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19TH OF NOVEMBER 2021

SUZANNA MARAZZA

CCDIGITALLAW, UNIVERSITÀ DELLA SVIZZERA ITALIANA

TODAY'S GOALS

- What does **Copyright** protect?
- Are data protected by copyright?
- How is a **software** protected by copyright?
- How can I **use copyrighted material** in Switzerland?
- What does "**open**" mean?
- What licenses can I use for **open data**?
- What are **Creative Commons Licenses**?
- What are **Free and Open Source Software** licenses?
- How may I combine open with proprietary licensed software?



Copyright



What does copyright protect?

<https://www.fosteropenscience.eu/content/open-science-training-handbook>

- Books
- Articles
- Text
- Movies
- Tutorials
- Courses
- Presentations
- Photos
- Computer programs
- Databases (EU: sui generis protection)
- Technical drawings
- Interviews



→ Usually protected by Copyright

- Intellectual creation (made by a person)
- Form of expression (ideas are not protected)
- Individual character (originality)

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Derivative works (art. 3 Swiss Copyright Act)

Derivative works are intellectual creations **with individual character** that are **based upon pre-existing works**, whereby the individual character of the latter remains identifiable.

- Translations
- Adaptations
- Modifications
- ...



<https://pixabay.com/de/photos/salvador-dali-gegeben-uhr-zeit-2615717/>

Collected works (art. 4 Swiss Copyright Act)

Collections are protected as works **in their own right** insofar as they are intellectual creations with **individual character** with regard to their **selection and arrangement..**

Works included in a collected work may be protected **individually**.

- Newspaper
- Dataset
- CD
- ...



What is not protected by copyright?

Art. 5 CopA: Copyright does not protect:

- a) acts, ordinances, international treaties and other official enactments;
 - b) means of payment;
 - c) decisions, minutes and reports issued by authorities and public administrations;
 - d) patent specifications and published patent applications.
-
- Mere information, facts, data
 - Ideas



How long is a work protected for?

<https://www.fosteropenscience.eu/content/open-science-training-handbook>

HOW LONG IS A WORK PROTECTED FOR?



Lifetime from creation



+ 70/50 years

→ Free to use
→ Public Domain

Creation of a work (art. 29 para. 1 CopA)

→ Copyright protection starts **automatically** from the creation of the work. No registration procedure needed.

The indication of the symbol © does not influence copyright protection.

- **70 years after the author's death** (art. 29 para. 2 let. b CopA)
- **50 years after the author's death** for computer programs (art. 29 para. 2 let. a CopA)

- **50 years after production** for photos lacking of originality (art. 29 para. 2 let. abis CopA)



HOW LONG IS A WORK PROTECTED FOR?



Lifetime from creation



+ 70/50 years

→ Free to use
→ Public Domain

Unknown authorship

- 70 years after first publication (art. 31 para. 1 CopA)

Unpublished Works

- 70/50 years after known time of death

Unknown time of death

- Where it has to be assumed that the author has been dead for more than 70/50 years, protection no longer applies (art. 29 para. 3 CopA)

Joint authors

Non divisible and independently exploitable contributions:

- 70/50 years after the last deceased author (art. 30 para. 1 let. b/let. a CopA)

Where individual contributions may be separated:

- After the death of the respective author: 70/50 years (art. 30 para. 2 CopA)



HOW LONG IS A WORK PROTECTED FOR?



Lifetime from creation



+ 70/50 years

Date to take into account:
31.12.2010

Death's date:
05.03.2010

Protection lasts until:
31.12.2080
31.12.2060



→ Public Domain Day

01.01.2081
01.01.2061

HOW LONG IS A WORK PROTECTED FOR?



- Any exploitation is allowed!
- Digitalizing, uploading online, commercial purposes, ...
- BUT:
 - It is unlawful to presume one's own/new copyright (so-called Copyfraud)
 - According to good scientific practice, it is nevertheless necessary to cite the source and to indicate that it is a quotation.

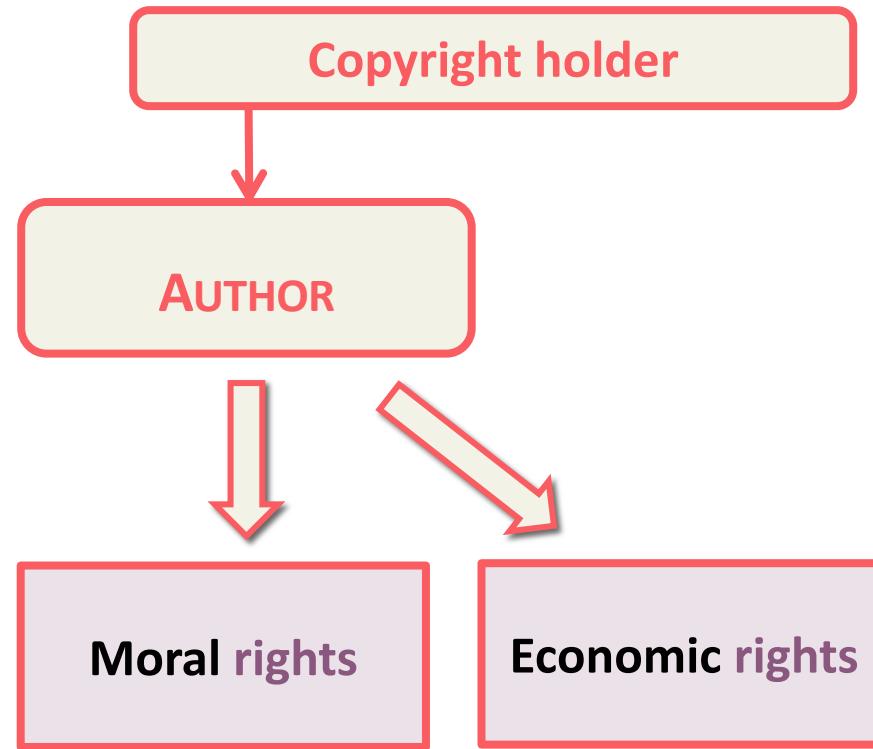


→ Work in Public Domain

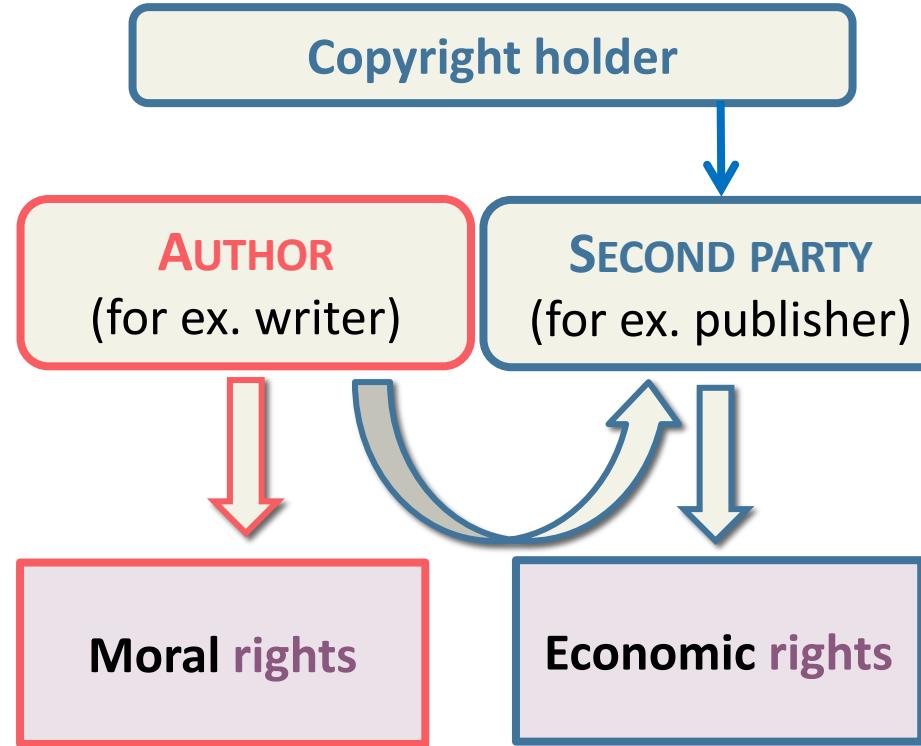
Who is the rightholder?

<https://www.fosteropenscience.eu/content/open-science-training-handbook>

THE AUTHOR



RIGHT HOLDER



Examples:

- Educational institution
- Employer
- Publisher
- Collecting society

What can others do with a protected work?

<https://www.fosteropenscience.eu/content/open-science-training-handbook>

Copyright

The **rule** is:

Always ask the rights holder for **permission** to use a protected work

There are **exceptions**:

- Private use
- Educational purposes
- Professional purposes
- Right of quotation
- Text & data mining for research purposes
- ...

Art. 19 Swiss Copyright Act

For **private use** (very small circle of persons):

- Anything (read, watch, view, see, copy, modify, ect.)

For **educational purposes**:

- Included in the collecting societies joint tariffs
- Only for my students
- Any use (also modifications): complete work
- **Distribution of a copy**:
 - Text, movie, music, video: only an **excerpt** (if work available in commerce)
 - Article of a newspaper, photo, images, prints: complete copy

For **professional purposes**:

- Included in the collecting societies joint tariffs
- **Distribution of a copy** (the extention is same as educational purposes)
- Purpose of internal information and documentation

Art. 25 Swiss Copyright Act Right of quotation

Published works may be quoted if the quotation serves as:

- an **explanation**,
- a **reference** or an
- **illustration**,
- and the **extent** of the quotation is **justified** for such purpose.

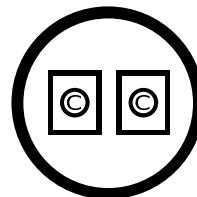
Art. 24d Swiss Copyright Act Text & Data mining

- the work used must be **lawfully accessible**,
- its reproduction and copy is due to the use of a **technical process** and **necessary** for the research activity,
- the copy must not be done so to avoid supplement costs of the purchase of works,
- the source must be mentioned.

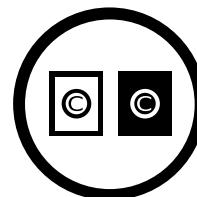
Copyright:

ONLY the right holders (author and employer)
(and who has got the permission from the rightholder = License)
are allowed to:

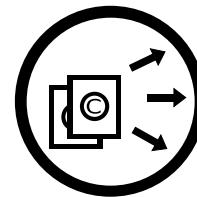
COPY...



MODIFY...

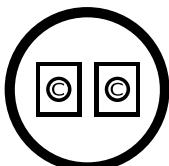


SHARE...



The right to copy

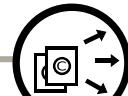
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- Scann
- Take a picture
- Copy out
- Pocket book version
- Copy from USB/CD/DVD...
- Record
- Download
- Upload
- Print a Pdf version
- duplicate
- “vervielfältigen”
- “reproduire”
- “riprodurre”
- ect...



