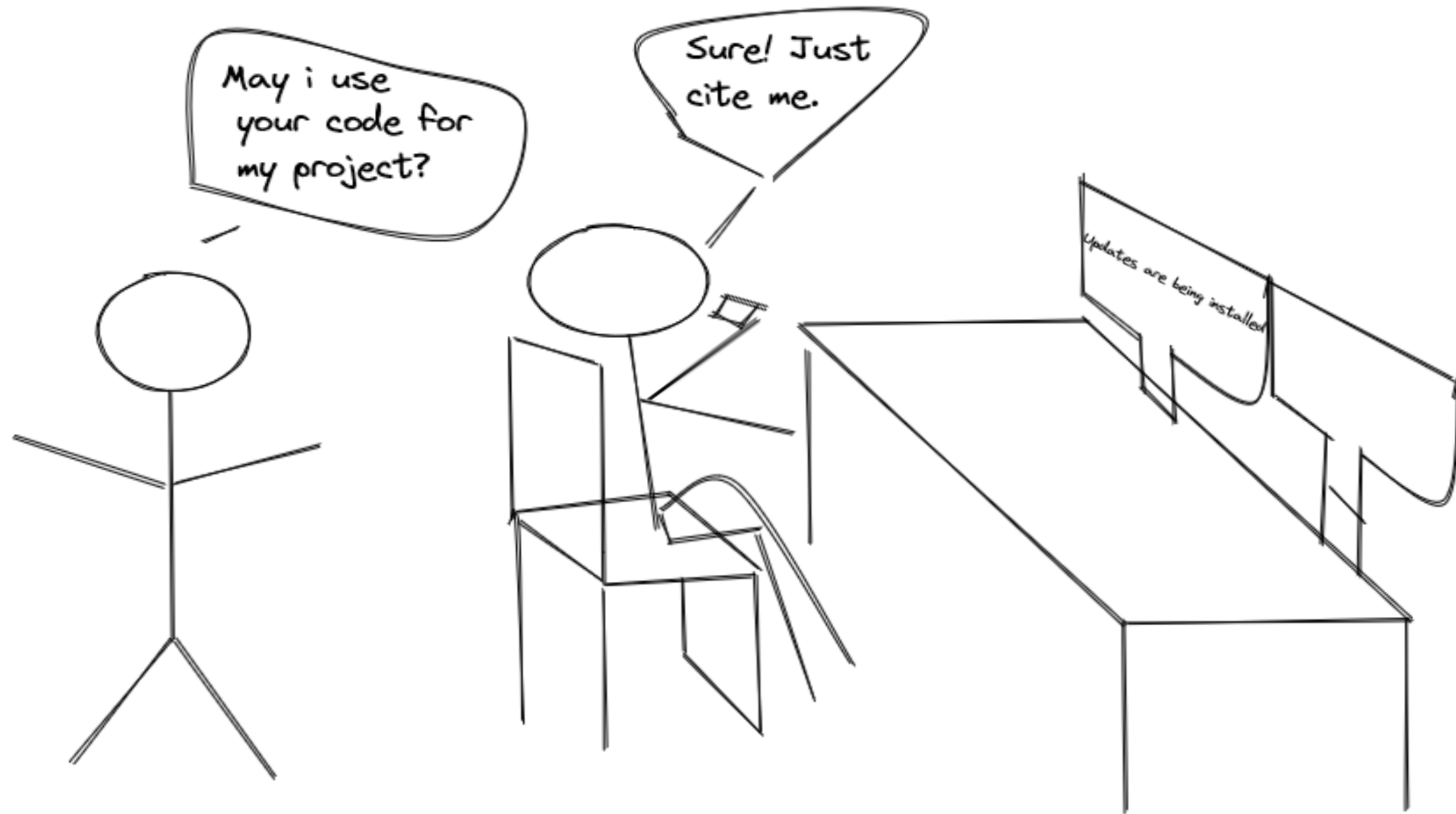


**Do I really need a
licence for my code?**

Whats is a licence?



