



TARTU ÜLIKOOL

Copyright and language research

Aleksei Kelli

Professor of IP Law

aleksei.kelli@ut.ee

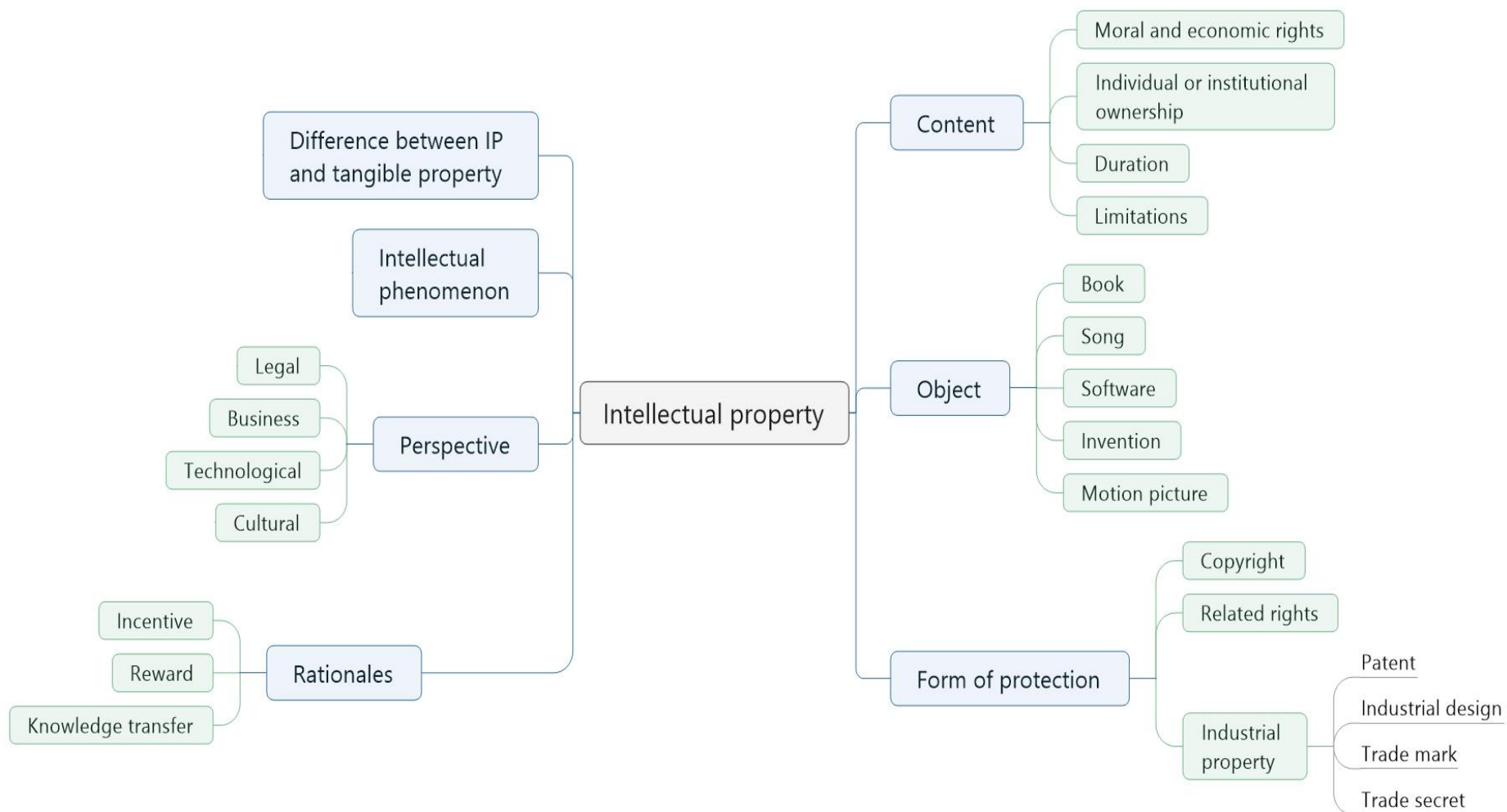


Copyright:

Only one thing is impossible for God: to find any sense in any copyright law on the planet.