Copy



Modify



Share



Attribution



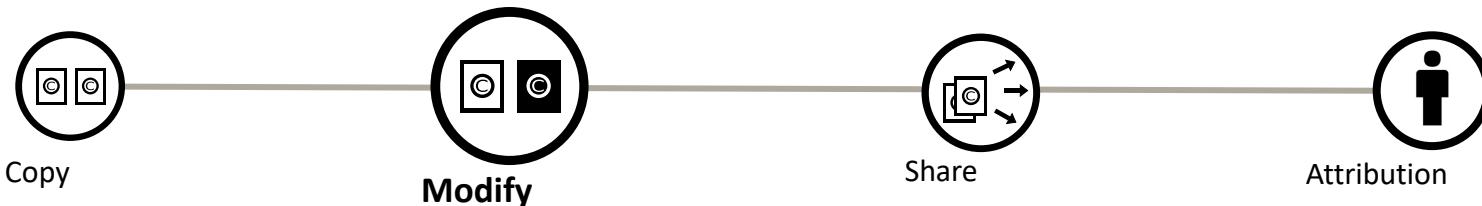
Joan Miró



Salvador Dalí

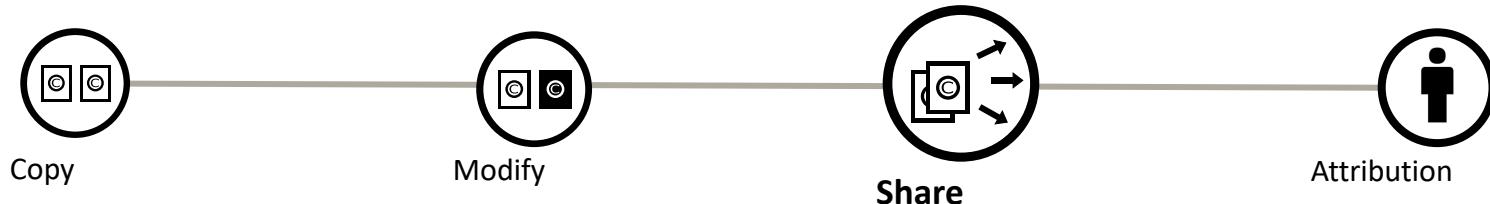
Right to modify

- Aka «remixing», changing, editing, combining
- «to alter», «ändern», «modifier», «modicare»
- Corrections of the teaching material, inserting additions, changing, translating, filming, remaking, changing the version, (audio / hearing / e- version), editing the structure, reductions, resuming, inserting subtitles, making a collage, putting together several teaching materials, reformatting (e.g. .docx to .pdf), adding music to a video
- Delimitation of free use: the original work is no longer recognizable



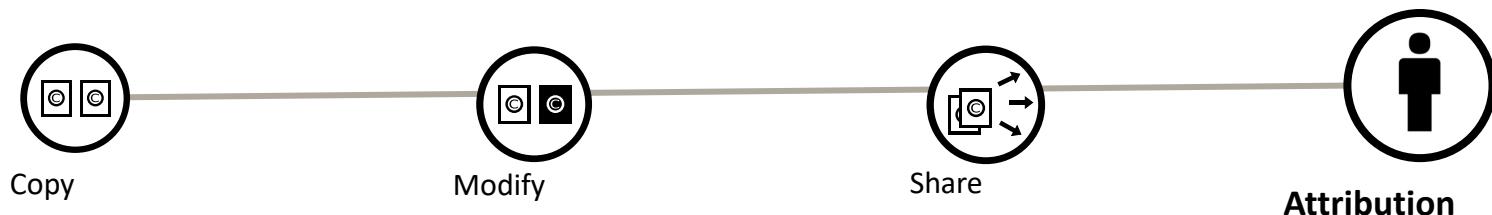
Right to share

- To sell a work, to give, to upload online, to make available, to add to a repository
- «to distribute», «verbreiten», «mettre en circulation», «mettere in circolazione»
- **ONLY applies to share a copy or a modified version**
- It is allowed to distribute a non-modified work, if it is **not duplicated** or modified
 - I sell a book I bought: ok
 - I upload a digital work on a blog: not ok
 - I forward an ebook: controversial



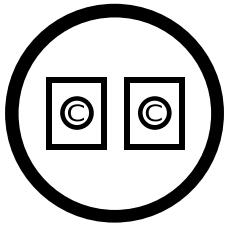
Right of attribution

- «Right to recognition of authorship», «Recht auf Anerkennung der Urheberschaft», «droit de faire reconnaître sa qualité d'auteur», «diritto di far riconoscere la sua qualità di autore»
- incl. Right to remain anonymous or to use a pseudonym
- Right of quotation (Art. 25 para. 2 CopA)

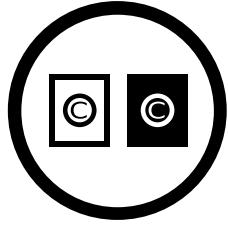


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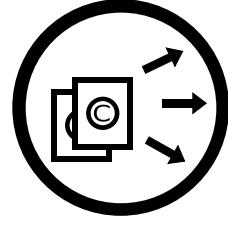
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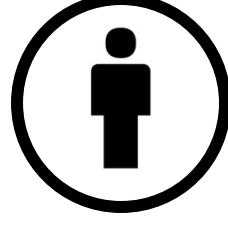
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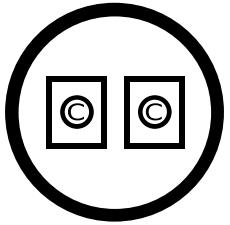
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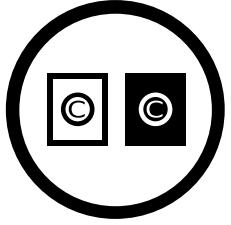
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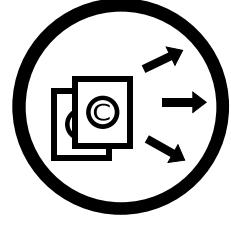
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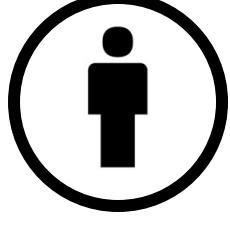
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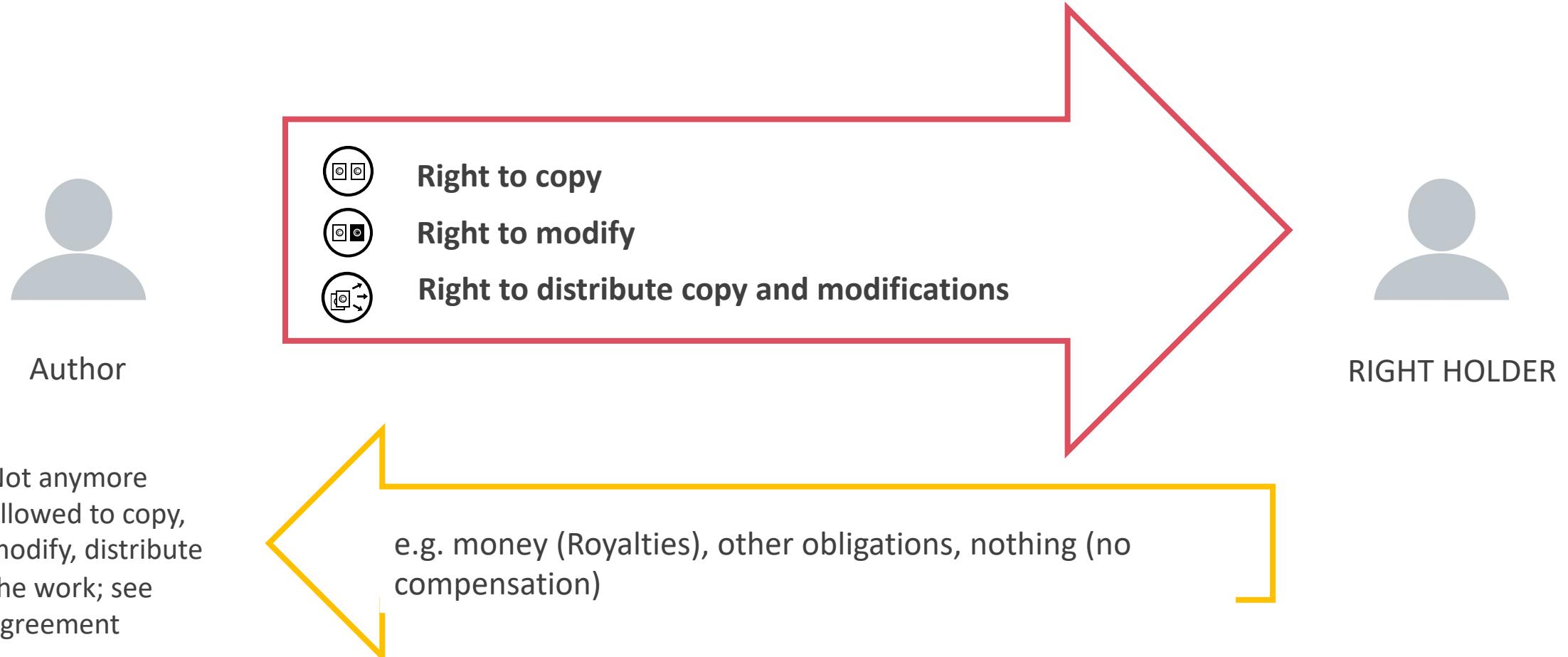
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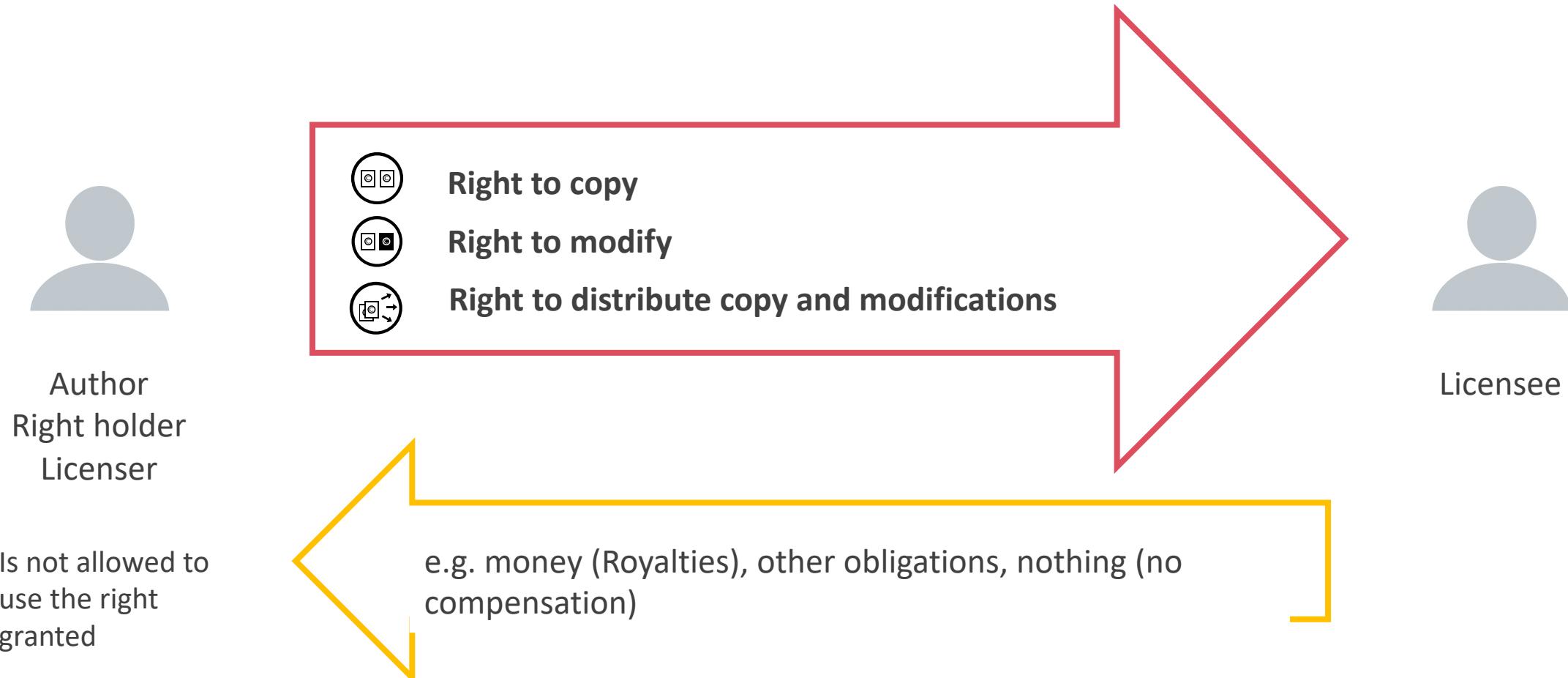
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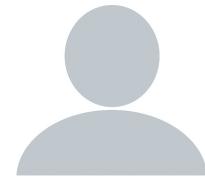


