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LEGAL ASPECTS OF RESEARCH DATA COLLECTION AND SHARING

DRITTER WORKSHOP DES ARBEITSKREISES FORSCHUNGSDATEN
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APPLICABLE LEGAL FRAMEWORKS

- **Copyright** (*Urheberrecht*)
- ***Sui generis* database right** (*Datenbankschutzrecht*)
- **Personal data** (*Personenbezogene Daten*)

I. COPYRIGHT

- **original works** (scientific, literary and artistic)
 - **originality:** author's own intellectual creation = arbitrary choices
 - also: derivative works, compilations
- **exclusive rights:**
 - **economic:** reproduction, distribution, making available to the public...
 - **moral:** paternity, disclosure, respect
- **right holders:** authors, editors
 - collective societies (*Verwertungsgesellschaften*)
- **duration:** life of the author + 70 years

II. *SUI GENERIS* DATABASE RIGHT

- **databases**
 - a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.
 - qualitatively and/or quantitatively substantial investment in either the obtaining, verification or presentation of the contents (not: creation)
- **exclusive rights:**
 - extraction and/or re-utilization of a substantial part
 - systematic extraction and/or re-utilization of insubstantial parts
- **right holder:** maker of the database
- **duration:** 15 years after each substantial investment

...SO WHAT TO DO?

- **statutory exceptions:**
 - **to copyright:** temporary copies (for network transmissions), quotations, non-commercial scientific research (very narrow - consult a lawyer!)
 - **to the database right:** non-commercial scientific research
- **licensing:**
 - **bespoke:** consult a lawyer!
 - **public (prêt-à-porter):** e.g. Creative Commons
 - **openness:** freely used, re-used and redistributed by anyone, subject only, at most, to the requirement to attribute and share-alike

...SO WHAT TO DO?

- **statutory exceptions:**

Zulässig ist, veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften ausschließlich für einen bestimmt abgegrenzten Kreis von Personen für deren eigene wissenschaftliche Forschung öffentlich zugänglich zu machen, soweit dies zu dem jeweiligen Zweck geboten und zur Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist. Für die öffentliche Zugänglichmachung ist eine angemessene Vergütung zu zahlen.

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- **public (prêt-à-porter):** e.g. Creative Commons
- **openness:** freely used, re-used and redistributed by anyone, subject only, at most, to the requirement to attribute and share-alike

CREATIVE COMMONS



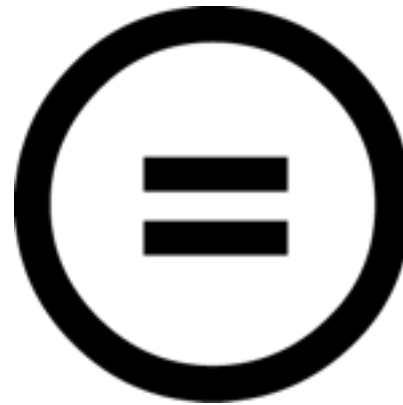
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III. PERSONAL DATA

- **definition:** any information relating to an identified or identifiable natural person ('data subject');
- **special categories:** racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health or sex life;
- **data subject's rights:**
 - information;
 - access to data (rectification, erasure, blocking of unlawfully processed, inaccurate or incomplete data);
 - objection (to processing for direct marketing purposes)

...SO WHAT TO DO?

- **statutory exceptions and limitations:**
 - processing for *compatible purposes*
 - anonymization
 - research exceptions (BDSG vs. LDSG)
- **consent (*Einwilligung*):**
 - any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed
 - information about the identity of the data controller, the purpose, the recipients, the right to access/rectify the data
 - processing of special categories of data requires specific consent!

IP? PERSONAL DATA?

- *'Der Handschuh'* by F. Schiller
- *'Die 1100 wichtigsten Gedichte der deutschen Literatur zw. 1730 und 1900'*
- *'August 30 2014: Bayer - Hertha 4:2'*
- results of all the official games Thomas Müller ever played in
- oldest written document from Jerusalem (discovered in 2010)
- Thomas Müller's medical record

THANK YOU FOR YOUR ATTENTION!

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