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

Comments submitted by EIFL

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Introduction

The Commission is considering targeted changes to the EU's copyright framework to enhance the resilience and competitiveness of Europe's cultural and creative sectors and to facilitate research and innovation, as announced in the Call for evidence published in May 2026.

Building on the feedback received in the context of the Call for evidence, this targeted consultation aims at gathering stakeholders' views on specific issues and challenges related to the use of copyright-protected content* in the context of Artificial Intelligence (AI), research, the fight against online piracy, and the use in the EU of the sound recordings of third country nationals. The consultation will gather stakeholder input on assessing whether there is a need for potential future measures on the different issues, and possible policy options.** The outcome of this consultation will feed into the preparation of a targeted initiative for a better copyright environment for European creativity and innovation.

The questionnaire is structured in different sections, addressing different topics relevant for copyright. You may choose to reply to questions in certain sections only and therefore limit your contribution to the areas of relevance to you. Even when selecting specific sections, you are free to skip any individual questions that you cannot or do not wish to answer.

* I would like to reply to the questions in the following sections

(please select all that apply)

- [x] Copyright and generative AI
- [ ] Online piracy of time-sensitive copyright-protected content, including live events
- [ ] Use in the EU of the sound recordings of nationals of non-EU countries
- [x] Copyright and research

Copyright and generative AI: licensing and enforcement of copyright and related rights

1. What are in your view the three most pressing issues regarding the use of copyright-protected content in the context of AI that need to be addressed?
(please select up to three options and **rank them** in order of priority, with 1 being the highest priority)

	1	2	3
Legal uncertainty on the applicable copyright rules, including with regard to the application of the text-and data mining exception	◉	○	○
Practical challenges in expressing, identifying, and respecting rights reservations, including lack of standardised opt-out technical protocols that can be operationalised at scale	○	◉	○
Differences in the applicable copyright rules that lead to competitive disadvantages an an uneven playing field between AI providers in the EU and providers operating in other jurisdictions	○	○	○
Difficulties in enforcing exclusive rights provided under EU copyright law due to limited transparency on the use of copyright-protected content by AI model or system providers	○	○	○
Limited licensing and remuneration opportunities for creators and creative industries	○	○	○
Limited access to quality copyright-protected data for AI training and development, including access to large-scale datasets necessary for building advanced AI	○	○	○
SMEs' and start-ups' lack of resources and limited bargaining power to conclude licenses	○	○	○
Use of protected content without authorisation, where no exception or limitation apply	○	○	○
Other - please explain	○	○	○

2a. As a rightholder, have you faced difficulties in enforcing and/or licensing your rights for AI uses (e.g. for training, or other types of uses)?

- ○ Yes
- ◉ Partly
- ○ No
- ○ Not applicable

2b. As an AI provider/data aggregator/research organisation/other user, have you faced difficulties related to the application of the existing EU copyright rules, for example in relying on relevant exceptions for AI training or obtaining authorisation or licenses for the use of copyright-protected content (e.g. for training your models, or other types of uses)?

- ○ Yes
- ○ Partly
- ○ No
- ○ Not applicable

3a. As a rightholder, what are the main barriers or obstacles you have encountered in enforcing and/or licensing your rights? (please select maximum 5 options and rank them in order of priority, with 1 being the highest priority)

	1	2	3	4	5
Legal uncertainty on the applicable copyright rules, including with regard to the application of the text-and data mining exception	◉	○	○	○	○
Fragmentation linked to national rules or jurisprudence across the EU	○	○	○	○	○
Difficulty in obtaining detailed information about the use of copyright-protected content as evidence to support licensing negotiations or infringement claims, including in courts	○	◉	○	○	○
Limited bargaining position in licensing negotiations	○	○	○	○	○
Counterparties are unwilling to engage in licensing	○	○	○	○	○
Difficulties in establishing or agreeing on the economic value of works or other subject matter for AI uses	○	○	○	○	○
Unclear responsibility regarding the clearance of rights across the AI value chain (dataset vendor vs. model/system provider vs. deployer)	○	○	○	◉	○
Difficulties to express reservation of rights (opt-out) under the TDM exception	○	○	○	○	○
Difficulty to verify the respect of the reservation of rights (opt-out) under the TDM exception	○	○	○	○	○

Insufficient transparency on the activities on web crawlers with regard to copyright-protected content	○	○	◉	○	○
Litigation or dispute-resolution costs	○	○	○	○	○
Transaction costs related to licensing	○	○	○	○	○
Other	○	○	○	○	◉

Other: please specify

200 character(s) maximum

Our answers to questions 'as a rightholder' refers to researchers as copyright owners who have retained their rights.