What happend here from a legal POV?

- “project” → limitation to a defined purpose
 - project is certainly documented e.g. cooperation agreement, external funds application, ...
 - project is known to other people for context outside written agreements

What happend here from a legal POV?

- “project” → limitation to defined duration
 - only as long as the project
 - if in context with FAIR principles also for that purpose and duration

What happend here from a legal POV?

- “use” → limitation to utilization, depends on context of “project”
 - not modify, not transfer, not sublicence, not exploit,... ?
 - do whatever you want?

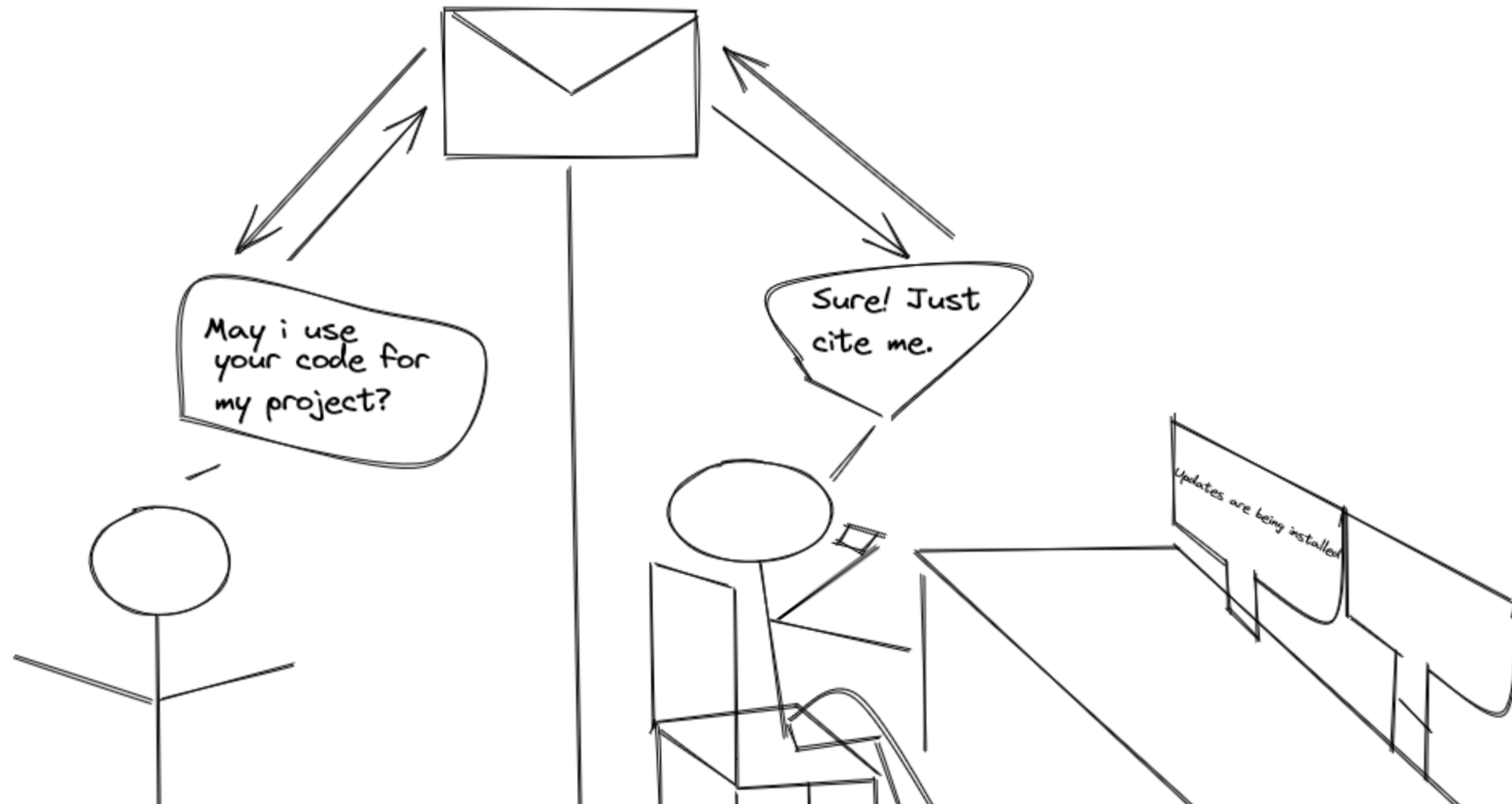
What happend here from a legal POV?

