

EARE's response to the call for evidence on the review of the CDSM Directive and a targeted initiative for a better copyright environment for creativity and innovation

The European Alliance for Research Excellence (EARE) welcomes the opportunity to provide input into the [call for evidence](#) on the review of the Copyright in the Digital Single Market Directive (CDSM Directive) and a potential targeted initiative for a better copyright environment for creativity and innovation. This is a unique opportunity for the EU to ensure that the copyright framework delivers the right incentives for research and innovation in the EU.

Executive Summary

EARE's vision for an EU copyright framework fit for research and innovation

The European Commission's review of the Copyright in the Digital Single Market (CDSM) Directive represents a key opportunity to improve the copyright framework for research and innovation. EARE members consider that any future initiative should focus on improving the implementation of the existing framework, rather than introducing new legislative proposals. In particular, to ensure a copyright framework that effectively supports research and innovation, the EU should address the key challenges faced by researchers and innovators in the application of the TDM exceptions.

Key challenges faced by researchers and innovators under the TDM exceptions

For EARE members, text and data mining (TDM) exceptions under Articles 3 and 4 of the CDSM Directive are essential for Europe's research and innovation ecosystem. These provisions support a wide range of activities, including scientific research, AI development, healthcare innovation, cybersecurity, and policy analysis. By allowing the analysis of large datasets, TDM facilitates new discoveries, reduces bias, and accelerates innovation across disciplines.

However, despite their importance, the current implementation of the TDM exceptions presents significant challenges, including: (1) **limitations to access data through technological protection measures (TPMs) and restrictive licensing terms**; (2) **unclear opt-out mechanisms**; (3) **outdated distinction between commercial and non-commercial research**; and (4) **fragmented implementation across Member States**, with some countries implementing more restrictive TDM exceptions. EARE also highlights growing ambiguity regarding the application of TDM exceptions to AI training and generative AI. While EU law already covers such uses, divergent interpretations are creating a chilling effect on innovation.

EARE recommendations for an EU copyright framework fit for research and innovation

EARE believes that **strengthening TDM exceptions** is essential to **support the EU's research and innovation ecosystem while preserving incentives to create new content**. It is important that any future initiative addresses the current limitations of the TDM framework to improve legal clarity, reduce uncertainty, and enable the full potential of TDM exceptions across research activities and EU countries, while leaving open the possibility of broader exceptions over time.

EARE recommendations include:

1. **Ensure the effective and harmonized implementation of the TDM exceptions across the EU**, including guaranteeing that publicly accessible data and research remain open and it is not subject to restrictions that limit access or TDM. This can be achieved by monitoring the implementation of TDM exceptions across all EU member States, ensuring that restrictive interpretations are avoided; and reaffirming that TDM exceptions apply to AI training and generative AI.

2. **Remove the commercial and non-commercial research distinction as part of the CDSM Directive to better reflect the realities of today's research.**
3. **Explore the development of a broader and more flexible TDM framework with the aim to support the research and innovation ecosystem.** EU institutions should assess the potential benefits of broader TDM exceptions which would allow TDM on lawfully accessible data including for commercial purposes and with fewer or no restrictions.
4. **Establish an open, mandatory, and flexible research exception as part of the InfoSoc Directive**
5. **Guarantee that opt-out mechanisms under Article 4 of the CDSM Directive are clear, machine-readable, and workable.** It is important that opt-out mechanisms ensure that the scientific research TDM exception is not undermined in practice. The EU should also encourage the use of widely adopted, machine-readable standards and avoid fragmented, immature, or unproven approaches. EU policymakers should also strengthen accountability when opt-outs are exercised broadly despite incomplete or unclear rights ownership.
6. **Strengthen the enforcement of TDM exceptions against technical protection measures (TPMs) and abusive contract terms.** Any potential measure should establish mandatory 72-hour resolution windows, potential sanctions for repeat offenders or long lockouts and legal support for researchers and innovators to ensure that they can contest unfair contract terms that override any research and education exceptions, including the right for TDM.
7. **Ensure that licensing practices do not undermine research and innovation,** advancing licensing practices are fair, transparent, and non-discriminatory, and do not impose abusive conditions or excessive fees.
8. **Support proportionate and balanced transparency requirements empowering research and innovation.** This would imply the effective implementation of existing transparency frameworks such as the Code of Practice for General-Purpose AI models, avoiding the introduction of additional transparency requirements such as itemized lists of copyrighted content that are disproportionate for researchers and innovators, ensuring the non-retroactive application of transparency obligations in public-private partnerships, especially for activities under the scientific research TDM in Article 3, and refraining from introducing mechanisms such as rebuttable presumptions that shift the burden of proof onto developers and researchers in a disproportionate manner.
9. **Establish an ambitious and harmonized secondary publication right,** ensuring that taxpayer publicly funded research is immediately available to the public at the time of publication.
10. **Ensure that any future targeted initiative within the copyright framework fully considers the interests of the research and innovation ecosystem.** Any initiative should be supported by a comprehensive impact assessment evaluating the effects on research and innovation activities, including the functioning of the TDM exceptions.
11. **Establish an informal multi-stakeholder dialogue on the implementation of the CDSM Directive** through a holistic approach that includes all relevant stakeholders such as rightsholders, research organizations, individual researchers, universities, libraries, spin-offs, start-ups, developers, companies, SMEs, and other relevant actors.
12. **Support the remuneration of the creative sector through targeted funding mechanisms** under the next Multiannual Financial Framework rather than restricting access to content for research and innovation through the copyright framework.

