Targeted consultation on a potential initiative for a better copyright environment for European creativity and innovation

Additional document from EIFL (Electronic Information for Libraries)

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Copyright and generative AI - Question 1

Problems experienced by libraries regarding the use of copyright-protected content in the context of AI

The need for legal clarity

Case 1

An EU-candidate country has a national initiative to develop a Large Language Model (LLM) trained specifically on materials in the national language. The model will be trained on various materials, including digitized and born-digital scholarly publications held by libraries, archives, museums and other heritage institutions. The academic and research library consortium, which manages and hosts the national OA publishing platform, was asked to provide the content of journals hosted on the platform for the LLM. Some of the journals are no longer being published.

The library consortium has multiple concerns about the request:

- Lack of national regulations addressing the use of scholarly content for AI training.
- All the hosted journals have signed a licence agreement giving the national platform the rights to make their content publicly available on the platform.
- No rights beyond that are given (unless a journal uses a Creative Commons licence).
- Some journals use restrictive licences and there would be a need to seek permission from copyright holders (publishers or authors).
- Even where liberal licences are used, the consortium is uncertain what is allowed in this context.

Case 2

A National Library in an EU-candidate country received a proposal for an addendum to its existing licensing agreement with a commercial journal database provider. The addendum introduces detailed provisions for the use of scholarly content in AI-powered services, particularly those based on retrieval-augmented generation (RAG).

The addendum would allow the database provider to sublicense scholarly journal content to third-party AI providers for use in generating responses to users. While the proposed addendum prohibits use of the content to train or fine-tune AI models, it requires the granting by the library of broad rights to copy, store, adapt and otherwise use the content in connection with AI services. It also allows AI-generated outputs to be provided without attribution or links to the original publications.

The proposed addendum raises several issues for the library:

- It places responsibility on the library for securing the necessary additional rights. But libraries do not usually have the authority to grant such rights, as copyright usually belongs to the author, their institution or the journal publisher.
- It requires the library to indemnify the commercial database provider against certain copyright-related claims, and to provide warranties for the granting of the rights.
- The scope of the rights, the distinction between RAG and AI model training, and the implications of the sublicensing are very difficult to assess from both a legal and a technical point of view.

Copyright and research - Question 8

Problems experienced by Repository Managers obtaining and depositing published research in open access repositories

The need for a Secondary Publication Right (SPR)

For completeness, we are re-submitting examples from repository managers in Europe[1] that were included in EIFL's response to the Commission's Call for evidence for an impact assessment (June 2026). The examples show how SPR would mitigate problems routinely encountered by repository managers obtaining and depositing published research in open access repositories, especially for co-authored publications and international collaborations.

Case 1 – Latvia

The Latvian Open Science strategy states that authors must retain copyright whenever possible, and they must make publications from publicly funded research programmes freely available without embargo. However, since existing institutional open access policies are largely recommendatory in nature, in practice, much depends on the awareness and initiative of the individual researcher that in turn is mostly shaped by publisher permissions and funder requirements.

In cross-border collaborations, this can create challenges, as co-authors from different countries may have different copyright frameworks and rights, leading to legal uncertainty. A Secondary Publication Right at EU level would help provide legal clarity and consistency across countries.

Case 2 – Armenia

In Armenia, the national repository is maintained by the National Library. The national repository service supports the dissemination and long-term preservation of Armenian research outputs, as well as researchers who wish to deposit their publications, in accordance with open access principles.

[1] Armenia, Serbia and Moldova are fully associated members of Horizon Europe. This status allows Armenian, Serbian and Moldovan researchers and universities to lead or partner in EU-funded projects on an equal footing with member states.

In practice, researchers in Armenia are often uncertain as to whether they are allowed to deposit the Author Accepted Manuscript (AAM) because many publications are co-authored with researchers from institutions in different countries and published in international journals. This uncertainty is particularly common when (1) the corresponding author is affiliated with another institution or country, and (2) has signed a publishing agreement on behalf of all the authors. Therefore, even when the Armenian researcher wishes to make their work open access, they may be unable to obtain the AAM, or to receive the necessary permissions to deposit it because of concerns by the co-authors about possible copyright restrictions.

As a result, publications cannot be discovered through the national platforms, reducing the visibility of important research outputs. In addition, the additional administrative work for repository staff who must review individual publisher policies and seek clarifications on a case-by-case basis, can be substantial.

A harmonized European Secondary Publication Right would provide legal certainty for authors and repository managers, ensuring that accepted manuscripts resulting from publicly funded research can be deposited in an open access repository regardless of the publisher's contractual restrictions.

Case 3 – Armenia

Repository managers in Armenia frequently encounter situations where researchers are willing to share their publications through the repository, but they are prevented from doing so because they have transferred their exclusive rights to publishers.

This issue is particularly significant for publicly funded research. Although the research has been conducted with public support and the institutions wish to ensure broad access to its results, copyright transfer agreements often prevent authors from making their accepted manuscripts open access. In some cases, embargo periods imposed by publishers further delay access to the research findings. These restrictions limit the visibility of Armenian research, reduce opportunities for international collaboration, and hinder the development of Open Science practices.