- *Mark Twain's Notebook*, 1902-1903

<http://www.twainquotes.com/Copyright.html>



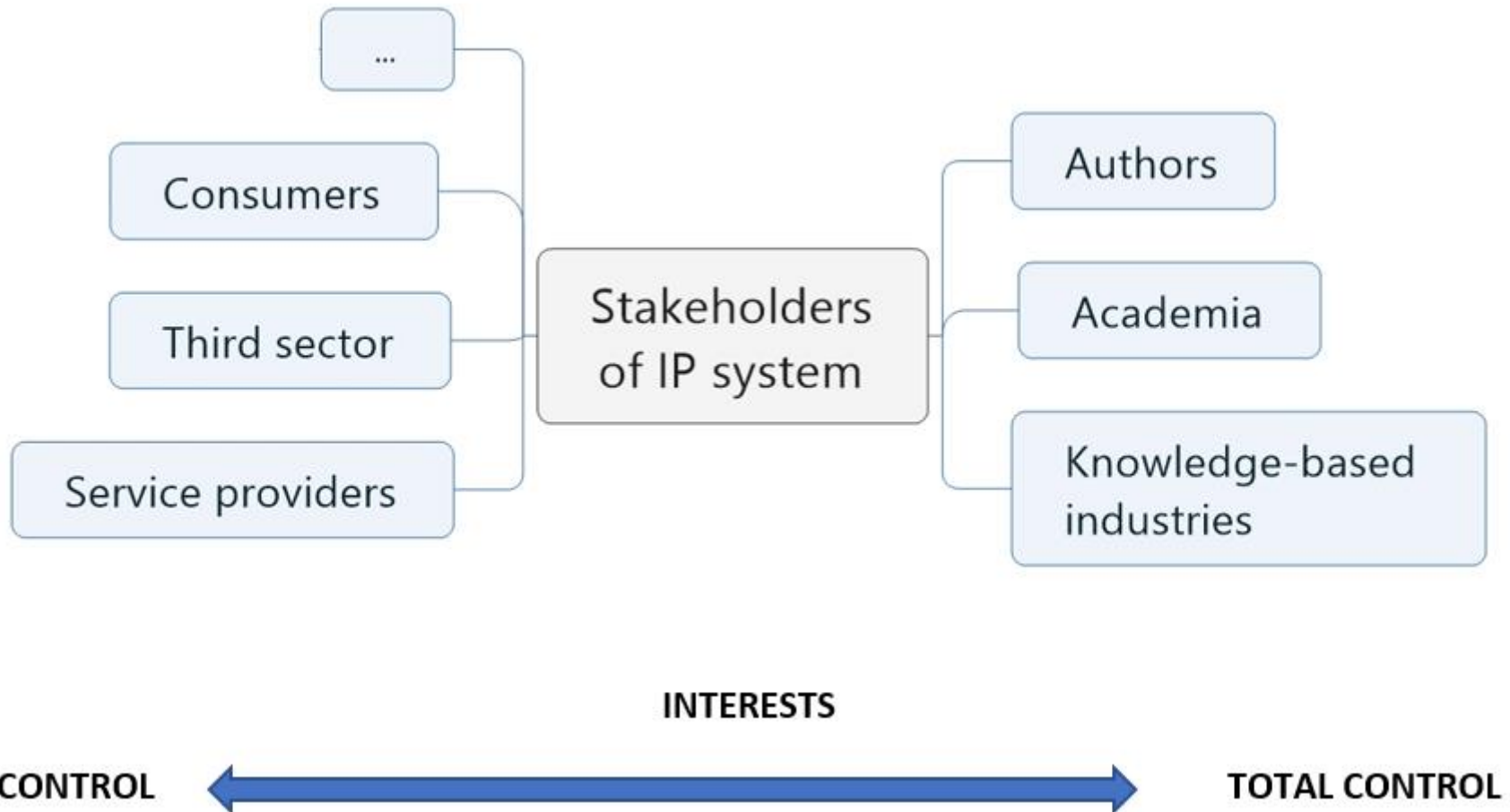


Convention Establishing WIPO:


“intellectual property” shall include the rights relating to:

- literary, artistic and scientific works,
 - performances of performing artists, phonograms, and broadcasts,
 - inventions in all fields of human endeavor,
 - scientific discoveries,
 - industrial designs,
 - trademarks, service marks, and commercial names and designations,
 - protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (art 2).

Stakeholder involvement:



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They always talk handsomely about the literature of the land....And in the midst of their enthusiasm they turn around and do what they can to discourage it.

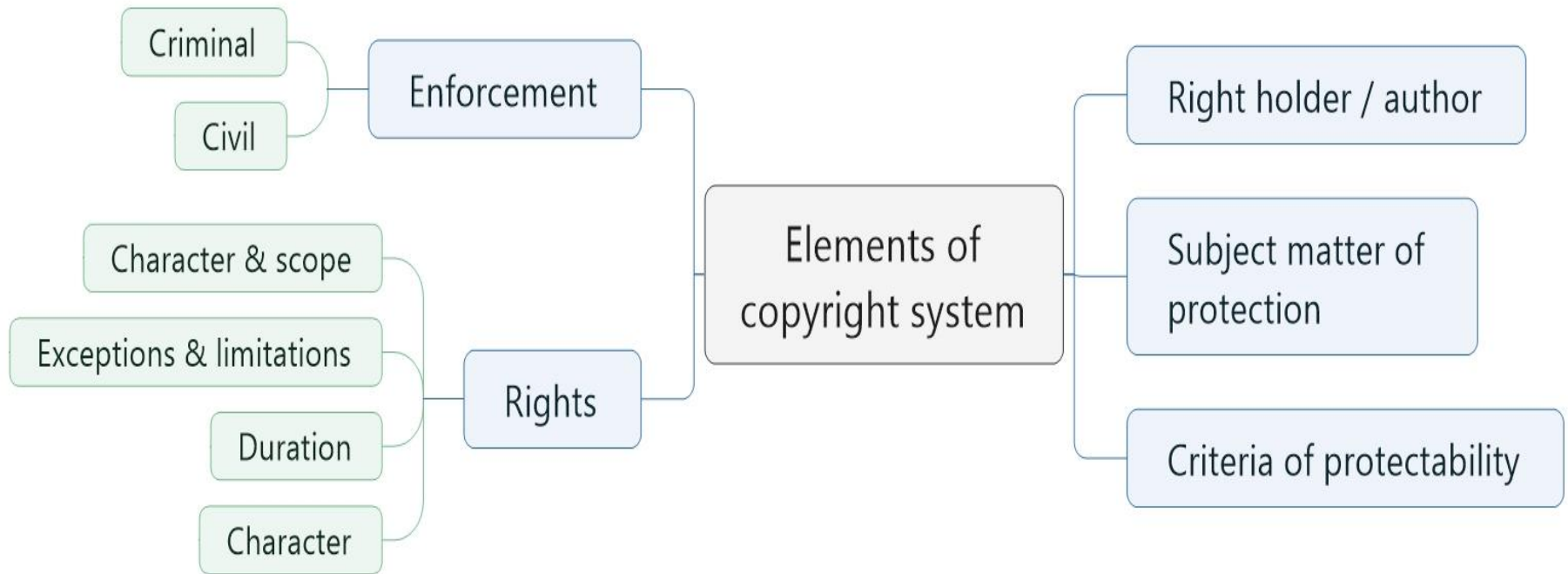
- Speech in Congress, 1906

Whenever a copyright law is to be made or altered, then the idiots assemble.

