

# Access to publicly funded research

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## The argument in brief

Published research outputs often end up locked behind paywalls, unavailable to many researchers and the broader public, impeding scientific – and human – progress. Despite progress in the area of open science, research funded by the European public is no exception to this. In many cases, European taxpayers are essentially asked to pay up twice, once for funding the research and again for access to the final publication. One reason for this is the transfer of copyright ownership. To comply with contractual demands, researchers routinely outright transfer their economic exploitation rights to publishers, or fail to retain sufficient rights that would allow them or their funders to republish or reuse their work. This contradicts the primary goal of research, which is to maximise its impact by sharing it as widely as possible in a timely manner.

In this Policy Paper, we propose a targeted intervention in European copyright law to improve access to publicly funded research<sup>1</sup>. We envision a three-tiered approach to unify and harmonise the EU legal framework: a secondary publication obligation, to be fulfilled by the funding recipient, to make Open Access (OA) mandatory for publicly funded research; a secondary publication right, to ensure that the author retains the

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<sup>1</sup> In addition to the interventions we are proposing, additional measures, including more financial support for OA journals and repositories or additional incentives for researchers who respect best practices, should be considered. However, these fall outside the scope of our expertise.

right to republish their research outputs; and a secondary publication exception for the benefit of knowledge institutions, to support the task of republishing all existing publicly funded research publications in OA.

## Background

The European Union, for good reason, is spending heavily on research and innovation. Horizon Europe, the EU's key funding programme until 2027, has a budget of EUR 95.5 billion, up from EUR 77 billion for its predecessor program, Horizon 2020, which ran from 2014-2020. These figures do not even include public funding for research at the member state level. Despite this massive investment, the EU is allowing copyright to stand in the way of scientific progress and innovation.

European researchers and the general public, in many cases, will not have free access to the published results of publicly funded research. Instead, additional costs accrue to European taxpayers in the form of expensive licences for access to digital content, in particular journal subscriptions. Moreover, publishers often charge additional fees – article processing charges – to researchers who would like to publish under OA to make up for lost revenue.

It has become abundantly clear that incumbent publishers are exploiting their market power and that the high degree of market concentration in the scientific publishing market is causing unwanted social externalities to knowledge readers and the wider society<sup>2</sup>. Researchers do not receive compensation for their articles, and reviewers and even many journal editors are unpaid volunteers. In addition, most academic journals have shifted from print to digital, which, at least in theory, reduces the marginal costs of publishing. And still, the pricing of many journal subscriptions is so excessive that knowledge institutions that operate under tight budgets need to make choices, leaving their researchers with no access to some state-of-the-art publications.<sup>3</sup> This outcome is unacceptable, since immediate access to the newest publications is a key condition for conducting groundbreaking research.

The market has been unable to self-correct. While new OA journals have emerged, strong career incentives remain for researchers to publish in established journals, which have built their reputation over decades and sometimes longer, and continue to be perceived as providing more reputational value. The majority of established journals continue to be closed access. Researchers are faced with a dilemma. Even

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<sup>2</sup> The concentration of publishers, academic databases and scientometric indices raises the question of whether government intervention is necessary to prevent anti-competitive practices. While this paper does not address competition issues, we share common concerns about pricing and control of reputational value.

<sup>3</sup> Ironically, some researchers are turning to shadow libraries, such as Sci-Hub, which make available research publications regardless of copyright. It cannot be the purpose of the copyright system to generate incentives for researchers to take on legal risk to get access to important publications.

though many care deeply about OA, presented with the opportunity to publish in an a-tier journal, they will often sign away all of their exploitation rights to the publisher.<sup>4</sup>

The open science movement has advocated for better access to research results for a long time, resulting in the adoption of the UNESCO Recommendation on Open Science in 2021. Today, more and more researchers and other practitioners in this field as well as universities are conscious of the problems associated with closed access and many have taken steps to improve the dissemination of research results. Nonetheless, important structural constraints, including in the form of copyright-related barriers, remain unresolved and far from all publications are freely accessible to the public.

There is also a growing recognition of these issues on the side of the European legislator, which are reflected in a contractual obligation in the Horizon framework to make available research results under OA<sup>5</sup>. In 2022, the European Commission also commissioned a study examining the role that the EU copyright framework plays in facilitating or hindering access to and reuse of scientific publications, including a proposal for an EU-wide secondary publishing right.

Furthermore, in 2023, the Council issued its Conclusions on High-quality, Transparent, Open, Trustworthy and Equitable Scholarly Publishing. In this document, the Council acknowledged the introduction of secondary publishing rights by some Member States as part of their national copyright laws. Moreover, the Council urged the Commission and the Member States to promote policies in favour of a non-profit model for academic publishing, characterised by OA and a variety of formats, with no cost burden on authors or readers. The document also includes support for national policies and guidelines on OA, aiming to make academic publications immediately accessible under an open licence.

