

Privacy & Law: Fundamentals of copyright law

Business

March 6th, 2025

FH Zentralschweiz



Intellectual property rights

Intangible assets - Intellectual property (IP); not tangible, i.e. immaterial

- **Copyrights** (the protection of **creations of works with individual character** by copyrights)
- **Design rights** (the protection of the **external appearance** of a product through design protection)
- **Patent rights** (the protection of **technical developments** by granting patents)
- **Trademark rights** (the protection of **signs** by trademark law)



Sources: <https://www.skyscrapercity.com/showthread.php?t=1756166&page=4028> April 1, 2022
<https://shop.contena-ochsner.ch/produktkategorie/abfallbehaelter/kehrschuettelimer-verzinkt/> April 1, 2022
<https://www.independent.co.uk/news/uk/home-news/coca-cola-logo-uk-favourite-vintage-collectable-a8484206.html> April 1, 2022

Learning objectives

- You know...

1. **copyright** and its **properties**

2. the **protection requirements** of copyright law

3. the **registration / non-registration** of copyrights

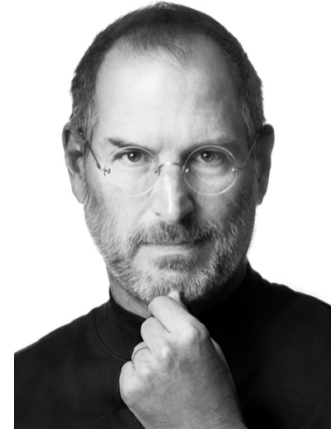
4. the **term** of protection of copyrights

	Copyright	Trademark	Design	Patent
Protection requirements				
Registration				
Term				
...				

Steve Jobs on the protection of intellectual property:

I knew from day one that Apple would go well if we created intellectual property. [...]. There would have been no incentive for us to develop new software and products if they had not been protected. Once the protection of intellectual property is no longer guaranteed, creative enterprises disappear or are not even set up.

Walter Isaacson, Steve Jobs, New York 2011

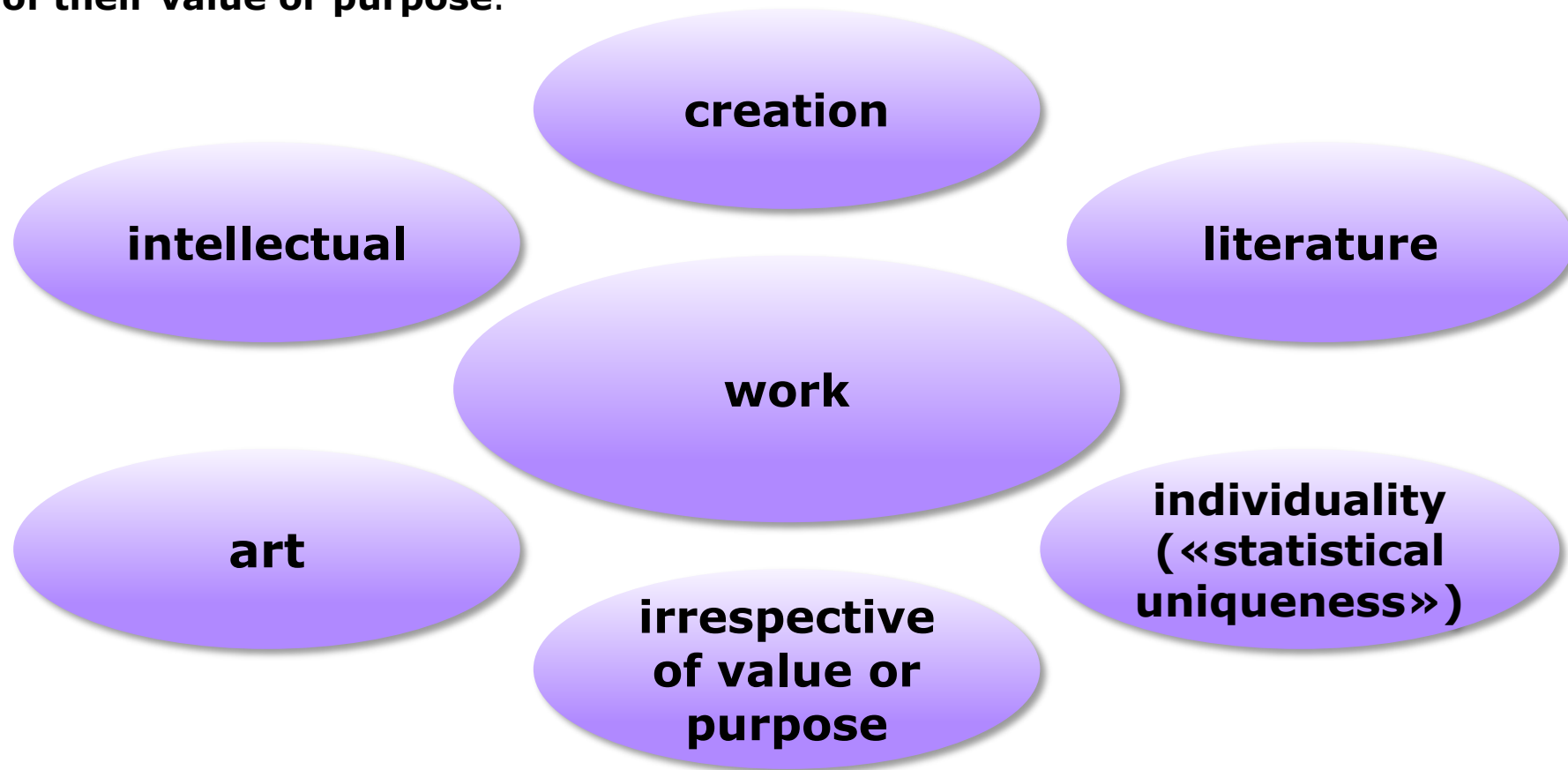


Intellectual property rights – Functions?