- *Mark Twain's Notebook*, 1902-1903



Elements of copyright system:



INTERNATIONAL LAW

EU / REGIONAL LAW

NATIONAL LAW

Trends (from Statute of Anne (1710) to InfoSoc directive):



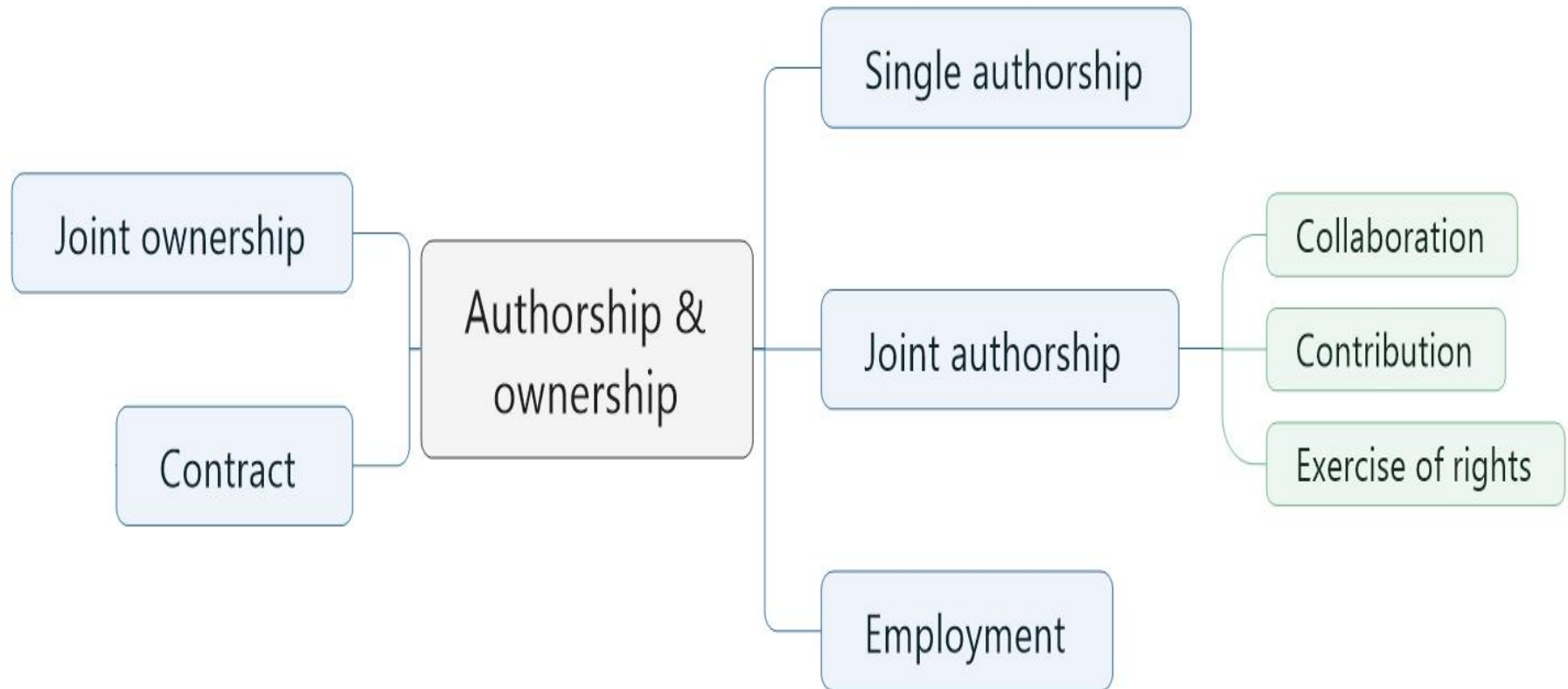


Main paradigms:

- Copyright (right to copy) vs. Author's right (*droit d'auteur*);
- Anglo-American (copyright) vs. Continental European (*droit d'auteur*);
- Positive laws (*ius positum*: man made law) vs. Natural law (*ius naturale*: inherent rights given by God, nature or reason).




The author:





The works (*œuvre de l'esprit*):

