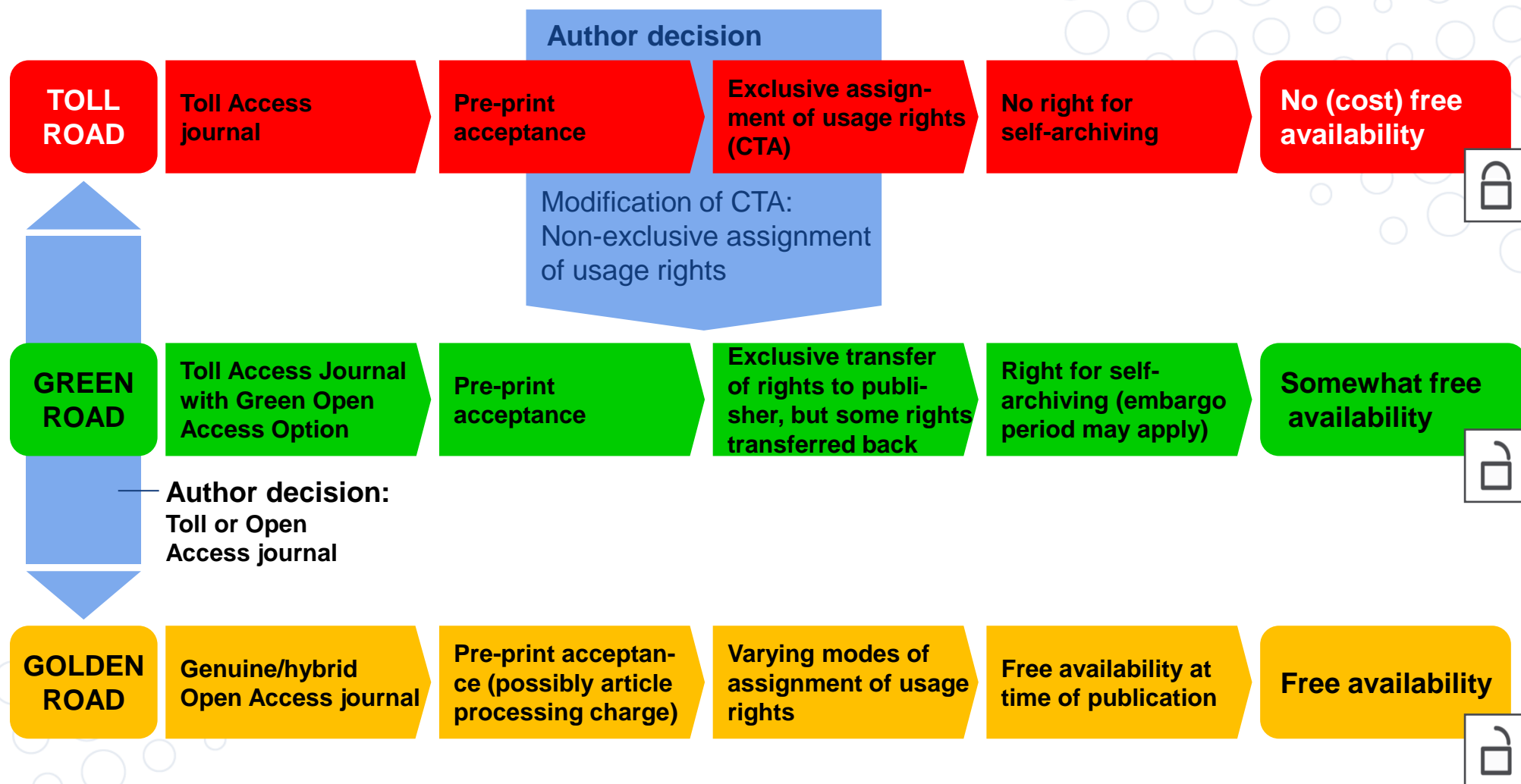
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digital library

# Overview

- Legal background
- Creative Commons
- Amending agreements
- Links

# OA Practice as of 2012



# Legal Background - Introduction

- Under German law the author (German „Urheber“) holds all usage rights and he/she can decide about these usage rights
- When publishing (i.e. make publicly available) a scholarly work the author needs to give permission, i.e. assign usage rights
- For publishing a scholarly work, e.g. via the Internet only non-exclusive usage rights to a user, e.g. publisher, are necessary
- In the past, publishers needed exclusive rights to disseminate the (expensive) printed copies of a scholarly work