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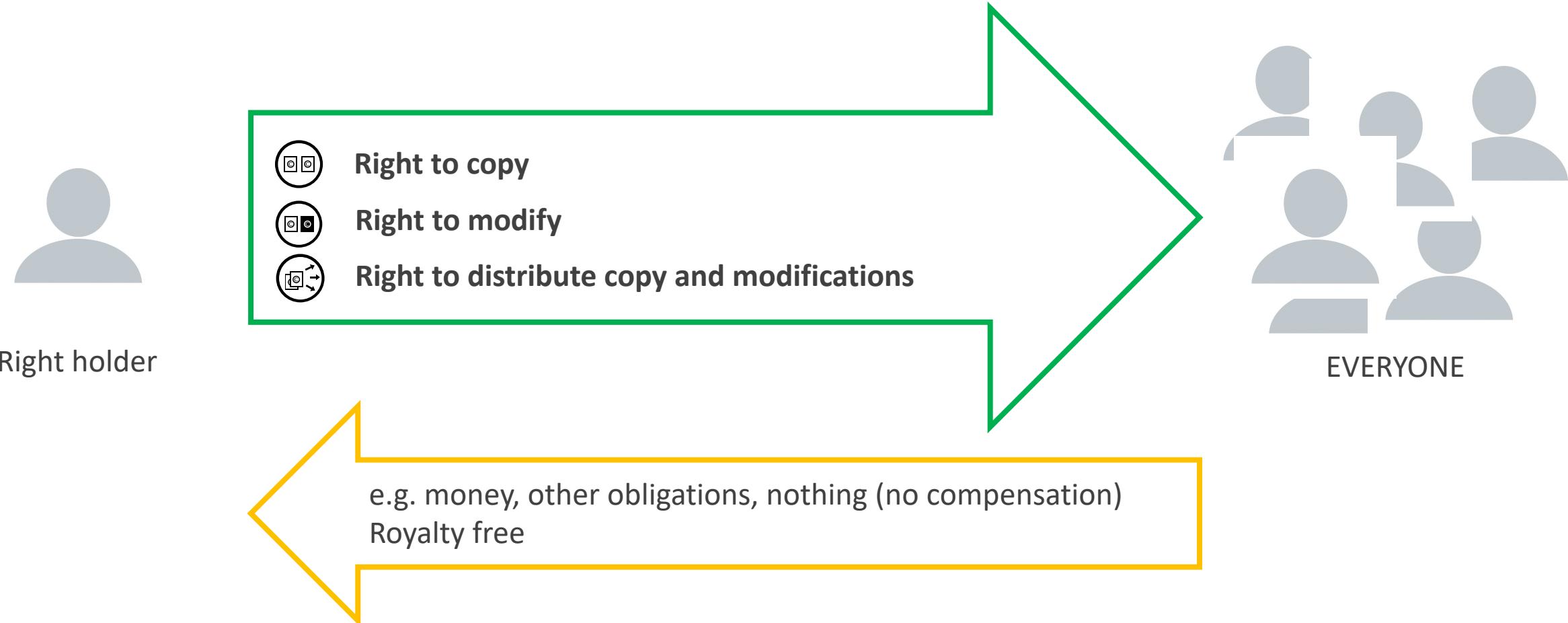
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John Locke: property rights over the fruit of your (intellectual) labour

Default: Closed → Copyright law

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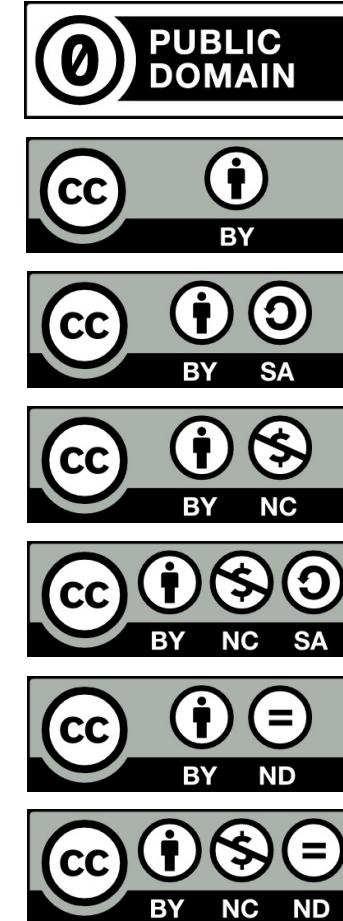


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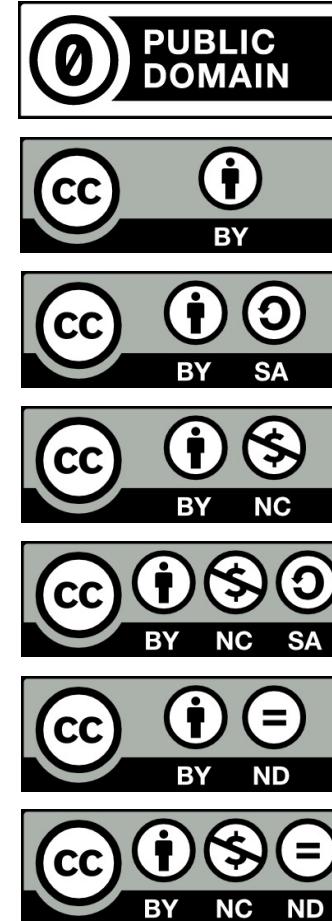


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- Often used for research data and open educational resources



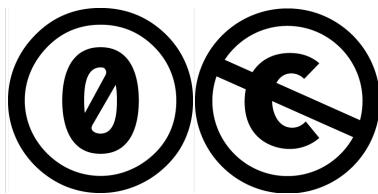
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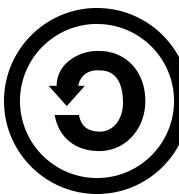
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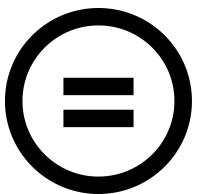
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and the author→ Several attribution
obligations**SA****Share alike**

Condition

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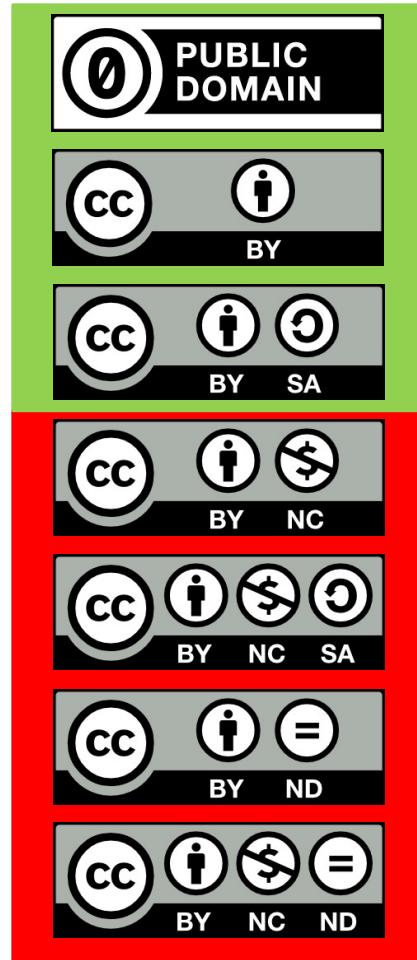
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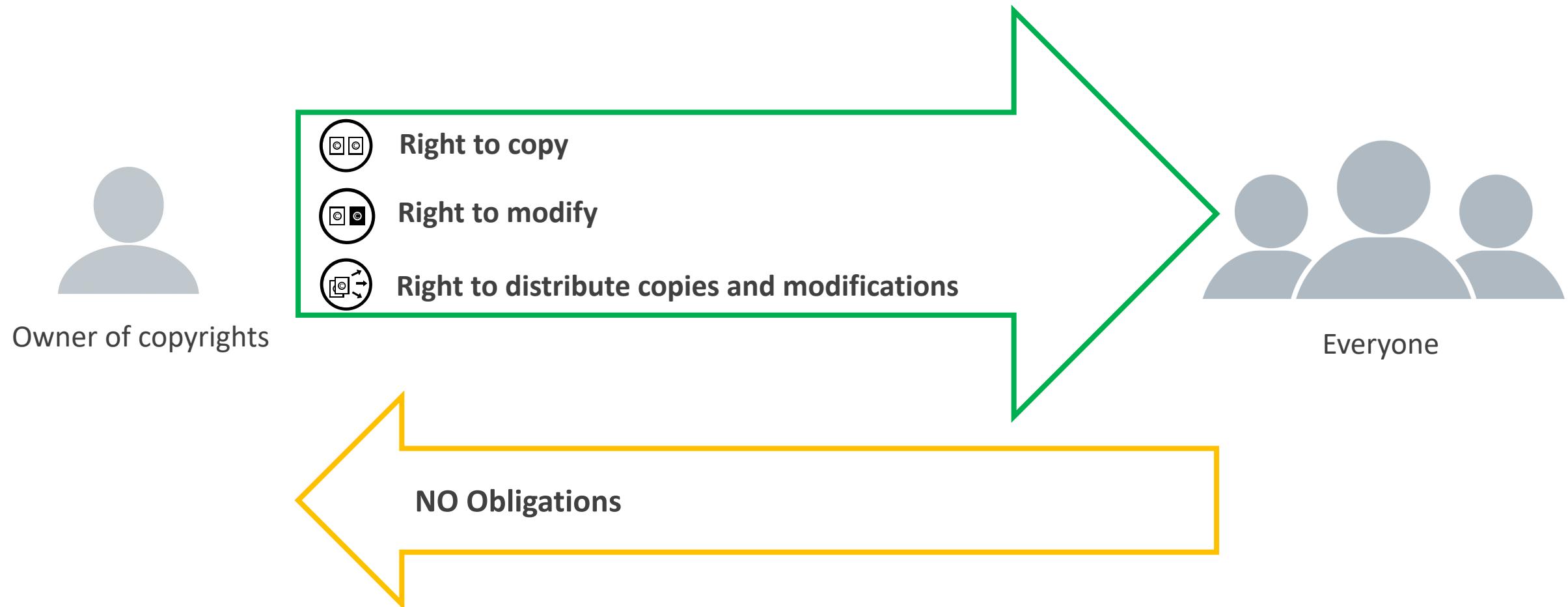
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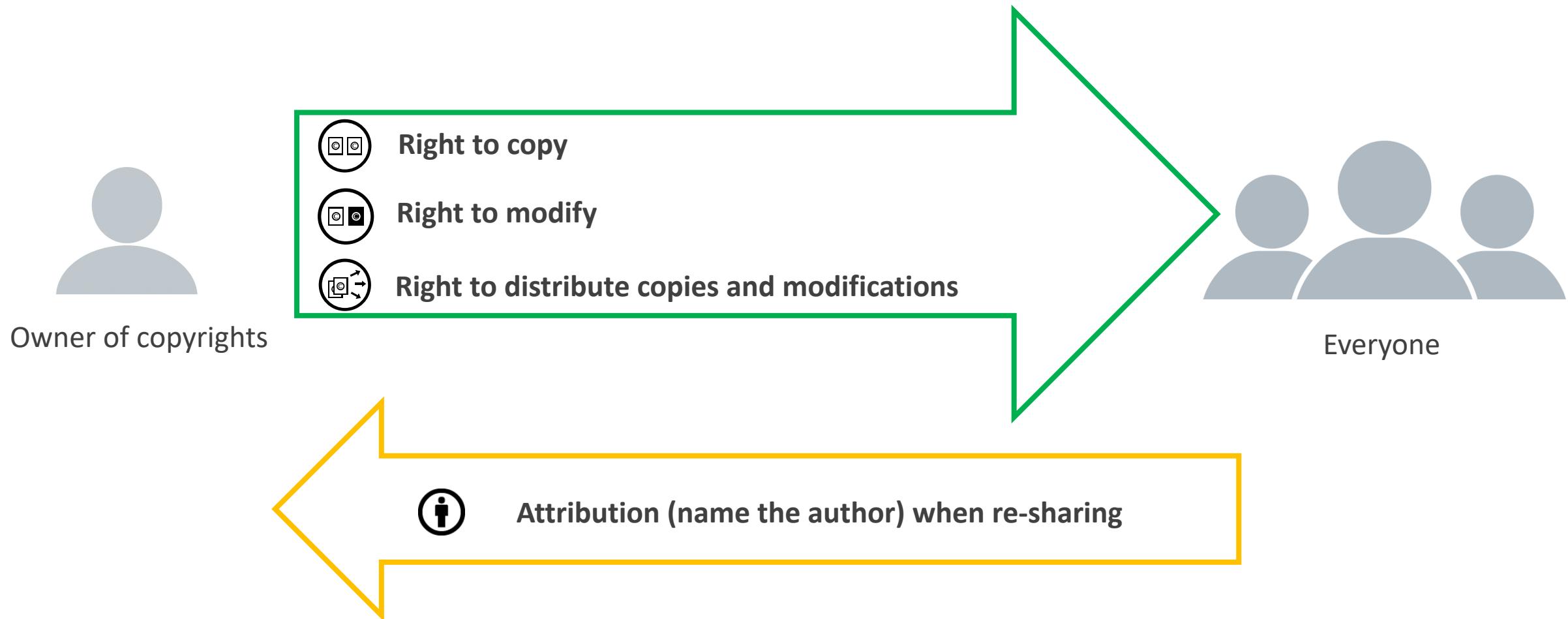


