

DMLaw Tool

Research Data Management legal aspects

Swiss Research Data Day, 22nd October 2020
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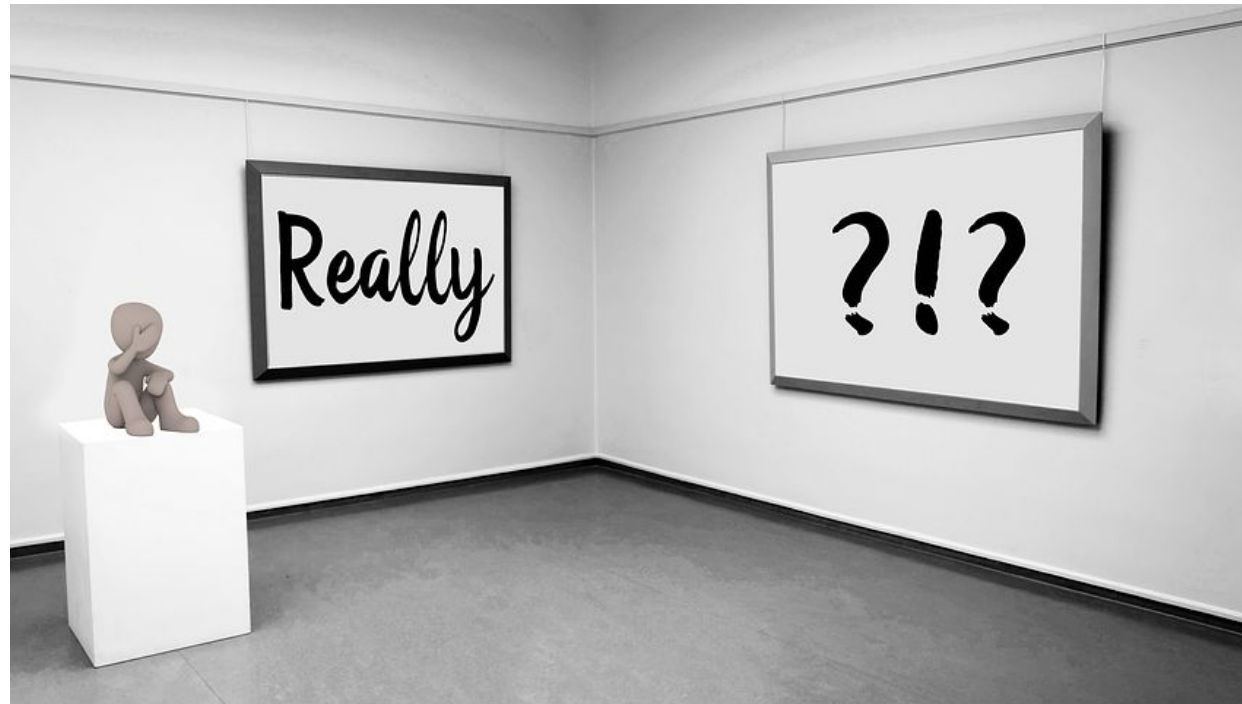
Team



Goals of today's workshop

- Introduction of the main notions of **copyright** and **data protection**
- Overview of the most relevant legal questions related to **data management** and **archiving**
- Presentation of possible solution approaches to the previously identified questions and introduction to the **DMLawTool**
- Application of the learned concepts to practical cases, **exercises in small groups**
- Discussion

15 Minutes to talk about Copyright and Data protection...



Copyright



Copyright

There are two sides of the same coin:

- You want to **use somebody's work** which is protected by copyright, how can you use it?
- You create your work, how can you **let other people do** what you want with it?