- IP rights grant their owners the legal means to **exclude** other people – usually competitors – from commercially using the products that carry the right.
- IP rights turn innovations and creations into a **marketable commodity and a company asset**.
- IP is an important **source of information** for companies, researchers, developers and creative minds.
- An IP right helps the **professional marketing** of a product or service and promotes its **reputation**.

Copyright: Protection requirements for a «work»

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



Individuality



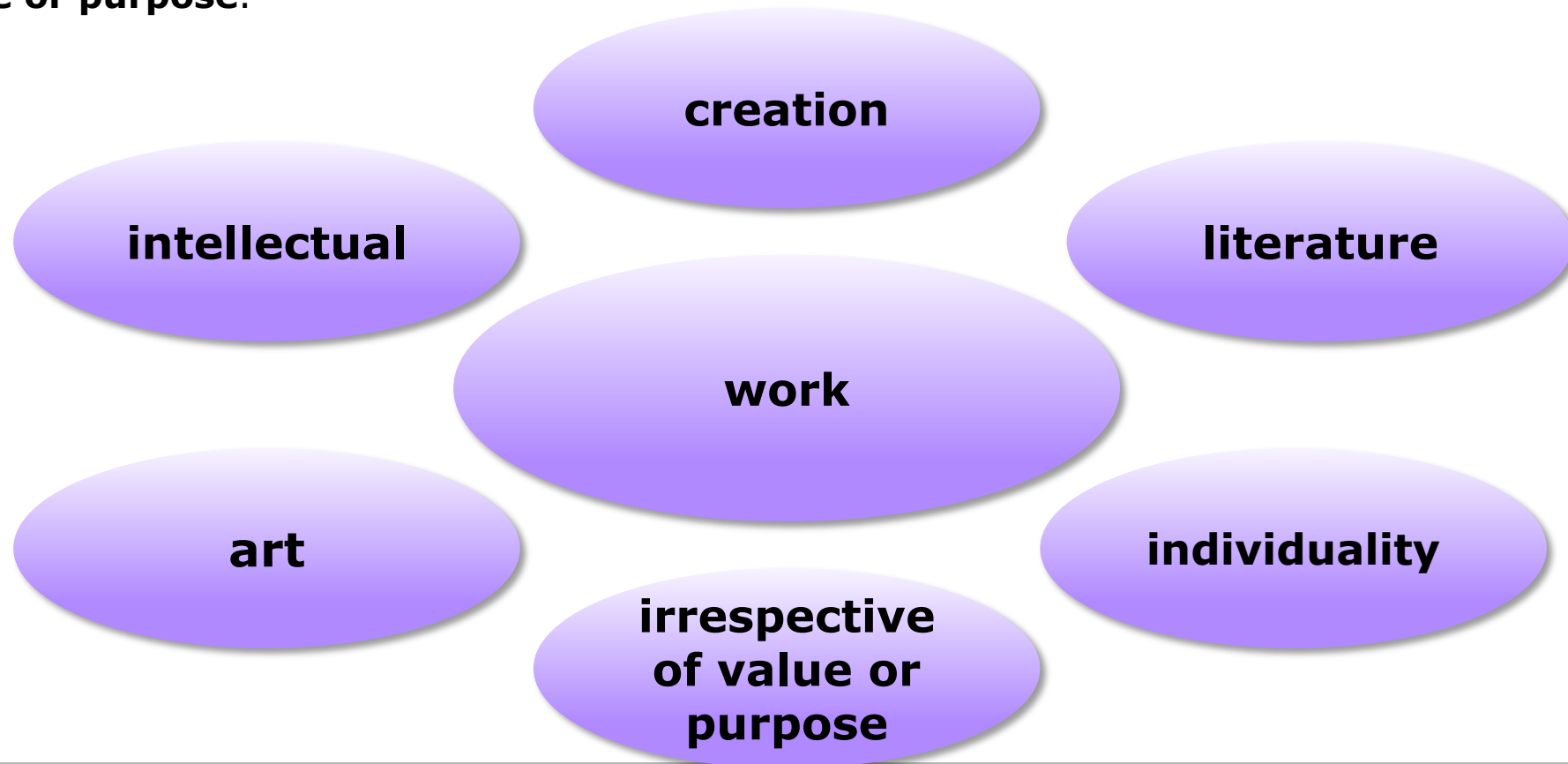
The object must have **characteristics** that sufficiently **distinguishes** it **from others**.

This prerequisite is fulfilled if an object in the **same form**

- has **not yet existed** and
- is **unlikely to be created again** in the same way (“**statistical uniqueness**”).

Copyright: Protection requirements for a «work»

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Copyright: Conditions of protection - Works as intellectual creations of literature and art

1. Literary, scientific and other **linguistic works**

E.g. books, speeches, letters, original slogans are protected.

Simple advertising texts, catalogues, price lists are not protected.

