

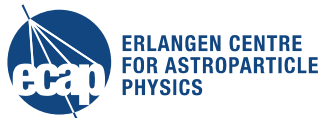
# Licensing Questions in KM3NeT

WOSSL

28th July 2020

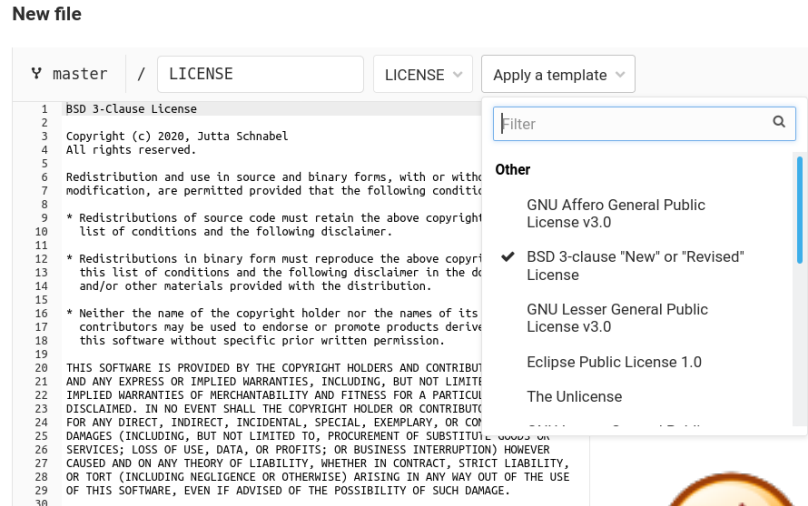
Jutta Schnabel, FAU

+ thanks to David Groep from Nikhef for providing slides!



# A journey to licenses

personal dilemma



What does that mean?

→ understand basic concepts

What are my options?

→ get an overview

Which considerations are important?

→ find guidelines and rules

How do we implement these?

collaboration requirement

D4.10	Regulations for cooperation models, authorship rights and intellectual property rights to be applied for external users (month 36)
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**Find expertise!**  
**Find allies!**