1. The work must be an **intellectual creation**
2. The work must be **expressed** in one form or the other
3. The work must have an **individual character** (not for photographs)

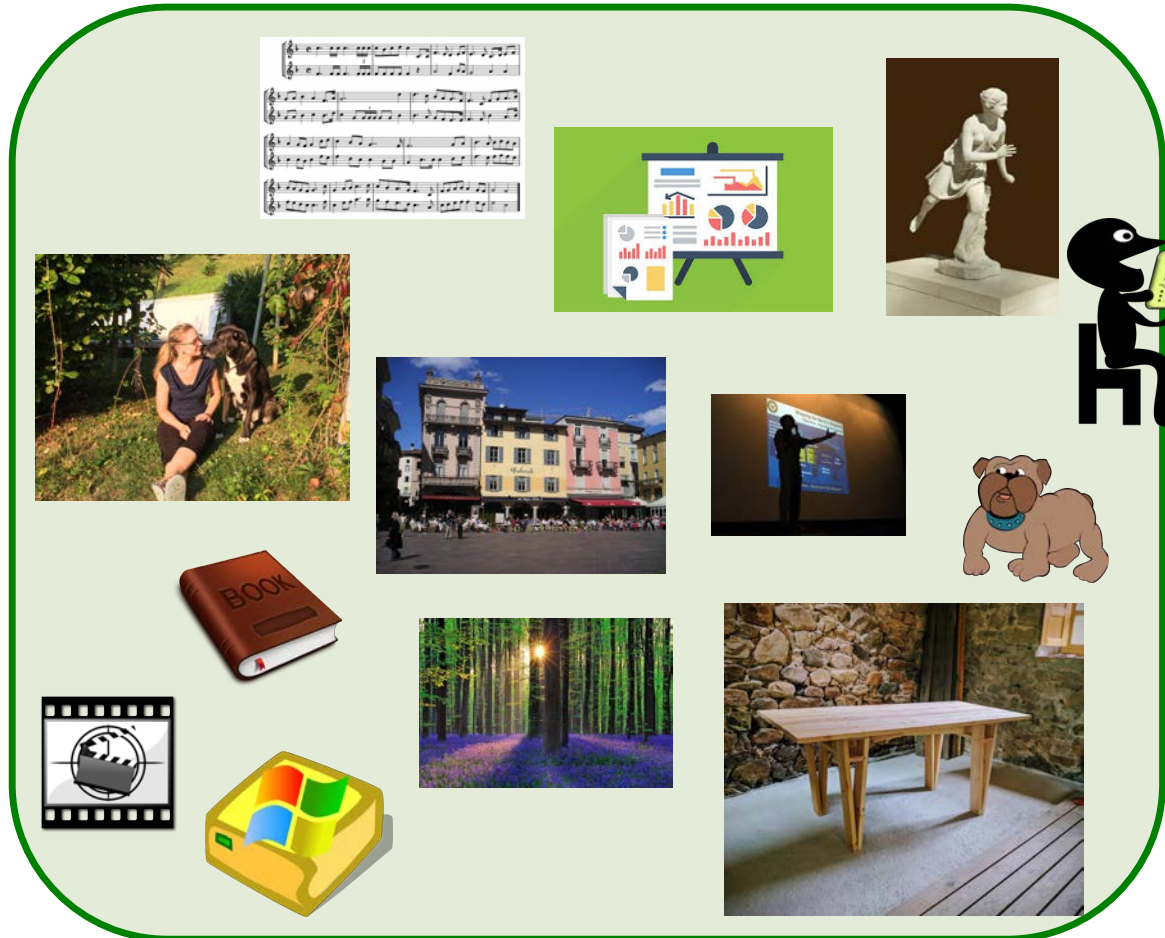
Works can be:

- A work
- A derivative work
- A collection

Copyright – What is a work protected by copyright?



PROTECTED WORKS



NOT PROTECTED WORKS



- Author
- Joint author
- Other owners of rights
 - Assignment of rights by **contract**
 - **Publishing contract**
 - **License** agreement
 - Assignment of copyrights under **employment** relationships

- **Moral rights** of the author
 - Right of first publication
 - Right to recognition of authorship
 - Right to the integrity of the work
- **Property rights** (uses of a work)
 - Right of reproduction (= printing, making a copy, scanning, a screenshot, uploading, downloading, embedding,...)
 - Right to distribute (= offer, sell, rent,...)
 - ...