2. Works of **music** and **fine arts**

E.g. songs

3. Works with **scientific or technical content**

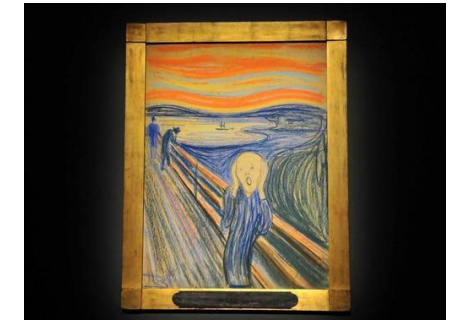
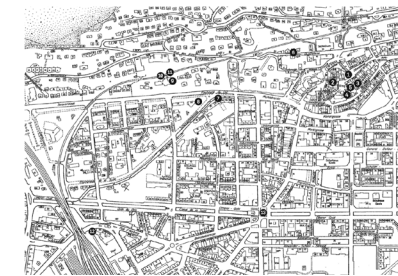
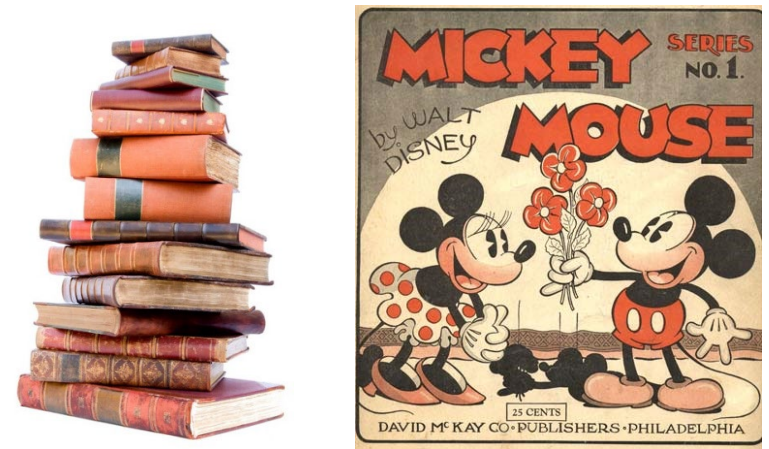
E.g. drawings, plans, maps, instructions for use

4. **computer programs**

5. Works of **architecture**

6. Photographic, cinematographic or other **visual works**

E.g. Photographs, films, television games, television programmes



Special case: **Derivative/Second-hand works**

Creations with an individual character which are created **using existing works** in such a way that the works used remain recognisable in their individual character

E.g. Translation of a book or its film adaptation



Example 1: Copyrights to photographs - requirements



Individuality

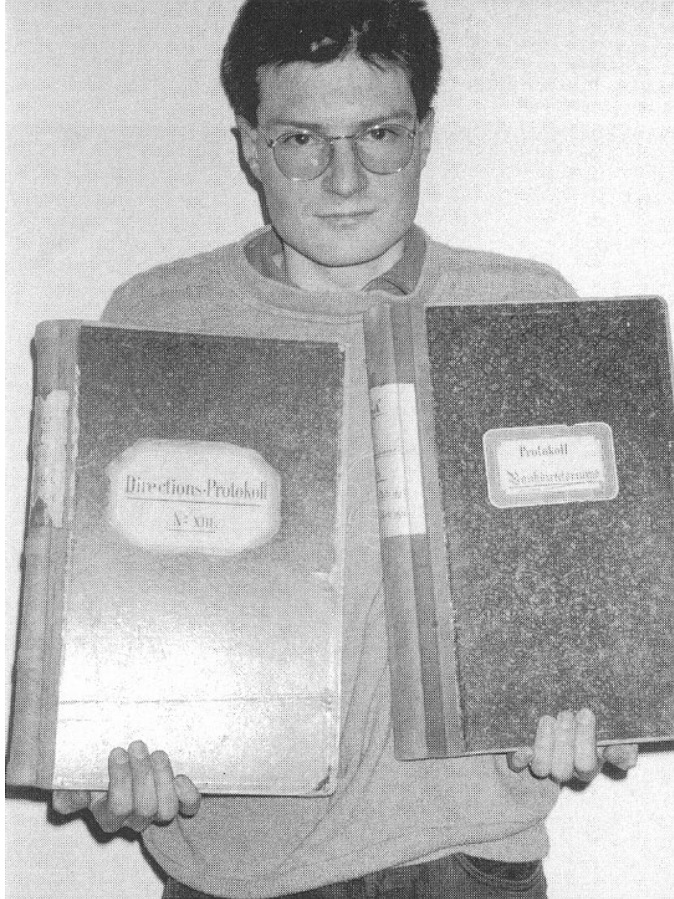
- Characteristics distinguish the object sufficiently from others.
- The object does not yet exist in the same form.
- Statistical uniqueness

Individuality

- by photo-technical means in the reproduction of the photographed object
 - Choice of viewing angle
 - Selection of the image section
 - Selecting the focal length of the lens
 - Choice of aperture
 - Choice of brightness or coloring
- by processing the photographed object
 - Posture of a portrayed person
 - Selection and spatial arrangement of a still life
 - Illumination or choice of the environment of the object
- by tension in the picture

➡ Copyright protection due to tension in the picture (BGE 130 III 168)

Example 2: Copyrights to photographs - requirements



Individuality

- Characteristics that distinguish the object sufficiently from others.
- The object does not yet exist in the same form.
- Statistical uniqueness
- Federal Court: The photography is designed in such a way that it **does not stand out from the usual**. It therefore lacks the individual character in the sense of article 2 of the Copyright Act.



Copyright: Authorship - co-authorship

The author is the **natural person** who created the work.

The copyright belongs **exclusively to the creator** of a work. He acquires this right originally, automatically, without any registration (so-called «**creator principle**»).

