

# Renegotiating Open-Access-Licences for Scientific Films

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**Abstract.** Scientific publishing is not limited to text any more, but more and more extends also to digital audio-visual media. Thus services for publishing these media in portals designed for scientific content, oriented towards the demands of scientists and which comply with the requirements of Open Access Licenses must be provided. Among others, it is the goal of the Competence Centre for Non-textual-materials of TIB to collect, archive and provide access to scientific audio-visual media in the TIB AV-Portal under the best possible (open) conditions. This applies to older films, as for example the film collection of the former IWF Knowledge and Media gGmbH i. L. (IWF) and to new films. However, even if the acquisition of the necessary rights for audio-visual media is complex, the renegotiation of Open-Access-Licenses for older films is very successful. This paper focuses on the role of Open Access in the licensing strategy of TIB regarding scientific films, the respective experience of TIB and the presentation in the AV-Portal, but also touches upon prerequisites and procedures for the use of Orphan Works.

**Keywords.** Open Access, Scientific Films, IWF Knowledge and Media, Licensing

## 1. Introduction

Scientific publishing is not limited to text anymore but more and more comprises other objects such as research data, 3D objects and digital audiovisual material among others. Thus opportunities are needed to publish different types of scientific content in an environment specifically designed for the object type and adapted to the needs of scientists. Among others, TIB collects, archives and provides access to scientific audiovisual media in its TIB AV-Portal<sup>2</sup>. TIB puts a special emphasis on Open Access and strives to offer its content under free and open conditions as close to the definition of Open Access contained in the Berlin Declaration of 2003<sup>3</sup> as possible. This is valid for older films such as the film collection of the former IWF Knowledge and Media as well as for the new scientific films which TIB acquires continuously.

When libraries acquire analogue film copies, the legal situation is relatively clear because the possibilities of utilisation are already defined in the German Copyright Act and copying constitutes a practical hurdle for analogue film formats. The legal situation for digital films and films posted on the internet, however, is more complex: The permits for analogue material regulated in the German Copyright Act cannot simply be

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<sup>2</sup> TIB AV-Portal. Available at <https://av.tib.eu> (Accessed: 4 March 2016).

<sup>3</sup> Berlin Declaration on Open Access to Knowledge in Sciences and Humanities.

transferred to digital material. In order to be able to make a film available online, all of the permits required must be agreed upon in license agreements. In contrast, creating copies of digital copyrighted material is child's play. There is a great danger that films will be passed on as digital copies (against the creator's will) because the process is such a simple one. In particular with regard to the publication of films on the internet, not only copyright has to be observed, but also publicity and personality rights of the filmed or vocally recorded individuals. This factor can usually be neglected in the case of texts.

At the end of 2012, TIB was entrusted with taking on the scientific film collection of the former IWF Knowledge and Media and, ideally, making it available to the public via its online portals. The collection comprises around 11,500 analogue and digital scientific films related to various subjects. The collection revolves mainly around technical and scientific subjects, as well as biology and ethnology. Although most of the publications were created between the 1950s and 1980s, the collection also contains a number of earlier cinematographic works. Unfortunately not all films are available in digital form. In addition to a lack of funding for digitizing such materials, TIB faces the problem of having to clarify how the films may be used. The rights in the IWF Knowledge and Media Film collection are very heterogeneous. After all, particularly when films are rather old, the agreements with the creators involved in the film production were also concluded at a time before digital use options on the internet became known and customary. In addition, many necessary changes were made in copyright law to adapt it to modern needs in the digital age. These options are therefore not included in the agreements concluded at the time with the creators. Moreover, usually many different people are involved in many different ways in the creation of a film – people who may potentially have rights to the film. Scriptwriter, director, cameraman, cutter, producer, performing artists, narrator ... Often it is not easy, or no longer possible in retrospect, to establish who was actually involved in the production of the film. When attempts are made to renegotiate rights, many film authors cannot be traced.

Thus, before being able to make the films available to the public via the TIB AV-Portal or through other services of TIB, it is obligatory that the legal situation regarding each film is examined and each author or rightsholder is contacted individually. As far as necessary and feasible, TIB renegotiates the necessary rights to be able to offer an up-to-date service to the customers. The renegotiation of rights among other things focuses on the rights needed to offer access to the films via the TIB AV-Portal, to create derivatives in alternative film formats and perform the video analysis in the TIB AV-Portal. It has become customary to make bibliographic metadata freely available under the Creative-Commons-License CC0 1.0 Universal Public Domain to spread information and knowledge about the collection. When contacting each author individually, TIB offers the authors and rightsholders the possibility to release the films under an open access-license of the Non-Profit-Organisation Creative Commons<sup>4</sup> in the TIB AV-Portal and allow for a greater and facilitated distribution of the films in the public.

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<sup>4</sup> Creative Commons. Available at: <http://creativecommons.org/> (Accessed: 4 March 2016).

Challenges for the renegotiation of the rights are manifold:

- The effort undertaken needs to be in balance with the results that can be achieved.
- In many cases it is impossible to trace the original film authors.
- Generally, the Creative Commons Licenses are unknown to this particular group of scientists.
- Many films contain material, to which the rights are not held by the original film authors (copyright of third parties, personality and publicity rights, etc.).
- Film authors expect a financial compensation for the use of the films.
- A lot of films are only available in analogue formats.

In spite of the challenges, the renegotiation of Creative Commons Licenses for many of the films is very successful: 59 % of all film authors whose films can be made available online, decide to release the films under the Creative Commons License. In the process, films for which the copyright protection has expired and orphan works are identified and made available online and through other services of TIB. In the poster, more detailed information is given about the background, process and success rates.