4a. As a rightholder, how do you assess the impacts of the barriers identified under question 3a? (select all that apply)

- ☐ Loss of revenues or licensing opportunities
- ☐ Market substitution and erosion of primary markets for copyright-protected content
- ☐ Reduced incentive to create, produce, or invest within the EU
- ☐ Reduced competitiveness of affected businesses or sectors
- ☐ Negative impact on the quality/performance of AI models or systems (e.g. lack of access to high-quality diverse or specific content, leading to low quality, output and worse model performance)
- ☐ No significant effects
- ☑ Other: please specify

Other: please specify

200 character(s) maximum

Growing reluctance by researchers to share content openly

Please explain your answer to question 4 (impact of barriers)
1000 characters maximum

Our answers to 4a. 'as a rightholder' means researchers as copyright owners who have retained their rights.

Legal uncertainty and unclear responsibilities for rights clearance discourages researchers from making their works openly available. They fear their outputs may be usurped or manipulated by AI companies. This lack of trust and confidence in the behaviour of AI companies risks damaging implementation of open science policies in Europe.

It risks the sustainability of OA publishing. AI companies are known to harvest information derived from OA publications and repositories on an industrial scale. AI tools are increasingly embedded in search engines, AI-generated search results are increasingly pushed on users who are engaging less with the original sources, reducing their visibility and making it harder for the organizations producing and maintaining open content to demonstrate value and impact. It risks leading to reduced or even discontinued funding for open access.

5. In your view, what would be the most appropriate approach at EU level to tackle the challenges linked to the use of copyright-protected content for generative AI?

- ○ Maintain the status quo: continue enforcing the existing rules, with no changes to the regulatory framework
- ○ Enhance voluntary cooperation among market players, through soft law instruments (at national or EU level)
- ○ Introduce non-legislative measures to support access and use of copyright-protected content for AI
- ◉ Introduce new binding measures under EU copyright law
- ○ Other: please specify

6. In your view, which mechanism(s) would be the most appropriate to support <u>enforcement of</u> <u>copyright and related rights</u> related to AI uses?

(please **rank** the options in order of appropriateness, with 1 being the most appropriate)

Note that you should only rank the options you deem appropriate - you may remove a selection by clicking the selected button

	1	2	3	4	5	6	7	8	9	10
Operationalising the existing opt-out mechanism under the TDM exception via a common vocabulary, EU standards for opt out protocols, and an EU-level registry for opt-out	○	○	◉	○	○	○	○	○	○	○
Clarify the application of EU copyright rules (including territorial application) for use of copyright-protected content for AI training and other AI uses	◉	○	○	○	○	○	○	○	○	○
Imposing an obligation on web crawlers and AI agents used to crawl content online to disclose identity and purpose	○	◉	○	○	○	○	○	○	○	○
Introducing an obligation on AI providers / dataset providers / data collectors of record-keeping and retention of information about use of copyright-protected content (e.g. clearance/licensing, verification of opt-out, etc.) for a defined period	○	○	○	◉	○	○	○	○	○	○
Imposing an obligation on AI providers / dataset providers / data collectors of independent audit /certification on use of protected content	○	○	○	○	○	○	○	○	○	○
Imposing an obligation on AI providers to provide information under NDA about use of protected content upon a substantiated request from CMOs/rightholders and under certain conditions, as an alternative to the public disclosure of the top 10% of the top domain names of the websites crawled as required in the Commission template for the public summary of training content under the AI Act	○	○	○	○	◉	○	○	○	○	○
Providing for the possibility for courts/ administrative authorities to impose disclosure obligations under certain conditions in the context of legal proceedings or mediation/arbitration	○	○	○	○	○	○	○	○	○	○
Introducing a rebuttable presumption of use of copyright-protected content by AI providers, subject to specific conditions, e.g. where AI providers do not fulfill the existing transparency obligations provided for in the AI Act	○	○	○	○	○	○	○	○	○	○
No need for additional mechanisms	○	○	○	○	○	○	○	○	○	○
Other: please specify	○	○	○	○	○	○	○	○	○	○