These recommendations are key to ensuring that the EU's copyright framework works for research and innovation. The review of the CDSM Directive is a key opportunity to strengthen the EU's leadership in research, innovation, and AI by making existing TDM exceptions clearer, more consistent, and more enforceable across Member States.

TDM exceptions are key for research and innovation and should be strengthened to maximize the benefits for the EU research and innovation ecosystem

The CDSM Directive, and in particular the text and data mining (TDM) exceptions contained in articles 3 and 4 of the CDSM Directive, have been, and continue to be, essential for researchers, libraries, universities, start-ups, companies, and innovators. These provisions adopted as part of the Copyright in the Digital Single Market Directive in 2019 ensure that researchers, libraries, universities, start-ups, and companies can analyze diverse amounts of datasets, identify trends and patterns, reduce bias in research, and support new scientific discoveries across different disciplines. For example, in the health sector, the TDM exceptions facilitate the large-scale analysis of biomedical and scientific data, contributing to the development of important research, which is crucial for new medicines and therapies in the EU. TDM is also used to analyze online content, including harmful material such as hate speech. Moreover, these techniques allow the examination of large data corpora and political documents, such as parliamentary debates and speeches, helping to identify patterns in policymaking and public discourse including issues like gender equality. All these activities would not be possible without the existence of the TDM exceptions.

TDM exceptions play a key role in the development of AI models in Europe. For example, TDM exceptions are crucial in connection with the development and refinement of AI models within academic institutions, libraries, and research organizations for the analysis of their own works. Examples include the [Erasmian Language Model](#) from the Erasmus University Rotterdam and the development of AI models specifically designed for the social sciences and humanities as part of the [SHARE project](#). Similarly, TDM exceptions are essential to develop AI infrastructure for underrepresented European languages, such as the [Language Resource Infrastructure for AI](#) (LAREINA), a public-private collaboration led by the University of Helsinki and Aalto University which aims to develop AI infrastructure for underrepresented languages, including Finnish and Sámi.

In cybersecurity research, TDM exceptions are also important for the development and evaluation of AI systems which can analyze large datasets, such as emails, URLs, websites and thread intelligence reports, to identify patterns associated with phishing, malware and fraud, and other malicious activity. In the financial sector, TDM exceptions similarly enable research and innovation in data analysis of market data, risk modeling, fraud detection and anomaly identification in transactional behavior including unusual credit card transactions.

Without question, the TDM exceptions contained in Articles 3 and 4 support the research and innovation ecosystem. Yet, researchers and innovators continue to grapple with challenges as part of the current copyright framework. We believe any future conversation about the copyright framework should account for ways to improve these challenges.

Key challenges faced by researchers and innovators under the TDM exceptions

The introduction of the TDM exceptions has been positive for fostering research and innovation. However, the implementation of these exceptions presents some limitations that impede the EU research and innovation ecosystem from fully benefiting from them. Addressing these limitations is important at a time when the EU aims to position itself as one of the main hubs for research, innovation and new technologies such as AI.