Co-authorship

- This occurs when several people create a work together, i.e. in conscious cooperation and according to a common concept.
- In the case of co-authorship, the co-authors have the joint right to the entire hand (consent of all co-authors required!).
- The financial means used to create a work are not relevant.

Copyright: Dependent creation of works

- Even if a work is created within the framework of a relationship of dependence, the **creator originally** acquires the **copyright**.
- Employers should ensure that all copyrights are assigned in the employment contract.
- The Copyright Act only has a corresponding standard for **computer programs**. However, this also applies **only** to the **employment contract** and not to contractual relationships based on orders and contracts for work and services.

Content of the copyright: Moral rights (Articles 9, 11 and 15 Copyright Act)

1. The author has the exclusive right to his own work and the right to **recognition of his authorship**.
2. 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**.

A work is considered to be published when it has been made available for the first time by the author, or with his consent, to a large number of persons not constituting a private circle.

3. The author has the **exclusive** right to decide:
 - whether, when and how the work may be **altered**;
 - whether, when and how the work may be used to create a **derivative work** or may be included in a **collected work**.
4. It is permissible to use existing works for the creation of **parodies** or other comparable variations on the work.

Content of the copyright: Economic rights («rights of use») / exploitation rights

(Article 10 Copyright Act)

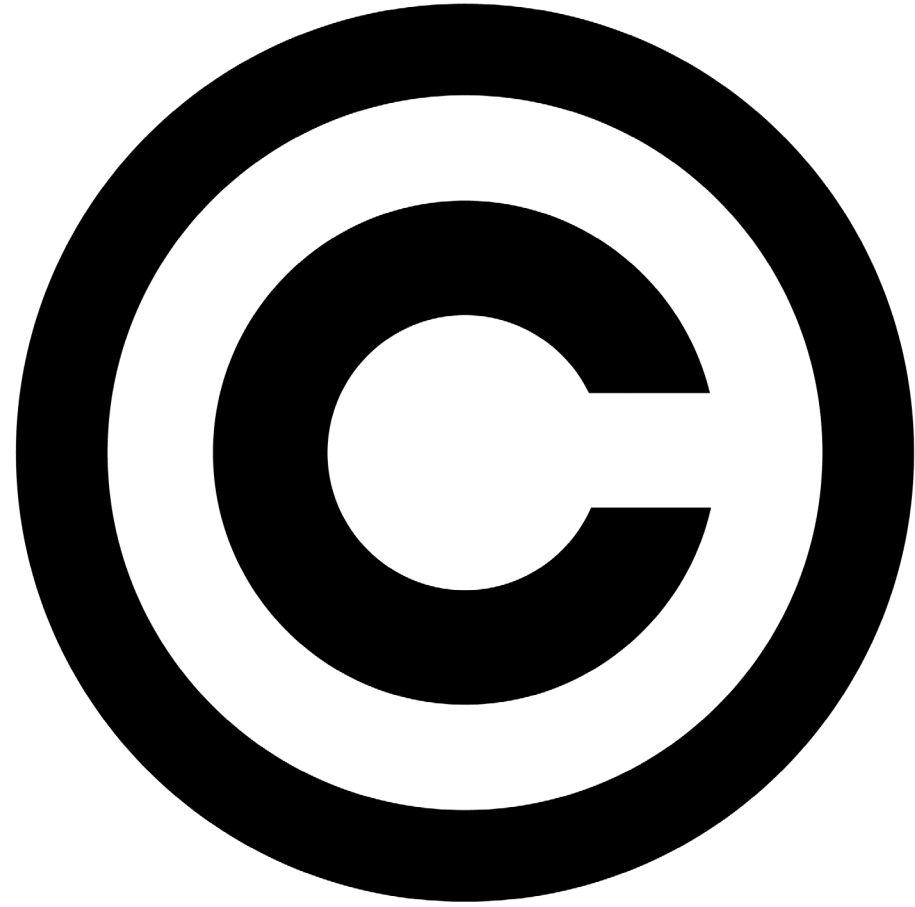
1. The author has the exclusive right to decide **whether, when and how his work is used**.
2. The author has the right, in particular:
 - a. to produce **copies** of the work, such as printed matter or data carriers;
 - b. to offer, transfer or otherwise **distribute** copies of the work;
 - c. to recite, **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;
 - d. to **broadcast** the work by radio, television or similar means, including by wire.
3. The author of a **computer program** also has the exclusive **rental** right.

Copyright: Conditions and duration of protection

- **Automatic protection without any action on the part of the originator**







The copyright protection begins without any registration at the moment when a work fulfils the protection requirements, i.e. as soon as the limit of individuality is exceeded.

- **Term of protection 70 years after the death of the author (50 years for computer programs and photographs)**
















