



# Science Tracking

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# Agenda

1. Initial situation
  - a) DEAL
  - b) Science tracking
  - c) GDPR
2. Data protection provisions in the DEAL contracts
  - a) Joint data processing (joint controllership)
  - b) Data transfer to non-EU countries
  - c) Tracking
  - d) Data minimization
3. Consequences for scientists and librarians

# DEAL

- 2014: Alliance of German Science Organisations commissioned a project to negotiate nationwide licences with the largest academic publishers
- 2016: Negotiations with Elsevier started
- 2017: Negotiations with Wiley and Springer Nature started
- 2018: Suspension of negotiations with Elsevier; access interrupted
- 2019: Start of Wiley-DEAL-contract
- 2020: Start of Springer Nature-DEAL-contract
- 2023: Start of the first contract with Elsevier
- 2024: Start of the second contracts with Wiley and Springer Nature

<https://www.b-i-t-online.de/heft/2023-02-fachbeitrag-mittermaier.pdf>

<https://www.b-i-t-online.de/heft/2023-03-fachbeitrag-mittermaier.pdf>

Ulrich Herb: The German DEAL contracts <https://doi.org/10.59350/vfqbg-13430>

# All around the research cycle

<https://stoptrackingscience.eu/background-information/>



# Science Tracking

- Cody Hanson (2019): “User Tracking on Academic Publisher Platforms”
- AWBI (2021): “Datentracking in der Wissenschaft: Aggregation und Verwendung bzw. Verkauf von Nutzungsdaten durch Wissenschaftsverlage”
- ABI Technik Bd. 42 Heft 2 (2022): Themenschwerpunkt Datentracking
- Petition „Stop Tracking Science“ (2023). *“Tracking of academics must stop and can no longer be the subject of negotiations between research institutions and publishers.”*
- SPARC (2023): “Navigating Risk in Vendor Data Privacy Practices” (Elsevier)
- AWBI/DEAL-group (2024): submission to “RuZ – Recht und Zugang“ in preparation

# GDPR

- Directly applicable European law
- In libraries and institutions, data protection has so far mainly been considered from the perspective of “GDPR-compliant website“, “handling user data“ etc.
- “New“ aspect: Contracts with publishers *might* be relevant because **joint data processing** *might* take place
  - Submission processes
  - Verification processes
  - Transmission of IP addresses
  - Usage statistics

## Art. 26 GDPR Joint controllers

(1) Where two or more controllers **jointly determine the purposes and means of processing**, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14 (..) .

(3) Irrespective of the terms of the arrangement referred to in paragraph 1, the **data subject** may exercise his or her rights under this Regulation in respect of and **against each of the controllers**.

<https://gdpr.eu/article-26-joint-controllers/>, <https://dsgvo-gesetz.de/art-26-dsgvo/>

# Joint Controllership

- The legal experts in the AWBI/DEAL working group clearly affirmed the existence of joint responsibility.
- The legal experts of Elsevier, Wiley and Springer Nature, however, just as clearly denied joint responsibility.
- Workaround: Non-existence of joint controllership is assumed; the publishers assume full responsibility for this assessment.



## No Joint Controllership

“The parties [**DEAL and Elsevier**] have assessed their respective personal data processing activities under this Agreement and have determined that they each carry out their respective processing as an **independent controller**.

If a **competent supervisory authority or court** decides that any personal data processing activity under this Agreement involves the parties processing personal data as joint controllers under Art. 26 GDPR, the parties agree to **negotiate in good faith** a joint controller addendum to allocate their respective data protection responsibilities and **Elsevier shall defend, indemnify and hold harmless DEAL Operating Entity and each Participating Institution for any violation or alleged violation of Art. 26 GDPR.**”

(similar provisions with Wiley and Springer Nature)

# Data transfer to non-EU countries

- Since 2020 very restricted as a consequence of the “Schrems II”-judgement (*though Elsevier and Wiley didn't bother too much*).
- Elsevier and Wiley insisted on data transfer because of their nature as international companies with global (IT-) infrastructures.
- On July 10<sup>th</sup> 2023, the European Commission adopted an adequacy decision for the EU-U.S. Data Privacy Framework → new situation
- Open question: What about all other countries?

„Your personal information may be stored and processed in your region or another country where Elsevier companies and their service providers maintain servers and facilities, including Australia, China, France, Germany, India, Ireland, the Netherlands, the Philippines, Singapore, the United Kingdom, and the United States.”

<https://www.elsevier.com/de-de/legal/privacy-policy>

## Data transfer to non-EU countries

- **Elsevier and Wiley:** The Parties agree that personal data shall only be processed in a Member State of the European Union (EU). Any relocation to a third country shall only be allowed if the specific conditions of Art. 44 et. seq. GDPR are met.
- **Springer Nature:** The Parties agree that data shall only be processed in a Member State of the European Union (EU) or in countries benefitting from an adequacy decision pursuant to Article 45 GDPR. Any relocation to a third country **requires the prior consent of MPDLS** in text form and shall only be allowed if the specific conditions of Art. 44 et seq GDPR are met.