1. Limitations to access data through technological protection measures (TPMs) and restrictive licensing terms

One of the most common challenges that researchers, universities, libraries, start-ups, companies, and innovators face is the limitations to access data when attempting to effectively exercise their right to text and data mining under the TDM exceptions included in Articles 3 and 4 of the CDSM Directive.

Access to publicly accessible data sets is often prevented by efforts to stop web crawlers or other restrictive measures such as contractual opt-outs that impede researchers, universities, and libraries from accessing data under the scientific research exception. These limitations lead to bias in research and curb the development of future EU discoveries.

Similarly, even where lawful access has been granted, researchers and innovators struggle to exercise their right to text and data mining under Articles 3 and 4 of the CDSM Directive. EARE members have encountered barriers to conducting TDM due to technological protection measures (TPMs) that prevent or limit the use of TDM techniques, despite having lawful access to the content.

In addition, researchers, universities, libraries, start-ups, and innovators also face difficulties with complex, restrictive, and unclear licensing and contract terms which as a result of the opt-out under Article 4 in practice can still restrict TDM activities. Restrictive licensing and complex contract terms add costs and delays for researchers and innovators who in many cases cannot afford them. Just as an illustration, in the case of the licensing [agreement](#) between OpenAI and the Wall Street Journal, the reported value was \$250 million over five years. In the case of OpenAI and Axel Springer, the agreement is estimated at around \$25–30 million over three years. By comparison, such amounts are beyond the reach of most European universities or public-private research project budgets. Unclear licensing terms add additional pressure to researchers, libraries and start-ups which have no capacity to negotiate favorable condition agreements with large rightsholders' organizations.

2. Unclear opt-out mechanisms

Researchers, universities, libraries, start-ups, and innovators must respect opt-out mechanisms under Article 4 of the CDSM Directive in their daily work, where their activities fall outside of the limited scope of Article 3, for example due to private partnerships, industry collaboration or downstream commercialization of research. However, opt-out mechanisms are often not clearly defined or machine-readable, leading to ambiguity, uncertainty, delays, and increased costs for research organizations and innovators. This lack of clarity, compounded by the uncertainty of when Article 4 applies, particularly impacts risk averse entities such as researchers and libraries.

As pointed out above, by reducing what a model can train on opt-outs also promote bias and reduce the ability of a model to make accurate predictions. This creates legal conflict with the AI Act which requires that models are trained on datasets that are “*complete for the intended purpose*.” (Art 10 (3)).

3. Outdated distinction between commercial and non-commercial research which does not reflect the realities of today's research

Today's research increasingly takes place in collaborative and hybrid environments, including public-private partnerships, mixed funding schemes, or university spin-offs. In these contexts, research projects may evolve from non-commercial to commercial applications. The current distinction between commercial and non-commercial research raises doubts about the applicability of TDM exceptions to public-private partnerships and downstream commercialization, which ultimately hinders innovation in the EU. An example of today's research reality is the [Language Resource Infrastructure for AI](#) (LAREINA), a public-private collaboration led by the University of Helsinki and Aalto University which aims to develop AI infrastructure for underrepresented languages, including Finnish and Sámi. Through collaboration between the Finnish Universities, industry partners, and CLARIN, LAREINA is developing a commercially viable model for AI-driven speech interfaces, making these technologies accessible to businesses looking to enter the global market. According to the researchers involved in this collaboration, the project suffered delays due to unclear contract terms and copyright concerns when developing the

AI models. This reflects the need to ensure that the copyright framework is clear, reflects the realities of today's research and fosters EU innovation.

4. Uneven implementation and interpretation of TDM exceptions

Researchers and innovators must also deal with the different implementations and interpretations of the TDM exceptions across the EU, which add further legal uncertainty and compliance costs for researchers, libraries, universities, start-ups, and innovators. While all Member States have implemented Article 3 and 4 into their legislation, some countries have implemented a much more restrictive version of the TDM exceptions. For example, Slovakia has implemented a more [restrictive](#) exception under Article 3, which only covers cultural institutions and schools, excluding research organizations. In the case of [Poland](#), the implementation of Article 3 is subject to scientific research which is not carried out for the purpose of obtaining direct or indirect financial gain, a requirement which is not included in the CDSM Directive. Similarly, there is no explicit provision safeguarding the mandatory nature of the exception.