The **rule** is: ASK FOR PERMISSION AND PAY

For every rule, there is an **exception**:

- Private use
- Educational purpose
- Company purpose
- Restriction for scientific research (Text & data mining)
- Right of quotation

- Law
- Contracts
- Licenses
 - e.g. Creative Commons Licenses

Data Protection

Data Protection

In less than 10 min: **main notions** of Data protection

... No time to get into the details at all. Focus on one thing that can be useful for you.

- Law is about **liability**: When and in which circumstances are you liable according to FADP?
(*FADP = Federal act on data protection*)
- Ratio:
 - You may be **concerned** by data protection (And you should)
 - But you may not be **interested** in data protection (that's legitimate, you have plenty of other things to think about)

Main aspects to consider:

- Art 2 FADP: *“This Act applies to the **processing of data pertaining to natural persons and legal persons...**”*
- *Processing*
- *...of data pertaining to natural persons*

- Art 4 al. 1 FADP: *“Personal data may only be processed **lawfully**”*

- Art 12 al. 1 FADP: *“**Anyone who processes personal data must not unlawfully breach** the privacy of the data subjects in doing so”. Al. 2: “in particular, he must not... process personal data in contravention to the principles of art. 4, 5 § 1 and 7 § 1”*

When you **process personal data**, **you are** in principle **responsible** for the lawfulness of the processing

Or in other words:

If you want to process personal data, you will have to make sure that you put in practice the principles set by the law for the **whole life cycle** of the data (from its collection to its destruction)

Art 3 let. A FADP: “**personal data** (data): all information relating to an **identified** or **identifiable** person”.

- The notion is wide:
 - Not only **direct** reference but also **indirect** references.
 - Technology evolves, and it is very easy to identify a person from indirect references:
 - Singling out;
 - Inference;
 - Linkability.
- The problem with anonymization:
 - Life cycle?
 - What about the data previous to anonymization?

Art 3 let. E FADP: “**processing**: any operation with personal data, irrespective of the means applied and the procedure, and in particular the **collection, storage, use, revision, disclosure, archiving or destruction of data**”

Lawfulness

- On the principle of the processing
- On how you process it
- On the extents of your processing

Good faith

- Legitimate interest
- Loyalty

- **Proportionality**
 - Is there a mean to reach my goal with **less intrusive processing**?
 - How can a **minimize** the processing and the risks?
 - Is my data **adequate** and **relevant**?
- **Purpose limitation**
- **Transparency and consent**
- **Accuracy**
- **Data security**
 - For the **whole life cycle**

If you want to process personal data, you are very likely to be **liable** for the **lawfulness** of the processing

Being fully compliant can be a hard task as it requires the data controller to take into account the whole life cycle of the personal data within the framework of its processing activity, identify the legal requirements and risks at stake, and then provide solutions that can be technical, organizational or contractual.

But

Keep calm and don't panic.