Creative Commons

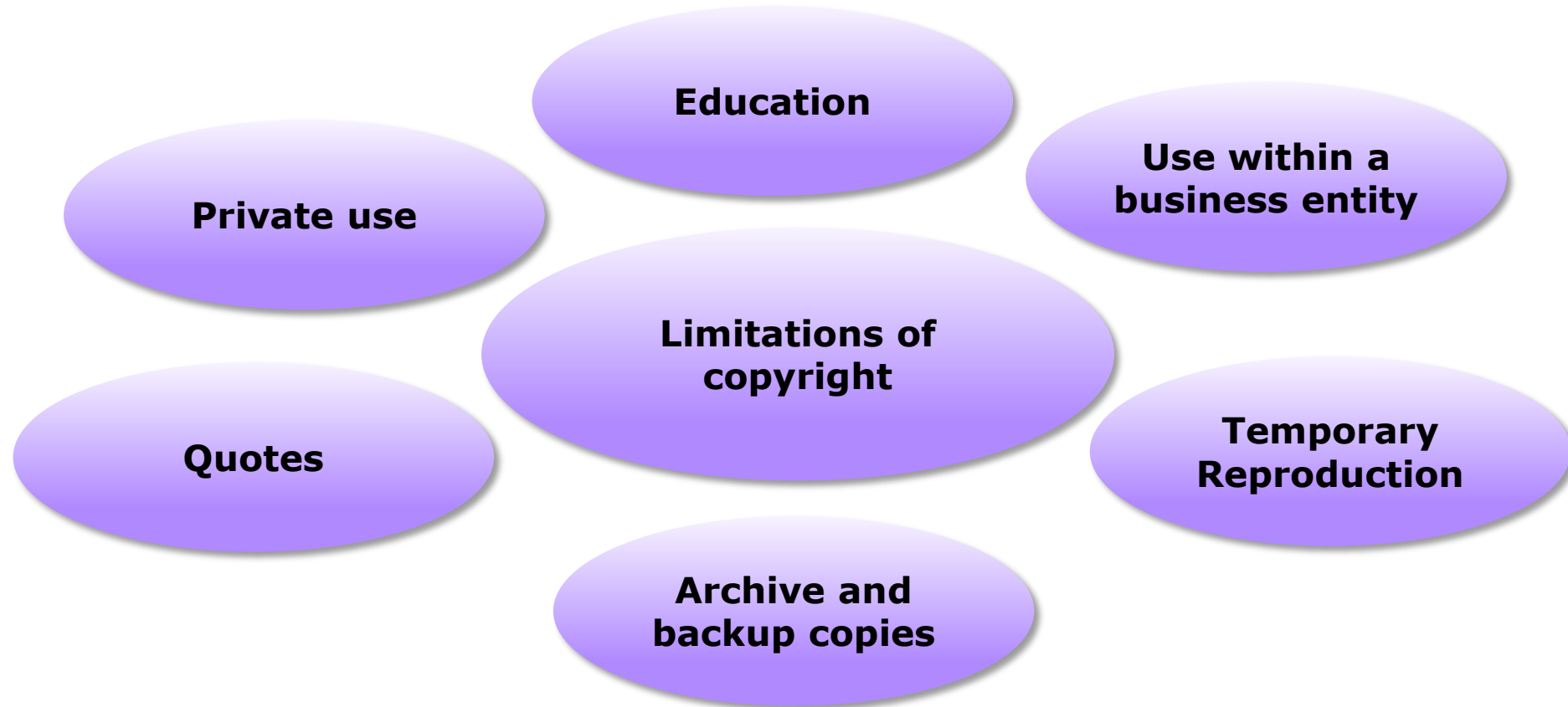
Creative Commons Licenses explained, at a glance.

-  You can redistribute (copy, publish, display, communicate, etc.) the works.
-  You have to attribute the original work (title of work, creators name, link, CC license).
-  You can use the work commercially.
-  You can modify and adapt the original work. Provided you indicate how you changed it.
-  You can choose any license for your adaptations of the work.
-  Intellectual property rights have expired, have been forfeited, or are inapplicable (e.g. works of Shakespeare, Beethoven, etc.)

Disclaimer: This document by its nature cannot be comprehensive and is provided to assist clients to clarify and identify legal issues on which they should seek legal advice. Please consult professional legal staff for advice specific to your situation.

						
		COPY & PUBLISH	ATTRIBUTION REQUIRED	COMMERCIAL USE	MODIFY & ADAPT	CHANGE LICENSE
	COPYRIGHT	✗	✗	✗	✗	✗
	PUBLIC DOMAIN*	✓	✗	✓	✓	✓
	CC BY	✓	✓	✓	✓	✓
	CC BY-SA	✓	✓	✓	✓	✗
	CC BY-ND	✓	✓	✓	✗	✓
	CC BY-NC	✓	✓	✗	✓	✓
	CC BY-NC-SA	✓	✓	✗	✓	✗
	CC BY-NC-ND	✓	✓	✗	✗	✓

Limitations of copyright (selection)



Whoever publishes, reproduces, performs, broadcasts or otherwise disseminates a work requires the author's consent. However, the Swiss Copyright Act includes the above exceptions and limitations in favor of users and consumers.

Transfer of copyright

Moral rights vest in the author and cannot be transferred / licensed.

However, they may, be waived or transferred to heirs upon death.

Economic rights (“rights of use”) (even parts thereof) may be transferred to third parties and transferred to heirs upon death, “rights of use” may be licensed.

The transfer of a work (copy of the work) does not transfer the rights in the work, even if the original work is transferred.

Copyright law and internet: Use of content

To create a website, many concepts, corporate profiles, etc. can be found in the internet: text, images, music and the like.

Downloading, copying, scanning etc. are types of use of a copyrighted work.

The author / right holder has the right to give permission to any kind of use of his work or to revoke this permission. This **permission** must be given **expressly** (verbally or in writing) or **implied**. However, do not assume that if the author / right holder remains silent to your use he / she permits such use. In practice, this means that works which are available in the internet, may not be used without explicit permission by the right holder.

When published works are used as sources in the internet, they must be cited in the way books are cited; otherwise, plagiarism is taking place.

