



LIBER'S RESPONSE TO THE EUROPEAN COMMISSION'S CALL FOR EVIDENCE FOR A BETTER COPYRIGHT ENVIRONMENT FOR EUROPEAN CREATIVITY AND INNOVATION/COPYRIGHT IN THE DSMD

LIBER, the Association of European Research Libraries, which brings together 431 libraries in 40 countries, welcomes the opportunity to contribute to this call for evidence. The 2019 Directive has brought about significant progress. However, the provisions related to research remain fragmented across Member States. This creates legal uncertainty for researchers and research institutions and does not adequately account for current research practices, including the use of AI.

The review aims to evaluate ways to close these gaps and better align EU copyright law with open science and the need for a strong research and innovation ecosystem in Europe. This would also help to make the so-called fifth freedom, the free movement of knowledge, research, and innovation as described in the Letta report, a reality.

LIBER recommends that the review focus on the following priorities:

1. a binding, harmonised EU-wide Secondary publication right for authors;
2. a mandatory, broadly formulated research exception that applies uniformly across Member States and works across borders;
3. effective safeguards for research uses and text and data mining in the context of AI;
4. protection of research-related exceptions against contractual and technological circumvention;
5. a modern, technology-neutral definition of research;
6. a simplified and workable framework for out-of-commerce works;
7. close coordination between the copyright review and the upcoming ERA Act.

1. A harmonised EU Secondary Publication Right for authors

A binding, harmonised EU-wide Secondary Publication Right for authors should apply in all Member States, cover a broad spectrum of scientific publication formats, include the Author's Accepted Manuscript and, if possible, the Version of Record, provide for no embargo periods, and allow the broadest possible re-use for both commercial and non-commercial purposes. This would be an important building block for Open Science and the European Research Area.





LIBER would like to express its support for the Commission's exploration of an EU-wide Secondary Publication Right (SPR) for authors, building on Member States' experience. Up to now, Member States have introduced SPRs in a fragmented way, resulting in varied implementation across areas, including differing embargo periods and eligibility requirements, which contradict the principle of a single market. In the majority of countries a secondary publishing right for authors has not been introduced at all. In those Member States, the ability of authors to make their publicly funded research openly available depends entirely on the terms of their publishing contracts, which individual researchers are rarely in a position to negotiate. As a result, researchers' ability to ensure the open sharing of their research outputs depends on national laws that are misaligned and, in some cases, even contradictory.

Cross-border collaborations are therefore depend on inconsistent rules. A recent example: a UK institution secured a research project funded jointly from the UK and Germany and could not determine with certainty whether the German SPR rules would apply to research outputs wholly led in the UK. The same questions will arise with EU/EC funding and with projects financed by multiple funders with and without an SPR in place. In practice, institutions often respond to this uncertainty by basing their policies on the most restrictive applicable regulation in a Member State, so that even existing secondary publication rights are not used to their full extent. As a consequence, the benefits of the right to secondary publication are diminished, and scientific collaboration is hindered. As operators of institutional repositories, research libraries directly experience how this manifests itself in inconsistent deposit conditions and practices for authors.

A harmonised SPR would also act as one lever to address the "European paradox" identified in the Draghi and Letta reports, by ensuring that the results of publicly funded research circulate more quickly and can be taken up for innovation.

2. A harmonised, broadly formulated research exception

Any research exception should take into account the specific needs of current research practices, including their transnational character and the diversity of research practices and approaches.

The current framework is based on a patchwork of national implementations. This creates legal uncertainty and hinders cross-border collaboration. In countries where there is no general research exception, some research projects depend on the permission of the copyright holder or the content provider. Research on data from social media platforms, for example, is dependent on being granted access and on agreeing to terms that may not be in line with good research conduct or with national legislation. In Sweden, for instance, a researcher may not be able to promise to delete all data after the end of a project, since they have to comply with the Archiving Act.

"Lawful access" is a further key problem in practice. Collaborators at different universities, nationally or internationally, often cannot determine whether data accessed at one institution under its licence may be shared with all project members.