**“IANAL” + “IANYL” DISCLAIMER**

**I Am Not A Lawyer (and certainly not your lawyer ☺)**

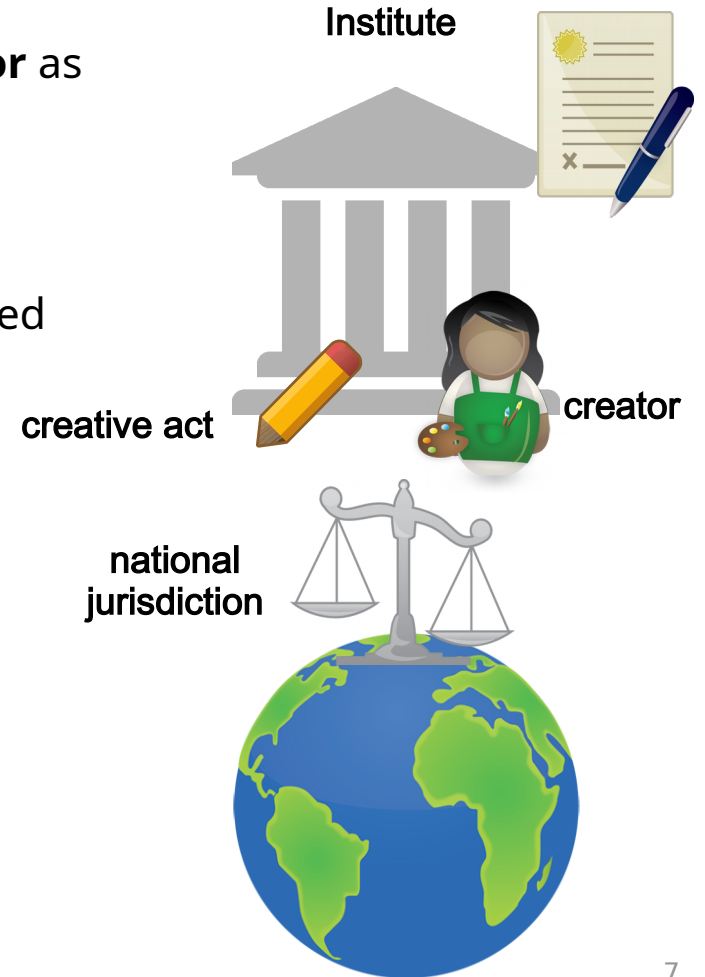


# Clarifying some basic concepts

# What is copyright?



- Copyright is invoked by a **creative act** to protect the **creator** as **copyright holder**
  - Joint copyright for several creators
- Protected by national intellectual property right, standardized internationally (more or less)
  - Trough treaties (e.g. WTO)
  - Relevant for KM3NeT: EU directives
- The right to **use and distribute** (ancillary copyright) can be transferred/granted by a contract
  - By assignment (e.g. employment)
  - By two-party contract (e.g. buy out)
  - By licensing (between creator and (any) user)



# What carries copyright, what not?

- Copyright **protected** (property of creator): creative work in its form
- **Public domain** (property of all): ideas, concepts, (basic) data



Texts



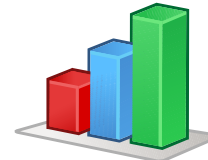
graphs



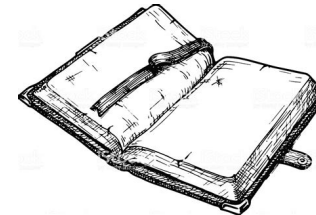
software



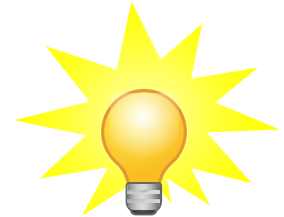
databases



data



Old work



ideas





# Scanning the feature space

# Contractual / Legal environment



national intellectual  
property right

EU copyright  
directives



Grant  
agreements



Service  
agreements



Civil law suit

- matter of contracts
- matter of parties



employment  
contracts



consortia  
agreements



software  
paper  
plot  
video

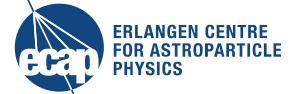


scientist



**task: add  
right building  
block(s)**

# Contract matrix



*product*



*copyright holder*



	publication	images, media	software	data	databases
employee	primary authorship	primary authorship	contract	-	-
institute	internal guidelines	internal guidelines	Internal guidelines	-	hosting
collaboration	joint authorship	joint authorship	joint – MoU or central	joint – MoU or central	funding
external	-	-	contributor/ third party	-	service



# Open license providers and types

- Licenses contain **permissions** to reuse the work while putting **duties** on the user
- Standard licenses for different kinds of work are provided by open **organizations**.



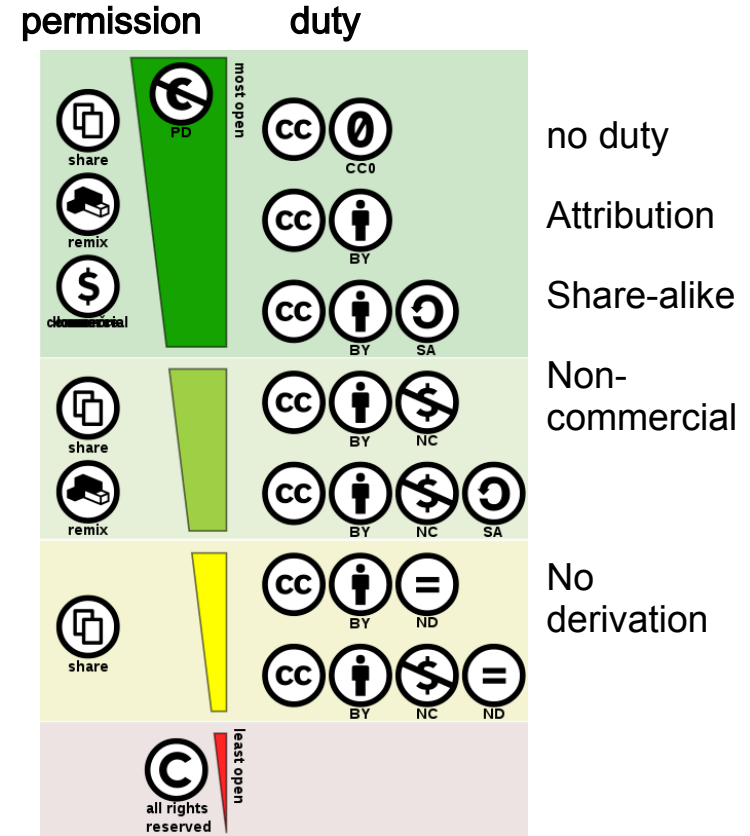
Open Content/Open Access:  
e.g. Creative Commons



