

**Targeted initiative
for a better copyright environment for European creativity and innovation**

Call for evidence for an impact assessment - Ares(2026)4845636

Response by EIFL (Electronic Information for Libraries)

June 2026

EIFL (Electronic Information for Libraries) appreciates the opportunity to contribute to the European Commission's Call for Evidence supporting the review of the 2019 Copyright in the Digital Single Market Directive.

Our response concerns facilitating research and sharing the results of publicly funded research.

To address challenges for cross-border research collaborations (due to inconsistent implementations of Article 5(3)(a) under Directive 2001/29/EC "Infosoc Directive"), EIFL calls for the introduction of a robust, harmonized, mandatory research exception. Without a clear, guaranteed right to research, and to share research results, ambitions for a common European Research Area will remain largely unfulfilled.

To address problems faced by academics in sharing, accessing and reusing the results of publicly funded research (as they often need to transfer their copyright to publishers when publishing in subscription-based scholarly journals), EIFL calls for the introduction of a broad, EU-level Secondary Publication Right (SPR). A right of secondary publication would ensure the wide dissemination and re-use of publicly funded research results by increasing open access to research outputs, including outputs that would otherwise remain behind a paywall.

The measures would provide real support to European researchers held back by legal uncertainty, especially in cross-border projects and public-private partnerships; boost open science, a key component of Horizon 2021-2027 (Europe's multi-billion Euro research and innovation funding programme); strengthen the competitiveness of Europe's research ecosystem; and contribute to the "fifth freedom" (the free movement of research, innovation, knowledge, and education) critical to harnessing the full potential of the EU in the global innovation and knowledge-based economy.¹

¹ Much more than a Market. Speed, security, solidarity – Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, Enrico Letta, 2024

A robust, harmonized, mandatory research exception

EIFL calls for the introduction of a harmonized, mandatory exception that enables all types of research, applies to all types of works, and permits the cross-border sharing of research data and outputs for research and scientific purposes. Licence terms and technological protection measures (TPMs) should not be allowed to override the exception.

Noting comments in the study, [Improving Access to and Reuse of Research Results](#), that the restriction of the research exception to non-commercial uses appears outdated, especially in light of research practices that increasingly involve collaborations with private partners, and are often encouraged and even required by European and national research funding schemes. The non-commercial requirement is also a source of legal uncertainty.

Legal uncertainty baked into the system

The different implementations of the InfoSoc Directive's Article 5(3)(a) on research in terms of scope and conditions of use across Member States are well documented². As a result, researchers and Research Performing Organizations (RPOs) throughout Europe experience persistent legal uncertainty, especially in cross-border projects and public-private partnerships, impacting on how they approach and conduct their research. Due to the optional nature of the exception, inconsistency and legal uncertainty are in fact baked into the system, even for research conducted within the EU.

In particular, the study also found that 80% of researchers surveyed face obstacles accessing copyrighted knowledge resources and 15% withheld the sharing of knowledge – since knowledge-sharing is the cornerstone of modern scientific research, this finding is particularly concerning. Institutions conducting primary scientific, academic and applied research, such as universities and research institutes, and researchers themselves, are universally calling for a better, harmonized research exception. Given high European ambitions on research and innovation, and investment of large amounts of public money, the unsatisfactory situation cannot continue, and policymakers must heed the calls.

² Senftleben, Szkalej, Sganga & Margoni, "Towards a European Research Freedom Act: A Reform Agenda for Research Exceptions in the EU Copyright Acquis" (2025); COMMUNIA Association, Policy Paper #23, "For a General Scientific Research Exception" (2025); Barriers to Research: Insights into the Patchwork of Research Exceptions in European Copyright Laws and Practical Perspectives from European Researchers (2026)

Researchers unable to navigate the copyright system

Not surprisingly, the unclear rules have left researchers with a poor understanding of what they are allowed to do under copyright law. As a result, they are often forced to operate in legal grey zones, unsure if what they are doing is legal or not - an unacceptable position for those working at the forefront of research and scientific inquiry. The response by RPOs is take a risk averse approach either by refraining from potentially lawful uses or by continuing time-consuming and burdensome rights-clearance workflows (workflow costs for RPOs, library consortia and repositories are estimated to range from €0.7bn to €1.2bn annually).³

A recent report by Centrum Cyfrowe, [Barriers to Research: Insights into the Patchwork of Research Exceptions in European Copyright Laws and Practical Perspectives from European Researchers](#), amplifies these findings: the highly fragmented legal landscape makes it difficult for researchers to navigate copyright or to comply with the law. It “imposes administrative burdens, delays access to critical materials and complicates cross-border collaboration” (p.11). The complexity slows the research process and impedes the circulation of knowledge and innovation, thus undermining a core principle of the European Research Area (the free movement of knowledge and innovation). These findings should set off alarm bells among policymakers.

Déjà vu: precedent for a harmonized research exception

The case for harmonized exceptions with cross-border effect was established in the DSM Directive in areas relevant for scientific research, innovation, teaching and preservation of cultural heritage. The factors cited in the Directive include the negative impact on the internal market due to the optional nature of [certain] exceptions (Recital 5), the negative effect on cross-border cooperation due to different approaches in Member States with regard to [certain] acts (Recital 26), and the risk that the Union's competitive position as an effective research area will suffer unless steps were taken to address the legal uncertainty concerning, in particular, text and data mining (Recital 10).

As a result, mandatory exceptions for uses of text and data mining technologies, as well as illustration for teaching in the digital environment and preservation of cultural heritage were introduced. Six years on from the adoption of the DSM Directive, it is self-evident that Article 5(3)(a) requires the same treatment. Europe's scientists and researchers deserve an enabling legal environment that matches [EU rhetoric and ambition](#).