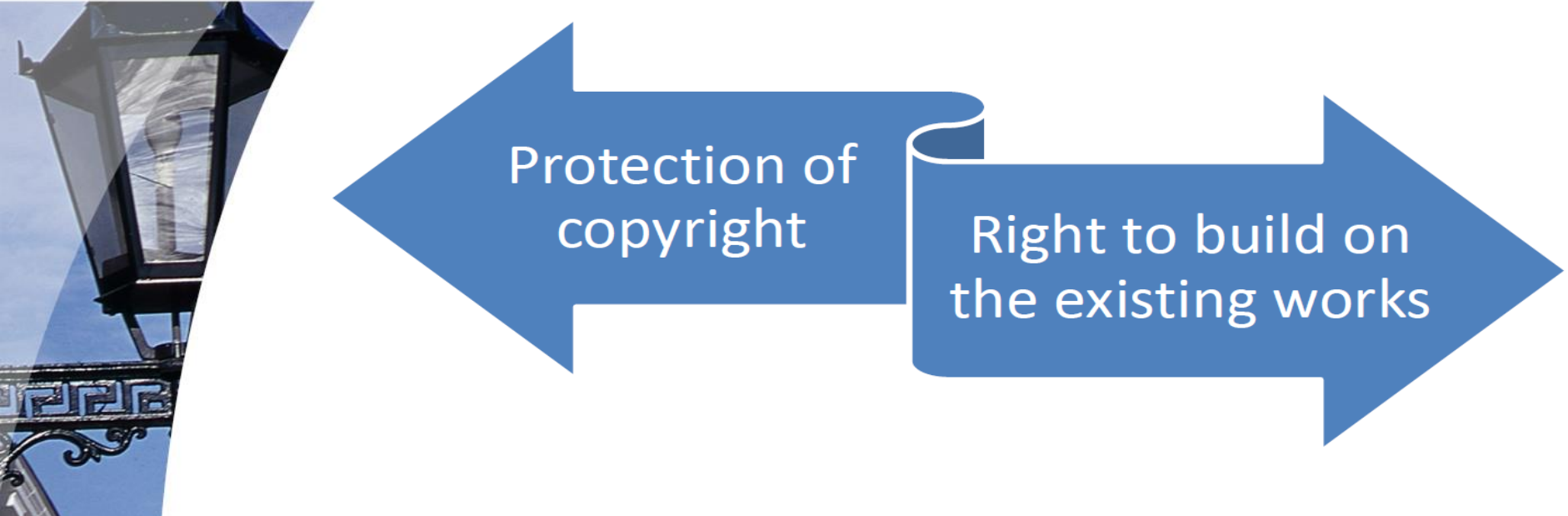
- Copyright subsists in a work, that is to say, **any expression** within the field of **literature, art or science** in so far as it constitutes its author's **own intellectual creation** (European Copyright Code);
 - The provisions of this Code shall protect the rights of authors in all works of the mind, whatever their kind, form of expression, merit or purpose (French IP Code).
- 



The works (*œuvre de l'esprit*):

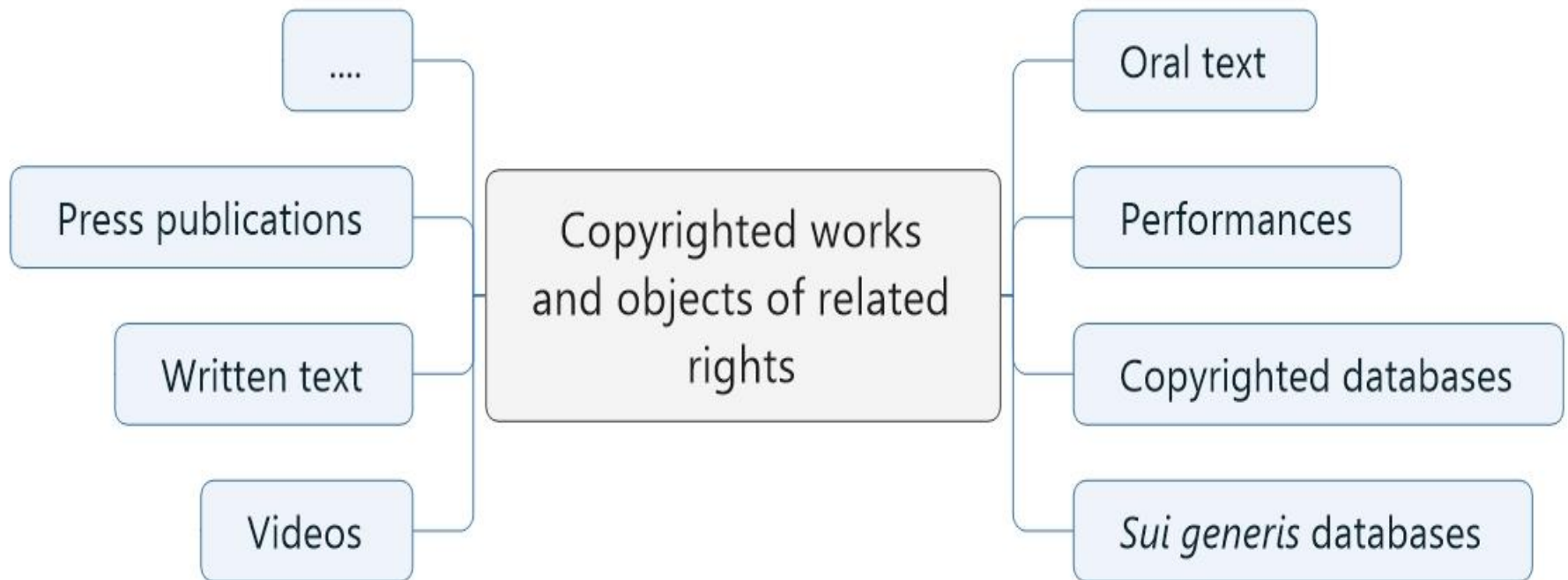
- Sweat of the brow doctrine;
- Creativity: choice & arrangement;
- Originality = independent creation + creativity;
- Independent creation;
- Any expression within the field of literature, art or science;
- Expressed in an objective form and can be perceived and reproduced in this form;
- Protection does not depend on societal value of a work.

Transformative use:



- Tension between a need to protect copyright and allow others to build upon it:
 - Legislative initiatives;
 - Private initiatives (viral copyright).

