

# Webinar

## Secondary Publication Rights – new EFL provision

### Main features and effects

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Attribution 4.0 International

# **EIFL provision on Secondary Publication Rights (SPR)**

## **EIFL Draft Law on Copyright, 2025**

- Countries are addressing SPR in a range of laws - copyright (Austria, Germany, Netherlands), science, technology & innovation (France, Spain), economics (Belgium) and culture (Italy).
- EIFL's provision pertains to copyright.
- To distinguish SPR from economic and moral rights in the Draft Law, SPR is allocated a separate article number - Article 8.

# Article 8

## Secondary Publication Right

5 sub-sections

- on copies of his work and in connection with any public use of his work, as far as practicable;
  2.
    - B. not have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym;
    - C. to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work which would be prejudicial to his honour or reputation.
  2. None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.
  3. The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under item (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived. Following the death of the author, the natural person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.
  2. A publisher that has accepted a research work for publication may not retract that acceptance on the ground that the author made the work freely available to the public in an online repository after acceptance of the article for publication.
  3. The operator of an online repository in which a research work has been made available to the public may include:
    - A. an acknowledgement of the author, funder, and publisher of the work; and
    - B. an indication of which version of the research work is being made available.
  4. Any contractual provision which prevents or restricts what is provided for in paragraphs 1 and 2 shall be null and void.
  5. For the purpose of this Section, the following terms have the following meaning:
    - A. a “research work” means a work based on research directly or indirectly funded in whole or in part with public funding, including any third party content, such as images and tables, that are required for the specific purpose of understanding the research work;
    - B. a “version” of a research work means any iteration of the work, including: a preliminary draft; a draft submitted for publication but not yet peer-reviewed; a draft that has been peer reviewed and accepted for publication but not yet been edited or typeset; the final published form; and revisions to the final public form; and
    - C. “freely available” means immediate and permanent access, free of charge, for anyone to use, download, distribute, adapt, and build upon.
- 8 Secondary Publication Right
1. The author of a research work shall have the right to make that work, in any of its versions, freely available to the public in an online repository immediately after its acceptance for publication by a publisher.

# Definitions

## Article 8.5

*“For the purpose of this Section, the following terms have the following meaning:*

*A. a “research work” means a work based on research directly or indirectly funded in whole or in part with public funding, including any third party content, such as images and tables, that are required for the specific purpose of understanding the research work;”*

- Ensures that research supported indirectly by public funds qualifies for SPR e.g. researcher salaries, use of public research infrastructures (such as cloud computing, data storage facilities or publicly funded research libraries), grants from private foundations that have benefited from tax exemptions.
- This approach supports access to research outputs in areas not typically funded through direct research grants, such as social sciences, history, and law, but are paid through public funds.
- Contributes to the overarching policy goal of secondary publication rights - the wide dissemination of research results to benefit society and human flourishing.
- Countries might decide to expand the definition of “research work” to works that are privately funded.

## Definitions (contd)

### Article 8.5

*“B. a “version” of a research work means any iteration of the work, including: a preliminary draft; a draft submitted for publication but not yet peer-reviewed; a draft that has been peer reviewed and accepted for publication but not yet been edited or typeset; the final published form; and revisions to the final public form; and;”*

- A broad definition of versions that qualify for SPR, set out in a non-exhaustive list.

## Definitions (contd)

### Article 8.5

“C. *“freely available” means immediate and permanent access, free of charge, for anyone to use, download, distribute, adapt, and build upon.*”

- Language is based on Creative Commons licences.

# Article 8.1

*“The author of a research work shall have the right to make that work, in any of its versions, freely available to the public in an online repository immediately after its acceptance for publication by a publisher.”*

- Allows authors to continue to have the right to make their works available in online repositories, notwithstanding any terms to the contrary that might be included in publisher contracts.
- There is no embargo period.
- Applies to all types of research (literary and non-literary) and all types of outputs e.g. journal articles, book chapters, images and tables.
- Applies to all types of publicly funded research - there is no minimum public funding requirement, and no distinction between commercial and non-commercial research.
- Applies to all versions, including the Version of Record, essential for citation purposes.

**Note:** To ensure that authors exercise the right set out in Article 8.1, employers and funders should **in separate agreements** require authors to exercise their SPR - many funders already do so by requiring authors, through funding agreements, to make their work publicly accessible.

## 29.2 Open access to scientific publications

The beneficiary must ensure open access (free of charge, online access for any user) to all peer-reviewed scientific publications relating to its results.

In particular, it must:

- (a) as soon as possible and at the latest on publication, deposit a machine-readable electronic copy of the published version or final peer-reviewed manuscript accepted for publication in a repository for scientific publications.



### National funders



### Charitable and international funders & research organisations



### European funders





## Article 8.2

*“A publisher that has accepted a research work for publication may not retract that acceptance on the ground that the author made the work freely available to the public in an online repository after acceptance of the article for publication.”*

- Ensures that a publisher cannot withdraw an offer to publish a research work **just because the work has been deposited in an online repository.**

## Article 8.3

*“The operator of an online repository in which a research work has been made available to the public may include:*

*A. an acknowledgement of the author, funder, and publisher of the work; and*

*B. an indication of which version of the research work is being made available.”*

- The best practice is for the author to provide citation information from the outset. However if they don't, this **gives the repository the right to add it** e.g. at the request of the funder, publisher or repository manager.
- It is **not made mandatory to avoid unintended consequences** for the repository, such as a takedown demand or exposure to copyright infringement action, if citation information is not included.
- This approach seeks **to remove the risk of the publisher using a formality** - the mandatory inclusion of citation information - to argue that SPR has not been properly exercised.
- At the same time, **it creates a mechanism** for citation information to be added.

## Article 8.4

*“Any contractual provision which prevents or restricts what is provided for in paragraphs 1 and 2 shall be null and void.”*

- SPR is protected from override by any terms in contracts that might seek to take away the right.

# Effects of the provision

## Some examples:

- A researcher is allowed by law to make their publicly funded, peer reviewed work openly available in their institutional, subject specific or generalist repository, even in the absence of an open access publishing agreement with the publisher.
- An institution (that owns the rights to the work of their researchers, or that obtains the work directly from the author) can build an online repository showcasing the research outputs of their institution in a searchable, managed and curated resource.
- Open access mandates set by funding organizations, requiring the immediate publication of research outputs in open access journals or platforms, will be seamlessly implemented.

# EIFL Working Group - Secondary Publication Right

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Thank you for comments:-

Knowledge Rights 21, LIBER, Open Data and Intellectual Property Institute ODIPI, SPARC Europe

# Draft Law on Copyright

INCLUDING MODEL EXCEPTIONS  
& LIMITATIONS FOR LIBRARIES AND  
THEIR USERS



Based on WIPO Draft Law on Copyright  
and Related Rights (version 2005)

Recommendations by EIFL (2025)

**WORK IN PROGRESS**

Available at [www.eifl.net](http://www.eifl.net)

Questions?

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