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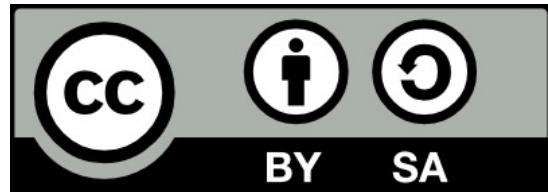


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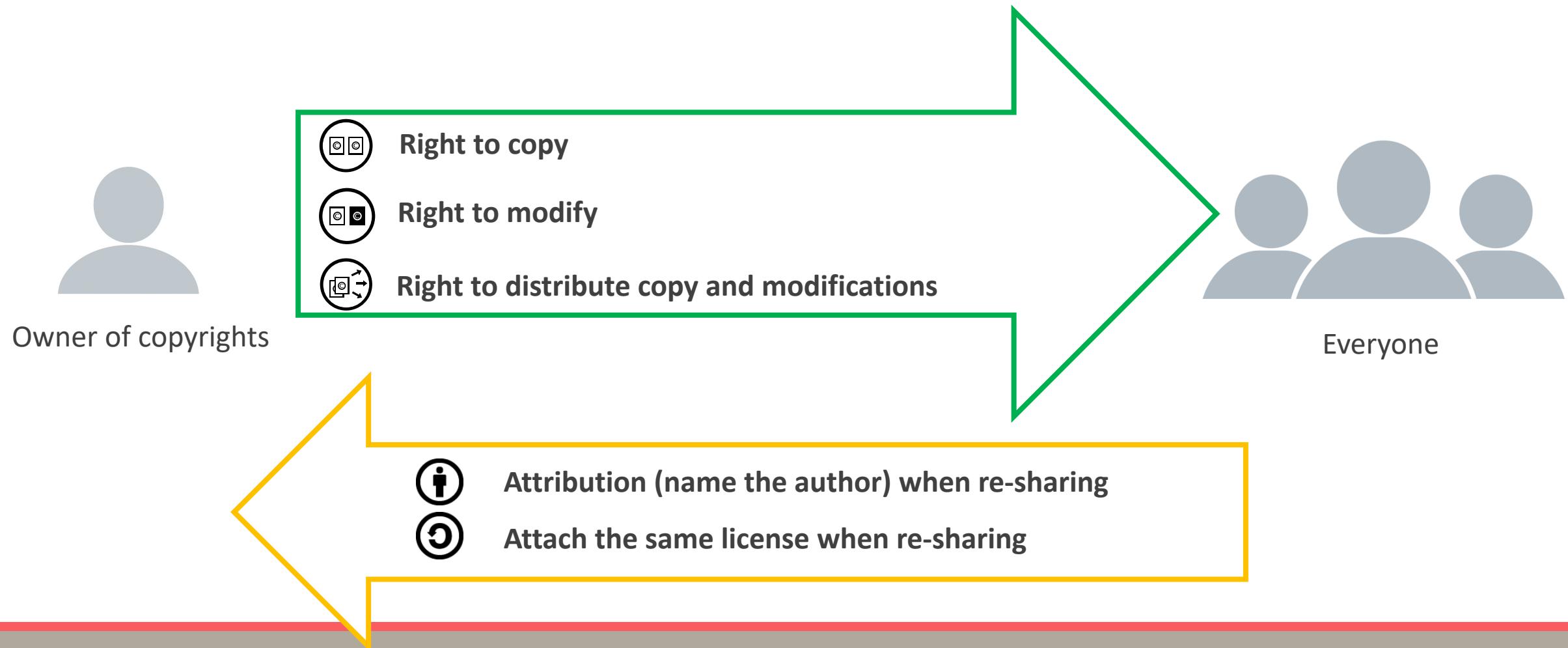


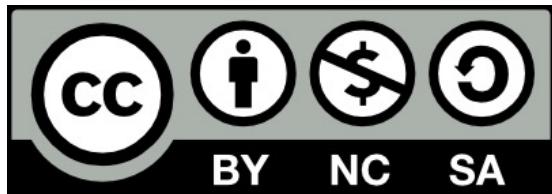
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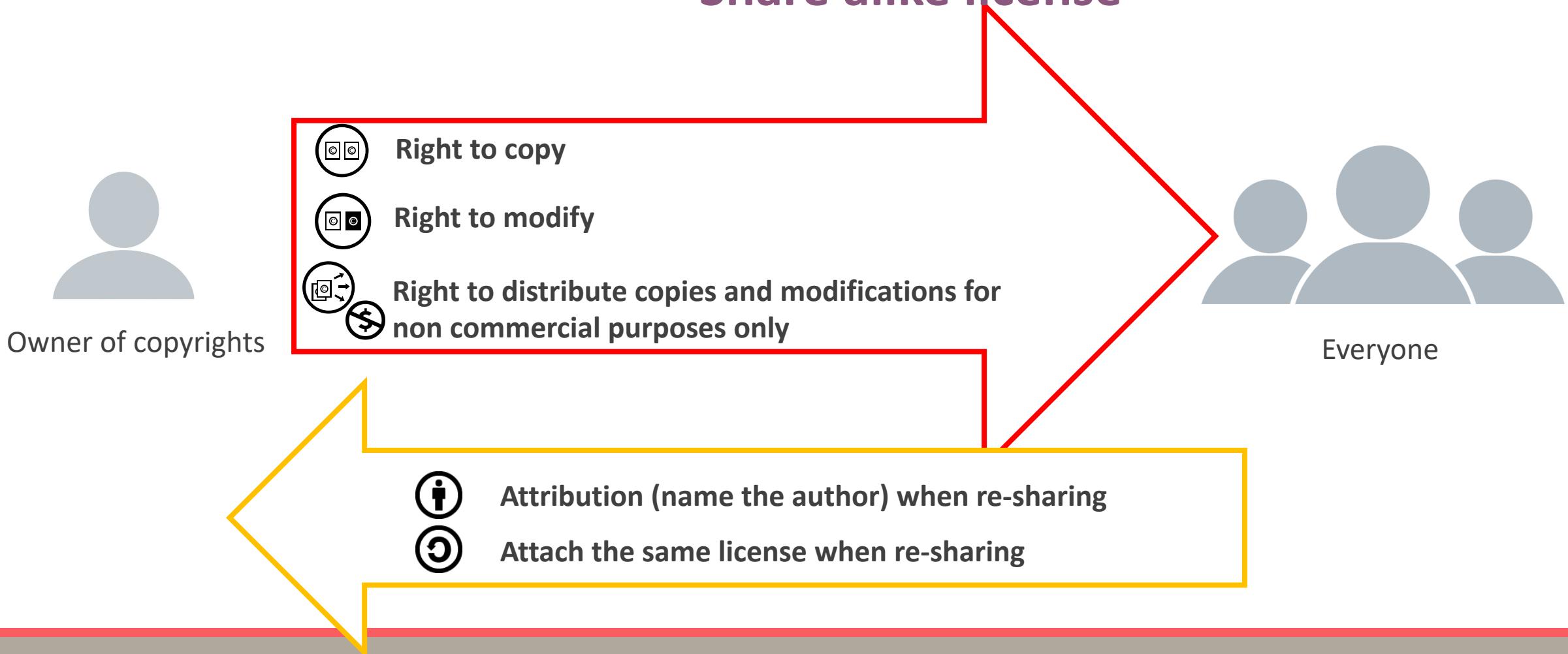


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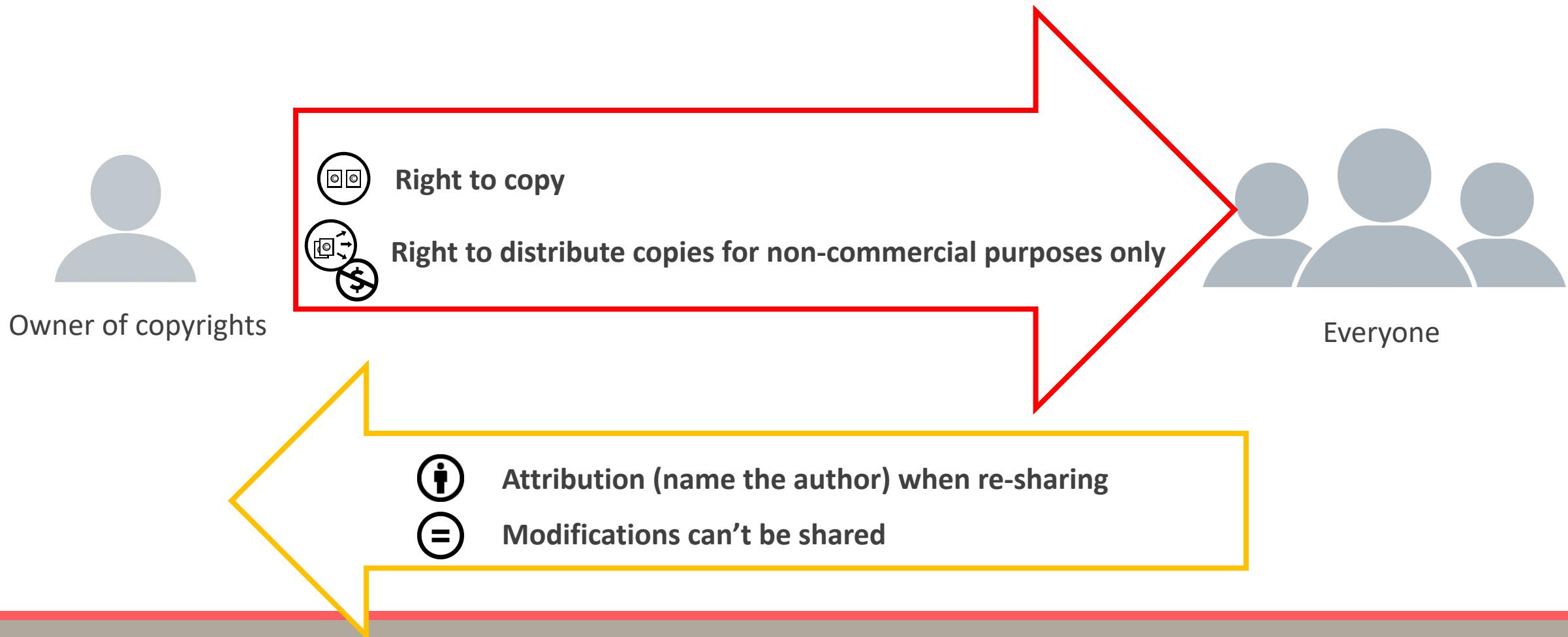