Copyright law and internet: Links

- Inserting links means the linking of different internet pages with one another.
- This first of all facilitates **access** to the linked page (by clicking directly on the link), and secondly implies to the internet user that the linked pages are **associated**. This assumption can be wrong.
- Therefore, rights can in fact be infringed simply through linking, such as those contained in the Federal Act against Unfair Competition (UCA) or the Data Protection Act (DPA).
- Therefore, linking should always be **agreed upon between the parties**.

Copyright law and the internet: how to protect your online content?

- Place copyright notice on your content (metatags)
- Notice first use (e.g. date of photo)
- Only use resized photos / logos
- Search for copies
- Research web.archive.org
- Send warnings and reminders to unlawful users (cease and desist letter)
- Request deletion / blocking by internet provider
- Request deleting from search engines

Case 1: “Sunny Beachclub Ltd”

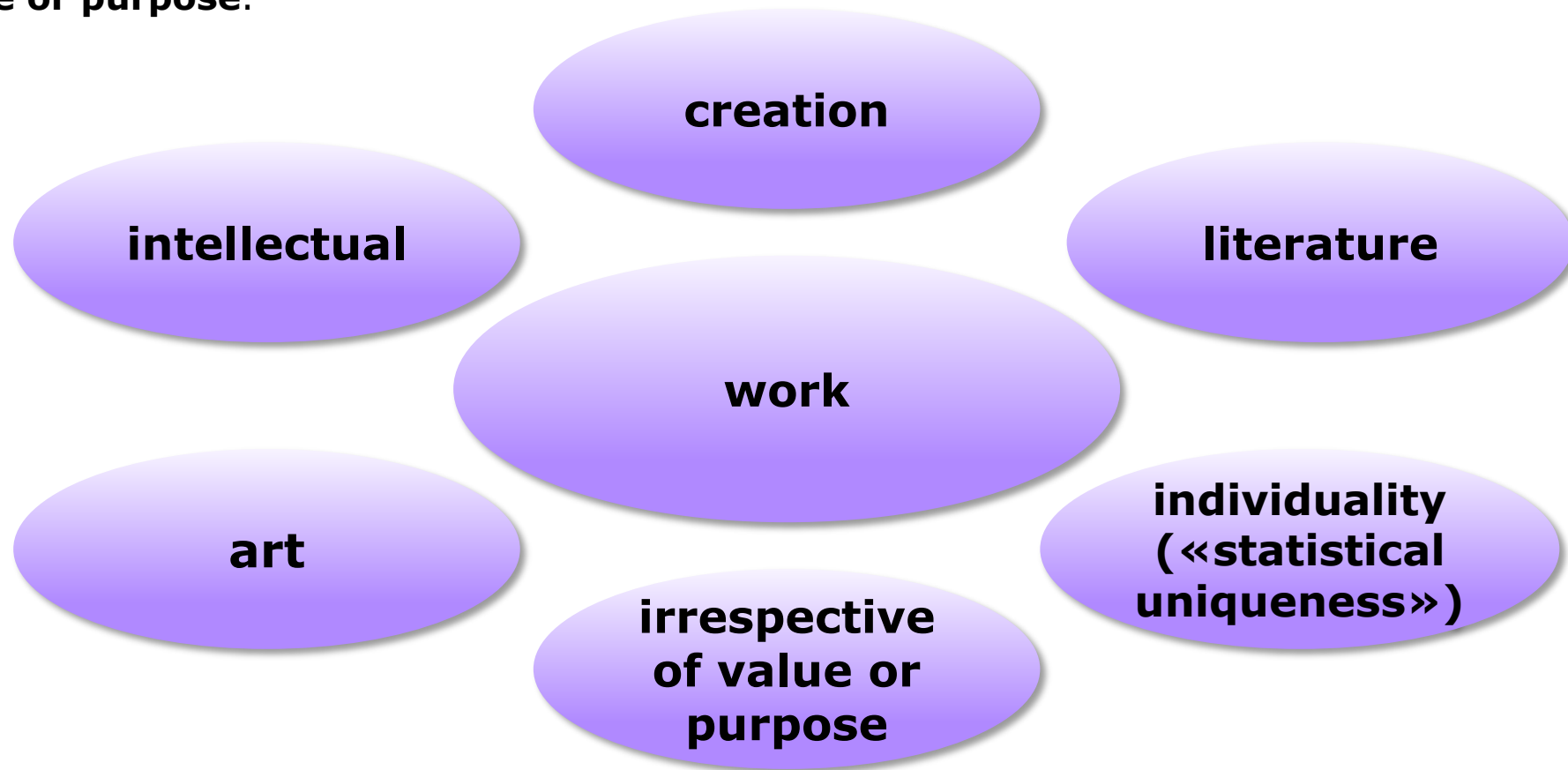
The “Sunny Beachclub Ltd” would like to have a new homepage created for them, combined with a webshop for the sale of sunglasses, sun creams, bath towels, etc. Therefore, it hires the “Trabax Design Ltd”, a company specialized in the creation of websites.

Is the software protected by copyright?