- “cite” → condition for publication
 - implies the right to publish the code
 - if in FAIR environment it also implies at least source code, right to sublicence

What about a “real” contract

- licence has no form requirement → oral contract is sufficient
- Problem: burden of proof
 - only witness accounts of the parties involved
 - depends on type of lawsuit

Alternative Scenario



Alternative Scenario

- simple E-Mail is sufficient indication for valid contract
- if with signature like DFN Cert or GEANT → advanced electronic signature Art. 26 **EIDAS VO**
EU

Conclusion

- no specific form or layout required → risk assessment!
- for clear and easy use at least in textform
 - Textform? Written form need's an actual handwritten signatur on real paper, everything else is textform

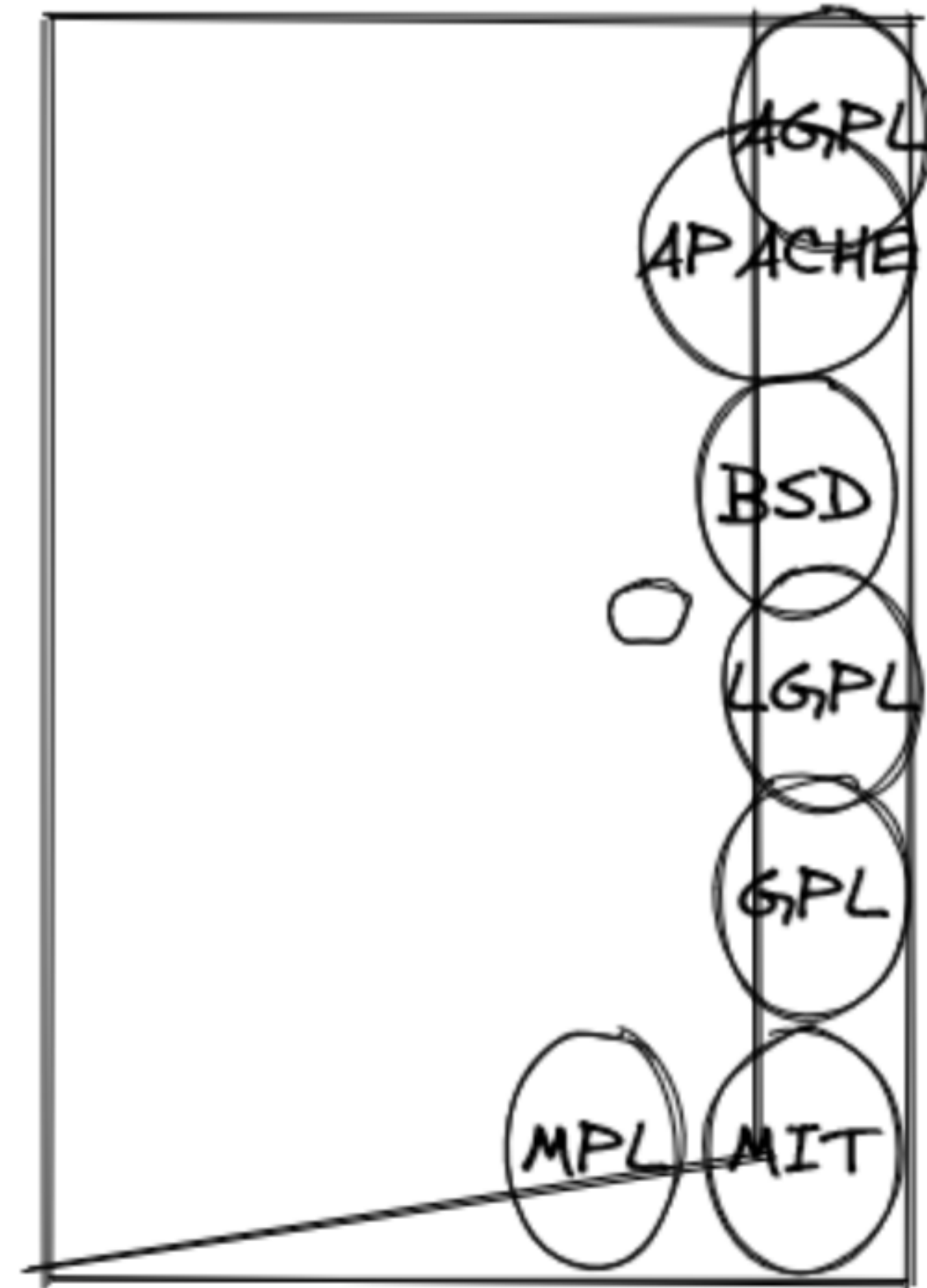
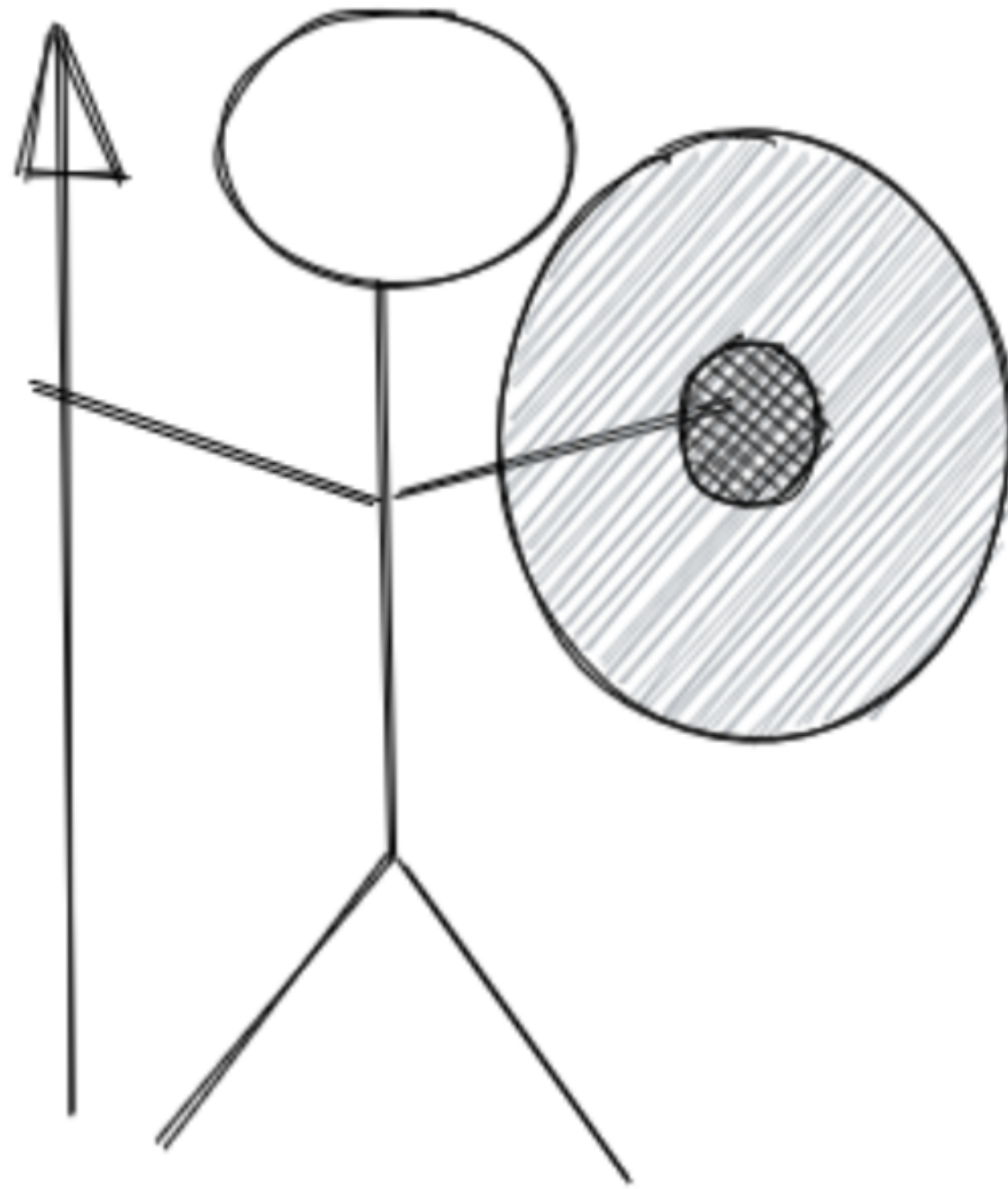
The Choice?

