

Legal Implications of Openness

Open Science Days
Berlin, October 14

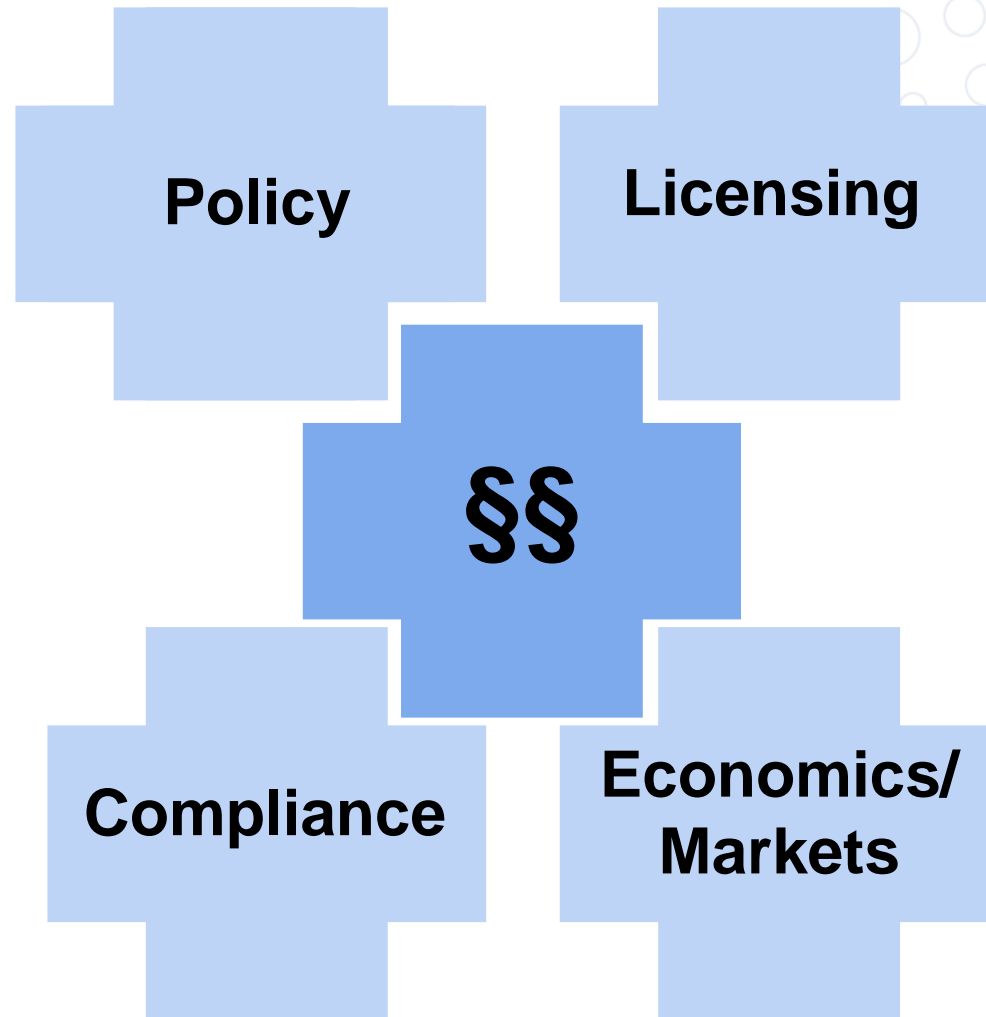
Thomas Hartmann

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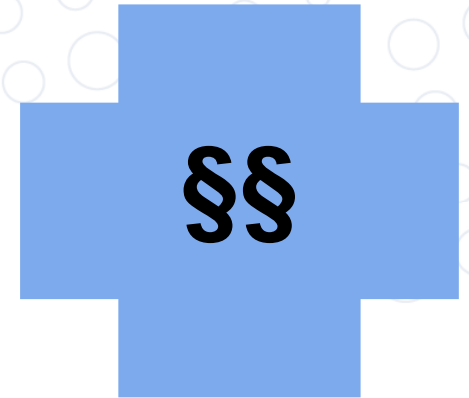
MAX PLANCK
digital library