7. In your view, how would these different options impact your business/activity?

	Strong negative impact	Moderate negative impact	Neutral	Moderate positive impact	Strong positive impact
Operationalising the existing opt-out mechanism under the TDM exception via a common vocabulary, EU standards for opt-out protocols, and EU-level registry for opt-out	○	○	◉	○	○
Clarify the application of EU copyright rules (including territorial application) for use of copyright-protected content for AI training and other AI uses	○	○	○	○	◉
Imposing an obligation on web crawlers and AI agents used to crawl content online to disclose identity and purpose	○	○	○	◉	○
Obligation on AI providers/dataset providers/ data collectors of record-keeping and retention of information about use of copyright-protected content (e.g. clearance/licensing, verification of opt-out, etc.) for a defined period	○	○	○	○	◉
Imposing an obligation on AI providers / dataset providers / data collectors of independent audit/certification on use of protected content	○	○	○	◉	○
Imposing an obligation on AI providers to provide information under NDA about use of protected content upon a substantiated request from CMOs/rightholders and under certain conditions, as an alternative to the public disclosure of the top 10% of the top domain names of the websites crawled as required in the Commission template for the public summary of training content under the AI Act	○	○	○	◉	○
Providing for the possibility for courts / administrative authorities to impose disclosure obligations under certain conditions in the context of legal proceedings or mediation/arbitration	○	○	○	◉	○

Note that you may choose not to answer any option on which you have no opinion by leaving the relevant boxes unticked.

Introducing a rebuttable presumption of use of copyright protected content by AI providers, subject to specific conditions e. g. where AI providers do not fulfill the existing transparency obligations provided for in the AI Act	○	○	○	◉	○

Please explain your answers to the question above

1000 character(s) maximum

Our answers reflect the experience of libraries and repository managers supporting researchers as copyright owners who have retained their rights, as well as repositories facilitating open access.

In our opinion, clarifying EU copyright rules and introducing transparency, disclosure and record-keeping obligations would have a strong positive impact. It would improve legal certainty, increase accountability among AI providers and make it easier for researchers, as copyright owners/rightholders, to understand how their content is used, to verify compliance with copyright rules and open content licences (e.g. where non-commercial uses are not allowed), and to protect their rights.

Standardized opt-out mechanisms and independent audits would also be useful - their effectiveness would depend on clear implementation procedures, reliable technical solutions and appropriate enforcement mechanisms.

8. In your view, which mechanisms would be the most appropriate to facilitate licensing and access to and use of copyright-protected content in the different phases of the AI lifecycle? (fill out a maximum of 3 rows)

In order to take into account the different types of uses of copyright-protected content, the table below makes a distinction between

- (i) uses related to the training of generative AI models (where rightholders have opted out from the TDM exception),
- (ii) uses taking place at inference time (use of content by an AI system after training, including for the purpose of responding to user inputs, retrieving copyright-protected content, providing context, grounding outputs, augmenting generation, or otherwise supporting the operation of the system during deployment), and
- (iii) other uses related to AI-generated output (such as production, creation, adaptation, or summarisation of content by an AI system based on content or

prompts).

at most 3 answered row(s)

	For training of generative AI	For inference-time use	For output
Supporting the development of a marketplace for licensing copyright protected content for AI uses, for example through technical solutions for automated licensing at scale	☐	☐	☐
Develop model contractual clauses for licenses covering AI uses	☑	☑	☐
Imposing an obligation on rightholders and AI providers to conduct negotiations in good faith	☐	☐	☐
Introducing a structured mediation or arbitration mechanism involving an independent body which could, under certain conditions, require the parties to share information, negotiate and assist in the determination of the remuneration	☐	☐	☐
Promoting collective licensing, in particular through the use of extended collective licensing (ECL), if and where appropriate	☐	☐	☐
Introducing a fair compensation obligation for the uses falling under the exception in Article 4 DSM which have not been reserved by the rightholders	☐	☐	☐
Introducing a remuneration right for certain uses of copyright-protected content by generative AI models/systems providers or other relevant actors	☐	☐	☐
No need for additional measures	☐	☐	☐
Other - please explain	☑	☑	☑

Other: please explain

200 character(s) maximum

Clear mechanisms to (1) ensure compliance with licences, (2) preserve attribution and provenance for training & inference time use, (3) enable rightholders address licence infringements for outputs.