# Tracking: Elsevier

Elsevier will not generate, track, record, store, share, transfer, and/or sell personal data of Authorized Users without the consent of the respective Authorized User (which must not be included in a general opt-in), **unless the processing is necessary for** (i) the performance of this Agreement or other contract according to Art. 6 Par. 1(b) GDPR, (ii) compliance with a legal obligation to which Elsevier is subject according to Art. 6 Par. 1(c) GDPR; or (iii) **a legitimate interest according to Art. 6 Par. 1 (f) GDPR.**

This restriction on personal data processing by Elsevier includes but is not limited to the collection, analysis, profiling and aggregation of personal data, such as through utilization of cookies, device fingerprinting technology, or similar technologies that track user behavior that are outside the services under the Agreement and the rights and obligations of the Parties under the Agreement.

## Tracking: Wiley

Wiley will not track, record, store, share, transfer and/or sell usage or personal data of Authorized Users (Science Tracking) without the consent of the Authorized User, **unless** the processing is necessary for the services to be provided under this Agreement, Wiley has a legal obligation, or **Wiley has a legitimate interest according to Art. 6 Par. 1 (b), (c) or (f) GDPR, respectively**. This Section 3.2 applies to Wiley's collection, analysis, profiling, and aggregation of personal data, that track Authorized User behavior outside the services under the Agreement and the rights and obligations of the Parties under the Agreement.

[https://commission.europa.eu/law/law-topic/data-protection/reform/rules-business-and-organisations/legal-grounds-processing-data/grounds-processing/what-does-grounds-legitimate-interest-mean\\_de](https://commission.europa.eu/law/law-topic/data-protection/reform/rules-business-and-organisations/legal-grounds-processing-data/grounds-processing/what-does-grounds-legitimate-interest-mean_de)

# Tracking: Springer Nature

Springer Nature is obligated not to track, record, store share, transfer and/or sell usage data or personal data of users accessing content under this Agreement, **unless absolutely necessary for the performance of this Agreement or in case of any security or content protection measures, but only if Springer Nature has a legal obligation or a legitimate interest according to Art. 6 Par. 1 (c) or (f) GDPR, respectively.** That includes the prohibition of collecting detailed real-time data on the informational behavior of users, including but not limited to the collection, analysis, profiling and aggregation of personal and other academic or private data from various sources, such as user tracking, duration of stay and category of information source, offline tracking of any kind, utilization of fingerprint technology, software toolboxes or similar to implement advanced tracking or profiling, meaning any data processing operations that are outside the common purpose of the Parties, the granting of access to online resources and the provision of anonymous usage statistics according to the COUNTER standard.

# Data minimization: Springer Nature

- Springer Nature is **obligated to delete or overwrite the final two octets of the IP addresses** collected from the users for the purpose of performance of contract prior to any geolocation.
- Springer Nature shall **refrain from storing any full IP addresses** for a time period longer than necessary for the purpose of the collection, but in no case for more than 48 hours. Where IP addresses, immediately after collection, are stored in an encrypted and anonymized manner, Springer Nature is obligated to utilize encryption technology, which precludes any state of the art de-anonymization.
- Springer Nature shall **limit the operational time of cookies** or similar technologies strictly necessary for the performance of this Agreement to a minimum operational time of 1 month or less except where the nature of the service supported by the cookie can be proven to require a longer duration.

## Data minimization: Elsevier

- Elsevier shall refrain from storing any **full IP addresses** for a time period longer than necessary for the purpose of the processing.
- The parties agree to hold a **joint workshop** during the first twelve (12) months of the term of the Agreement to discuss further steps to strengthen data protection and data privacy. In the workshop, the parties will, regarding IP address geolocation, assess **whether and how to delete or overwrite the final two octets** of any IP addresses collected from Authorized Users using the Products that are not the IP addresses of any Participating Institutions. The parties shall undertake good faith efforts to contribute by means of an outcome-focused design process.



## Data minimization: Wiley

- Wiley shall refrain from storing any Authorized User's **full IP addresses** for a time period longer than necessary for the purpose of the collection. When storing IP addresses in the database of the Wiley Online Library application, Wiley will use **encryption technology** as applicable.
- The Parties agree to hold a **joint workshop** during the first twelve (12) months of the term of the Agreement to discuss further steps to **strengthen data protection and data privacy regarding full IP addresses collected from Authorized Users using the Products that are not the IP addresses of any Participating Institutions**. The Parties shall undertake good faith efforts to contribute by means of an outcome-focused design process.

## What scientists can do

- As authors: always chose CC-BY
- As readers: always chose “only essential cookies”
- Read the publishers’ privacy regulations (*and let the text work its magic on you*)
  - <https://www.elsevier.com/legal/privacy-policy>
  - <https://www.wiley-vch.de/de/ueber-wiley/impressum#datenschutz> as well as <https://web.archive.org/web/20231218164157/https://www.wiley.com/en-us/privacy>
  - <https://link.springer.com/privacystatement>
- Ask publishers **how long** and **where** they process/store **what** personal information
  - <https://www.elsevier.com/legal/privacy-policy/data-request>
  - [datenschutz@wiley.com](mailto:datenschutz@wiley.com)
  - [dataprotection@springernature.com](mailto:dataprotection@springernature.com)
- In case: File a complaint with the local data protection authority

# What libraries can do with other publishers / contracts

- Relevant at least for transformative agreements and Gold OA contracts
- Address “joint responsibility“ (Art 26 GDPR) in advance and offer to include the model clauses provided by AWBI/DEAL working group
- Fall-back option: Workaround as in the DEAL contracts
- Use DEAL-Springer Nature contract as a template for further clauses
- .... and watch out for the AWBI/DEAL working group publication
- **Support your scientists**

Thank  
You