³ Economic analysis of options for improving EU legislative and regulatory frameworks with impact on access and reuse of publicly funded R&I results p.12

Protection from licence terms and TPMs: an ‘effectiveness multiplier’

Additionally, the measure would not be complete unless the new research exception is protected from licence terms (that could otherwise simply override the exception) and from TPMs (that could prevent its practical application in a TPM-protected environment).

For evidence and examples of contractual practices that restrict scientific research, including licence terms imposed by publishers that prohibit text and data mining, see COMMUNIA’s report on [Unfair licensing practices: the library experience](#) (2025).

Noting that while the DSM Directive permits text and data mining (Articles 3 & 4), and Article 7 states that any contractual provision contrary to Article 3 is unenforceable, it still doesn’t prevent publishers from seeking to deny text and data mining rights granted by European and national laws. Such is the negotiating environment in which library consortia often operate. Without any safeguards, the new research exception would be toothless and the power imbalance between publishers and library consortia seeking to exercise the right would be further exacerbated.

Regarding TPMs, the study [Economic analysis of options for improving EU legislative and regulatory frameworks with impact on access and reuse of publicly funded R&I results](#) characterizes circumvention of a TPM as an “effectiveness multiplier” through strengthening the practical enforceability of the exception. It further recognizes that without practical enforceability, some of the expected benefits of reform would not materialise.

Problems faced by academics and researchers sharing, accessing and reusing the results of publicly funded research

EIFL calls for the introduction of a broad EU-level Secondary Publication Right (SPR) to guarantee free access to, and reuse of, publicly funded research results.

Despite decades of advocacy and multiple policy actions, many research outputs are still behind paywalls that hinder their use and re-use diminishing opportunities for collaboration and innovation.

An EU-wide Secondary Publication Right would provide authors of publicly funded research with a legal right to share their research outputs even in the absence of an open access (OA) publishing agreement with the publisher, or in the absence of a national policy on open access. It would also provide for situations where co-authors are from multiple countries each with a different copyright framework.

SPR would support a fundamental tenet of open science - free access to, and reuse of, publicly funded research outputs – and it would help to fulfil [a legal obligation for grantees of the Horizon Europe programme](#) (there are two mandatory practices: open access to publications and open access to research data based on the principle of ‘as open as possible, as closed as necessary’.)

In 2023, the [Council of the European Union welcomed the introduction by a number of Member States of secondary publication rights](#) enabling open access to scholarly publications involving public funds. The Council noted, however, that increasing costs for access to scientific publications are becoming unsustainable for public research funders and institutions accountable for the spending of public funds, decreasing the funding available for research activities.

Researchers surveyed for the study [Improving Access to and Reuse of Research Results](#) echoed the funding problem, and they judged SPR to be beneficial in situations where the institution lacks sufficient budget to pay article processing charges (APCs). (An APC is a fee paid to a journal so that a published research article is made immediately open access). As journals transition from read-only to open access models, APCs are becoming an increasingly significant, and unsustainable, portion of an institution’s overall spend (see [The Guild of European Research-Intensive Universities](#)).

Faced with challenges from APC-based models, and the trend towards the introduction by publishers of new OA charges, [thousands of European universities, research-performing organisations, libraries, scholarly infrastructures and academies of sciences and humanities](#) recently called for a harmonised Secondary Publication Right allowing the dissemination of publicly funded research that is openly licensed, without embargo or the imposition of extra OA charges.

Model SPR provision in copyright law

In 2025, EIFL developed a model provision on Secondary Publication Right in copyright law to address the growing interest in SPR among policymakers and the research and library communities. It was [carefully drafted by an expert group](#), taking into account existing provisions on SPR in EU Member States, and the five policy options on SPR contained in the European Commission study [Improving Access to and Reuse of Research Results](#). We hope the model provision might be useful when considering these policy options.

Implementation of the five policy options in the model SPR provision:

- (1) Includes a broad range of scientific output (not only journal articles) - articles, book chapters, images and tables.
- (2) There is no minimum funding requirement. Additionally, the provision applies to research that is directly funded through grants, or indirectly through other means such as researcher salaries or use of public research infrastructures (this approach supports research in areas such as social sciences, history, and law that are not typically grant-funded, but are nonetheless paid for through public funds).
- (3) The scope includes the Version of Record (VoR) - essential for citation purposes.
- (4) The embargo period is minimized (no embargo or only a short period).
- (5) All types of uses are allowed (there is no distinction between commercial and non-commercial).

See Annex 1 for the text of the EIFL model SPR provision.

Case studies – Latvia, Armenia, Serbia and Moldova

Repository Managers in four countries (Latvia, Armenia, Serbia and Moldova⁴) describe their experiences obtaining and depositing published research in open access repositories, including for co-authored publications and international collaborations and how SPR would mitigate the problems they encounter.

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.

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.

⁴ Armenia, Serbia and Moldova are fully associated members of Horizon Europe. This status allows Armenian, Serbian and Moldovan researchers, universities, and businesses to lead or partner in EU-funded projects on an equal footing with member states.

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.

Annex 1

Secondary Publication Right in Copyright Law - EIFL model provision

Drafted as a stand-alone, self-contained item, the provision on SPR is numbered Article 8 in the [EIFL Draft Law on Copyright and Related Rights \(2025\)](#). The Draft Law contains an explanatory note setting out the objective and rationale for the provision, as well as its practical effect.

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.
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.

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, Kosovo, Latvia, Lithuania, Moldova, Macedonia, Serbia, Slovenia and Ukraine.

EIFL is currently 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).

For more information visit our website: www.eifl.net or contact: info@eifl.net.