Free and Open Software:  
e.g. Open Source Initiative



Open Data: e.g. Open Knowledge Foundation



eg. Creative Commons

## In an EC project context ...

'Model Grant Agreement' covers *a lot* of ground (and is kind-of a 'given')

each beneficiary owns its own generated foreground (& retains rights to own background)

individual employees should (preferably & usually) transfer ownership to the partner org

they can nevertheless exercise rights over foreground in a manner compatible with their obligations<sup>5</sup>. It is therefore advisable that each beneficiary assesses the potential personal rights of their personnel and, should these people be entitled to ownership, **reach an agreement for the transfer of ownership**. The agreement should take preferably (and if possible) the format of an assignment, but it could also be a licence agreement (with appropriate rights to sub-license).

pretty strong limits on *exclusive* licensing to third parties (but open source licenses are perfectly OK)

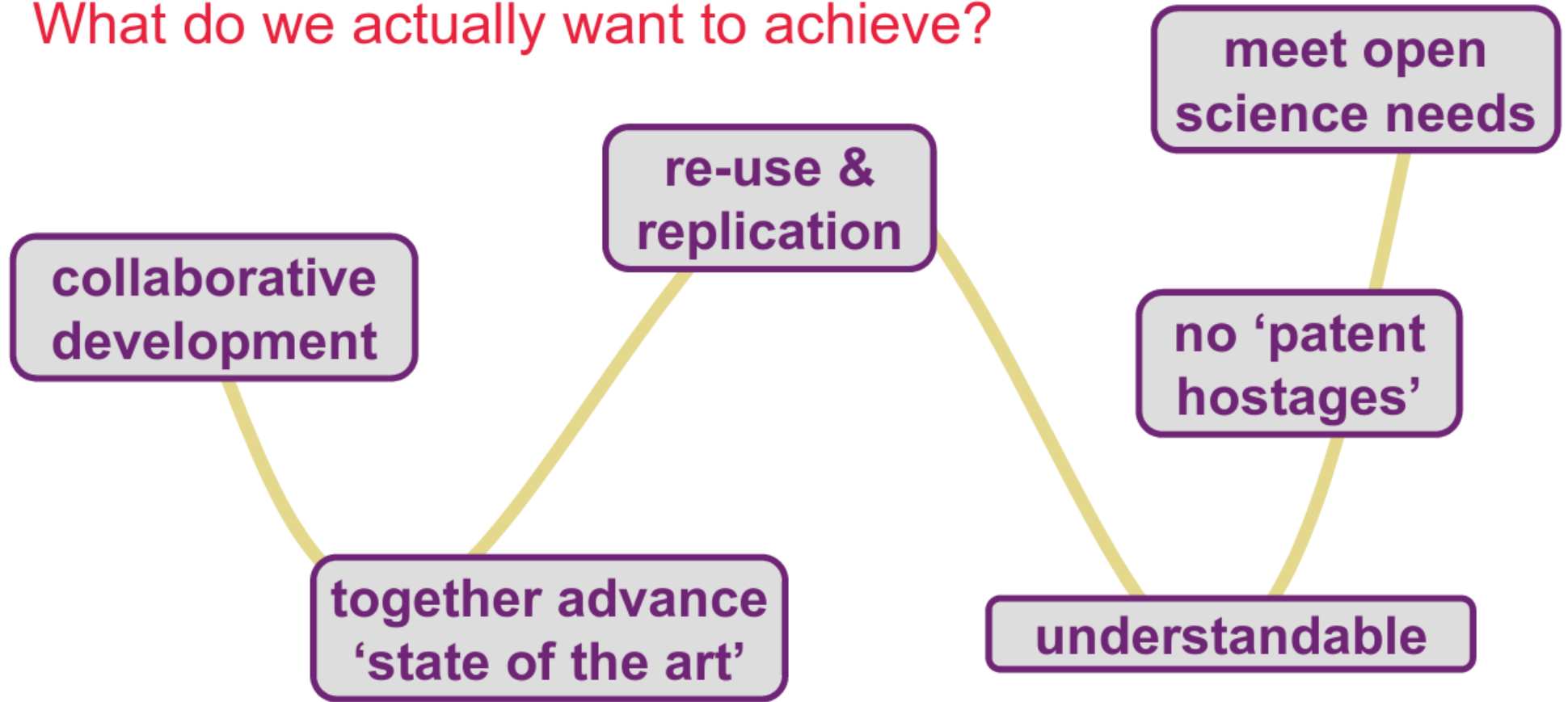
in practice, your consortium agreement will cover the specifics