Puzzling about a scientific-friendly legal framework



Copyright provisions for openness, science and education (*Germany*)

- Linux clause, § 32 (3) 3 UrhG, since 2002
- Green Open Access clause, § 38 (4) UrhG, since 2014
→ [FAQ-Check](#) with [recorded talk](#)
(Open Access Days, Hamburg 2013)



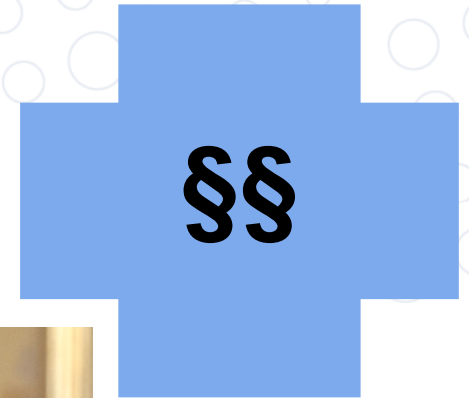
- * National law vs. electronic publishing & worldwide science
- * Obscolent, inflexibel
- * Compromise
- * No copyright legal framework specified for science/education



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Copyright provisions for openness, science and education (*EU*)

- European Framework: Copyright Directive since 2001
→ exceptions for e-learning and e-science
- * European law vs. electronic publishing & worldwide science
- * Obscolent, inflexibel
- * Compromise
- * No copyright legal framework
specified for science/education
- * No harmonisation even within the EU



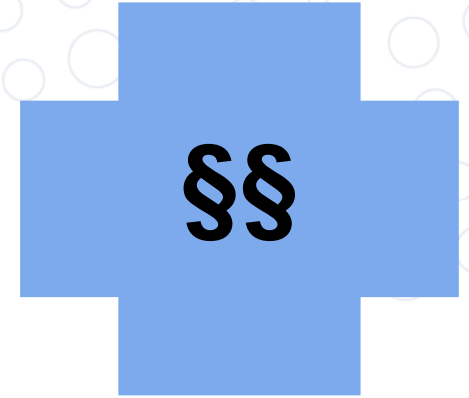
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European Network for Copyright in support of Education and Science

Copyright provisions for openness, science and education (*world*)

- Framework (i.e. Berne Conventions or Universal Copyright Convention)
- No applicable copyright law
- US Copyright vs. European Copyright law (traditions)



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United Nations
Educational, Scientific and
Cultural Organization

Open Access Policies

- Smart legal instrument fitting with the self regulation principles of the academic freedom (fundamental right)
 - Developed by the scientific community
 - Soft law i.e. for interpretations by courts
-
- Global model: Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities (2003)
→ 489 signatories



Policy



MPG - <http://openaccess.mpg.de/Berlin-Conferences>

Open Access Compliance

- Educational and scientific institutions should implement processes, structures and persons in order to comply with legal, moral, ethical and (good) scientific standards.
→ [Recorded talk](#) (Open Access Days, Köln 2014)

- i.e. [Dal Libraries' Copyright Office](#)
“The landscape of copyright law has undergone a dramatic shift within the last number of years. Changes in technology, the law and in practice have dramatically affected, and will continue to affect, the way in which the University functions as both a creator of copyright as well as a user of copyright protected material.”

The Dalhousie Libraries' Copyright Office offers support to faculty, staff and students to ensure that our community can succeed in their teaching, research and studies.

To support that goal, the Dalhousie Libraries' Copyright Office endeavours to:

- Provide educational programs and general advice on copyright issues.
- Monitor the University community's compliance with copyright rules and encourage appropriate practices.
- Policy development and dissemination.”



Compliance



<http://www.dal.ca/about-dal.html>

IP & Innovations

- Empirical evidence about the impact of IP on Innovation
→ Max Planck Institute for Innovation and Competition



**Economics/
Markets**

- (New) legal & business models/framework for digital goods/e-publishing/e-teaching...

→ CJEU leading case *UsedSoft*. New re-selling markets also for e-books, films, music...?

i.e. ReDigi:



„ReDigi is the world's first online marketplace for the resale of pre-owned digital media, and a one-stop-shop that allows users to store, stream, buy and sell legally acquired digital media.”