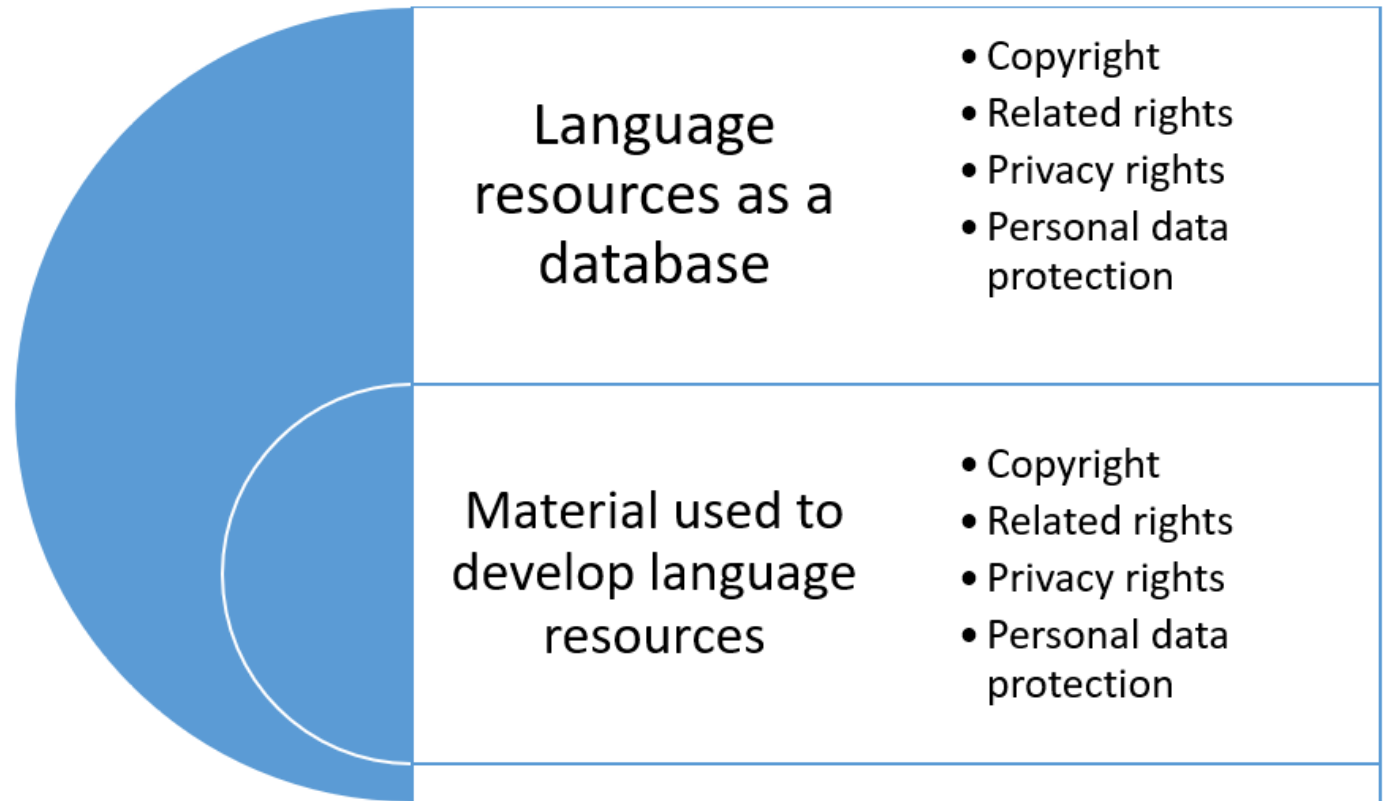
Language data & copyright:





Example of language data:

Two tiers of rights covering language resources



Intellectual creations not protected by copyright:



- Intellectual creation is not a work / excluded works:
 - Ideas, methods, inventions,
 - Works of folklore;
 - Legislation & court decisions;
 - Facts and data;
 - Scène à faire;
 - Merger doctrine.



Intellectual creations not protected by copyright:



AUTHORSHIP



IDEA PROVIDER

TECHNICAL ASSISTANT



AUTHORSHIP



IDEA

FACT



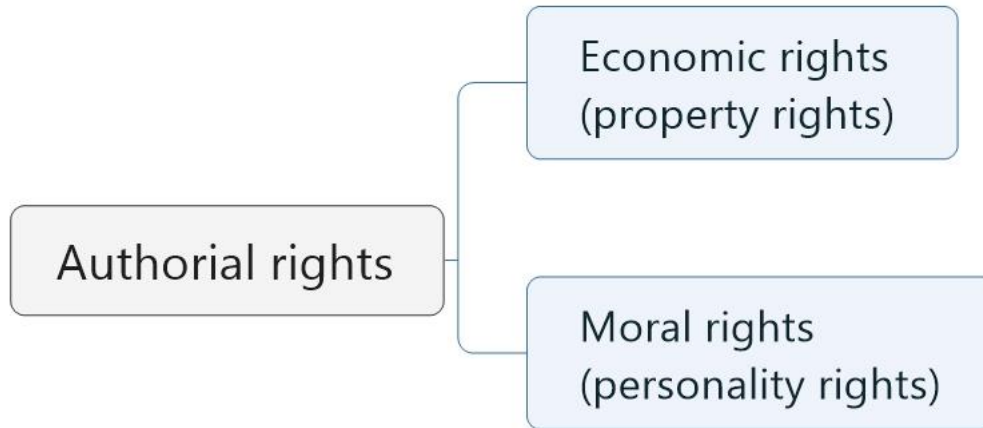
Moment of creation of copyright:

- No formalities (e.g., registration and other requirements);
- Copyright in a work is created with the creation of the work;
- Benefits of formalities:
 - Title search;
 - Certificate of authorship;
 - Statutory damage + attorneys fees.