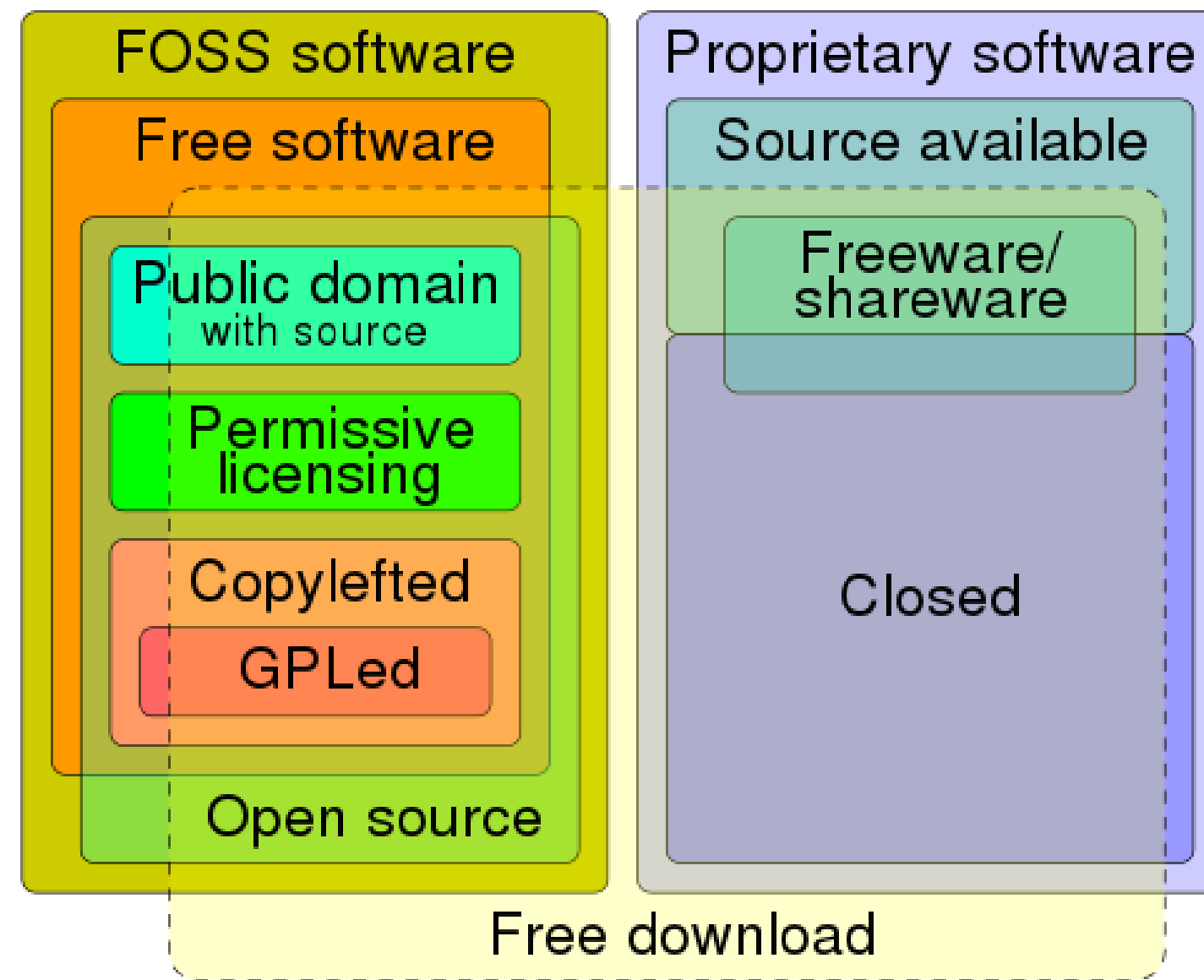
**Can I even choose a
licence?**

- All copyright must be within your institution
- via CoopAgreement, Employment/Guest Contract, CLA
- Documentation is key! E.g. Employment of contributor at the moment of contribution
- But what if that's unclear? → e.g. EIRENE Just write a proper notice

- Why is the situation of employment important?