Case 1: “Sunny Beachclub Ltd”

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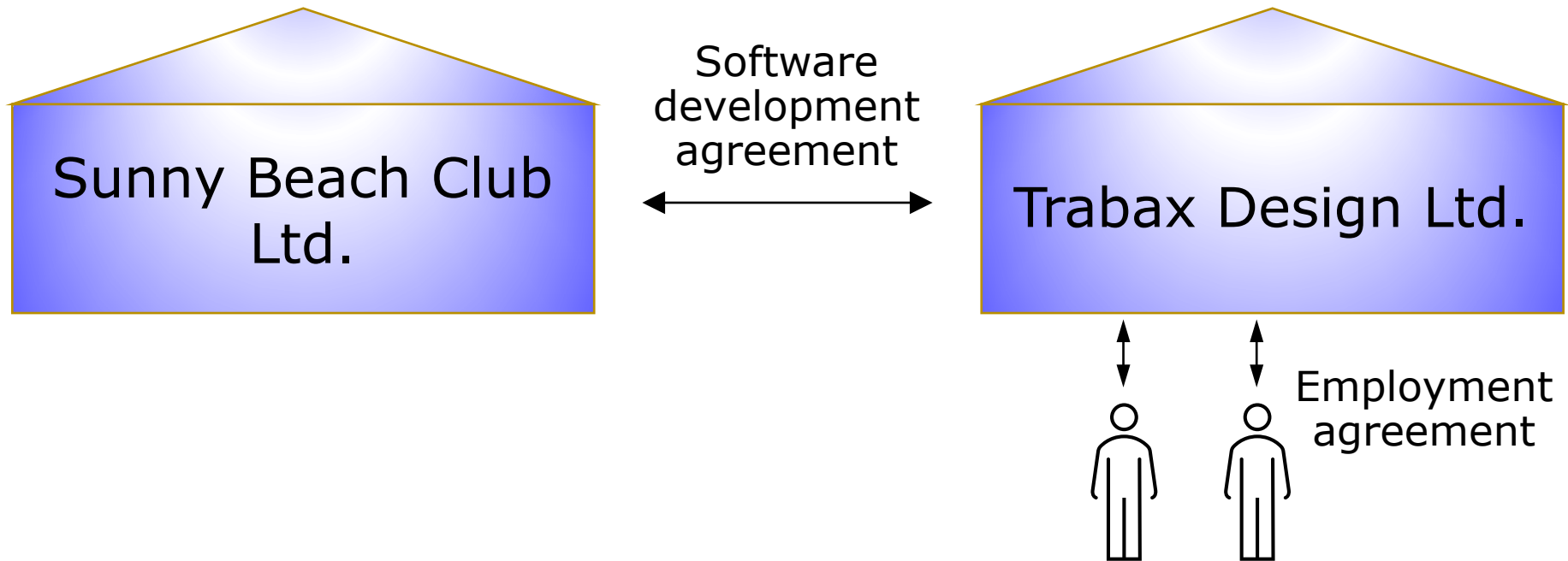
Case 1: “Sunny Beachclub Ltd”

The “Sunny Beachclub Ltd” would like to have a new homepage created for them, combined with a webshop for the sale of sunglasses, sun creams, bath towels, etc. Therefore, it hires the “Trabax Design Ltd”, a company specialized in the creation of tailor-made websites.

Is the software protected by copyright?

Who owns the copyrights to the created software and to the graphic elements etc.?

Case 1: “Sunny Beachclub Ltd”



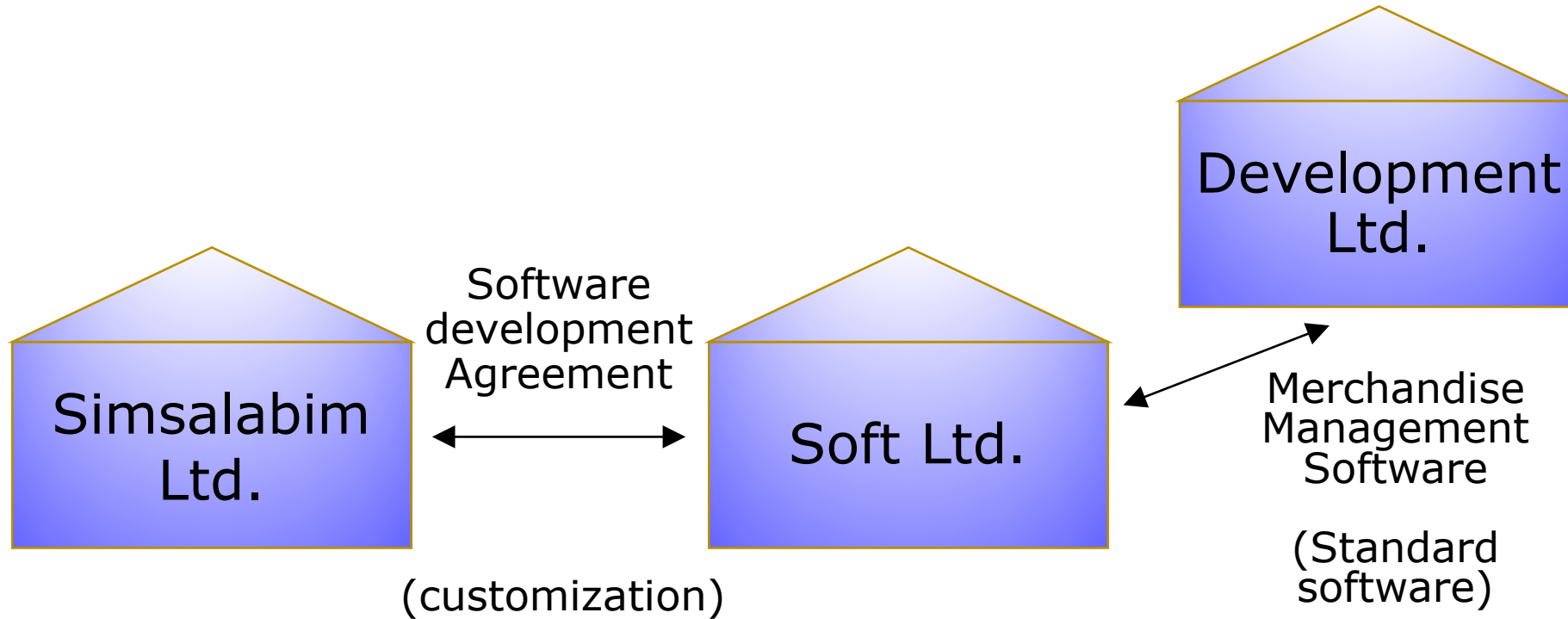
Case 2: “Soft Ltd” (Part 1)