Please explain your answer and share your views on the mechanisms listed above, including on the conditions of application:

Our answers reflect the experience of libraries and repository managers supporting researchers as copyright owners who have retained their rights, as well as repositories facilitating open access.
The key priority should be to ensure that AI providers respect copyright rules and open licences, where declared. Special attention should be paid to AI-generated outputs, particularly where these outputs reproduce copyrighted content without proper attribution or authorization, or where they directly substitute for original content, potentially undermining the sustainability of open access publishing platforms, repositories and projects (as noted by the Wikimedia Foundation, for example). Smart mechanisms are needed to ensure compliance with existing licence conditions, while not restricting legitimate reuse.

9. In your view, how would these different options impact your business/activity?

Note that you may choose not to answer any option on which you have no opinion by leaving the relevant boxes unticked.

	Strong negative impact	Moderate negative impact	Neutral	Moderate positive impact	Strong positive impact
Supporting the development of a marketplace for licensing copyright protected content for AI uses, for example through technical solutions for automated licensing at scale	○	○	○	○	○
Develop model contractual clauses for licenses covering AI uses	○	○	○	○	○
Imposing an obligation on rightholders and AI providers to conduct negotiations in good faith	○	○	○	○	○
Introducing a structured mediation or arbitration mechanism involving an independent body which could, under certain conditions, require the parties to share information, negotiate and assist in the determination of the remuneration	○	○	○	○	○
Promoting collective licensing, in particular through the use of extended collective licensing (ECL), if and where appropriate	○	○	○	○	○
Introducing a fair compensation obligation for the uses falling under the exception in Article 4 DSM which have not been reserved by the rightholders	○	○	○	○	○
Introducing a remuneration right for certain uses of copyright-protected content by generative AI models/systems providers or other relevant actors	○	○	○	○	○
Use this row to indicate the impact of the mechanism you described under "other" in question 8 above	○	○	○	○	◉

Please explain your answer:

1000 character(s) maximum

AI providers should respect the conditions under which AI-generated content is made available. Particular attention should be paid to AI-generated outputs that reproduce copyrighted content without declaring provenance or complying with applicable licence conditions.

Copyright and research

1. Have you experienced specific challenges or barriers related to the use of copyright-protected content for scientific research activities, including across borders?

- (●) Yes
- ( ) No
- ( ) Not applicable

Please describe the challenges or barriers you have encountered:

1000 character(s) maximum

Differences in the application of exceptions relevant to research in national copyright laws create legal barriers to the legitimate use of copyrighted content by Europe's scientists and researchers. Researchers experience difficulties determining whether they can lawfully access, reproduce, analyze or share copyrighted materials in cross-border projects, even within EU Member States, where different legal frameworks and licensing conditions commonly apply. Uncertainty about permitted uses and unnecessary restrictions on sharing research materials complicate collaboration and limit the reproducibility of research. For more information, see 'Improving access to and reuse of research results, publications and data for scientific purposes' (European Commission, 2024), 'Barriers to Research' (Centrum Cyfrowe, 2026).

A consistent application of research-related exceptions would help address these barriers by providing greater legal clarity for beneficiaries and practitioners.

2. Do you think that the existing copyright exception for scientific research provided for in Article 5 (3)(a) of Directive 2001/29/EC is fit-for-purpose to support research in the digital and cross-border environment?

- ( ) Yes
- (●) No
- ( ) I don't know

Please explain your answer:

1000 character(s) maximum

The European Research Area (ERA) aims to create a single, borderless market across the EU for research and innovation. Horizon Europe, the EU's key funding programme, requires participation from organizations in at least 3 different EU or associated countries - the Commission recognizes that international cooperation is a driver of world class research and innovation.