A European-wide Secondary Publication Right would ensure that researchers retain a minimum legal right to provide open access to their accepted manuscripts through trusted repositories after publication. This would improve access to publicly funded research, and support cross-border knowledge sharing and scientific cooperation.

Case 4 - Serbia

Repository Managers at research organizations in Serbia are usually responsible for monitoring compliance with national and institutional open access policies. These policies require researchers to deposit the Author Accepted Manuscript (AAM) of their publications in the institutional repository, and I provide support to help ensure this happens.

In principle, all co-authors should have access to the submitted and accepted versions of a manuscript. In practice, the AAM is usually held by the corresponding author, who may be based at another institution or even in another country. When the AAM is requested from authors, they usually contact the corresponding author to obtain it. The first response from the corresponding author is often uncertain as to whether they are allowed to share the accepted version because of the publishing agreement they have signed. To avoid the risk of copyright infringement, they decide not to provide the manuscript. At that point, Repository Managers usually get involved to clarify the policy requirements and explain what is generally permitted. These negotiations are time-consuming and not always successful, due to which institutions are sometimes unable to comply with OA mandates.

A European-wide Secondary Publication Right would provide researchers with a legally guaranteed right to make their accepted manuscripts openly available through repositories, reduce uncertainty and ease the administrative burden for repository managers.

Case 5 - Serbia

In 2024, Serbia's Ministry of Science, Technological Development and Innovation established a task force to update the national Open Science policy. In discussions concerning the introduction of a no-embargo, immediate open access (OA) via repositories, representatives of the research community raised concerns that such a mandate would be difficult to apply to publications arising from international collaborations. In particular, co-authors based in countries without OA requirements and where national legislation does not grant a clear right to self-archive, may be unable or unwilling to approve the deposit of the manuscript in a repository, they said.

Even when all the authors approve the deposit because, for example, they have to comply with OA policies or their national legislation contains provisions on SPR, legal and policy requirements may still be quite different e.g. embargo periods can range from immediate access to 6, 12, or more months, and licensing terms may also vary greatly.

As a result, Serbian researchers (who are required to comply with national OA policies) may be prevented from doing so due to legal constraints beyond their control. The challenge is especially pronounced in STEM fields, where international and cross-border collaborations are very common.

A harmonized European Secondary Publication Right would ensure that all authors of publicly funded research have a right to share their accepted manuscripts, regardless of their country of affiliation. It would streamline compliance with OA policies that would be much more straightforward to apply across international collaborations.

Case 6 – Moldova

The new Regulation on Open Science of the Republic of Moldova (Order No. 696 of 30 March 2026) establishes a national framework for ensuring open access to scientific publications and research data resulting from publicly funded research. It requires that publicly funded research outputs are made available in open repositories, defines rules for self-archiving, sets embargo limits, and introduces standards for data management, licensing, and repository use.

The Regulation is aligned with European and international Open Science principles, and the system works well for research conducted at the national level. However, significant difficulties arise when research is conducted through international collaboration. Moldovan researchers often co-author publications with partners from other countries. In many of these countries, there is no legal right allowing authors to freely deposit the accepted manuscript in an open repository, or publishing contracts require full copyright transfer to publishers.

As well, the Regulation limits embargo periods to six months for science, technology, engineering and medical disciplines, and twelve months for social sciences and humanities. Where a publishing contract imposes a longer embargo period, researchers must notify the funding body and request a justified derogation before signing the publishing agreement. In the context of international collaborations, this requirement creates additional administrative burdens and uncertainty, as embargo periods are often determined by publishers and negotiated collectively by international research teams, leaving individual authors with limited ability to influence contractual terms. As a result, even when Moldovan law requires open access deposit, researchers may not always be able to fully comply. Co-authors may be subject to different legal frameworks, institutional policies, or publisher agreements that restrict self-archiving or impose embargo periods exceeding those permitted under national regulations. This creates a practical gap between national Open Science obligations and international publishing practices, particularly in large collaborative projects.

An EU-wide Secondary Publication Right, duly adopted in the Republic of Moldova, would address some of the practical challenges implementing the Regulation on Open Science. It would ensure that authors of publicly funded research retain a non-waivable right to make the accepted manuscript of their scientific publications available through trusted open access repositories in Moldova, irrespective of contractual arrangements with publishers. It would also support national efforts aimed at strengthening Open Science and improving access to publicly funded knowledge, as well as Moldova's integration into the European Research Area.

About EIFL

EIFL is an international not-for-profit organization based in Europe with a global network of partners. Working in collaboration with libraries and library consortia in over 50 countries in Asia, Africa and Europe, EIFL enables access to knowledge for education, learning, research and sustainable community development.

In Europe, EIFL partners with library consortia in 13 countries: Albania, Armenia, Azerbaijan, Estonia, Georgia, Kosova, Latvia, Lithuania, Moldova, Macedonia, Serbia, Slovenia and Ukraine.

EIFL is a project partner in three European Commission funded projects: Activate European Guidance and Incentives for Sustainable Open Access publishing (AEGIS-OA), Aligning and Mutualizing Nonprofit Open Access Publishing Services Internationally (ALMASI), and Open Science for Ukrainian Higher Education System (Open4UA).

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