Nonetheless, the EU hasn't taken any steps to unify or harmonise its legal framework. The fragmentation of copyright laws constitutes a significant barrier to the success of cross-border research projects. Although significant progress has been made and

<sup>4</sup> Interestingly, OA publications generate more citations, which is an important, if flawed, metric that is used in many appointments committees. This incentive has proved insufficient for a full shift towards an OA by default system.

<sup>5</sup> Under Horizon Europe Model Grant Agreements, (t)he beneficiaries must ensure open access to peer-reviewed scientific publications relating to their results. In particular, they must ensure that:

- at the latest at the time of publication, a machine-readable electronic copy of the published version or the final peer-reviewed manuscript accepted for publication, is deposited in a trusted repository for scientific publications - immediate open access is provided to the deposited publication via the repository, under the latest available version of the Creative Commons Attribution International Public Licence (CC BY) or a licence with equivalent rights; for monographs and other long-text formats, the licence may exclude commercial uses and derivative works (e.g. CC BY-NC, CC BY-ND). [...] Beneficiaries (or authors) must retain sufficient intellectual property rights to comply with the open access requirements. In addition, the beneficiaries must manage the digital research data generated in line with the FAIR principles and [...] ensure open access — via the repository — to the deposited data, under the latest available version of the Creative Commons Attribution International Public License (CC BY) or Creative Commons Public Domain Dedication (CC 0) or a licence with equivalent rights [...].”

many research results are now published under OA, this problem is far from being solved at the EU level.

## Secondary publication right

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An EU-wide secondary publishing right would go a long way in protecting authors and solving access problems. By restricting contractual freedom, this statutory mechanism ensures that researchers, as recipients of public funds, retain the right to republish their articles and other research publications regardless of contractual obligations towards publishers.

Secondary publishing rights exist in a number of Member States, but are traditionally confined to journal articles and some may only permit the upload of preprints<sup>6</sup>. Moreover, the majority are subject to an embargo period, which creates delays to access, including in cases where research outcomes are urgently applicable (e.g. COVID vaccines).<sup>7</sup>

To secure a unified effect across the EU and solve the shortcomings identified in national legislation, an EU-wide secondary publishing right without an embargo period and applicable to the version of record<sup>8</sup> can be considered a first step in the direction of improved access to research outputs, but legislators should be aware of its limitations.<sup>9</sup>

An unwaivable and inalienable right is an important mechanism to protect the authors and guarantee that they retain the necessary rights to republish publicly funded research outputs in OA repositories. However, from a public interest perspective, a right is only a second-best option when compared to an obligation.

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<sup>6</sup> A preprint is a version of the publication before being published.

<sup>7</sup> See Knowledge Rights 21's [Position Statement on Secondary Publishing Rights](#). A standout example is [Bulgaria](#), which has recently passed a secondary publishing right without an embargo period together with its transposition of the Copyright in the Digital Single Market Directive.

<sup>8</sup> The version of record is the final typeset, published version of the publication.

<sup>9</sup> See the [Model Law](#) developed by LIBER.

## Secondary publication obligation

An EU-wide secondary publication obligation would be the more consequential approach to make available research outputs in OA repositories. Many researchers are still unaware of the importance of self-archiving their research outputs and may choose not to exercise their republication rights. Under an obligation system, the onus of disseminating scientific research and understanding complex contractual terms and conditions could be shared by research performing organisations.

Such an obligation constitutes a reasonable limitation of the individual authorial freedom of researchers, considering both the massive investment of public funds in academic research and the public interest in obtaining access to research results.

Currently, only two Member States – Slovenia<sup>10</sup> and Spain<sup>11</sup> – have legislation in place that imposes secondary publication obligations directly on researchers. At the non-legislative level, however, many funders, including the EU and cOAlition S<sup>12</sup>, already contractually require, from funding recipients, OA publication of research results and research data. To ensure an EU-wide effect, essentially the EU legislator would need to turn these contractual obligations into a legal obligation to republish research outputs where public funds are involved.

This would involve unified legislation that creates an obligation for research performing organisations and other recipients of public funds in the area of research to deposit research results, upon publication, through an OA repository and under an appropriate OA licence.