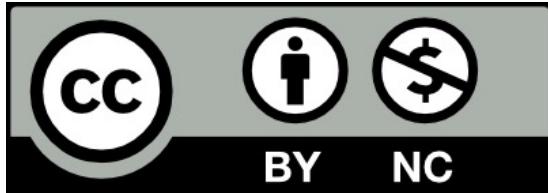
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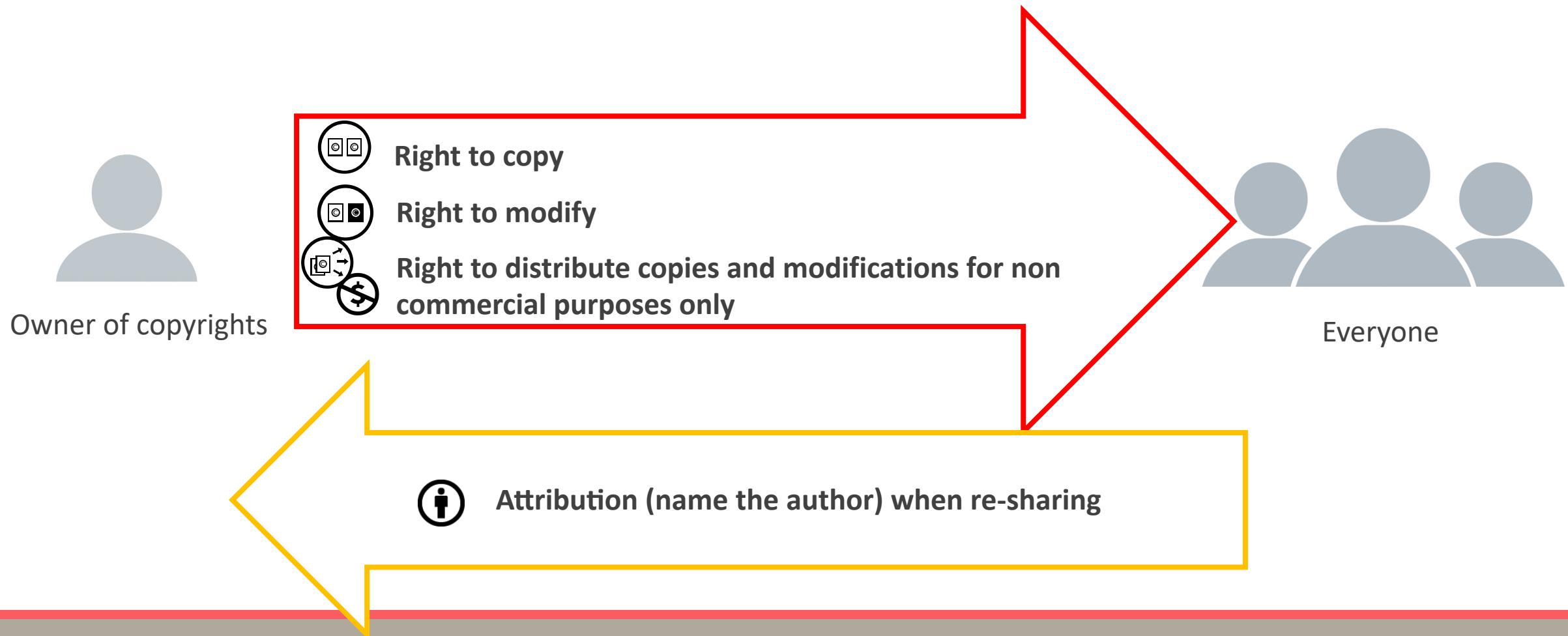


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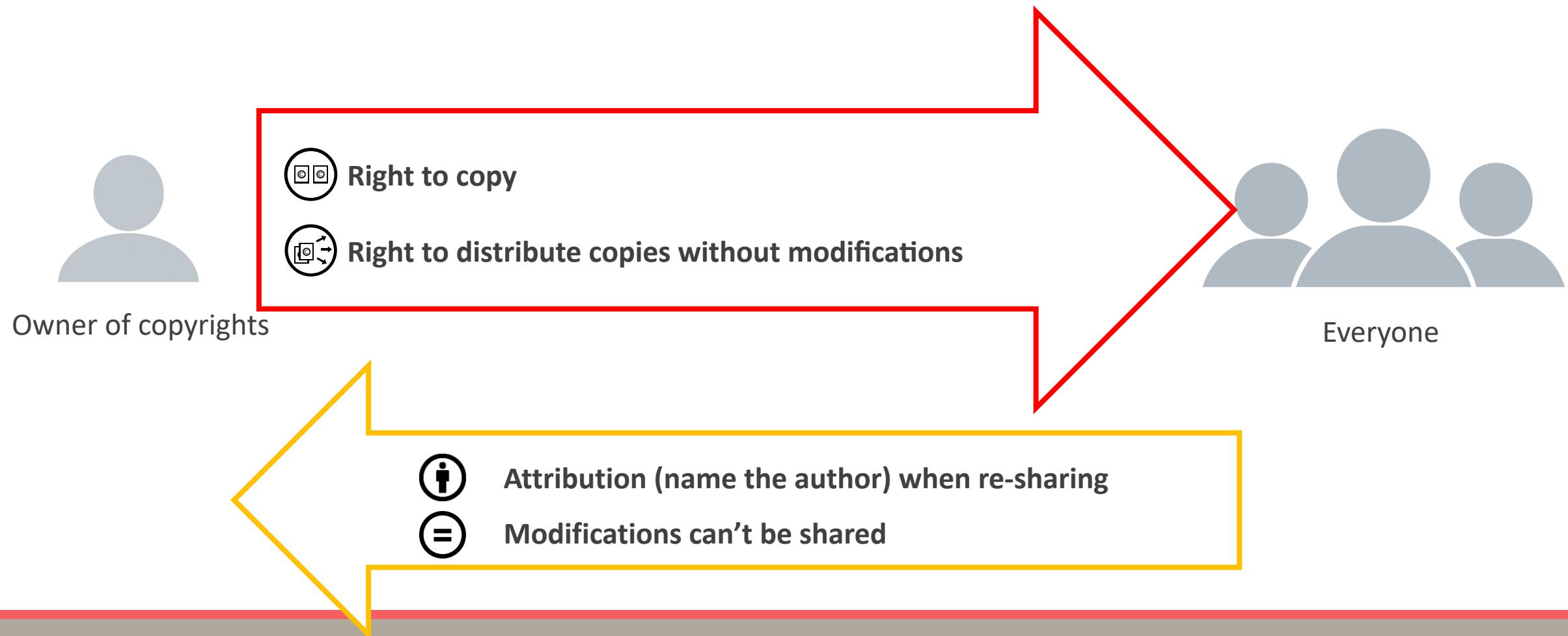


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→ CC license chooser: <https://creativecommons.org/choose/>

Attach the license symbol or the license name to the work

→ Reference to license text

→ Similar to: «Our general conditions and terms apply»

Where should I attach it?

→ Where best visible

Source of icons: <https://creativecommons.org/about/downloads/>

WHERE CAN I FIND OPEN MATERIAL IN INTERNET?

Websites with (mostly) free to use images:

<https://www.pexels.com>

<https://picography.co>

<https://pixabay.com>

<https://pixy.org;>

The collection of the Metropolitan Museum of Arts (<https://www.metmuseum.org>)

Or by searching in Google



WHERE CAN I FIND OPEN MATERIAL IN INTERNET?



Always read
the license
before use!

The screenshot shows a Google search results page for the query "lugano". The results include several images of Lake Lugano and surrounding areas. A red arrow points from the text "Always read the license before use!" to the "License details" link in the right-hand sidebar of the top search result, which is a Pixabay image of a lake promenade.

Google lugano

File:Lago di Lugano at Sunset (cropped ... commons.wikimedia.org)

File:Lugano-innevata.jpg - Wikimedia ... commons.wikimedia.org

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Combination of two or more CC licenses?

- Combiners must use the most restrictive license on the combination
- The more compatible, the easier it is to continue using it
- Original material can be distributed under several licenses → Further users can chose which license they prefer.

	© PUBLIC DOMAIN	Ø PUBLIC DOMAIN	CC BY	CC BY SA	CC BY NC	CC BY ND	CC BY NC SA	CC BY NC ND
© PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
Ø PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
CC BY	✓	✓	✓	✓	✓	✗	✓	✗
CC BY SA	✓	✓	✓	✓	✗	✗	✗	✗
CC BY NC	✓	✓	✓	✗	✓	✗	✓	✗
CC BY ND	✗	✗	✗	✗	✗	✗	✗	✗
CC BY NC SA	✓	✓	✓	✗	✓	✗	✓	✗
CC BY NC ND	✗	✗	✗	✗	✗	✗	✗	✗

Picture: CC_License_Compatibility_Chart, <https://creativecommons.org/faq/#can-i-combine-material-under-different-creative-commons-licenses-in-my-work>, CC-BY 4.0 International
Modification made by Melanie Graf: Transparent green layers to indicate «open» vs. non-open CC licenses

WHAT LICENSE TO CHOOSE?

1

Do you have the **right to license** the work?

No

You must
not
license



2

Do you want to publish it according to opendefinition.org?

Yes

No

Choose any
license

Yes

CC0; CC-BY; CC-BY-SA

3

Do you or your organization want to be **named**?

Yes

No

CC0

You can also use CC-BY
and CC-BY-SA and
waive to be named

CC-BY; CC-BY-SA

4

Do you want it to be **kept open**?

Yes

I don't care

CC0; CC-BY

Yes

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Free and Open Source Software Licenses

Free and Open Source Software (FOSS)

- Users are allowed and able to
 - **Run** the software
 - **Copy** the software
 - **Modify** the software
 - **Share/distribute** the copy and/or modification of the software
- What FOSS programs do you know or use in your daily life?

Free and Open Source Software (FOSS)

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 - Run the software
 - Copy the software
 - Modify the software
 - Share/distribute the copy and/or modification of the software
- What FOSS programs do you know or use in your daily life?



Free and Open Source Software (FOSS)

- Users are allowed and able to:
 - Run the software
 - Copy the software
 - Modify the software
 - Share/distribute the copy and/or modification of the software
- Prerequisites
 - Access to **source code** of the computer program
 - **License** to copy, modify and distribute the computer program
 - **No license fee**

How software is protected by copyright

What may be protected:

- Source code
- Object code
- Descriptive and preparatory documentation
- Architecture and design
- User manuals, support materials
- Graphic user interfaces

What is not protected:

- Interface information
- Data/file formats
- Ideas and principles
- The way of functioning

Give access to source code

What is a Computerprogram?

“99 bottles of beer on the wall, 99 bottles of beer.

Take one down and pass it around, 98 bottles of beer on the wall.

98 bottles of beer on the wall, 98 bottles of beer.

[...]

1 bottle of beer on the wall, 1 bottle of beer.

Take one down and pass it around, no more bottles of beer on the wall.

No more bottles of beer on the wall, no more bottles of beer.

Go to the store and buy some more, 99 bottles of beer on the wall.”