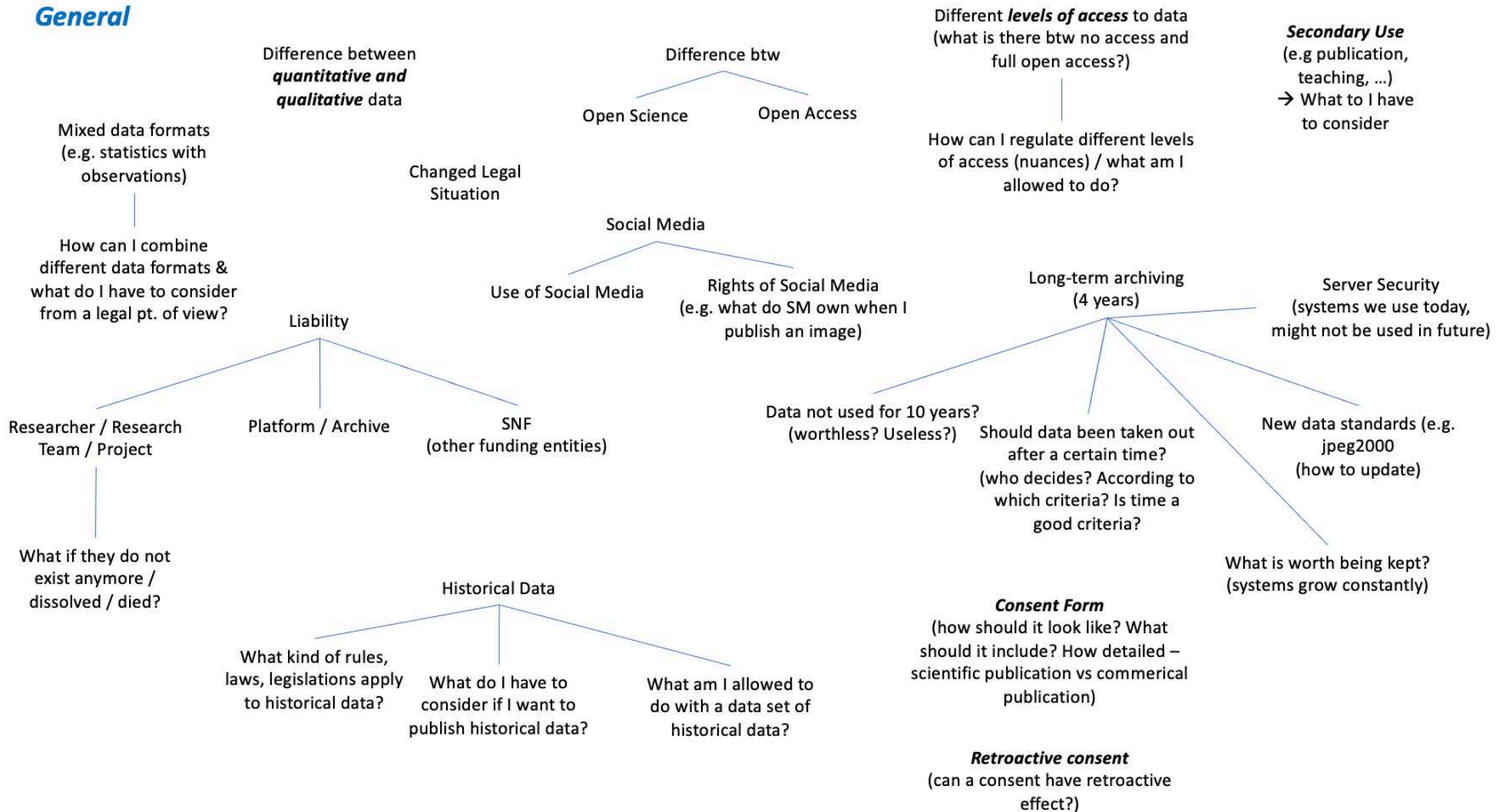
None of these goals are unreachable. Compliance is first and foremost a matter of transparency and preparation.

Tools for example ;)

Overview of the most relevant legal questions related to data management and archiving