 - → § 69b UrhG **Act on Copyright and Related Rights**

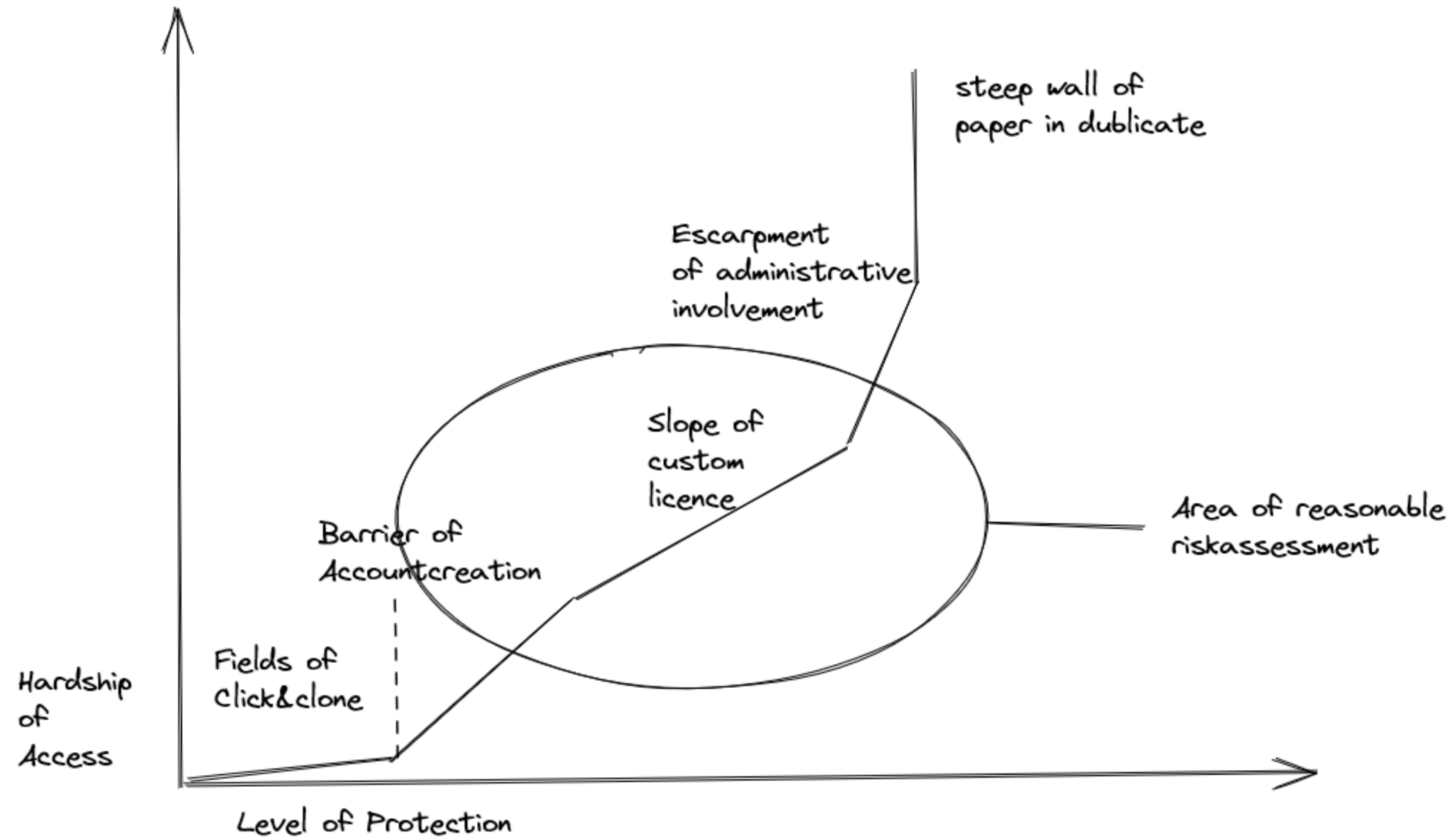
(1) Where a computer program is created by an employee in the execution of his or her duties or following the instructions of his or her employer, the employer alone is entitled to exercise all economic rights in the computer program, unless otherwise agreed.