# German Copyright Law

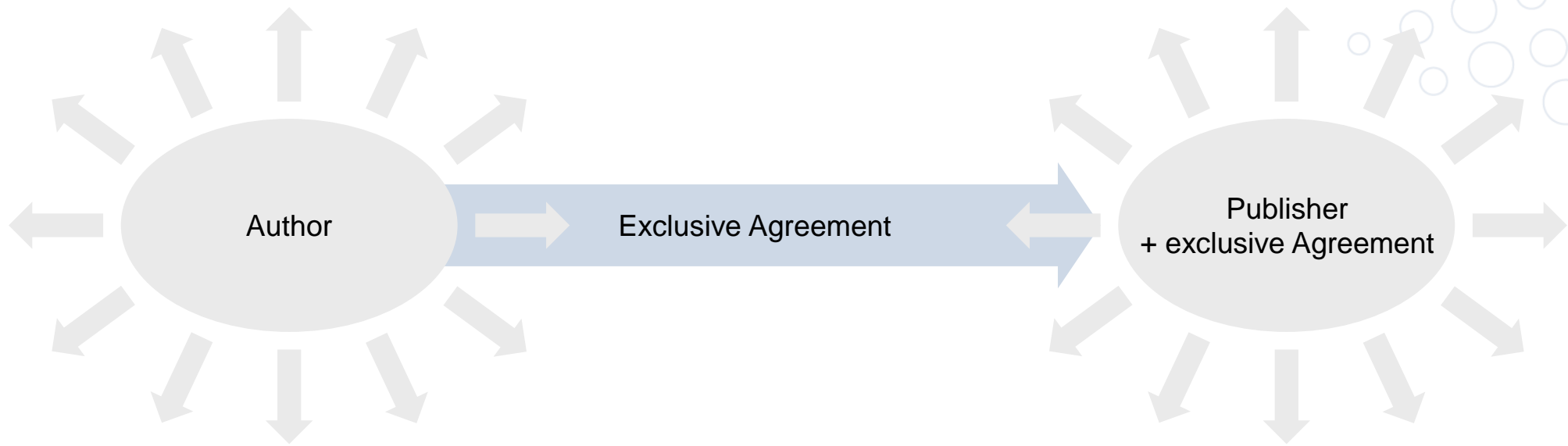
## § 1 UrhG General

Authors of literary, scientific and artistic works shall enjoy protection for their works in accordance with this Law.

## § 2 UrhG Protected Works

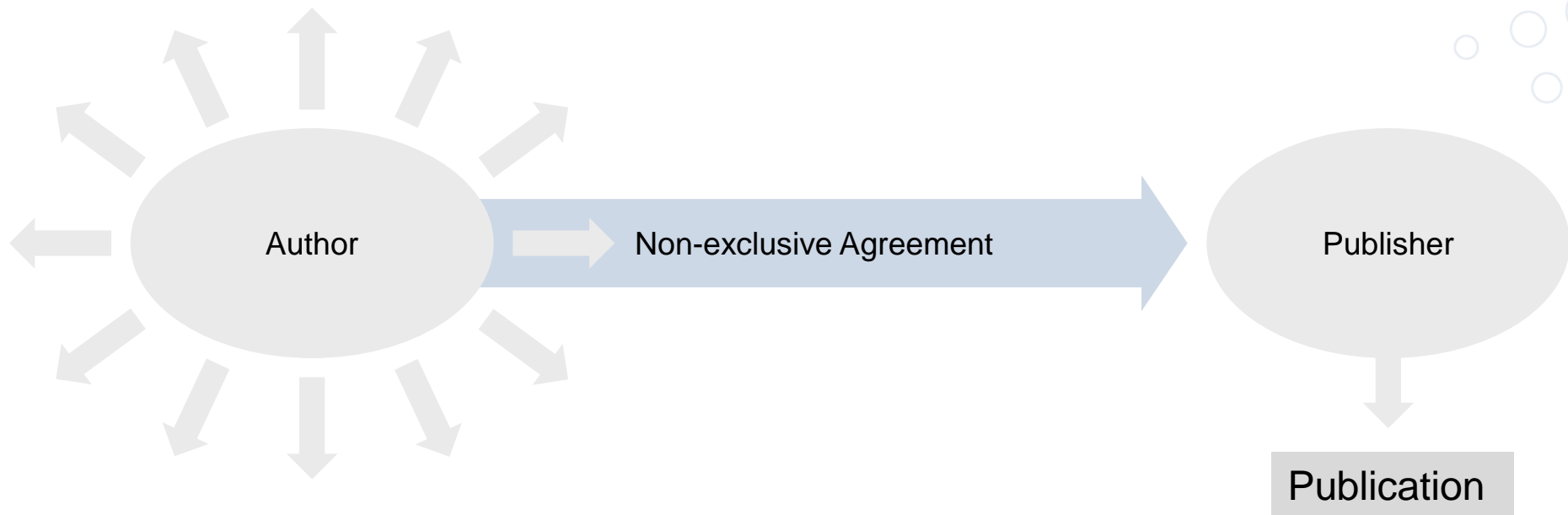
- (1) Protected literary, scientific and artistic works shall include, in particular,
1. works of language, such as writings, speeches and computer programs;
  2. musical works;
  3. works of pantomime, including choreographic works;
  4. works of fine art, including works of architecture and of applied art and plans for such works;
  5. photographic works, including works produced by processes similar to photography;
  6. cinematographic works, including works produced by processes similar to cinematography;
  7. illustrations of a scientific or technical nature, such as drawings, plans, maps, sketches, tables and three-dimensional presentations.
- (2) Personal intellectual creations alone shall constitute works within the meaning of this Law.