Authorial rights:



Everyone has the **right to the protection of the moral and material interests** resulting from any scientific, literary or artistic production of which he is the author (**The Universal Declaration of Human Rights art. 27 (2)**)



Moral rights:

Moral rights
(*droit moral*)

The right of attribution


The right of integrity

The right of disclosure

The right of withdrawal
or repentance

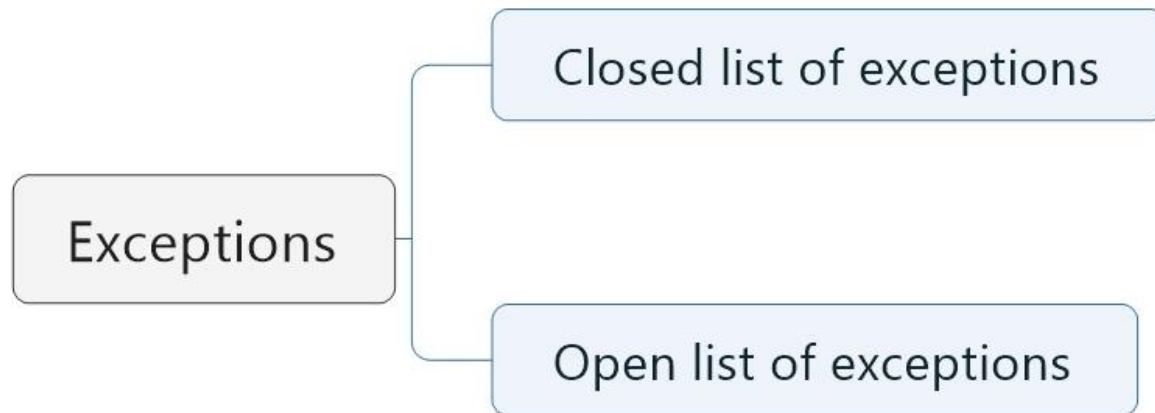


Economic rights:

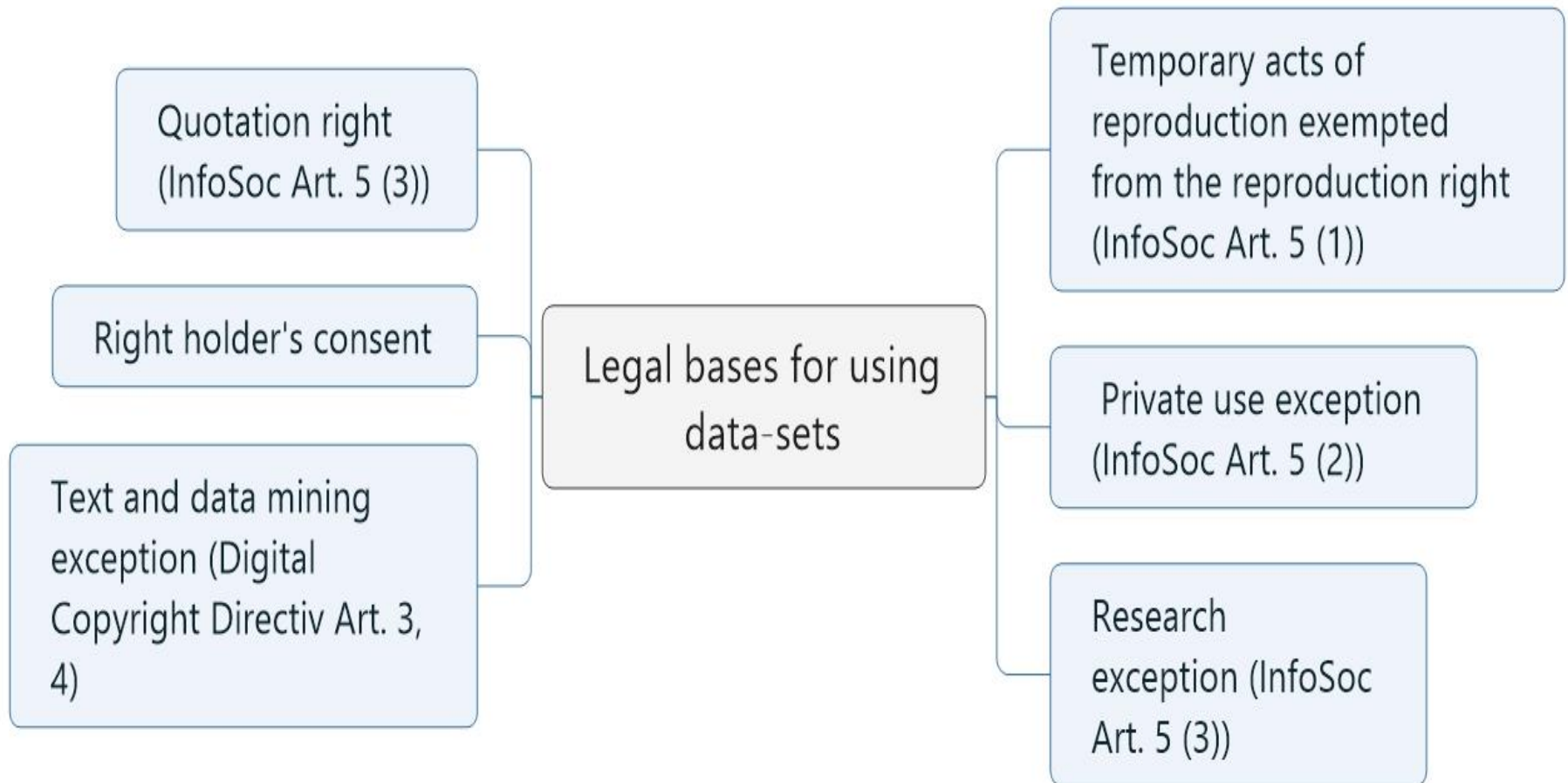
- Open vs. closed catalogue of rights;
 - Reproduction right;
 - Distribution right;
 - Right of translation;
 - Right of alteration of the work;
 - Right to communicate works to public;
 - Making available right;
 - The interplay between economic and moral rights.
- 