The Choice?

- Need to answer three Questions:
 - How easy should others be able to do stuff with the code?
 - How much control do you want to keep?
 - How much time **can** you spend answering the above?



The Choice?

- We just want to be cited correctly → MIT
- It should stay open source → GPLv3, EUPL
- We don't want it commercialised → CC BY-NC-SA 4.0 → not recommended for OS use by CC themselves
- It should only be used for a specific purpose → self-made license

- Must code authored by an FZJ employee during their work be explicitly licensed only for peaceful purposes?
- Peace Clause in the company agreement of FZJ
- Company gets obliged, not employee

How to contribute?

How to contribute?

- Basically two scenarios
- External contributor to your code
- You to external code

How to contribute?

- External contributor signs CLA
- at least as a perpetual, irrevocable, unrestricted licence

How to contribute?

- Is the external person authorised to do so? → better don't ask
 - Why? As long as you can assume they are authorised, they are
 - How does that work? → Duldungs-/Anscheinsvollmacht (acting with apparent or ostensible authority)

How to contribute

- You sign an external CLA
- But are you authorised to do so?
- Not on scope at FZJ until recently

Internal contract compliance versus external licence

Internal contract compliance versus external licence

- no classical versus situation
- basically as any other contract
- network between contract management tool and repository

Open source versus proprietary?

Open source versus proprietary?

- no fundamental conflict
- proprietary implies control over the code beyond the licensee
- access to source code and right to modify is still possible

Open Source versus commercial exploitation?

Open Source versus commercial exploitation?

- Fear of the “industry” of GPL like licences → Code Infection!
- Basically true, but what are the consequences?
- “Infection” only takes relevant effect if the code is transferred
- Internal use without restrictions

Open Source versus commercial exploitation?

- Classic sale situation
 - If you transfer the code you also must transfer source code
 - Does that influence the reasons why the software was bought?
 - End User just want's the product to run

Open Source versus commercial exploitation?

- Security concerns? → Kerckhoffs Principle

It should not require secrecy, and it should not be a problem if it falls into enemy hands.

Questions?