# Legal Background – Contract I



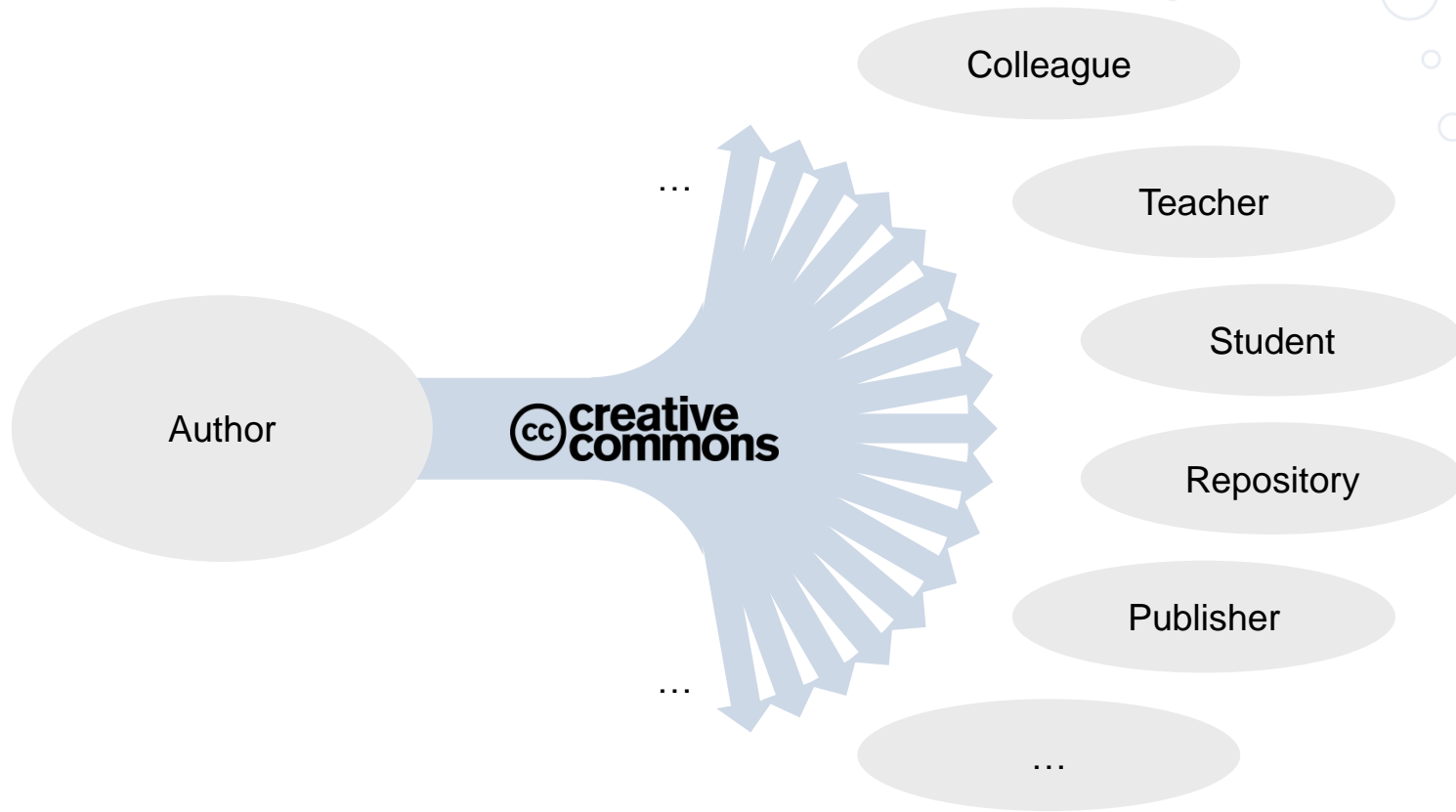
➡ Usage rights

## Legal Background – Contract II






Usage rights

# Legal Background – Licencing