But copyright law has not caught up. The optional nature of Article 5(3)(a) and its various implementations means that each Member State has its own version of this core exception. In the digital environment, it can easily be taken away by contract terms and its use prevented by TPMs. As a result, researchers are forced to operate in legal grey zones, unsure if what they are doing is legal and facing a dilemma - if they respect the law, they may not be allowed to share research materials with project partners and the research will suffer. Article 5 (3)(a), adopted a quarter of a century ago, is no longer fit-for-purpose.

3. In your view, what would be the most appropriate approach at EU level to tackle the challenges and barriers related to the use of copyright-protected content for scientific research, including cross-border research collaboration?

- ○ Maintain the status quo: no changes to the copyright regulatory framework
- ○ Work on increasing awareness on allowed uses and developing guidelines
- ○ Changes to the regulatory framework at the EU level
- ◉ Other: please explain

Other: please explain

1000 character(s) maximum

EIFL calls for Article 5(3)(a) to be updated and made mandatory to facilitate research in the digital environment, align with European research policies and support ambitions for a common European Research Area. It should be protected from contract terms for digital content that override the exception, and technological protection measures that prevent enjoyment of the exception. It should align with Horizon Europe and apply across borders. The restriction to non-commercial purposes should be removed - Horizon Europe also sets public-private partnerships as a key implementation tool to reduce fragmentation of the research and innovation landscape, avoid duplication of investments, and best address Europe's research priorities for a green, digital and resilient Europe. Fixing Article 5(3)(a) would help to achieve these priorities and support a robust European Research Area.

4. Considering possible changes to the EU copyright regulatory framework (research exception under the Infosoc Directive), what would be in your view the impacts of the following options on your business, innovation, research and/or other activities?

Note that you may choose not to answer any option on which you have no opinion by leaving the relevant boxes unticked.

	Strong negative impact	Moderate negative impact	Neutral	Moderate positive impact	Strong positive impact
Making the exception mandatory for all Member States	○	○	○	○	◉
Clarifying the beneficiaries of the exception	○	◉	○	○	○
Clarifying the purpose of the exception, scope of permitted use and conditions of applicability	○	◉	○	○	○
Removing the non-commercial condition attached to the existing exception	○	○	○	○	◉

Allowing cross border uses of protected content under the exception	○	○	○	○	◉
Ensuring that technological protection measures do not prevent beneficiaries from uses under the exception	○	○	○	○	◉
Ensuring that the exception cannot be overridden by contracts	○	○	○	○	◉

Please elaborate your answer:

1000 character(s) maximum

The options selected above would have real, practical impact. By making the research exception mandatory across all Member States, removing the non-commercial condition and explicitly allowing cross-border uses, it would support researchers, reduce legal uncertainty especially in cross-border collaborations, and facilitate international research cooperation. By protecting the exception against contractual restrictions and technological protection measures, it would help to ensure that researchers can exercise their rights in practice.

Note we do not support amending the beneficiaries, purpose and scope of the exception as it risks having the opposite intended effect by introducing more confusion and uncertainty, as well as unnecessary delays in the adoption of any legislative change.

5, Have you faced issues in sharing your own work or accessing others' works produced in the context of publicly funded research (e.g. scientific publications, such as articles, books, conference papers)?

- ◉ Yes
- ○ No
- ○ Not applicable

Please specify what problems you faced

1000 character(s) maximum

Repository Managers around Europe have reported numerous problems sharing publicly funded research outputs including embargo periods imposed by publishers that delay access to research findings; restrictive licences for Green Open Access; pressure to transfer copyright to publishers preventing authors from making their manuscripts open access; high APC charges and subscription costs; inability to share works co-authored by researchers from different institutions and/or countries due to different legal and policy requirements and/or the inability to get the necessary permissions to deposit. These common problems illustrate an increasing gap between national open science policies and restrictive international publishing practices, as well as difficulties for researchers in meeting their research or funding obligations particularly in large collaborative projects. It also creates substantial administrative burdens for institutions managing open access repositories.