→ Computer program to generate the more than 200 hundred lines of text of the song 99 Bottles of Beer

Source Code

- Understandable for humans
 - Modifiable
 - Not understandable for computers
 - Can be trade secret/know-how
(you do not need it to run a computer program)

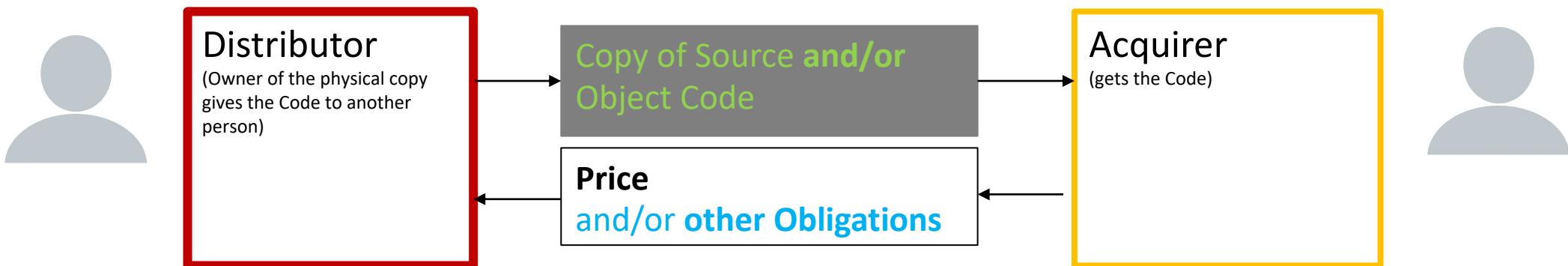
CC0 image, retrieved from: <https://www.pexels.com/photo/close-up-code-coding-computer-239898/>

Object Code

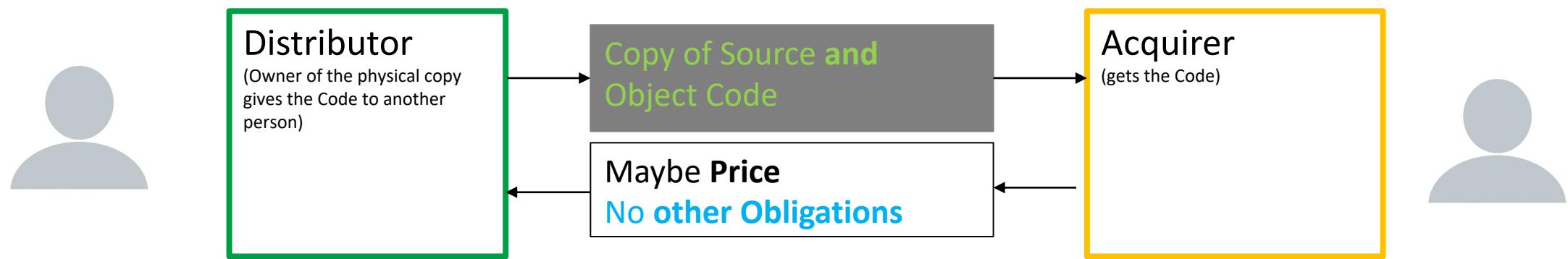
- Translated from Source Code
- Zeros and Ones
- Other terms: *machine code* or *binary*
- Executable or understandable for computers
- Not understandable for humans therefore not modifiable
- Reverse engineering very difficult if not impossible



Transfer of software



Transfer of FOSS



Distribution of verbatim Copies of Code

- Obligations when distributing copies of FOSS-Code:
 - Attribution
 - Attach or better include license agreement in code [this is how you know it is an free and open source software]
 - Disclaimers and warranties
 - Copyright notices
 - Each FOSS License may be different.
Eg GNU GPL: access to source code if distribution of object code
- Scope of the term « **distribution** »



FOSS licenses

Copyright and Software

- **Works:**
 - «literary and artistic intellectual creations»
 - with an «individual character»
 - for example a computer program (Source Code and Object Code)
- Bundle of exclusive rights to use
 - Right to **copy** the work
 - Right to **distribute** work
 - Right to **modify** the work
 - (Moral rights)
- **Owner** of the copyrights: Creator or Employer of the Creator

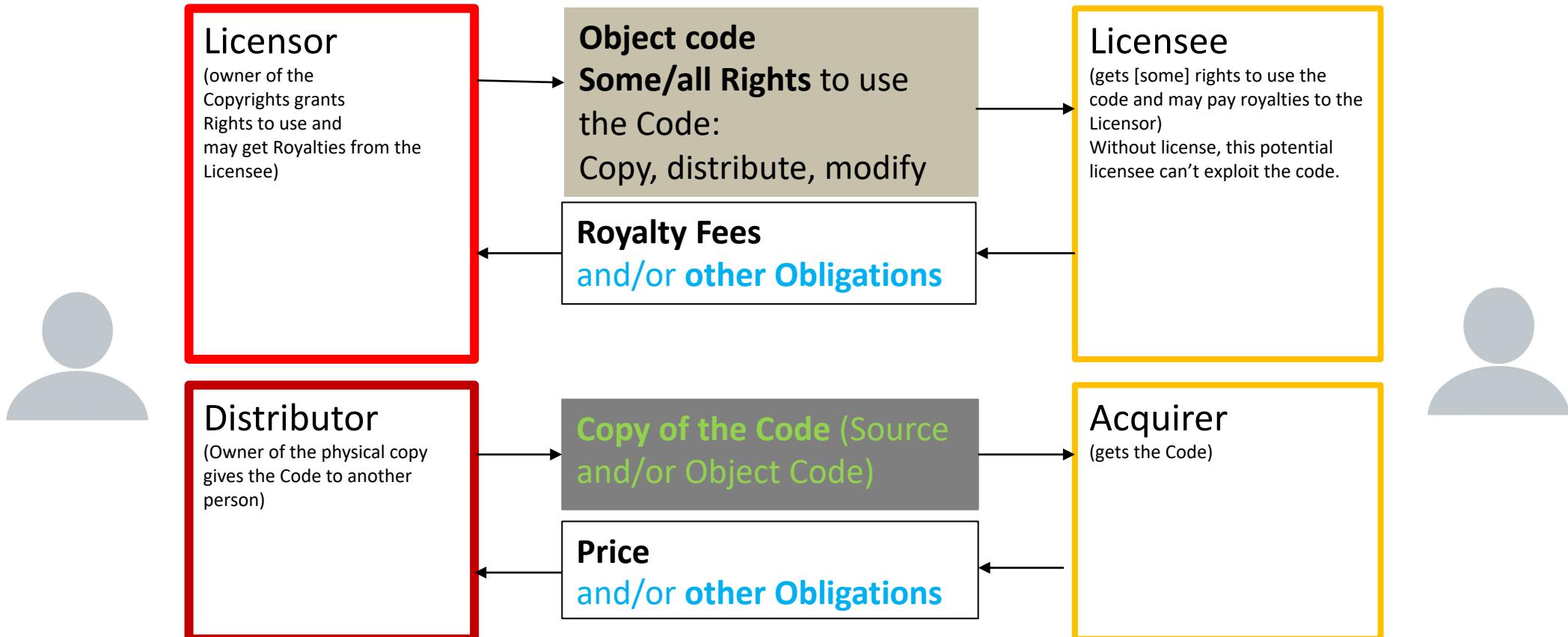


Licenses

The right holder:

- Has an exclusive right which is being exploited through licensing
- Grants of wide use rights
- Allows other people to exploit the exclusive rights
- No license = exclusive exploitation by right holder

Proprietary Software Licenses



FOSS Licenses' Definition(s)

- **Free Software (Licenses):**
 - Freedom 0 – the freedom to use the work,
 - Freedom 1 – the freedom to study the work,
 - Freedom 2 – the freedom to copy and share the work with others,
 - Freedom 3 – the freedom to modify the work, and the freedom to distribute modified and therefore derivative works.
- **Open Source Software (Licenses):**
 - 10 criteria, including the right of distribution, the right of creating derivates, etc.

