



Changes in copyright law: Safeguard your right to online publication!

Changes in German copyright came into force on January 1, 2008, which affect you as the author of scientific works. Article 137I of the new Act introduces an automatism according to which the right to the type of use referred to as online publication (which has become known in the meantime) is to be subsequently transferred to German (including former East German) users/publishers. This applies to all publications in respect of which all essential rights of use were granted exclusively and without restriction in territory or time by the author to a publishing house during the period from 1966 up and including 1994.

The author can put a stop to this automatic transfer:

Option 1:

The author lodges an objection with all publishers concerned and thereby retains his or her rights.

Option 2:

The author grants a non-exclusive right to online publication of the works concerned to a third party before his or her rights are obviated by the automatic process introduced in Article 137I.

Authors who have works which previously appeared in print prior to 1995 published electronically via the Max Planck Society's central repository are making an important contribution to ensuring free access to scientific literature ("Open Access"). The Max Planck Society committed itself to this ideal when it signed the [Berlin Declaration](http://oa.mpg.de/) [http://oa.mpg.de/] in October 2003. At the same time these authors are also helping to ensure that their publications remain visible in the long term.

Explanatory notes on Option 1

It is the responsibility of the author to lodge his or her objection. This may if necessary include the need to ascertain who currently holds the rights.

When exercising the right to object, two time limits must be taken into consideration:

One-year limit

There is a one-year time limit for objections commencing from the time at which the amended copyright legislation came into force on January 1, 2008. If no action is taken by either the author or the publisher, upon expiry of this one-year time limit the right to unknown types of use, currently meaning online publication, will automatically be granted to the publisher.

Three-month limit

Should the publisher give notice to the author that it intends to republish in electronic form, the time limit is reduced to three months. This time limit commences on the day on which the letter is sent and expires irrespective of whether the letter actually reaches the author. Authors who do not wish to forfeit their right of objection by overrunning this time limit should dispatch their objection no later than **March 31, 2008**.

Explanatory notes on Option 2

By granting a non-exclusive right of use, the author retains the facility to independently publish his or her work in electronic form or grant additional rights to other third parties, for example to the publisher.

For the avoidance of conflict with the publisher (see Option 1), it is recommended that the right of use should be granted no later than **March 31, 2008**, whereby it is not necessary for the publisher to be informed. Using the second option is therefore particularly simple for the author, as he or she has only one point of contact to deal with.

When rights of use are granted the works concerned must be designated. It is however possible to supply a schedule at a later date. Unless the author disposes over a certified electronic signature, objections and grants of rights should therefore be printed, signed by your own hand and dispatched on paper. If there is a risk that a time limit may be exceeded, the declaration of intent can be sent by e-mail and followed up with a version on paper.

Detailed information on this subject in German and English as well as sample letters are also available

on the Internet on the Max Planck Open Access Unit information platform at http://colab.mpg.de/mediawiki/Open_Access_Index

Should you have any questions, please contact us.

Yours truly,

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Max Planck Society Open Access Unit

Sample letter (Option 1)

From [name and home address of the author]

To
The holder of the print rights / publisher

Ladies and Gentlemen,

Following the adoption by the Bundestag of a reenactment of the German Copyright Act (UrhG), I am not in all respects in agreement with the amendments to Article § 31a - "Contracts for unknown types of use" and Article 137I - "Transitional rules for new types of use". In Article 137I, Para. 1, Sentences 1 and 2 of the Copyright Act (UrhG), the author is afforded the right to object to the assignment of rights to types of use which were unknown at the time of entry into contract.

I hereby exercise this right of objection. This objection applies to all of my publications, the rights to which I have granted to you for publication by your publishing company.

[Optional addition: At the same time I assign to you a non-exclusive right to use all of my publications published by you for the purpose of online publication on the Internet, provided that in return you raise no objections to the printed versions of my publications published by you being used as templates for their online publication by third parties to whom I may also have granted such a right.] Should the rights of use which I originally granted to you have meanwhile been assigned by you to a third party, I would ask you pursuant to Article 137I, Para. 2 of the Copyright Act (UrhG) to advise me forthwith as to whom the rights were transferred. I would also request confirmation of my objection in respect of each individual publication.

Yours truly,
Place, date, signature

Sample letter (Option 2)

From [name and home address of the author]

To
Person / institution [to whom / which a right to online publication shall be granted]
[[For the Max Planck Society please use the address given in the letterhead]]

Ladies and Gentlemen,

I hereby grant to [person / institution], hereinafter referred to as the Beneficiary, a non-exclusive right to publish in electronic form those of my technical publications which appeared from 1966 and prior to 1995 and are specified in the attached list.

Insofar as the works concerned are works of or by multiple authors, I am authorized by the latter to grant the Beneficiary a non-exclusive right of use in respect of utilization in electronic form.

I / the co-authors represented by me am / are aware and I / the co-authors represented by me am / are in agreement that the Beneficiary will make the works listed by me available to the public free of charge and can therefore make no payment in return for the granting of a non-exclusive right to electronic publication.

For works published by foreign publishing companies, this grant of a right to online publication shall apply only insofar as the associated contracts are covered by the provisions of Article 137I of the German Copyright Act (UrhG), that is to say, insofar as I / the co-authors represented by me am / are still the exclusive holder(s) of the right to online publication.

A list of works in respect of which the right of use is assigned is enclosed with this letter or will follow no later than March 31, 2008.

Yours truly,
Place, date, signature