Limitations and exceptions to copyright:

- Policy consideration:
 - Freedom of expression;
 - Participatory democracy;
 - Right to culture;
 - Transaction costs;



Use of LD & copyright protection:



TDM (Directive 2019/790):

Text and data mining: any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations (Art. 2);

Text and data mining can also be carried out in relation to **mere facts** or **data** that are not protected by copyright, and in such instances no authorisation is required under copyright law (Recital 9).

TDM (Directive 2019/790):

There can also be instances of text and data mining that do not involve acts of reproduction or where the reproductions made fall under the mandatory exception for **temporary acts of reproduction** provided for in Article 5(1) of Directive 2001/29/EC, which should continue to apply to text and data mining techniques that do not involve the making of copies beyond the scope of that exception (Recital 9).



TDM beneficiaries (Art. 2):

Research organisation: a university, including its libraries, a research institute or any other entity, the primary goal of which is to **conduct scientific research or to carry out educational activities** involving also the conduct of scientific research:

(a) on a **not-for-profit basis** or by reinvesting all the profits in its scientific research; or

(b) pursuant to a public interest mission recognised by a Member State; in such a way that the access to the results generated by such scientific research **cannot be enjoyed on a preferential basis** by an undertaking that exercises a decisive influence upon such organisation;

Cultural heritage institution: a publicly accessible library or museum, an archive or a film or audio heritage institution.



TDM and public-private partnership:

While research organisations and cultural heritage institutions should continue to be the beneficiaries of TDM exception, they should also be able to **rely on their private partners** for carrying out text and data mining, including by using their technological tools (Recital 11).



TDM conditions:

- Right to make reproductions and extractions for TDM;
- Subject matter covered:
 - Works;
 - Objects of related rights:
 - Performances;
 - Phonograms;
 - Broadcasts;
 - *Sui generis* databases;
 - Press publications



TDM (Directive 2019/790):

Lawful access: This exception or limitation should only apply where the work or other subject matter is accessed lawfully by the beneficiary, including when it has been made available to the public online (Recital 18);

Any **contractual provision contrary** to the exceptions shall be **unenforceable** (Art. 7).

TDM and technological measure:

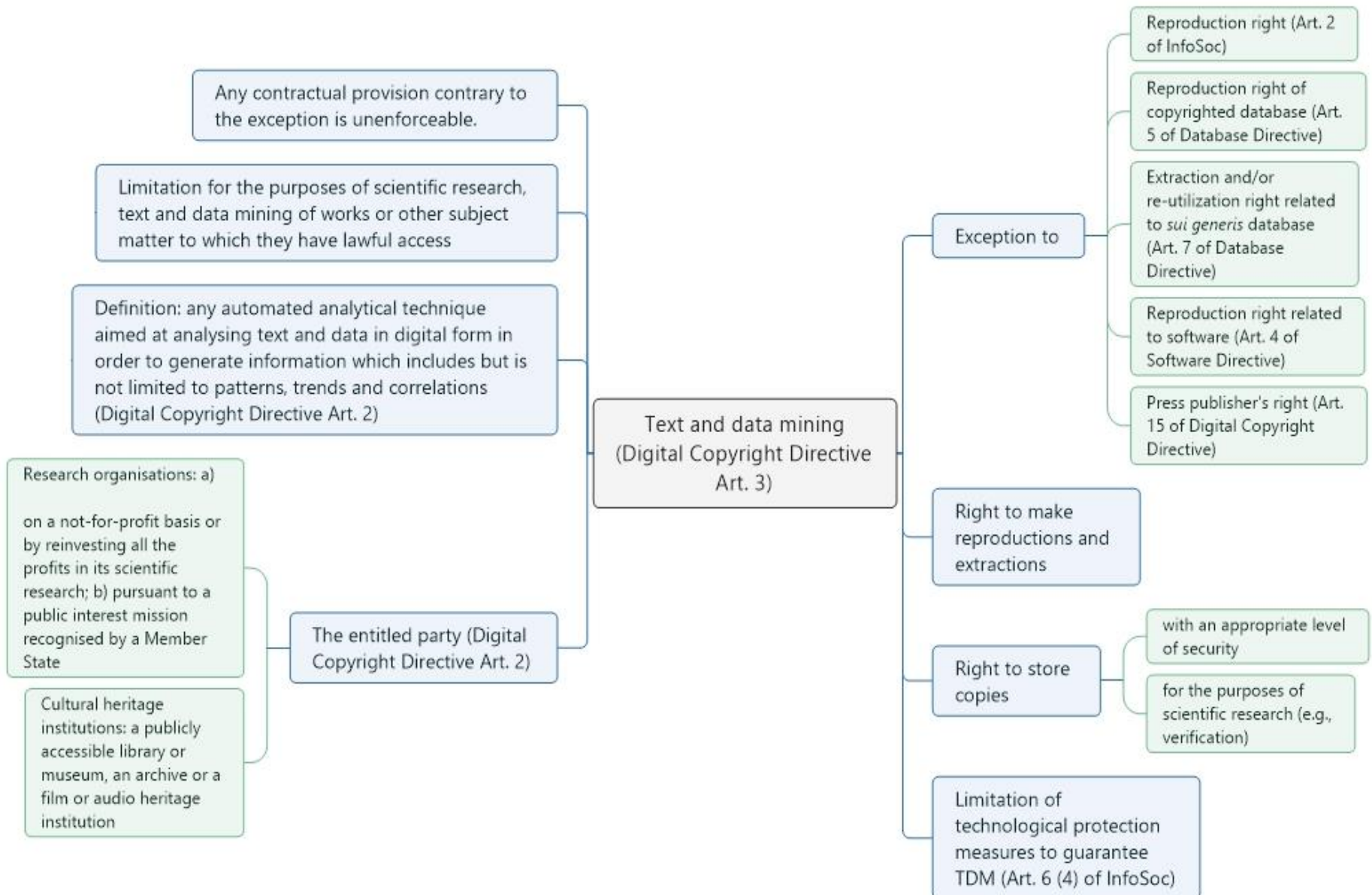
Rightholders are allowed to apply **measures** to **ensure the security and integrity** of the networks and databases where the works or other subject matter are hosted. Such measures shall **not go beyond** what is necessary to achieve that objective (Art. 3 (3));