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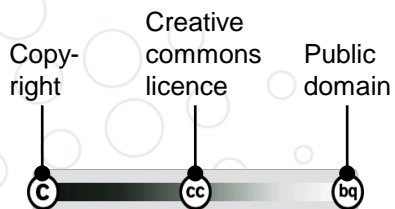
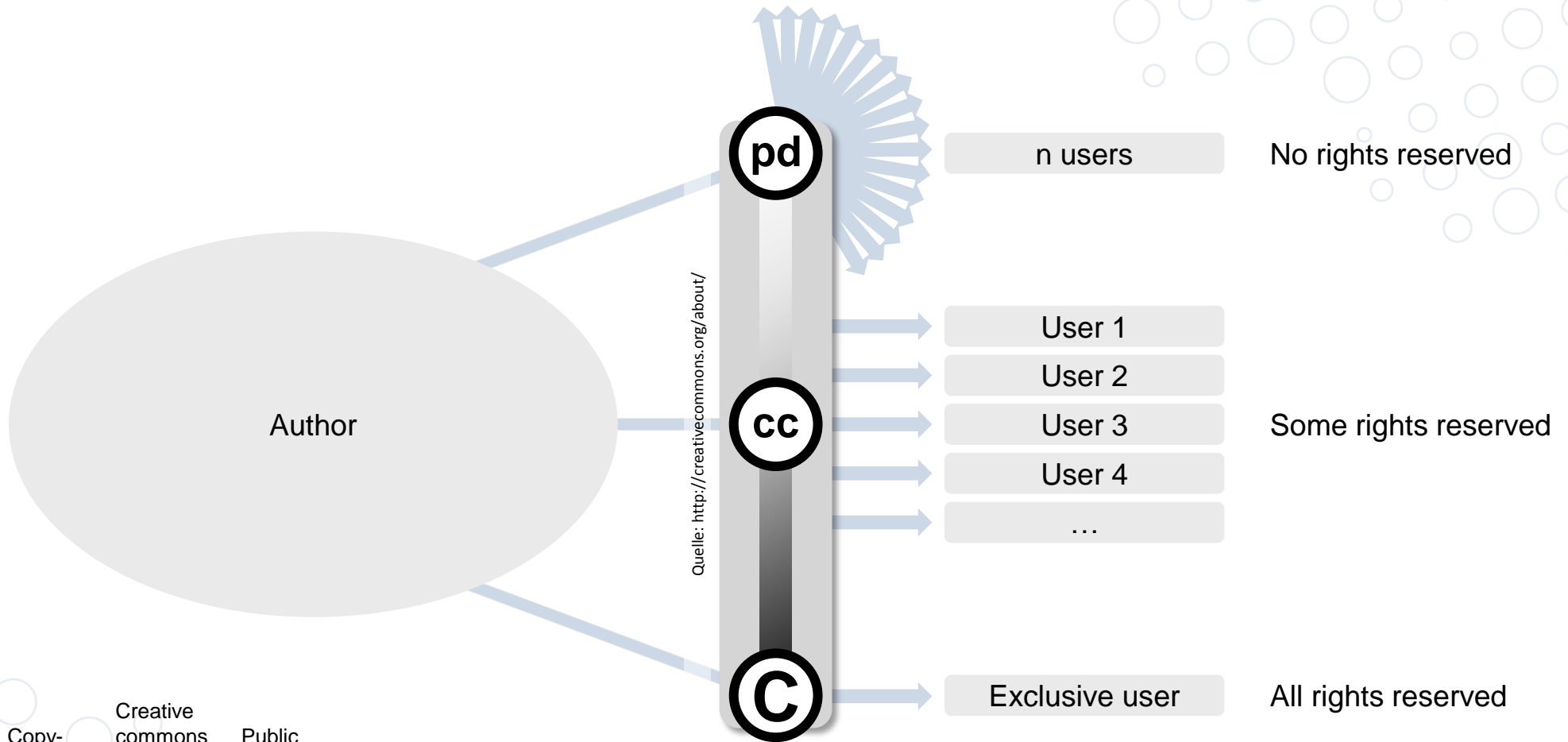
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# Legal Background – Summary