LIBER recommends creating a binding, broadly formulated European cross-border research exception that applies uniformly across all Member States, supports both established and digital research methods as well as inter-library loan, and enables cross-border research



cooperation. In addition, new technologies, including AI-supported research and text and data mining, should be covered. Such an exception would reduce legal uncertainty and facilitate research cooperation in the European Research Area in practice.

3. Safeguarding research and the public interest in AI use

The review of the CDSM Directive should focus not only on the formal existence of research exceptions, but also on whether these exceptions can be effectively exercised in practice and whether technical and legal barriers that contradict the Directive are adequately addressed.

AI poses new challenges for rights holders, particularly regarding control, licensing, and remuneration for the use of works. LIBER shares the concern for fair conditions for authors. At the same time, the debate should not be reduced to generative AI alone. AI is far wider than generative applications, and a narrow focus risks acting as a blanket that also prevents uses which are not generative and which do not compete with the interests of rights holders. New measures to strengthen rights holders' control over AI uses must not undermine existing research and TDM exceptions or the use of AI by public institutions. In particular, the exception for text and data mining for scientific research purposes by research organisations and cultural heritage institutions should remain in effect and non-waivable. Given the central role of AI in research, any restrictions on the use of research-related AI would weaken the competitiveness and innovation capacity of European research. Moreover, limitations on the volume and veracity of content will limit the accuracy of models, thus promoting bias and poor model predictions.

Research on and with AI requires legally secure access to content. New regulations should therefore be designed to avoid restricting this access for research.

LIBER also points out that, in practice, lawful access to content is often insufficient when text and data mining are prevented or hindered by technical protection measures, API restrictions, access blocks, restrictive licence terms, or unclear rights reservations. Libraries regularly procure content under licence terms that restrict any or all use of that content by AI tools, whether generative or not, public or private. Such clauses place severe restrictions on the ability of institutions and researchers to conduct legitimate research and may directly contradict the TDM exceptions included in the Directive. TDM clauses in licences are themselves subject to limitations: many content licensors require researchers to notify the supplier or to request permission before carrying out TDM activities, subject to licensor approval, which may or may not be granted. Academic and scientific freedom to engage in legitimate research activity thus becomes dependent on opaque licensor permissions and attitudes. This applies in particular to large and heterogeneous datasets, such as those required for digital research and AI-supported methods.

4. Protection against contractual circumvention of research uses

LIBER recommends that the Copyright Directive ensure that neither contractual clauses nor technological protection measures should be able to override, restrict, or nullify the rights granted by EU copyright law for research purposes.

Beyond the explicitly mentioned options, LIBER recommends addressing contractual circumvention, which runs counter to the principles of the copyright directive. Researchers'



dependence on publishers and other commercial institutions, as well as a lack of resources for legal expertise, mean that the legitimate rights of academic institutions are often not adequately reflected in contracts. In practice, this means that research-related exceptions, such as those for text and data mining, scholarly sharing, and other research uses, are regularly restricted by licence and contract terms. As long as an exception can be contractually overridden, it does not provide reliable legal certainty. This legal uncertainty also leads to high costs, as research institutions must verify not only compliance with legal requirements but also the presence of potentially conflicting contractual provisions. This impedes the rights explicitly set in the Directive.

Technical protection measures should likewise not prevent the lawful exercise of exceptions. Libraries, educational institutions and other beneficiaries should be allowed to unilaterally circumvent TPMs where these block access to copyrighted works, or rights holders should be obliged to give access within 72 hours where TPMs block access pursuant to Article 3 of the CDSM Directive, as is the case in Slovenia.

5. A modern, technology-neutral definition of research

Research exceptions should therefore apply to legitimate research activities carried out by research organisations and their partners, provided that the activity is primarily research-oriented.