A secondary publication obligation could and should coexist with a secondary publication right. A right is necessary to ensure that the authors, and subsequently the funding recipients, retain the rights necessary to comply with the obligation. An

<sup>10</sup> See Article 3(1), [Decree on the implementation of scientific research work in accordance with the principles of open science](#) (U R E D B O o izvajanju znanstvenoraziskovalnega dela v skladu z načeli odprte znanosti): *Research providers shall, as soon as feasible and at the latest on publication of a scientific publication, make that scientific publication available in open access in accordance with the preceding Article, together with the associated research data and other research results. (...) (official translation).*

<sup>11</sup> See Article. 37(2), [Law 14/2011, 1 June 2011, on Science, Technology and Innovation](#) (Ley 14/2011, de 1 de junio, de la Ciencia, la Tecnología y la Innovación (LCTI)): *Research personnel in the public sector or whose research activity is mainly financed with public funds and who choose to disseminate their research results in scientific publications, must deposit a copy of the final version accepted for publication and the data associated with them in institutional or thematic open access repositories, simultaneously with the date of publication. (translation via [Knowledge Rights 21](#)).*

<sup>12</sup> In contrast to Horizon Europe's prior-obligation approach, under cOAlition S Rights Retention Strategy, grantees are required to apply a CC BY licence to all future author accepted manuscripts or versions of record reporting original research, supported in whole or in part by their funding. The coalition also provides model contracts and other templates to authors to ensure that they retain the necessary rights.

obligation makes OA mandatory, ultimately ensuring that publicly funded research outputs are republished in OA repositories.

A secondary publication right also provides a legal framework for the dissemination in OA repositories of publicly funded research outputs published before the entry into force of a secondary publication obligation. A retroactive effect would not be possible with a secondary publication obligation alone.

## Secondary publication exception

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The EU should further consider introducing an EU-wide secondary publication exception, for the benefit of cultural heritage institutions and other knowledge institutions. Knowledge institutions, which range from archives and libraries to educational establishments and research organisations, play an important intermediary role in connecting European citizens to, and enabling their use of, information resources. They are well positioned to search, structure, organise and facilitate access to publicly funded research.

A copyright exception allowing knowledge institutions to republish publicly funded research publications would be particularly important to support the task of making publicly available research outputs published before the entry into force of secondary publication rights and obligations.

# Conclusions and Recommendations

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Many publicly funded research outputs are still not immediately accessible to every researcher and the broader public. If we want EU research funding to reach its full potential and maximise Europe's innovative capacity, a targeted legislative intervention is needed. We strongly advise an EU-wide approach, considering that the complexity caused by legal fragmentation can be a significant barrier for European research and innovation, and further considering that scientific research is an international endeavour that often involves researchers and knowledge institutions from multiple Member States. Ideally, this intervention would be part of a more comprehensive regulation, a Digital Knowledge Act, which addresses the needs of universities and other knowledge institutions, such as schools and cultural heritage institutions, in the digital environment more broadly.

We recommend a tiered approach to open publicly funded research outputs to the public, immediately upon publication, where a secondary publication obligation co-exists with a secondary publication right. An obligation by the funding recipients to republish is a more consequential approach to protect the public interest, as it makes OA mandatory. A right is, however, necessary to ensure rights retention by the authors and secure a retroactive effect. A copyright exception for the benefit of knowledge institutions, such as libraries and archives, would further support the task of making available research publications to the public free of charge.

## RECOMMENDATION 1

### **EU-wide obligation to republish publicly funded research outputs**

We call on the EU to create a Union-wide obligation to republish publicly funded research outputs, immediately upon publication, in an open access repository under an appropriate open licence. This obligation shall be fulfilled by the funding recipient, which shall ensure that they retain the intellectual property rights necessary to comply with this obligation. If the funding recipient fails to comply with the obligation, the research funding organisation shall have the right to republish, and that right shall apply even if exclusive rights have been granted to a publisher.

## RECOMMENDATION 2

### **EU-wide right to republish publicly funded research outputs**

The EU should further grant the author a Union-wide right to republish publicly funded research outputs, immediately upon publication, in an open access repository under an appropriate open licence. This right shall be unwaivable and inalienable. To maximise its impact, a right should not be limited to future publications. In line with Commission Recommendation (EU) 2018/790, the legislator should consider application to publicly funded research outputs published before the entry into force of this right.

## RECOMMENDATION 3

### **EU-wide exception to republish publicly funded research outputs**

The EU should also consider implementing a Union-wide exception to copyright and related rights allowing cultural heritage institutions and other knowledge institutions to republish publicly funded research outputs, immediately upon publication, under an appropriate open licence.




## About COMMUNIA

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The COMMUNIA association advocates for policies that expand the Public Domain and increase access to and reuse of culture and knowledge. It acts as a network of like-minded activists, researchers and practitioners based in Europe and the United States who seek to limit the scope of exclusive copyright to sensible proportions that do not place unnecessary restrictions on access and use.

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For more information on COMMUNIA visit our website:  
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