The “Simsalabim Ltd”, a large carpentry workshop in Eastern Switzerland specializes in the production of doors. The “Simsalabim Ltd” wants to introduce a new merchandise management system. For this reason, it contacts the “Soft Ltd”, which distributes a merchandise management system as a partner of “Development Ltd” and carries out customer-specific adaptations, training courses, installations, etc.

In the course of implementation, the “Simsalabim Ltd” will make customer-specific adjustments.

Who owns the copyright to these customizations?

Case 2: “Soft Ltd” (Part 1)

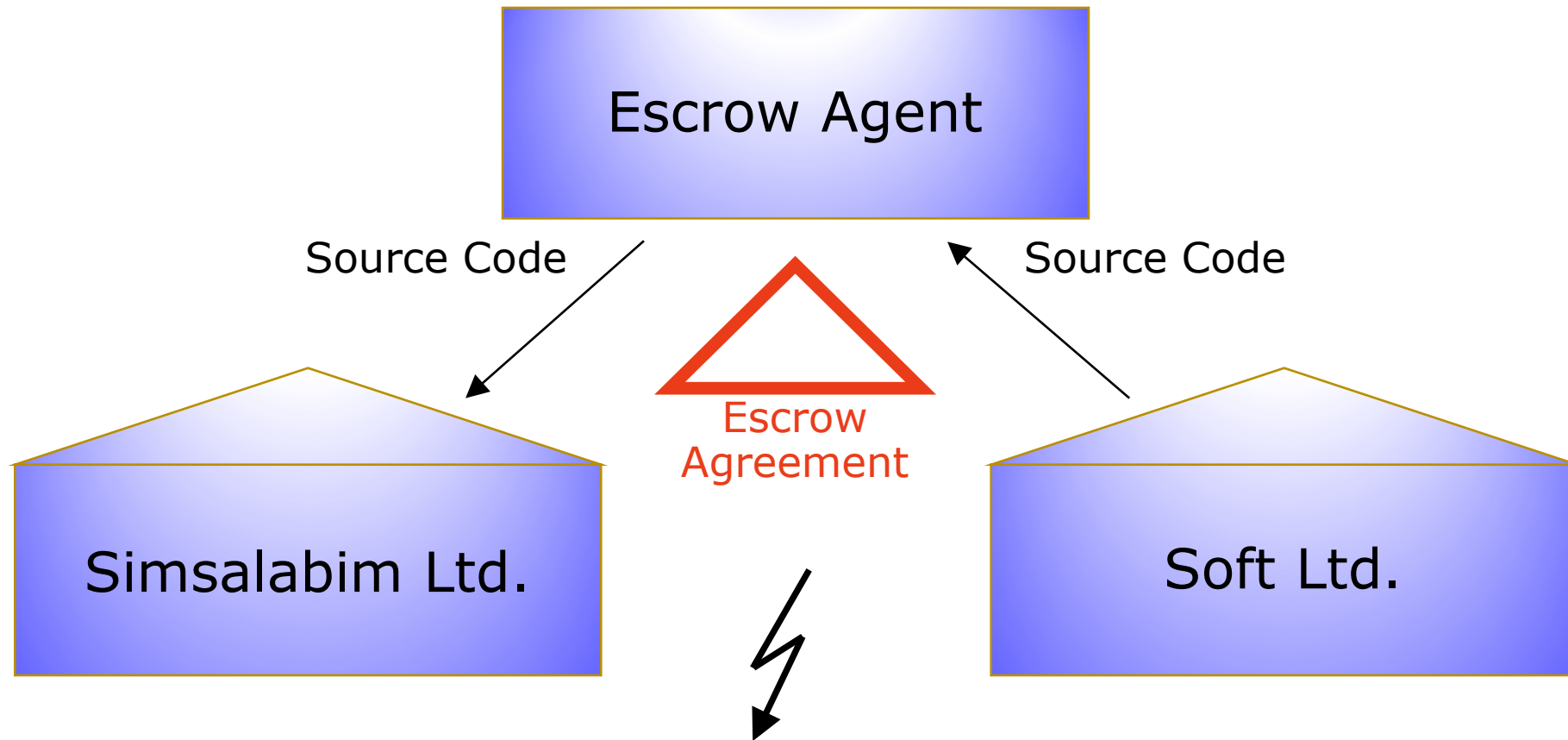


Case 2: “Soft Ltd” (Part 2)

The “Soft Ltd” has massive liquidity problems, which is why it has been in arrears with wage payments for some time now. For this reason, many of the urgently needed maintenance work for “Simsalabim Ltd” will no longer be carried out or will be carried out only after a considerable delay.

How can it be achieved that “Simsalabim Ltd” can still continue to work with the software if maintenance work is not carried out by the “Soft Ltd”?

Case 2: “Soft Ltd” (Part 2)



Sources

https://www.ige.ch/fileadmin/user_upload/kmu/d/Pocket_Guide_Gedacht_Gemacht_Geschuetzt_de_2023_bf_.pdf
February 6, 2024