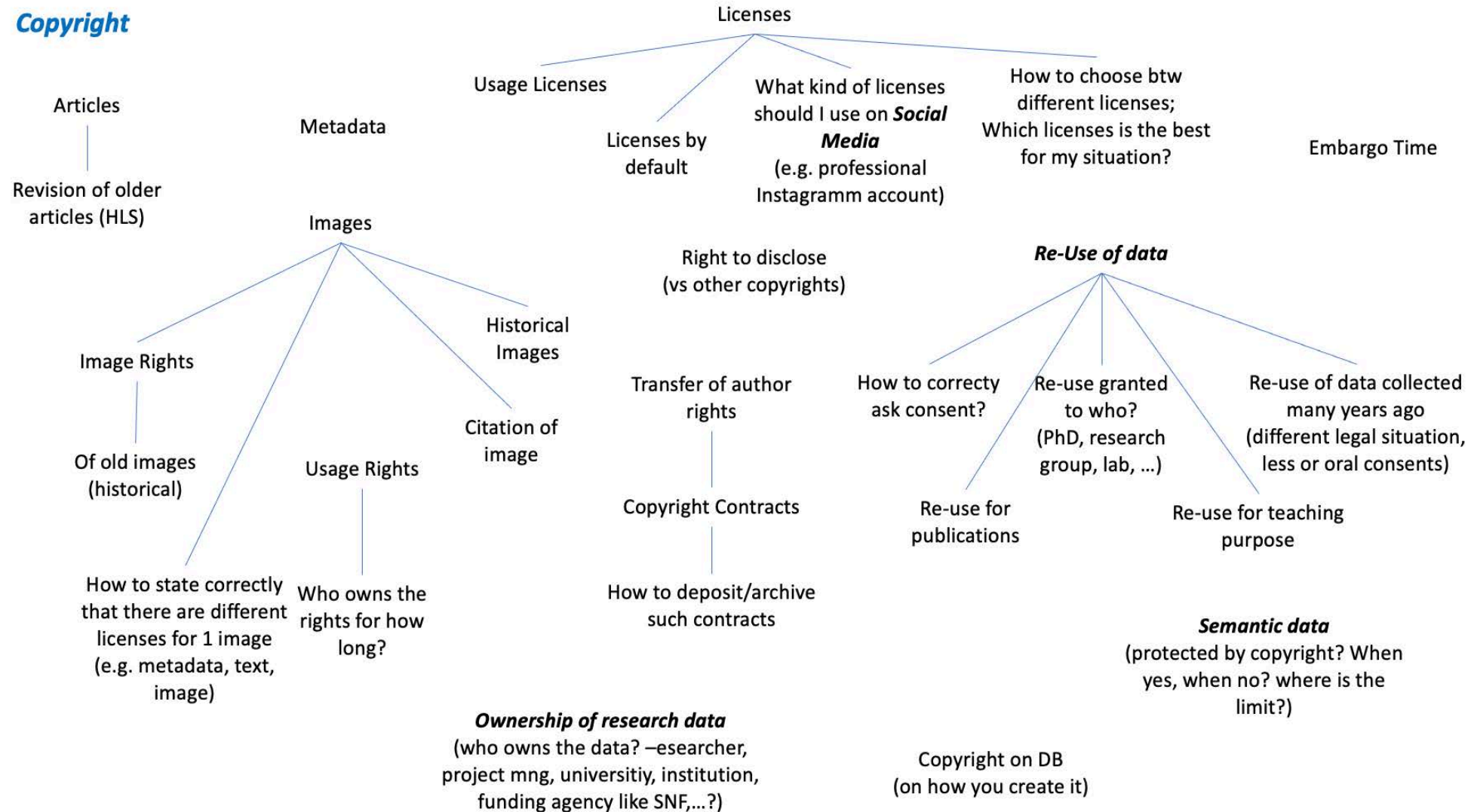
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General