6. In your view, what would be the most appropriate approach to tackle the challenges related to the sharing and accessing of scientific publications / works produced in the context of publicly funded research?

- ○ Maintain the status quo: no changes to the copyright regulatory framework
- ○ Issuing recommendation and/or guidance to Member States to encourage and support open access to publicly funded research results
- ◉ Introducing a harmonised secondary publication right in EU copyright legislation
- ○ Other: please explain

7. **In your view, which of the following statements best describe the added value and/or risks related to the possible introduction of an EU-wide secondary publication right?** (select all that apply)

- It will be easier for researchers to share their research publications more widely.
- ☑ It will be easier for researchers to access publicly funded research publications and use them for the benefit of further research

☑ It will strengthen the position of scientific authors when transferring rights to publishers
☐ It will facilitate the commercial exploitation of research publications (e.g. accelerating their route to market, supporting the faster adoption of research results into products and services)
☐ It will disrupt existing publishing models, potentially affecting journal operations and quality of scientific publications overall, and reducing the incentives for investment in publishing
☑ It will make it more difficult for researchers to publish their works in journals
☐ It will have no additional effects as currently available open access routes are sufficient to share and access scientific publications
☐ It is not possible to estimate the effect of introduction
☐ Other: please explain

8. Considering possible changes to the EU copyright regulatory framework (introduction of an EU-wide secondary publication right), what would be in your view the impacts of the following options on your business, innovation, research and/or other activities?

Please note that in the options below the EU-wide secondary publication right (SPR) would apply only to the making available of publications or works resulting from publicly funded research (receiving at least 50% public funding).

Note that you may choose not to answer any option on which you have no opinion by leaving the relevant boxes unticked.

SPR Scenario	Strong negative impact	Moderate negative impact	Neutral	Moderate positive impact	Strong positive impact
The SPR would apply only to scientific journal articles and would allow authors to make publicly accessible the author accepted manuscript after an embargo period	○	◉	○	○	○
The SPR would apply only to scientific journal articles and would allow authors to make publicly accessible the author accepted manuscript without embargo period	○	○	○	◉	○
The SPR would apply to scientific journal articles and all forms of scholarly output that enjoy copyright protection and would allow authors to make publicly accessible the author accepted manuscript without embargo period	○	○	○	○	◉
The SPR would apply to scientific journal articles and would allow authors to make publicly accessible the author accepted manuscript without embargo, and the version of record (VoR) after an embargo period	○	○	○	○	◉

The SPR would apply to scientific journal articles and all forms of scholarly output that enjoy copyright protection and would allow authors to make publicly accessible the author accepted manuscript without embargo, and the version of record (VoR), after an embargo period	○	○	○	○	◉

Please elaborate your answer:

1000 character(s) maximum

An EU-wide SPR would ensure that researchers retain a minimum legal right to provide open access to their version of record or accepted manuscripts through repositories after publication, regardless of their country of affiliation. It would address some of the practical challenges implementing national policies on open science. It would streamline compliance with OA policies that would be much more straightforward to apply across international collaborations, reducing uncertainty and easing the administrative burden for repository managers.

See additional document with case studies describing problems experienced by repository managers in Europe obtaining and depositing published research in open access repositories, and how SPR would mitigate the problems they encounter, especially for co-authored publications and international collaborations.

9. Would your responses to the previous question change if any amount of public funding would allow for the SPR provision to come into effect?

If so, please elaborate how and what percentage of public funding you would find adequate.

1000 character(s) maximum

SPR should apply regardless of the proportion of public funding, and it should enable immediate open access under an open licence. Setting arbitrary limits for public funding will reduce the impact of the measure. It would make implementation of national OA policies more difficult, increase inequality between countries, and harm the progress of open science in countries that are less well resourced. All public funding counts and it should qualify for SPR. For maximum impact, SPR should enable immediate open access under an open licence, preferably CC BY.

Additional documents

You may upload a document on the subject of this consultation, as additional background reading to better understand your position and/or to provide concrete evidence (e.g. quantification of impact, technical explanations of options suggested). Confidential documents and information should be marked as such.

Additional document from EIFL - Case Studies

- Copyright and generative AI - Question 1
- Copyright and research - Question 8