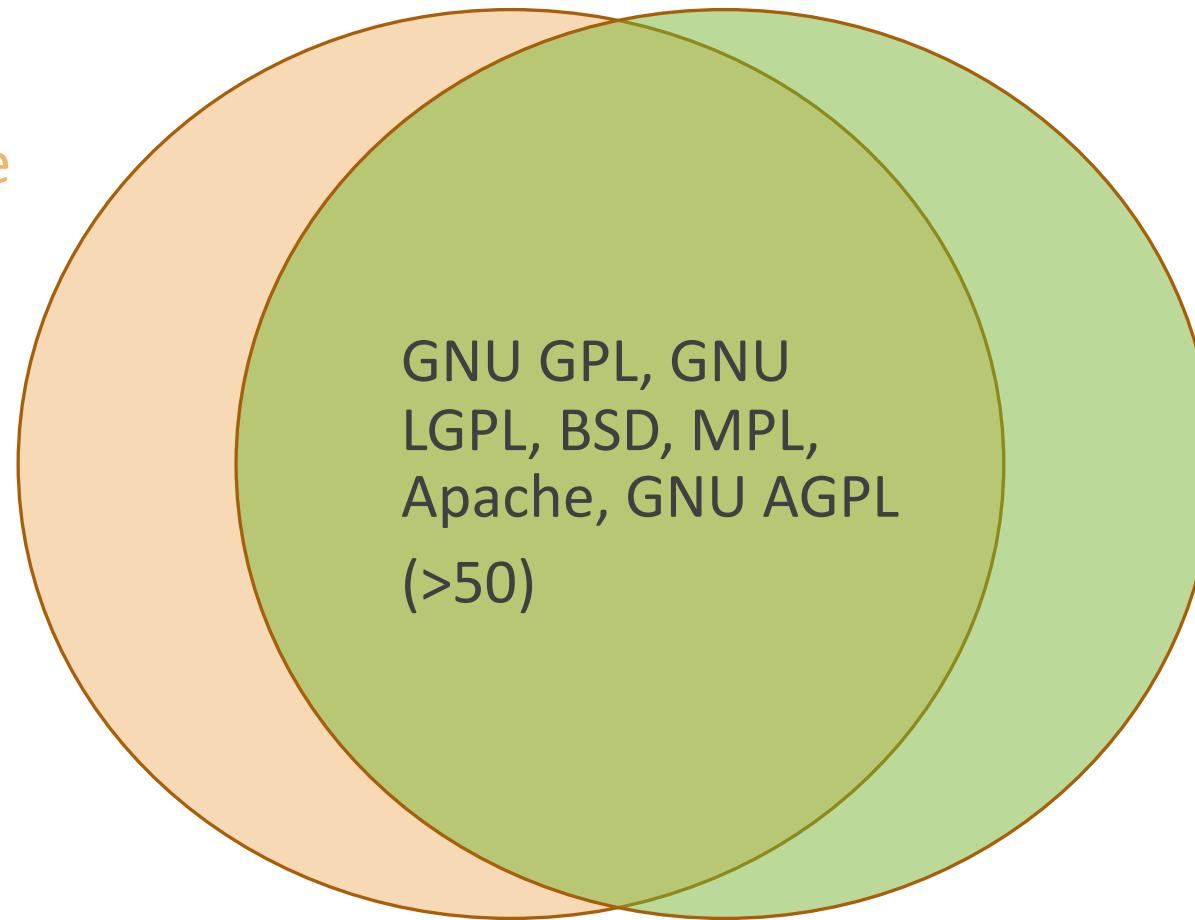
Free and Open Source Software Licenses

Free Software Licenses

List of approved licenses:
<https://www.gnu.org/licenses/license-list.html>

Open Source Software Licenses

List of approved licenses:
<https://opensource.org/licenses/alphabetical>

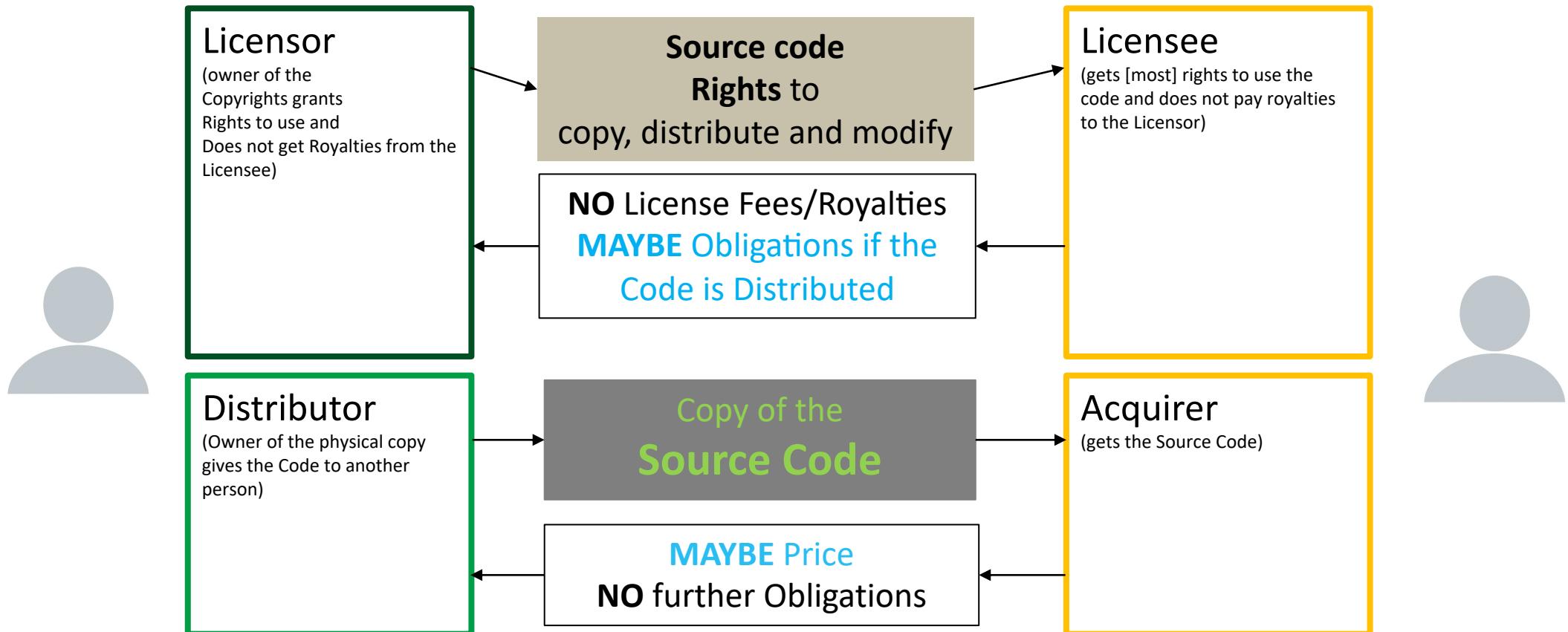


Free and Open Source Software Licenses

- Content of FOSS Licenses:
 The **Licensor** grants

- Access to the Source Code of the Program
 - The Right to run the Code
 - The Right to modify the Code
 - The Right to distribute the verbatim and changed Copies of the Code
 - Without claiming license fees for the granted rights (royalty-free)

FOSS Licenses



Permissive and Copyleft Licenses

- Obligations to license modified FOSS-Code when distributing the modified Code:
 - NONE (permissive FOSS Licenses)
→ free in your choice on how to license
 - SOME (copyleft FOSS Licenses)
→ Distribution of modified FOSS-Code only under the **same** or a **compatible** license





Weak or Strong Copyleft Licenses

- Obligations to license modified FOSS-Code when distributing the modified Code:
 - Weak copyleft
 - copyleft only on the original work, the **core code**
 - extensions or composed works can also be proprietary
 - Strong copyleft
 - copyleft on **whole redistributed work**, including derivative and composed works incorporating the work

Permissive and Copyleft Licenses

Type	Characteristic	Licenses	Examples
Permissive	No restrictions on reuse / redistribution Derivatives / Compilations may be closed	BSD, MIT , Apache 2	Android, Apache webserver, Open Stack, PHP, Ruby
Weak copyleft	Only copyleft on the original core code, not on extensions or composed works using the code	LGPL, MPL, CPL	JBoss, Mozilla, LibreOffice, Joomla
Strong copyleft	Copyleft on all the redistributed work, including derivates and composed works	GPL2 , GPL3, EUPL	Linux, Asterisk, the GIMP, MySQL, Drupal, MediaWiki

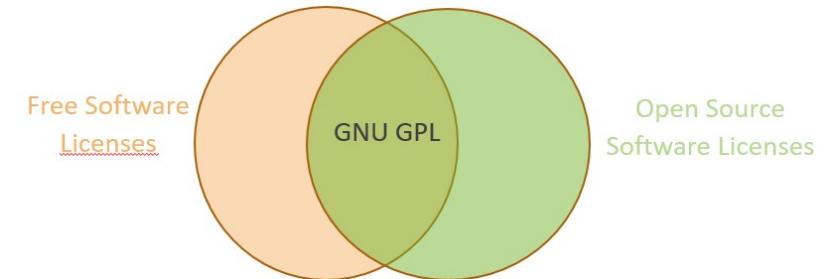
Source: World Intellectual Property Organization (WIPO)

Copyleft-Clause in GNU GPL v2



Copyleft for:

- «work based on the Program »
 - The Program
 - Derivative work under copyright law
 - A work containing the Program
 - A work containing parts of the Program
 - Modifications
 - Translations into other languages
- Code sections that are distributed as part of a whole



Copyleft-Clause in GNU GPL v2

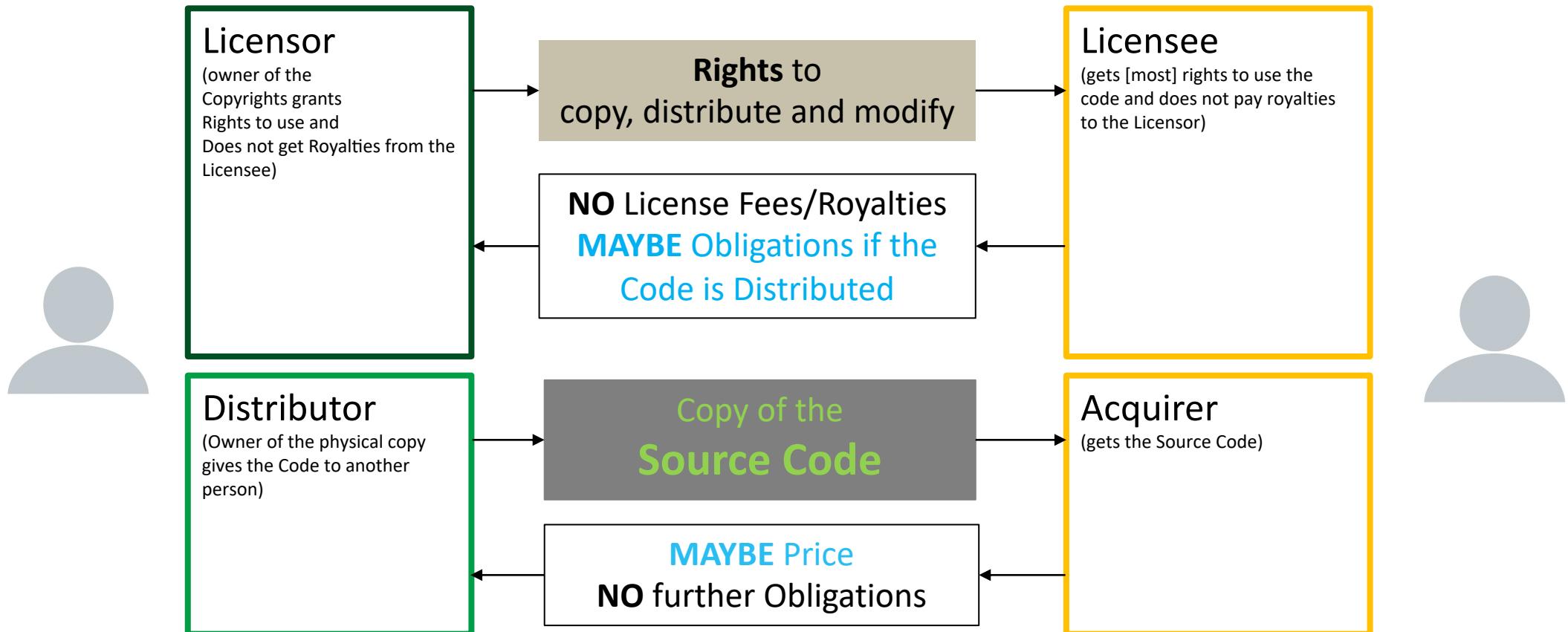


No Copyleft for code sections:

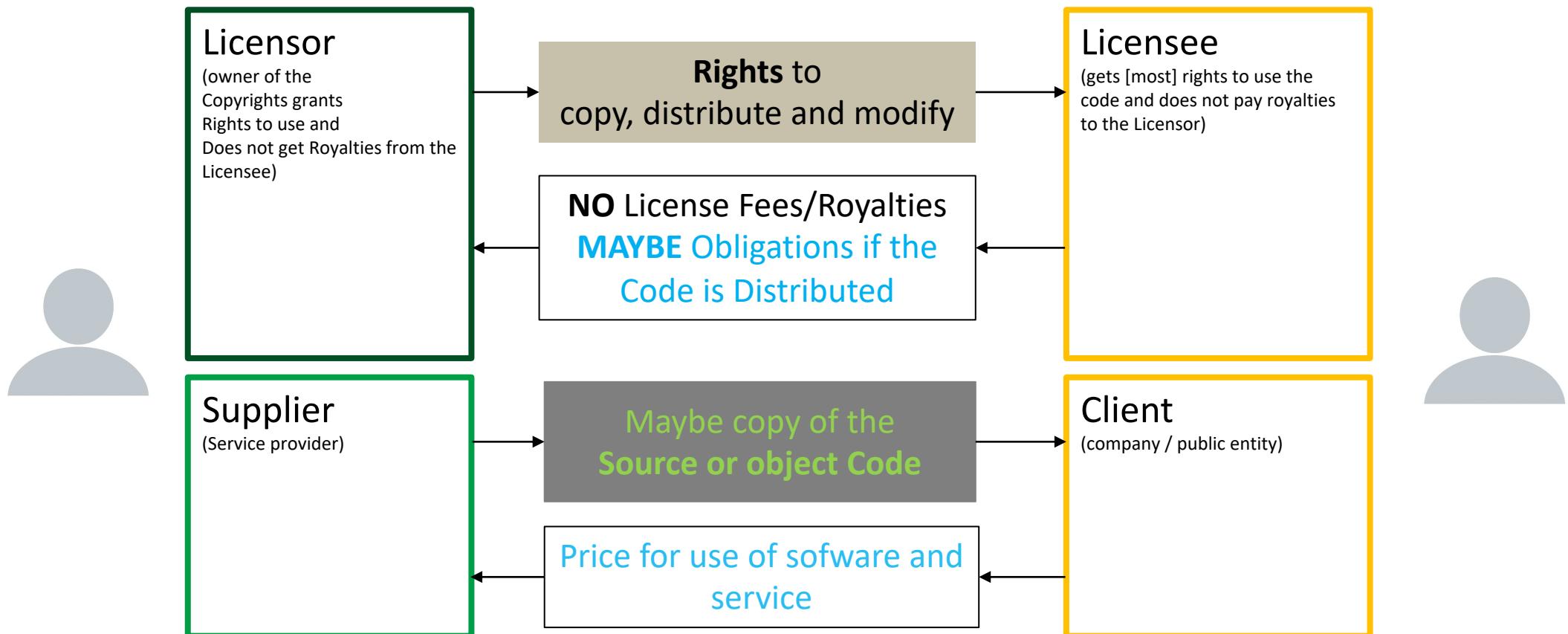
- Identifiable section of the code
- Not derived from the Program
- Can reasonably be considered independent and separate from the GPLv2-Code
- Section is distributed as a separate work (not necessarily on a different volume of a storage or distribution medium)

