EARE's response to consultation on Spanish Draft Royal Decree regulating the granting of extended collective licenses for the exploitation of protected works for the development of general-use AI models

The European Alliance for Research Excellence (EARE) welcomes the opportunity to express views on the Spanish Draft Royal Decree regulating the granting of extended collective licenses for the mass exploitation of works and services protected by intellectual property rights for the development of general-use artificial intelligence (AI) models.

To maximize Spain's innovative potential, avoid fragmentation in the EU single market and prevent the creation of a *de facto 'opt in system'*, we are calling on Spain to **preserve the current EU legal framework on Copyright** and especially **uphold Article 67 of the Spanish implementing Royal Decree-Law No. 24/2021** that transposes the EU Copyright Directive, requiring that rightsholders are required to expressly reserve their rights.

Our Perspective

At EARE, we support the principle that data should be "*as open as possible, as closed as necessary*" to ensure Europe's innovation and future prosperity. We promote open data and data access policies that facilitate data sharing and AI development and consider that the right to read is the right to mine. The Text and Data Mining (TDM) exceptions introduced by Articles 3 and 4 of the Digital Single Market (DSM) Directive allow research and innovation by authorizing organizations like universities and research institutions to perform TDM on data they have lawful access to while introducing a mechanism for rightsholders to opt out by explicitly reserving their rights. At EARE, we believe that **TDM represents the next wave of innovation enabling European governments, researchers, and small businesses to unlock the power of data and as such should be protected**.

By incorporating **extended collective licenses** (ECLs) into Spain's legal system, along with specific conditions for collective management entities, this Royal Decree aims to address the perceived challenges or inequities posed by the development of AI models. However, it will significantly threaten data access for AI innovators and researchers, and as a consequence, could hinder AI development, innovation, and research in Spain.

This instrument presupposes that a **Collective Management Organization** (CMO) can exercise a reservation of rights with the aim of facilitating the granting of said non-exclusive authorizations, or collective licenses, in the context of the technological development of AI. At EARE, **we believe that such an instrument poses severe risk to research and innovation in Spain for several reasons**.

Risks of this new instrument to research and innovation in Spain

Firstly, **it seems to contradict the current EU legal framework established by the Digital Single Market (DSM) Directive**. Turning first to Article 4 of the Directive, which may apply to TDM activities by research organisations when carried out in collaboration with the private sector, Article 4 of the DSM Directive offers to rightsholders the right to expressly exercise the reservation of rights relating to Text and Data Mining (TDM). The ability for CMO to exercise a reservation of rights conflicts with the spirit of this Article, which emphasizes individual control. In the current system, some rightsholders may choose to reserve their rights for certain works while not doing so for others. Therefore, **this would take away their ability to define their choice, and unduly limit the works available under Article 4, transposed as Article 67 of the Spanish Royal Decree Law 24/2021**.

Secondly, we note that the **mandatory opt out under Article 3 of the Directive was not fully transposed into Spanish law,** as it does not establish a clear distinction between commercial TDM and TDM for the purpose of scientific research. This lack of clarity will disproportionately impact research organisations in Spain if CMOs are permitted to exercise a complete opt-out of works for all purposes. **It would also raise important questions about authorless works and existing licences**. Additionally, **it would fragment the EU single market and hinder global collaboration**. There will be a limited amount of data available in Spain for AI development, increasing potential biases, and hindering AI capacities. Researchers may also shy away from exploring innovative uses of data, due to the legal and reputation risks of unintentionally violating opt in requirements.

For more practical reasons, **this process would also slow the development cycle as relying on CMOs and ECLs might introduce additional layers of negotiations and compliance**, thereby **delaying access to datasets for training AI**. Mandatory licensing fees and royalties could make acquiring training data more expensive, which might hinder the development of smaller AI companies or spin-off research projects.

Due to the reasons mentioned above, EARE believes that this de facto 'opt in' system will pose significant challenges and instead, **Spanish policymakers should promote opt out systems, where datasets are openly accessible** alongside licensed content with clear option for rightsholders to opt out. This approach would ensure that **data sources remain diverse supporting a wide range of innovation and research efforts**. This approach, which is reflected in the current EU legal framework, would establish a balanced system that effectively safeguards rights while fostering innovation. **Opt-out systems reflecting rightsholders' preferences strike a balance between innovation and right protection and should be preferred**. We believe that the current EU legislation gives rightsholders the ability to participate in AI in a way that reflects their preferences. This EU legal framework ensures a fair use while respecting intellectual property, and Spain should not be moving away from it. Spain should be strengthening this framework by ensuring a harmonised implementation in the European single market. As shown by the European Competitiveness report written by

Mario Draghi, Spain, and more generally the European Union, should adopt an innovation-driven approach to AI regulation to become more competitive globally.

Proposed Actions

- We **urge Spain to maintain the existing EU legal framework on copyright**, the **existing TDM exceptions** and to **uphold Article 67 of the Spanish Royal Decree-Law No. 24/2021**, which mandates that rightsholders must explicitly reserve their rights. CMOs should not have a reservation right nor be able to conduct licensing for TDM activity on behalf of members or non-members.

- Instead of restricting data access, **Spain should ensure an open approach to data, to ensure Europe and Spain's competitiveness and future prosperity**. AI is a driver of innovation in all sectors of the economy and copyright should not be used to solve issues raised by the development of AI, especially when other countries (e.g. Japan, Singapore) have passed pro innovation copyright laws that strongly support machine learning and minimise biases.

- An **opt-in system**, while well-intentioned, **would inadvertently stifle innovation, entrench biases and isolate Spain from the global AI ecosystem**. **Opt-out systems** which allow data collection by default with robust transparency and easy mechanisms for opting out, ensuring broader dataset inclusivity**, should be favoured**. Spain risks being left behind in the AI-driven global economy and should rethink its approach, align with the EU, and encourage innovation by ensuring a regulatory framework that supports rather than hinders research and growth.