



DATA SHARING AND INTELLECTUAL PROPERTY

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SUMMARY

- Copyright protection and referee reports
- Who owns the copyright in a referee report?
- To what extent it is possible to share data and information contained in referee reports?
- How to share referee reports among partners of the PEERE project: an example



Copyright protection and referee reports

- Referee reports as literary works
- Originality of literary works
 - ✓ difference between the *common law* countries vs the *civil law* countries approach to the originality issue
 - ✓ in general terms, low degree of originality required for copyright protection
 - ✓ usual, trivial, standardized or necessary works (or parts thereof): not protected by copyright
- Idea / expression dichotomy
 - ✓ only formal expression is protected, never ideas, facts, raw data, etc.
 - ✓ introduction of referee's comments and suggestions into the work to be published does not imply a co-ownership (at least generally) between the author and the referee



Who owns the copyright in a referee report



- General principle: the author owns the copyright in the work (i.e. the referee owns the copyright in the referee report)
- The employer may own – in some cases – the copyright in its employees' works (however, it is extremely rare in the academic context that the employer owns the right in the writings of the researcher-employee)
- The rights of the publisher depends on the contractual arrangement with the referee
 - ✓ “informal” approach: implied license + *zweckübertragungstheorie*
 - ✓ “formal” approach: license or assignment of rights



To what extent it is possible to share data and information contained in referee reports?

- Lacking a license or an assignment of rights:
 - ✓ only ideas, data and information contained in the referee report may be shared (paying attention to privacy and database legislation...)
 - ✓ the referee report as such should not be shared without the express consent of the copyright holder (i.e., generally, the referee), as “sharing” entails performing acts (e.g. reproduction and distribution or communication to the public) which are exclusive rights of the author or his/her successor in title

- When a license or a formal assignment of rights has been signed
 - ✓ the referee report as such may be shared, provided that the copyright have been properly assigned to the publisher or, at least, that the referee has authorized the reproduction and distribution or communication to the public of the referee report for the intended uses (e.g. scientific purposes)



How to share referee reports among partners of the PEERE project: an example



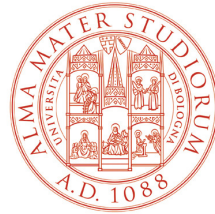
Express consent to share (i.e. reproduce, distribute, make available) referee reports – in an anonymous form – among a certain number of subjects, for scientific purposes, may be obtained:

- (i) by requesting the referees to enter into a license agreement with the publisher; or
- (ii) by properly drafting the ToU of the peer review process platform (if any)

Cross-authorization to share referee reports among partners may be exchanged by signing a multilateral agreement in which:

- (i) the intended purposes
- (ii) the permitted uses
- (iii) the extent of the making available of the referee reports

should be detailed, in accordance with the rights transferred by the authors (*nemo plus iuris transferre potest quam ipse habet*).



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THANKS FOR YOUR ATTENTION

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