LIBER recommends that EU copyright rules reflect the reality of contemporary research practices. The distinction between commercial and non-commercial research should not be interpreted in a way that creates legal uncertainty for legitimate research activities. Today, research is often carried out in collaboration between publicly funded institutions, industry partners, clinical actors, cultural heritage institutions, public authorities and civil society organisations. These collaborations are essential for innovation, knowledge transfer and societal impact. At the same time, the purpose and future use of research results cannot always be clearly determined at the beginning of a project. A research activity may begin with a non-commercial scientific objective and later lead to innovation, technology transfer or practical applications. This is fully in line with the goals of European research and innovation policy, in which knowledge valorisation is a key strategic objective of both the European Commission and Member State governments. A rigid distinction between commercial and non-commercial research risks discouraging legitimate collaborations and creates unnecessary legal uncertainty, particularly in areas such as text and data mining and AI-supported research.

6. Strengthening the framework for out-of-commerce works

The review of the CDSM Directive should be used to expand the scope of the fallback exception so that it applies even where licences are not realistically available or practicable. In addition, clearer and more harmonised criteria for assessing the representativeness of collecting societies should be established. Finally, stakeholder dialogues under Article 11 should be more actively promoted.

The CDSM Directive has established a framework for out-of-commerce works (OOCWs). However, implementation remains inconsistent and administratively burdensome. LIBER recommends strengthening and simplifying this framework. The aim should be to provide legal certainty for cultural heritage institutions, facilitate cross-border access to and reuse of works, reduce compliance costs and administrative burdens, and effectively enable large-



scale digitisation and preservation activities.

Article 8 of the CDSM Directive requires cultural heritage institutions to seek a licence from a relevant collecting society before digitising out-of-commerce works. The exception applies only if no sufficiently representative collecting society can be identified. The mechanism plays an important role in enabling cultural heritage institutions to provide access to works of cultural and societal significance that fall into the so-called “20th-century black hole”: works that are no longer commercially available but still remain under copyright, thereby limiting public access. In practice, however, this system has proven difficult to use, and many institutions have not yet made works available through it. This assessment is supported by recent studies on the practical application of Article 8, which point to ongoing obstacles for cultural heritage institutions, particularly regarding licensing, outright refusals to license, administrative burdens, and the assessment of the representativeness of collecting societies.

Since these works typically have only limited commercial value, collecting societies have little incentive to negotiate or to offer workable terms. Where licences are granted, they may still include burdensome conditions, such as requirements related to AI applications or text and data mining, and, due to collecting societies’ own national laws or mandates, they may impose territorial restrictions that limit cross-border access, in tension with the Directive’s aim of broadening access to Europe’s cultural heritage (recital 30).

Licensing processes are often time-consuming and costly. Even where successful negotiations have taken place, the process can remain complicated, especially for works with mixed content where several collecting societies may need to be consulted. Uncertainty around representativeness adds to this: determining whether a collecting society has sufficient authority for a specific category of works is not always straightforward, particularly for collective works such as films, illustrated publications or periodicals, which may involve multiple rights holders and organisations. There are also cases of an outright refusal to license to cultural heritage organisations, as can be seen in Sweden.

7. Coordination with the ERA Act

LIBER recommends that the ERA Act explicitly recognise access to knowledge, open science, robust Secondary Publication Rights for authors, and the free circulation of research outputs as core conditions for a functioning European Research Area. This would help ensure that copyright rules, research policy, and the fifth freedom are developed in a coherent and mutually reinforcing way.

LIBER is convinced that only a robust legal framework can support the uniform enforcement of legal safeguards for publicly funded research. The revision of the Copyright Directive is an important step toward this, but should not be viewed in isolation. The points raised in this statement should be aligned with the upcoming ERA Act. While the copyright revision can address specific legal barriers, the ERA Act offers an opportunity to ensure more robust open science, legal security, and the free circulation of knowledge within the European Research Area. A holistic review of the impact of relevant legislation on research is also needed: the DSA, the DMA, the Open Data Directive, the Data Act, the Data Governance Act, the Database Directive, the AI Act, the InfoSoc Directive and the GDPR all have an impact on research activity. The ERA Act has the potential to enable research activity into



the future, but it must be cognisant of its effects within this wider legislative framework.

8. References

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