No license fee

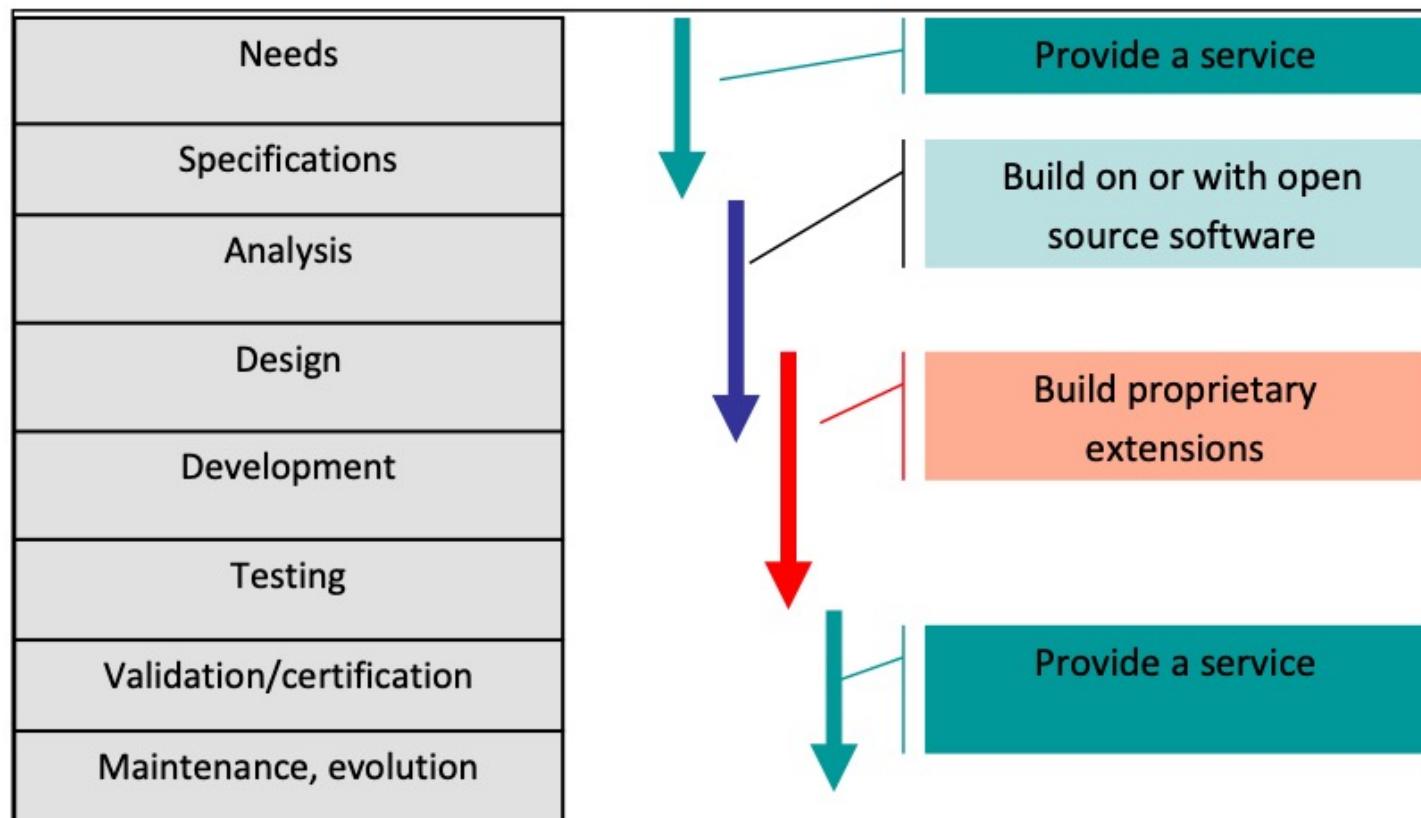
FOSS Licenses



IT supply and service contract



IT supply and service contracts

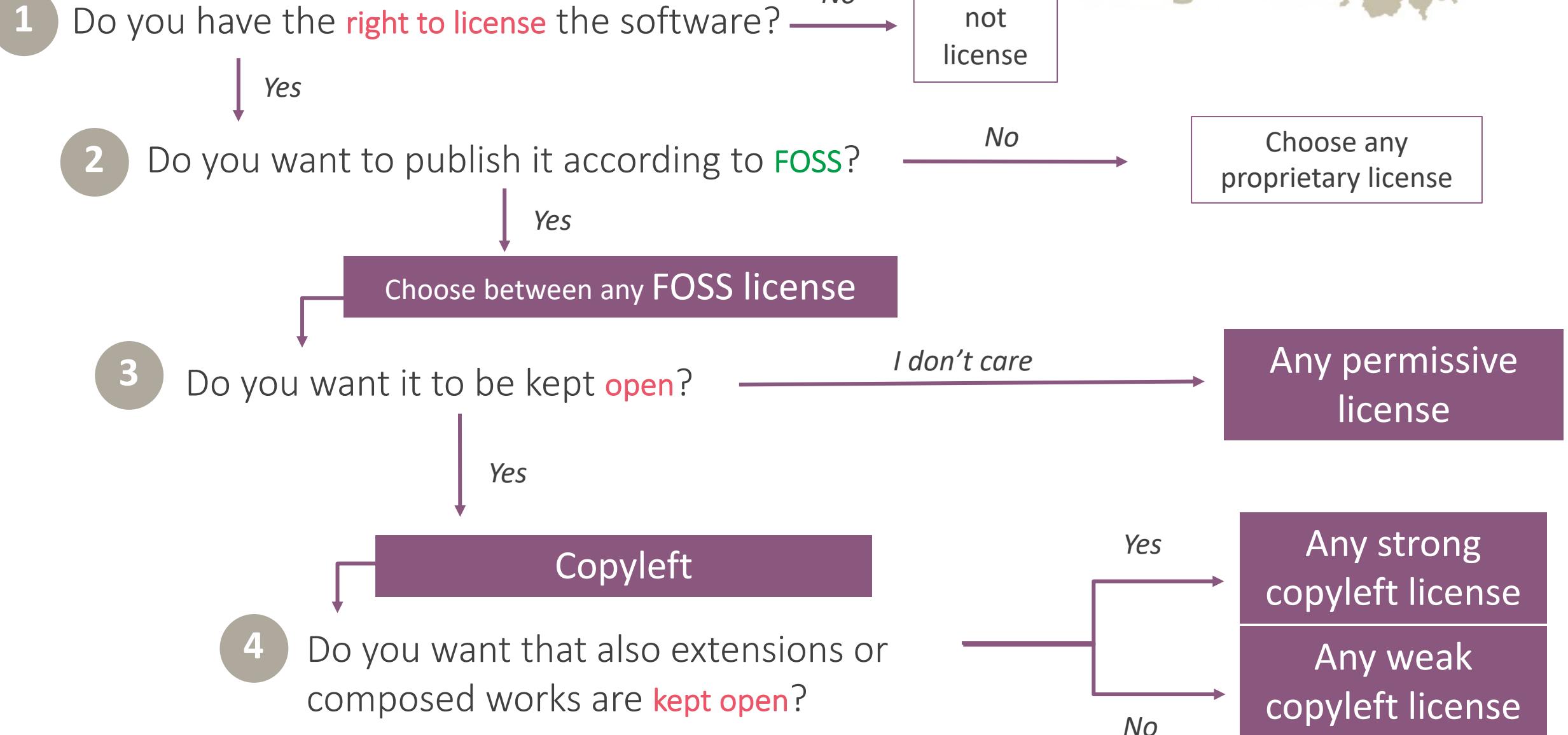


Source: World Intellectual Property Organization (WIPO)

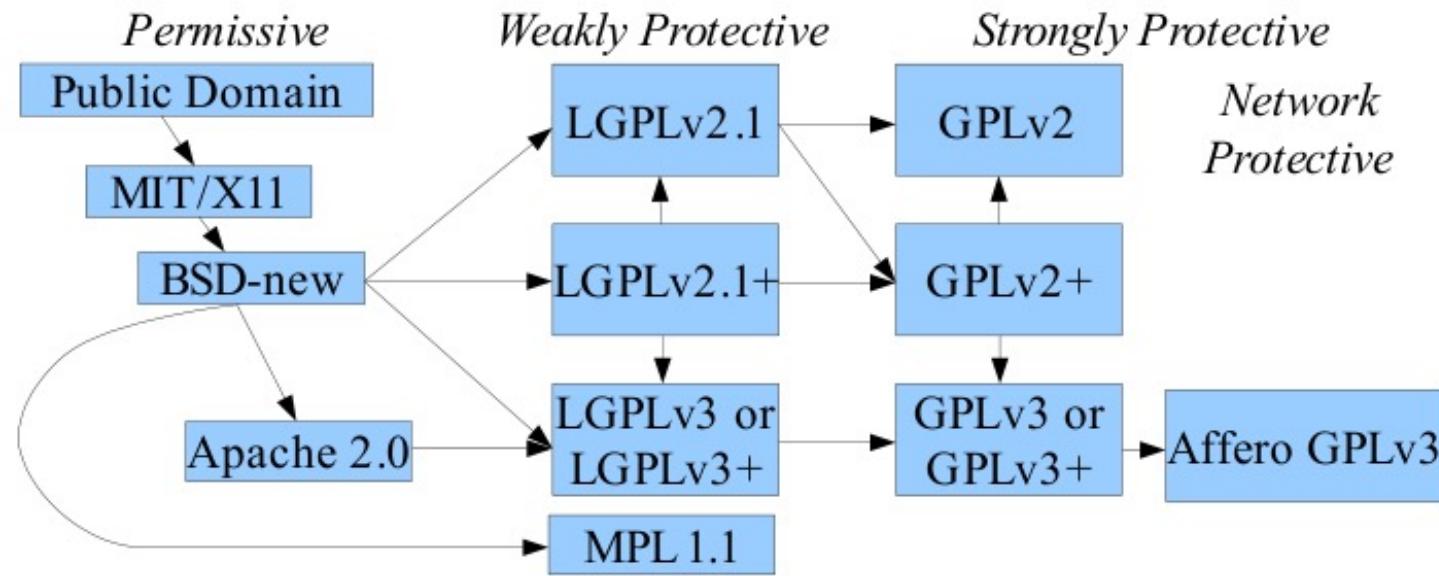
No further restrictions

- Users are allowed and able to
 - **Run** the software
 - **Copy** the software
 - **Modify** the software
 - **Share/distribute** the copy and/or modification of the software
- No circumvention through other means
 - Licensing fees
 - Legal prohibitions through contracts (eg. NDA for Source Code, general conditions that prohibit distributions..)
 - Technical barriers (DRM)

WHAT LICENSE TO CHOOSE?



Compatibility of FOSS Licenses



Source: <https://www.dwheeler.com/essays/floss-license-slide.html>

Author: David A. Wheeler,

Date: 27 September 2007

License: Creative Commons “Attribution-Share Alike 3.0 License” (<https://creativecommons.org/licenses/by-sa/3.0/deed.en>); the GNU Free Documentation License; or the GNU GPL (version 2 or later)

Synthesis

Free and Open Source Software

- two definitions
- many different licenses
- permissive and copyleft (weak and strong) licenses

FOSS ≠ without condition

- Comply with the license terms

→ ALWAYS READ THE LICENSE!

Thank you very much for your attention!

More information @ www.ccdigitallaw.ch

The screenshot shows the homepage of the CCdigitallaw.ch website. At the top, there is a dark header bar with the logo "CCdigitallaw.ch" and a map of Switzerland, followed by a language selection button "English". Below the header, there is a navigation menu with links to "FAQs", "Knowledge base", "Training", "Advising", "About", and "News Archive". A search bar is located below the navigation. The main content area features a welcome message: "Welcome to the Competence Center in Digital Law. We support Swiss Higher Education Institutions (students, academic and administrative staff) in dealing with legal questions related to the digitalization process and the use of new media and technologies." Below this, there is a section titled "Showcases" with four items: "How to avoid Plagiarism" (image of a desk with a laptop, books, and papers), "Publishing on Social Media" (image of a hand pointing at a screen displaying various social media icons), "Free & Open Source SW" (image of a computer screen showing code), and "Creative Commons" (image of the Creative Commons logo). A purple arrow button is positioned to the right of the Creative Commons showcase.

CCdigitallaw.ch

English

FAQs Knowledge base ▾ Training ▾ Advising About ▾ News Archive

Search

Welcome to the Competence Center in Digital Law. We support Swiss Higher Education Institutions (students, academic and administrative staff) in dealing with legal questions related to the digitalization process and the use of new media and technologies.

Showcases

How to avoid Plagiarism

Publishing on Social Media

Free & Open Source SW

Creative Commons