Member States shall take **appropriate measures** to ensure that rightholders make available to the beneficiary of an exception the **means of benefiting from that exception** (InfoSoc Art. 6 (4))

TDM datasets:

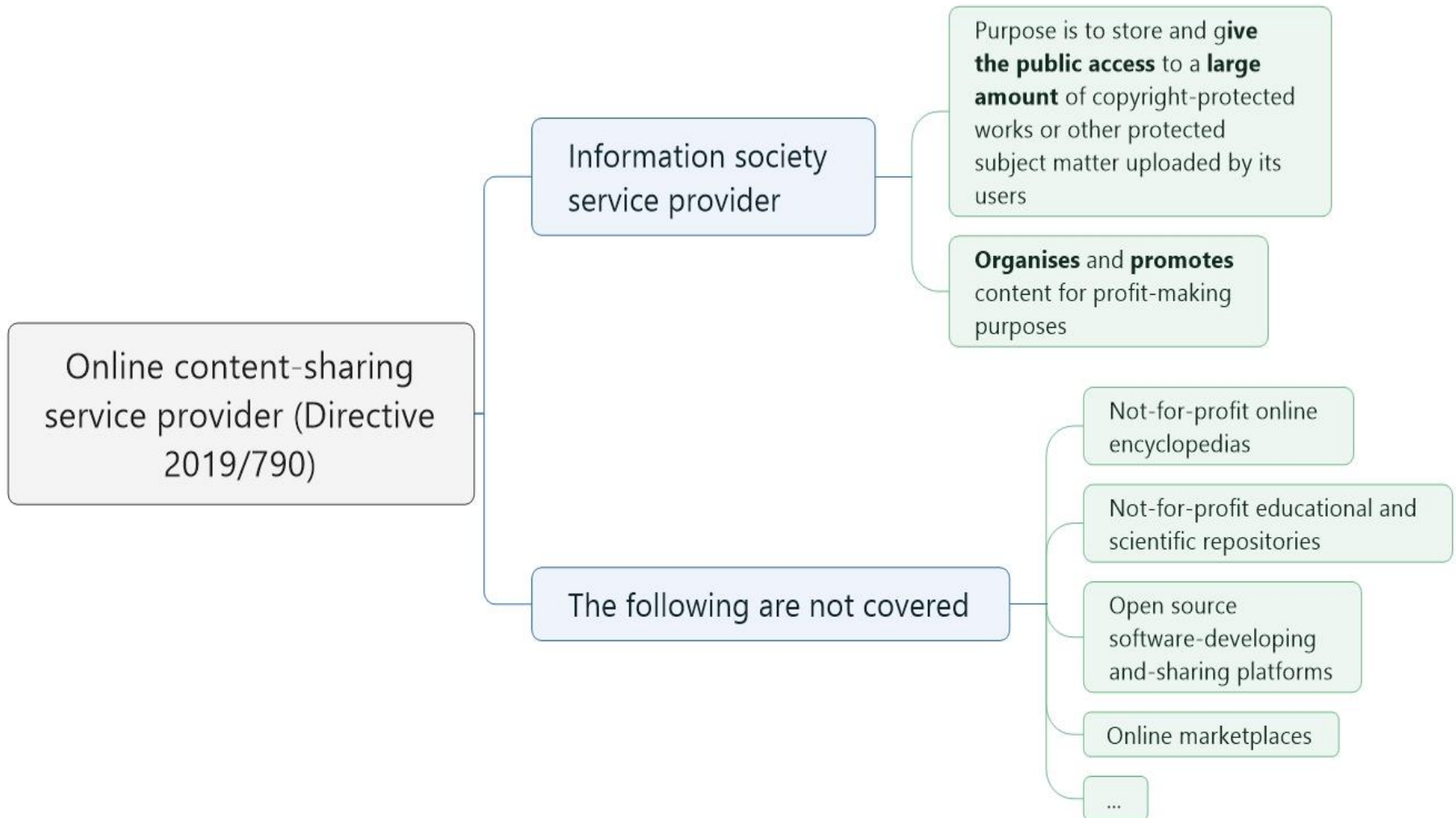
- Copies of works or other subject matter made in compliance with paragraph 1 shall be stored with an **appropriate level of security** and may be retained for the **purposes of scientific research**, including for the **verification of research results** (Art. 3 (2));
- Uses for the purpose of scientific research, other than text and data mining, such as scientific peer review and joint research, should remain covered by research exception in InfoSoc.

TDM:



Liability of depositories:







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