[https://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Fact-Sheet-Foreground-in-FP7-Projects\\_0.pdf](https://www.iprhelpdesk.eu/sites/default/files/newsdocuments/Fact-Sheet-Foreground-in-FP7-Projects_0.pdf)



**Finding a strategic approach**  
-  
**reducing the feature space**

# What do we actually want to achieve?





**as open as possible**

## 1) Permissive license

Put minimal restrictions on the use of the products



**but give us credit!**

## 2) Attribution

attributed to the actual copyright holder, i.e.

- to the creator or institute according to the best current understanding
- to the KM3NeT collaboration where possible



**keep it simple**

## 3) No Share-Alike

might lead to compatibility issues at a later stage

## 4) No Warranty

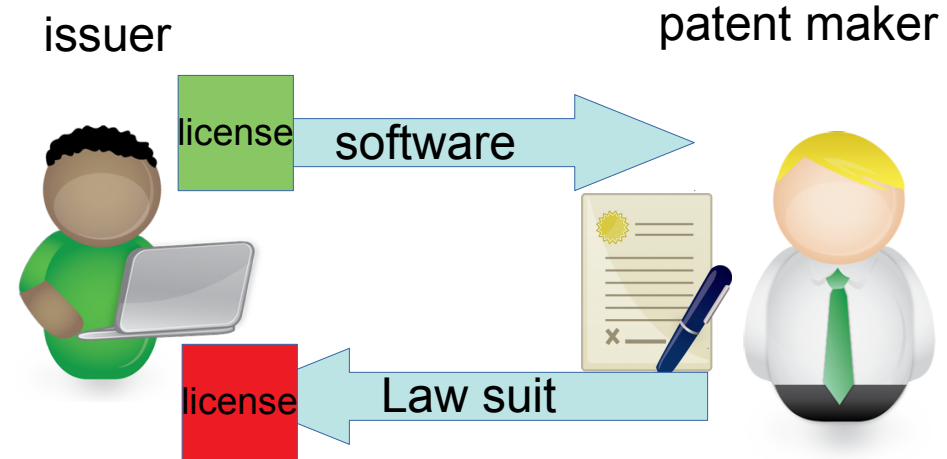
liability for the use of KM3NeT products should be limited

## 5) Standard application

should be machine-readable, use/provide standard licenses

## Patent retaliation

- Open software can be patented by contributor
- Contributor could sue original issuer for patent infringement
- “patent retaliation” in some licenses revokes original right on litigation
- Mostly relevant for US market



Somewhat less of a problem in Europe than the US, but software that is used to (~) create material effects may still be granted a patent (and cause a lot of debate in the process ...) ... like software for embedded control systems that enable industrial applications ... or detectors.



Open Content

CC-BY international license 4.0



Open Data

- data base model
- Sui generis db rights
- Content

Open data Commons Attribution (ODC-By) v1.0

& CC-BY?



Free and Open  
Software?

Easiest case:

software created  
within KM3NeT for  
KM3NeT

# Have your pick ...

## Popular Licenses

The following OSI-approved licenses are popular, widely used, or have strong communities:

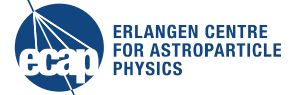
- Apache License 2.0
- BSD 3-Clause "New" or "Revised" license
- BSD 2-Clause "Simplified" or "FreeBSD" license
- GNU General Public License (GPL)
- GNU Library or "Lesser" General Public License (LGPL)
- MIT license
- Mozilla Public License 2.0
- Common Development and Distribution License
- Eclipse Public License version 2.0




from: <https://opensource.org/licenses>




# Which one? - we just voted ...




## MIT

 most widely used  
short

 Patent retaliation  
Obligation for users

JPP, KM3pipe


## BSD-3


 Restricts use of name

 Patent retaliation

SKA, CTA

## Apache 2.0

 Patent retaliation

 Only GNUv3 compatible

Astron



**Putting it into practice**

# Dealing with contributors and joint development

## Amalgamate (all or most) IPR in one entity

- easy to re-licensing under new terms - esp. if origin can no longer be contacted
- need to transfer copyrights *and* patent rights explicitly
- you need ...  
... a receiving entity 😊

don't have  
that ...