Moreover, an additional source of legal uncertainty concerns the application of the TDM exceptions to AI development, as in recent years several voices are claiming that the TDM exceptions are not intended to cover AI training or generative AI. However, Article 3 and 4 of the CDSM Directive clearly define TDM as “any automated analytical technique aimed at analyzing text and data in digital form to generate information”. This definition already covers training AI models, including those used for generative AI, which involves analyzing large datasets to extract patterns. The application of the TDM exceptions to train AI systems is not a new issue for policymakers and EU institutions and Member States have been aware of these discussions for a long time. This is reflected in the negotiations of the CDSM Directive and the AI Act. In this context, recital 105 of the AI Act explicitly reaffirms that TDM exceptions apply when training AI models.

In practice, conflicting legal interpretations and restrictive licensing practices, particularly contractual limitations on TDM and AI uses, contribute to a chilling effect, discouraging researchers and innovators from relying on the rights granted under EU law. A noteworthy development in this regard is the [approach](#) taken by Italy, which explicitly clarifies that TDM encompasses reproductions and extractions carried out for the purposes of developing AI models and systems, including generative AI. By explicitly linking TDM to AI development, the Italian implementation provides greater legal certainty for emerging forms of research and illustrates how copyright law can address persistent uncertainty at EU level.

Similarly, the current TDM exceptions do not clearly allow for the sharing of mined datasets or outputs between project partners. This is largely because the exceptions primarily cover acts of reproduction and extraction, without extending to the right of communication to the public or making available. As a result, sharing outputs within collaborative research projects, particularly across institutional or national boundaries, may fall outside the scope of these exceptions and require additional authorization. However, some Member States, such as Germany, have implemented the TDM exceptions more flexibly, allowing for the sharing of data or TDM outputs across project partners. Furthermore, despite the objectives of the European Research Area, the absence of a clear cross-border effect of the TDM exceptions further limits the ability to reuse lawfully mined data across Member States. EU policymakers should clarify that TDM outputs can be securely shared, following more flexible national approaches such as that of Germany. In parallel, it is important that EU policymakers ensure that lawfully mined data in one Member State can be reused across the EU, aligning TDM rules with the European Research Area objectives.

EARE recommendations for an EU copyright framework fit for research and innovation

EARE members believe strengthening TDM exceptions is essential to support the EU's research and innovation ecosystem while preserving incentives to create new content. Rather than reopening the CDSM Directive, EU policymakers should consider effective, harmonized implementation of the existing exceptions through non-legislative measures such as guidance and targeted interpretation of existing instruments. If these measures prove insufficient or where non-legislative measures are not feasible, policymakers should consider legislative interventions or new legislation. Addressing current limitations would improve legal clarity, reduce uncertainty, and enable the full potential of TDM across research and innovation activities, while leaving open the possibility of broader exceptions over time.

Against this background, EARE calls on EU policymakers to explore the following recommendations to ensure that the EU copyright framework continues to be fit for research and innovation:

1. Ensure the effective and harmonized implementation of the TDM exceptions across the EU

Research organizations, universities, libraries, start-ups, private companies and innovators would benefit from an effective, harmonized implementation of the TDM exceptions across the EU, addressing the current limitations that they face in accessing data and conducting text and data mining techniques. It is important that any future initiatives maintain an approach that ensures open access to data for research and innovation, in line with the principle that data should be “*as open as possible, as closed as necessary*,” and that “*the right to read is the right to mine*” is fully upheld.

In order to achieve this objective, the European Commission should:

- **Ensure that publicly accessible data and research remain open and are not subject to restrictions that limit access or text and data mining.** Researchers, universities, libraries, start-ups, and companies should be able to access and mine publicly available data and research without technical protection measures or restrictions on web crawling.
- **Monitor the implementation of the TDM exceptions across all EU Member States,** ensuring that restrictive interpretations are avoided, and engage in structured dialogues with national authorities which have implemented a more restrictive version of TDM exceptions (e.g. Slovakia). This will support the consistent implementation of the TDM exceptions in line with the CDSM Directive, and it will reduce legal uncertainty for researchers, libraries, universities, start-ups, and companies.
- **Reaffirm that TDM exceptions apply to AI training and generative AI, and refrain from introducing measures that could restrict or undermine their application,** as this would negatively impact Europe's capacity to develop new AI models and innovate. This could be complemented by non-binding European Commission guidelines on the interpretation of TDM exceptions to ensure a consistent approach across all EU Member States. These guidelines can be developed through a holistic process involving all relevant stakeholders including rightsholders, research organizations, libraries, universities, start-ups, SMEs, and AI companies.

