Copyright: Future for scientific authors

Prof. Dr. Thomas DREIER. Institut für Informations- und Wirtschaftsrecht / Zentrum für Angewandte Rechtswissenschaft
“Opening up access to content and data can radically increase access and reuse, bridge gaps, improve transparency and thus foster innovation and increase societal welfare.”

Open Knowledge Foundation, okcon.org/about

“...A high level of protection of intellectual property, will foster substantial investment in creativity and innovation, ... and lead in turn to growth and increased competitiveness.”

EU-Directive Copyright in the Information Society
Copyright

What is, why is and how works copyright?

- Exclusive rights and moral rights
- as incentives to create
- and to secure participation in proceeds from exploitation

In practise:

- Transfer of use rights
- here: to the publisher
- in general: comprehensively

(world-wide; duration of copyright, all use rights)
Author ./ Publisher

- Traditionally: Shift of perspective
  - From author to publisher
  - Legal protection of publishers against competitors
  - Protection of publisher only indirectly benefits authors

- Internet: Author-publisher – from symbiosis to conflict
  - Possibility and need for own publication
  - Possibility and desire to cost-free access
  - At the same time: Journal-crisis and increase in production cost and subscription fees
§ 38 I German Copyright Act:

- As regards contributions to periodicals . . .
- „the author retains the right to reproduce and distribute the work beginning one year after it has been initially published“
- but only if the parties have not otherwise agreed upon
- in practice, however, the rule

Consequence:

- Rights in general with publisher even beyond one year
- unless publisher voluntarily agrees to no or shorter delay
Legal (2): *de lege ferenda*

**Wishfull thinking:**
- Duty to offer for first publication via open access (*Pflüger/Ertmann*)
- Contrary to freedom of science and research (Art. 5 III GG)

**More realistically:**
- Make § 38 I German Copyright Act mandatory (*Hansen*)
- Initially discussed, but probably not retained in „3rd basket“ (Copyright reform 2011)
Contractual solutions

„Thumb screws“: Regulations on grants:
- Awarding grants subject to the condition of OA-publishing

Contracts between authors and publishers:
- Golden Road: initial OA-publication
- Green Road: Self-archiving
  (mostly time-shifted, possibly simultaneously with initial publication)
„Tools“

Creative Commons (CC):

- „some rights reserved“
- simple „surface“
- Built upon complex legal and technical basis

and similar licenses:

- E.g., Digital Peer Publishing License (DPPL) of DIPP, www.dipp.nrw.de
- modular; different versions
- Advantage: specially tailored to scientific publishing
- Disadvantage: incompatibilities amongst different licenses and versions
Copyright: Future for scientific authors