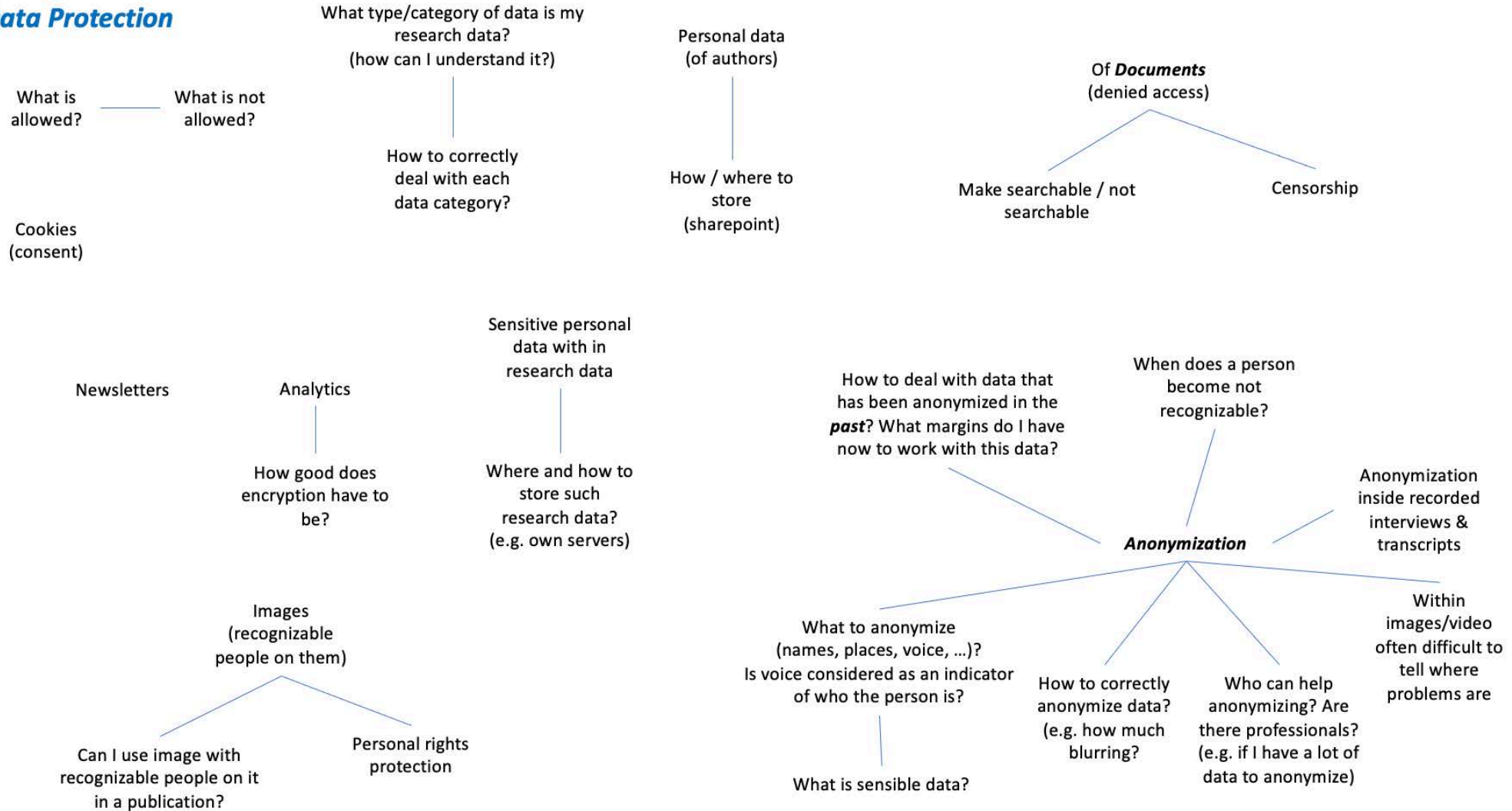
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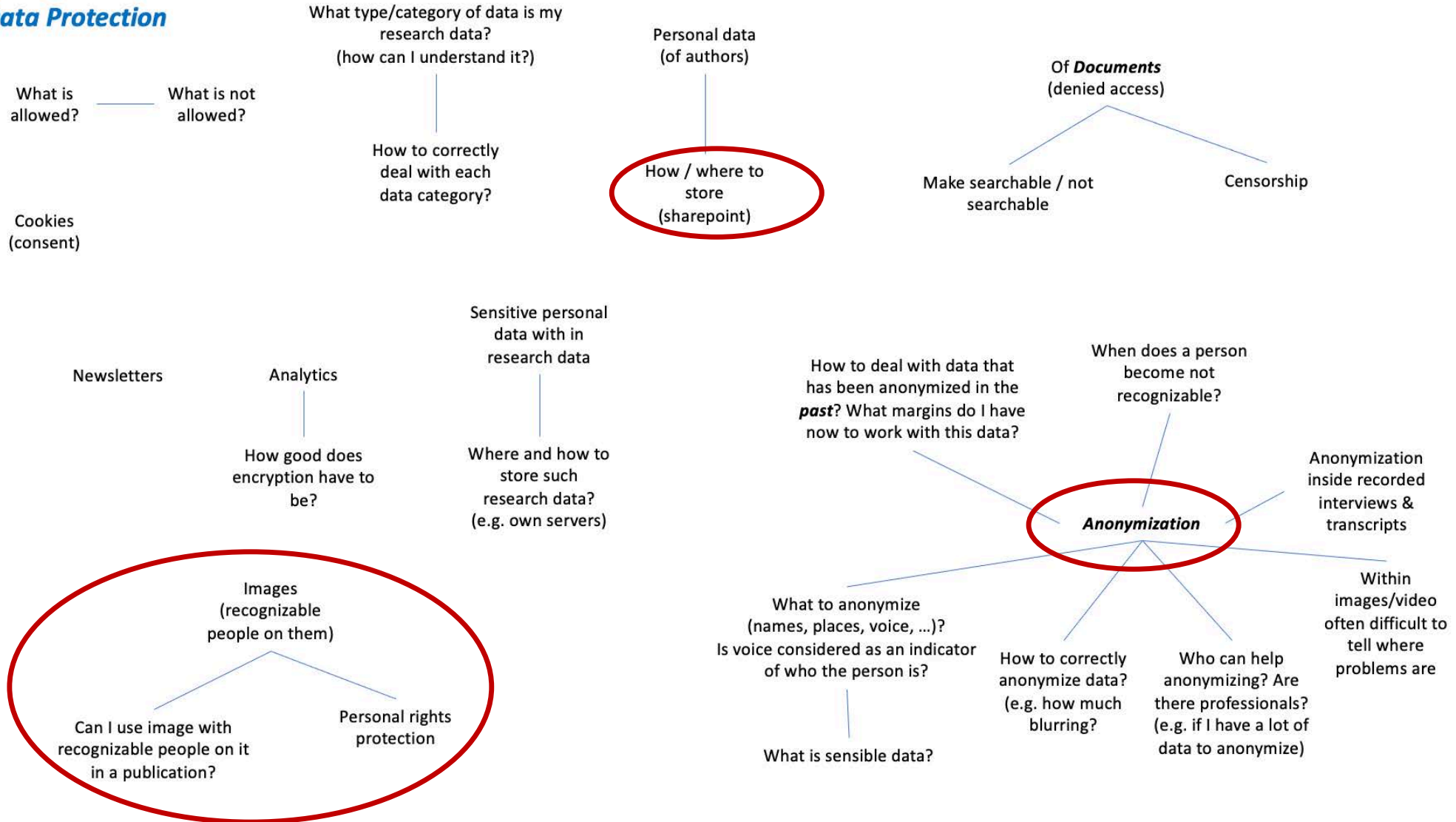
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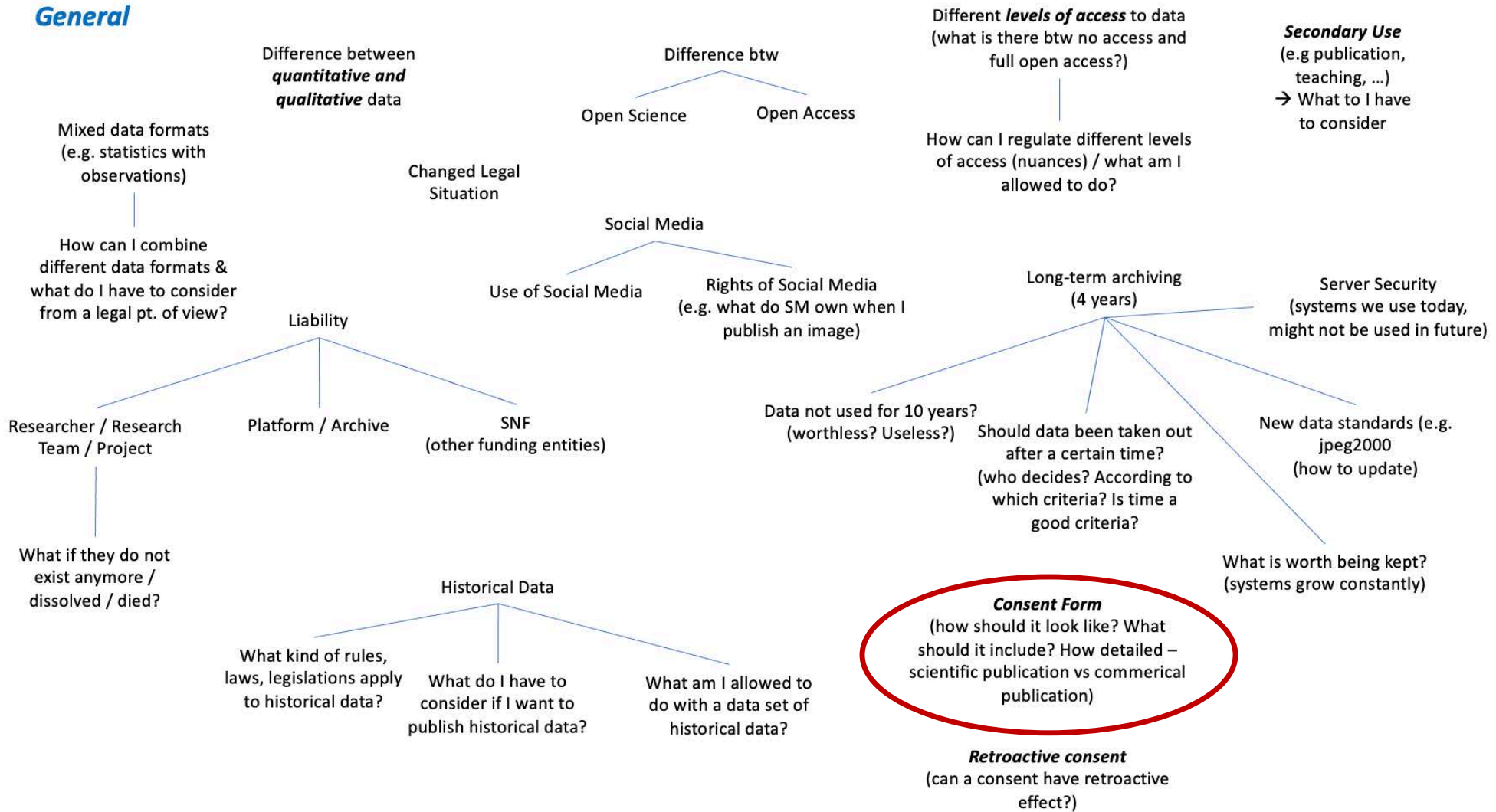
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Overview of the most relevant legal questions related to data management and archiving

General



Presentation of possible solution
approaches to the previously
identified questions
and
introduction to the **DMLawTool**

Copyright

Somebody else's works



Copyright for users

My own works



Copyright for authors

Data Protection

- Personal vs Sensitive
- How to correctly ask for consent
- Anonymization
- How to store personal data

Copyright

Somebody else's works



Copyright for users

My own works



Copyright for authors

Data Protection

- Personal vs Sensitive
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- How to store personal data

Introduction to the DMLaw Tool

<https://dmlawtool.web.app>

Application of the learned concepts

Exercises in 8 small groups

You will be assigned to a breakout room

➔ Please discuss within your group and enjoy 😊

Application of the learned concepts



Group 1, 2, 3 and 4 : exercise 1
Group 5, 6, 7 and 8: exercise 2

Discussion



Contact

Thank you very much for your attention

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