# Amendment of Copyright Agreement

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Every agreement is a contract with the publisher and therefore in principle negotiable

## Copyright Transfer Agreement – Typical Phrasing

- I hereby assign to XY the copyright in the work throughout the world, in all languages for the full term of copyright ...
- The copyright of the work is transferred to XY which hereby acquires the sole right to print, publish, distribute and sell the work throughout the world...
- I hereby transfer to XY all rights, title, and interest to the above named work, including the right to claim copyright throughout the world...

# Using an Author Addendum

## Addendum to Publication Agreement<sup>1</sup>

(Version to be used to amend publication contract for which German law does not apply - 28.06.2011)

1. This Addendum modifies and supplements the attached Publication Agreement concerning the following work:

Title: \_\_\_\_\_

Journal: \_\_\_\_\_

2. The parties to the Publication Agreement are:

Corresponding author: \_\_\_\_\_

\_\_\_\_\_

Publisher: \_\_\_\_\_

\_\_\_\_\_

3. The parties agree that wherever there is any conflict between this Addendum and the Publication Agreement, the provisions of this Addendum are paramount and the Publication Agreement shall be construed accordingly.

4. Notwithstanding any terms in the Publication Agreement to the contrary, the author retains the following rights:

- to use all or part of the content of the work in future works of the author, including lectures, textbooks, reviews and articles and press releases provided proper notice of the publisher's copyright is given;
- to reuse any portion of the work, without fee, in future works of the author's own, including books, lectures and presentations in all media, provided that the publisher's citation and notice of the copyright are included;
- to include the work in a thesis or dissertation;
- to deposit an electronic copy of the published version (if permitted by the publication agreement) or the final manuscript (after peer review) accepted for publication in an institutional and/or subject-based repository at the moment of publication.
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immediately if the scientific publication is published "open access", i.e. if an electronic version is also available free of charge via the publisher, or

within [6] [12] months of publication.

5. For record keeping purposes, the author requests that the publisher sign a copy of this Addendum and return it to the author. However, if the publisher publishes the article in the journal or in any other form without signing a copy of this Addendum, such publication manifests the publisher's assent to the terms of this Addendum.

AUTHOR

PUBLISHER

\_\_\_\_\_  
Date, Signature  
(corresponding author on behalf of all authors)

\_\_\_\_\_  
Date, Signature

<sup>1</sup> Provided by Max Planck Digital Library and based on the author addendum provided by the DG Research of the European Commission:  
[http://ec.europa.eu/research/science-society/document\\_library/pdf\\_06/model-cover-letter-for-amendment\\_en.zip](http://ec.europa.eu/research/science-society/document_library/pdf_06/model-cover-letter-for-amendment_en.zip)

# Special clauses in the German Copyright Law

## Journal Articles

§38 para. 1 UrhG

Exclusive rights for one year then non-exclusive usage right back to the author

## Commemorative publications etc.

§38 para. 2 UrhG

Exclusive rights for one year then non-exclusive usage right back to the author, when no remuneration was paid

## Newspaper articles

§38 para. 3 UrhG

Non-exclusive rights only

**These clauses are only effective when no contract was signed!**

# Links

- MPS OA Website → <http://oa.mpg.de/>
- Creative Commons → <http://creativecommons.org/>
- IUWIS → <http://www.iuwis.de/>
- Information Platform Open Access → <http://open-access.net>
- Allianz Priority Initiative → <http://www.allianz-initiative.de/de/>  
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