2. Remove the commercial and non-commercial research distinction as part of the CDSM Directive to better reflect the realities of today's research

A recent economic [study](#) published by the European Commission on the economic impact of measures to improve the access and reuse of scientific knowledge in the EU and a European Commission's [legal analysis](#) show that the removal of the commercial and non-commercial research distinction as part of the Information Society Directive (InfoSoc Directive) will be the option with greater economic impact for research organizations and that would improve legal clarity, knowledge valorization, and reduce compliance costs. This example illustrates the broader

advantages of adopting a more flexible framework that does not differentiate between commercial/non-commercial research. Extending this approach to the CDSM Directive would further support research and innovation by reducing fragmentation and legal uncertainty. Such a step would also bring the EU closer in line with many countries such as the US, Singapore, Japan, Canada, South Korea, Switzerland, China, Israel, and Taiwan.

3. Explore the development of a broader and more flexible TDM framework

In the long term, the EU could explore the development of a broader and more flexible TDM framework, building on Articles 3 and 4 of the CDSM Directive, with the aim of supporting the research and innovation ecosystem. In order to support the development of a more flexible TDM framework, EU institutions could:

- **Assess the potential benefits of broader TDM exceptions which would allow TDM on lawfully accessible data including for commercial purposes and with fewer or no restrictions, such as opt-out mechanisms.** Such TDM exceptions would allow the EU to be closer to countries that provide explicit TDM exceptions such as Singapore, or rely on more flexible standards such as the US fair use.

4. Establish an open, mandatory, and flexible research exception as part of the InfoSoc Directive

The current provision for research Article 5(3)(a) of the InfoSoc Directive is optional, unclear, and creates a distinction between non-commercial and commercial research, limiting the capacity of libraries to be involved in research-industry partnerships. Inconsistencies across Member States also create costs for collaborations. Recent European Commission research including a [legal analysis](#), and an [economic study](#) have shown strong support from the research ecosystem for more flexible rules and consistency between EU Member States. To ensure a more flexible research exception as part of the InfoSoc Directive, EU institutions should:

- **Update Article 5 (3)(a) of the InfoSoc Directive to make the research exception mandatory**, ensuring that it enables public-private partnerships by **removing the discrimination between non-commercial and commercial research**.

5. Guarantee that opt-out mechanisms under Article 4 of the CDSM Directive are clear, machine-readable, and workable

For the time being, EU institutions should ensure that opt-out mechanisms are **clearly defined, machine-readable, and practical to implement**, and do not create ambiguity that unduly limits the use of data for text and data mining. Their design and application should ensure that the scientific research TDM exception under Article 3 is not undermined in practice.

In this context, the EU should encourage the use of widely adopted, and machine-readable standards, such as robots.txt, while avoiding fragmented, immature, or unproven approaches that could increase complexity and compliance costs. Special attention should be given to the impact on public-private partnerships, SMEs and start-ups, ensuring that opt-out mechanisms do not impose disproportionate administrative or technical burdens and remain accessible, and easy to implement.

Similarly, the EU should resist any expansion of the opt-out mechanism under Article 4 of the CDSM Directive. In particular, EU policymakers should reject proposals to broaden the categories of content subject to opt-outs, as it risks rendering TDM exceptions unworkable.

In addition, rightsholders or intermediaries exercising an opt-out should ensure that they hold the necessary rights to do so, including, where applicable, rights from underlying authors and contributors. In complex content value chains, some opt-outs are exercised broadly despite

incomplete or unclear rights ownership, leading to legal uncertainty and over-restriction of TDM activities. To address this problem, EU policymakers should strengthen accountability by introducing penalties in cases where opt-outs are exercised without the necessary rights. This would reduce incorrect or overly broad opt-outs and improve legal certainty for researchers and innovators.

6. Strengthen the enforcement of TDM exceptions against technical protection measures (TPMs) and abusive contractual terms

The European Commission must strengthen the enforcement of TDM exceptions to protect the research and innovation ecosystem from technical protection measures (TPMs), and contractual practices that override and limit TDM exceptions.