Open Access Licensing

- Free licenses *for education and research*



<https://creativecommons.org/videos/creative-commons-kiwi>

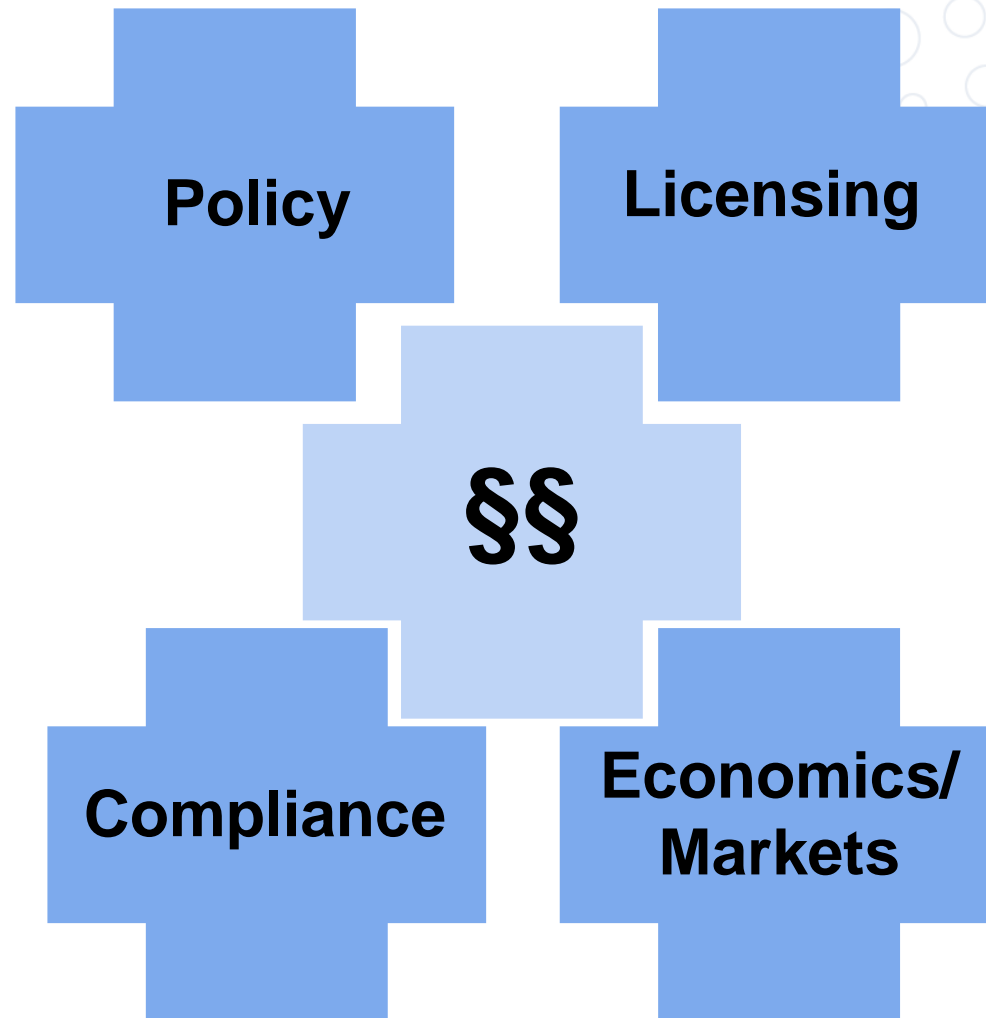
Creative Commons:

“Science Commons was re-integrated with Creative Commons.”

[See i.e. 2013.](#)



Puzzling about a scientific-friendly legal framework





**Max-Planck-Institut
für Immaterialgüter- und Wettbewerbsrecht**
Max Planck Institute for Intellectual Property and Competition Law



Publications, lectures, talks, workshops, videoclips, manuals etc.
- see http://www.ip.mpg.de/en/pub/academic_body/acad_staff/thomas_hartmann.cfm