## Collect contributors in one consortium, with IPR remaining with creators

- participants requirements in consortium agreement (such as the EC's MGA)
- contributions implicitly managed
- will need a contributors list  
'Copyright (c) Members of the EGEE Collaboration. 2006-2010. See <http://eu-egee.org/partners/> for details on the copyright holders.'

## Maintain list of all contributions online, in-file, or auto-generated

- the IPR *must* be deeded by each contributor
- through license agreement, with contributor agreement, or through both
  - GPL escapes this by 'virality'
- will need to maintain list
- harder to re-license

for external  
contributors?



# Dealing with contributions

## Dealing with contributions

## 'contributions' clause

Many licenses incorporate a 'contributions' clause

- Apache 2.0
- EU DataGrid (which drafted its own license just for this in 2001)
- GEANT4 (identical to EU DataGrid, given its CERN background)

**5. Submission of Contributions.** Unless You explicitly state otherwise, any Contribution intentionally submitted for inclusion in the Work by You to the Licensor shall be under the terms and conditions of this License, without any additional terms or conditions. Notwithstanding the above, nothing herein shall supersede or modify the terms of any separate license agreement between You and a Licensor regarding such Contributions.

4. You are under no obligation to provide anyone with any bug fixes, functionality or performance of this software that you works without contemporaneously requiring users to enter into DataGrid a worldwide, non-exclusive, royalty-free, perpetual license enhancements or derivative works, whether in binary or source code form.

## Contributor License Agreements

<http://apache.org/licenses/icla.pdf>

Apache Foundation is 'better safe than sorry'

- contributors retain their IPR
- formally release under the license
- and a central entity (the Foundation)

## contributors agreement

ity for this ...

## Request transfer (assignment) of software IP to a central place?

Transfer of (all transferable) rights is made

## transfer of copyright

- you have many contributors
- and**
- you may desire to change license conditions later,
- or**
- when you want to publish your IP under multiple licences

*the Perl language reference implementation, and much of CPAN, is famously double-licensed under both GNU GPL as well as under the Perl Artistic License*

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Exploring licensing frameworks for collaborative software

Nik|hef

Thank you for your interest in the Apache Software Foundation (the "Foundation"). In order to clarify the intellectual property license granted with Contributions from any person or entity, the Foundation has had a Contributor License Agreement ("CLA") file that has been signed by each Contributor, indicating agreement to the license terms below. This license is for your protection as a Contributor as well as the protection of the Foundation and the users. To date, no change your rights to use your own Contributions for any other purpose. If you have not already done so, please complete and sign, then mail or email a pdf file of this Agreement to [contribute@apache.org](mailto:contribute@apache.org). Please read this document carefully before signing and keep a copy for your records.

Full name: \_\_\_\_\_  
(optional) Public name: \_\_\_\_\_  
Postal Address: \_\_\_\_\_  
Country: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
(optional) preferred Apache id(s): \_\_\_\_\_  
(optional) notify project: \_\_\_\_\_

You accept and agree to the following terms and conditions for Your present and future Contributions submitted to the Foundation. In return, the Foundation shall use Your Contributions to help the

<https://www.apache.org/licenses/icla.pdf>

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Exploring licensing frameworks for collaborative software

Nik|hef

*for some examples,  
see David's slides!*

## In the collaboration

- Who is the copyright holder of the open product (media, software, data)?
- Which open license can be used for which product?
- Are additional contracts/ clauses /agreements needed within the collaboration?
- Which considerations have to be taken into account for the choice of licenses?
- How can we deal with external contributions?

## In the community

- Which guidelines can be provided to help in the choice of open licenses?
- How can joint authorship be managed?
- How to easily gather consent from contributors for further changes?
- How to choose a good license for community-driven software?
- How to license other research products (beyond software)?

# References

- [Collaborating on software](#) - exploring the framework of copyright and licensing in some projects and consortia, David Groep
- KM3NeT licensing note: <https://jschnabel.pages.km3net.de/licensing>

“IANAL” + “IANYL” DISCLAIMER – I Am Not A Lawyer (and certainly not your lawyer 😊)

Too many options?



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