Technical protection measures (TPMs)

- **Mandatory 72-hour resolution window:** Any potential initiative must ensure that Member States include in their national law provisions requiring rightsholders to remove TPMs and resolve lockouts within a 72-hour window. A successful example is the case of [Slovenia](#), which codified a 72-hour time limit for rightsholders to remove TPMs, enabling effective access to data under both the scientific research and general-purpose TDM exceptions.
- **Potential sanctions for repeat offenders or long lockouts:** A potential mandatory resolution window could be reinforced by a scheme of potential penalties against rightsholders which do not resolve lockouts on time.

Contractual terms

- **Legal support for researchers, libraries, and universities to ensure enforcement of the research and education exceptions including the right to TDM as part of the scientific research exception:** Any potential initiative should recommend Member States to establish legal support mechanisms for researchers, libraries and universities to ensure that they can contest unfair contract terms that override any research and education exceptions, including their rights for TDM under the scientific research exception.

7. Ensure that licensing practices do not undermine research and innovation

- **Licensing practices should be fair, transparent, and non-discriminatory, and should not impose abusive conditions or excessive fees,** particularly on research organizations, start-ups, and SMEs, with limited negotiating power compared to large rightsholder corporations. It is also important to note that large AI developers with substantial legal and financial resources can negotiate bilateral licensing agreements with major content providers, while smaller EU AI developers and start-ups cannot. EU institutions should monitor licensing practices at EU level to ensure they remain fair, transparent, and non-discriminatory across EU countries.

8. Ensure proportionate and balanced transparency requirements empowering research and innovation

Transparency is a core value for EARE. However, transparency obligations must be **proportionate, clear, and balanced** to ensure that they empower research and innovation. To ensure the right balance between transparency obligations and research and innovation, EU institutions should consider the following recommendations:

- **Prioritize the effective implementation of existing AI transparency frameworks** included in the AI Act, the Code of Practice for General-Purpose AI (GPAI) models, and the summary of training data used to develop GPAI models. Before introducing any additional transparency requirements as part of potential future initiatives, the EU should focus on the effective implementation of these instruments.

- **Avoid introducing additional transparency requirements** such as itemized lists of copyrighted content, that are **disproportionate, impractical or costly to implement** for researchers and innovators. In this context, it is important to note that the European Commission's [study](#) on improving access to reuse of research results for scientific purposes, mentioned that a detailed summary of the data used for training can “*add a layer of compliance costs for research organizations*”. Similarly, for SMEs, and startups developing AI models, a more detailed document can be difficult to implement. For this reason, the European Commission should focus on working with AI providers, research organizations, SMEs, startups, and other relevant stakeholders to monitor the implementation of the template.
- **Ensure non-retroactive application of transparency obligations in public-private partnerships.** In collaborative research settings, particularly public-private partnerships, transparency requirements should not apply retroactively, especially where activities have been carried out under the scientific research TDM exception in Article 3 of the CDSM Directive. Applying transparency obligations retrospectively in such cases would create legal uncertainty, undermine legitimate reliance on the existing TDM framework, and risk discouraging collaboration between research organizations and private partners.
- **Protect trade secrets and commercially sensitive information**, ensuring that transparency obligations do not undermine competitiveness of the research and innovation ecosystem or access to funding, especially for SMEs and start-ups.
- **Ensure that AI Office procedures safeguard confidential information when assessing submissions**, particularly for start-ups and SMEs.
- **Refrain from introducing mechanisms such as a rebuttable presumption** that shift the burden of proof onto developers and researchers in a disproportionate manner. A rebuttable presumption assumes that copyrighted works have been used in training AI models if transparency requirements are not fully met. However, this approach risks disproportionately affecting AI researchers and start-ups located in the EU, particularly those lacking the resources to ensure full compliance or who may be unaware of these obligations despite being willing to comply. This presumption could further deter researchers and smaller AI startups from developing AI models. Similarly, since the rebuttable presumption would apply to any form of TDM, it could impact the work of researchers and innovators by discouraging the use of data and potentially facilitating bias into research results. Finally, the formulation of this rebuttable presumption could create legal uncertainty and confusion, due to different interpretations across Member States, and lack of clarity on when this rebuttable presumption should apply.

9. Establish an ambitious and harmonized secondary publication right

Europe would benefit from an ambitious and harmonized secondary publication right, ensuring that taxpayer publicly funded research is immediately available to the public at the time of publication. The CDSM Directive already recognizes that research needs to have a special place in the *acquis* while a [major research](#) commissioned by the European Commission has demonstrated overwhelming support for this approach in the research community, as well as favorable attitudes among institutional publishers. A separate [economic study](#) has shown that a secondary publication right could facilitate knowledge valorization/transfer from public institutions and potentially open the way to innovation in publishing markets.

Crucially, given that governments use public funds derived from taxation to support research and downstream innovation, works placed onto repositories in this context should be under a truly open license e.g. CC BY, to allow for maximum dissemination and immediate use. Contracts with publishers and technological protection measures should not undermine such laws. An EU-wide

harmonized approach is essential, as existing national regimes, currently in place in only seven Member States remain fragmented, vary in scope, and lack cross-border effectiveness.

10. Ensure that any future targeted initiative within the copyright framework fully considers the interests of the research and innovation ecosystem

In particular, any future initiative should preserve researchers' and innovators' needs and be supported by a comprehensive **impact assessment evaluating the effects on research and innovation activities**, including the functioning of the TDM exceptions. Any such initiative should also be developed through a structured and inclusive dialogue with all relevant stakeholders. This includes research organizations, individual researchers, libraries, universities, start-ups, spin-offs, private sector organizations, AI developers, and rightsholders. This is essential, as changes within the copyright framework have direct and far-reaching implications for a wide range of actors, particularly those engaged in research and innovation across the EU.

11. Establish an informal multi-stakeholder dialogue on the implementation of the CDSM Directive

To support a holistic and inclusive approach to copyright policy, the European Commission may consider the creation of an informal but structured platform enabling regular exchanges between all relevant stakeholders across the copyright ecosystem in a holistic way, including rightsholders, research organizations, individual researchers, universities, libraries, spin-offs, start-ups, AI developers and companies, SMEs, and other relevant actors.

Such a forum would provide a valuable space to monitor the implementation of the Directive, identify practical challenges, share best practices, and ensure that diverse perspectives are taken into account. It would also help to anticipate emerging issues, foster mutual understanding among stakeholders, and support evidence-based policymaking in the evolving copyright and AI landscape.

12. Support the remuneration of the creative sector through targeted funding mechanisms

Support for the creative sector should be delivered through targeted funding instruments, rather than primarily through measures within the copyright framework that may restrict access to data. As a key pillar of the EU economy, the creative sector can be more effectively supported through dedicated funding mechanisms under the next EU Multiannual Financial Framework, such as AgoraEU. These instruments should be combined with policies that foster research, innovation, and knowledge sharing across sectors.

It is important to note that the primary concern raised by generative AI is a market-structure problem, not a copyright infringement problem. If there is a market failure, any policy responses should be designed accordingly, focusing on competition dynamics including market and job displacements rather than on expanding copyright protection in ways that restrict data access and harm the broader EU economy.

Conclusions: Towards a copyright framework that works for research and innovation

The review of the CDSM Directive is a key opportunity to strengthen the EU's leadership in research, innovation, and AI by making existing TDM exceptions clearer, more consistent, and more enforceable across Member States. At this stage, policymakers should focus on harmonized implementation, removing outdated commercial/non-commercial distinctions, and eliminating barriers to data access, while avoiding disproportionate transparency requirements, restrictive licensing terms, and other measures that would increase legal uncertainty or compliance burdens. Any future initiative should be informed by robust impact assessments and structured stakeholder dialogue, while also leaving room for longer-term reforms such as

a broader TDM framework and a modernized research exception to support open access to knowledge, legal certainty, and Europe's competitiveness.



About EARE: *The European Alliance for Research Excellence (EARE) was convened by Microsoft in 2017, and now brings together nine members from the research and innovation ecosystem in Europe, including the Association of European Research Libraries (LIBER Europe), the European Bureau of Library, Information and Documentation Associations (EBLIDA), BSA | The Software Alliance, Microsoft, Allied for Startups, LACA, Research Libraries UK, SCONUL (Society of College, National and University Libraries), and UCL (University College London) Library, advocating for the EU to live up to its innovation potential in the digital economy.*