

Europe is investing heavily in research and innovation, and for good reason. But we have failed to support these interests by clearing the way for the digital transition of libraries, archives, universities and other knowledge institutions that are essential to promoting progress. During this legislative term, we need to remove the barriers that prevent knowledge institutions from fulfilling their public mission in the digital ecosystem. We need to prioritise reform that focuses on the needs of these institutions. We need a targeted legislative intervention — a Digital Knowledge Act — that enables knowledge institutions to offer the same services online as offline.

A Digital Knowledge Act should focus on four actions to empower knowledge institutions in the digital age:

#### ACTION 1.

PROTECT THE PUBLIC DOMAIN!

Public sector documents, public speeches and raw materials are essential sources of information, but not always freely accessible to the public. They should clearly be excluded from copyright protection. Legal barriers to use images of cultural heritage that are in the Public Domain need to be removed.

#### ACTION 2.

UNLOCK RESEARCH!

Scientists often struggle to access and share research. A right to research and an obligation to openly publish publicly funded outputs would go a long way towards unlocking the potential of European research.

#### ACTION 3.

#### PROMOTE DIGITAL ADAPTATION!

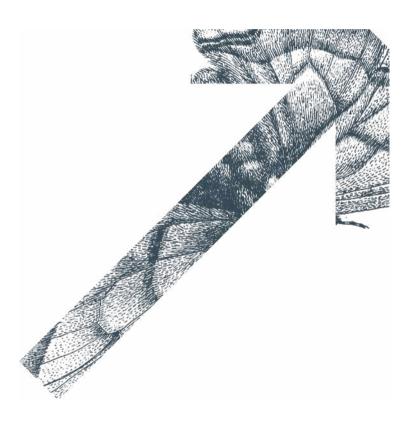
Refusal to license and unfair licensing terms for digital materials are one of the biggest challenges for libraries and research organisations today. We need an EU-wide e-lending right and an obligation to license digital works to knowledge institutions.

#### **ACTION 4.**

#### SHIELD INSTITUTIONS FROM LEGAL RISK!

Due to the complex and fragmented state of EU copyright law, many individuals and institutions shy away from research collaborations and other public interest activities.

An exemption from liability for damages for those who act in good faith would mitigate this chilling effect.



The idea of a Digital Knowledge Act is ripe for implementation. The incoming legislators must tackle these problems in a comprehensive manner to unlock the full potential of Europe's knowledge institutions.



# Protect the Public Domain

# HARMONISE THE BOUNDARIES OF COPYRIGHT

The EU has not harmonised what is out of copyright.

This leads to legal uncertainty and poses obstacles to cross-border uses of materials that were never meant to be protected by copyright, such as laws, court decisions and raw data. This raises fundamental rights concerns, and has chilling effects on research and other activities.

Data, facts, news and information are explicitly excluded from copyright protection in 12 Member States, but the issue is not treated equally across the EU. Likewise, 19 Member States already exclude certain categories of public sector documents from copyright protection, yet in many Member States they are still protected by copyright or locked behind paywalls. Where this is the case, access to, and use of, these materials can be difficult or prohibitively expensive.

Despite the importance of public speeches, they are also not necessarily publicly available across the EU.

The EU law allows Member States to introduce a copyright exception for political speeches and other categories of public speeches, but these provisions do not go far enough.

#### NO COPYRIGHT ON DATA, FACTS, NEWS AND INFORMATION

→ EU law should explicitly provide that data, facts, news and information are not eligible for copyright protection.

#### NO COPYRIGHT ON PUBLIC SECTOR DOCUMENTS

→ EU law should provide that public sector documents that are essential to the rule of law, such as legislation, court decisions and decisions by administrative authorities, or that provide information of general interest to citizens, such as public governmental documents, public sector studies, public sector software and public sector datasets, are not eligible for copyright protection.

### NO COPYRIGHT OR AN EU-WIDE EXCEPTION TO USE PUBLIC SPEECHES

→ EU law should provide that public speeches that serve informatory or legal purposes, such as speeches on political and religious matters and speeches delivered during the course of judicial, administrative or parliamentary proceedings, are excluded from copyright protection or can be used under an EU-wide copyright exception.



Read more:

POLICY PAPER #16

Public sector documents and public speeches

# PROTECT THE RIGHT TO USE PUBLIC DOMAIN HERITAGE

Copyright is predicated on the idea that, once a work's term of protection expires, it enters into the Public Domain and becomes free for all to access and use. However, some EU companies have recently been sued for their use of Public Domain works, including Michelangelo's David and Da Vinci's Vitruvian Man.

The cultural heritage laws of Bulgaria, France, Greece, Italy, Portugal and Slovenia all require permission and the payment of a fee for uses of reproductions of certain paintings, sculptures and other heritage in national collections — even if the work in question is in the Public Domain.

Attributing perpetual exclusivity to our shared cultural heritage hollows out the Public Domain and has serious consequences for the enjoyment of fundamental rights, such as the right to access and enjoy culture, freedom of expression and artistic freedom. It also conflicts with Article 14 of the 2019 Copyright Directive, which stipulates that reproductions of Public Domain works shall not be subject to copyright or related rights.

#### NO RESTRICTIONS ON USING PUBLIC DOMAIN HERITAGE

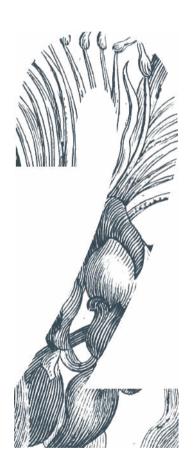
ightarrow EU law should provide that the use of reproductions of cultural heritage that is in the Public Domain, whether for commercial or other purposes, shall not be restricted by national cultural heritage laws.



Read more:

POLICY PAPER #20

The right to use Public Domain heritage



# Unlock research

# PROTECT THE RIGHT TO RESEARCH

Research resources are often protected by copyright, and copyright owners can prohibit their use for research purposes. In 2019, the EU attempted to address some of the obstacles copyright law poses to scientific research by granting researchers the right to copy works to conduct computational analysis. However, it did not grant researchers the right to share resources, which is essential to facilitate joint and cross-border collaborations, enable remote access to research and secure research transparency.

Member States are allowed to introduce broad research rights, however, only eight countries provide such flexibility in their copyright laws. Elsewhere in the EU, researchers face copyright restrictions that force them either to refrain from using such materials or to work in legal grey zones.

A 2024 survey commissioned by the European Commission shows that about 80% of research organisations are in favour of harmonising the EU legal framework through the inclusion of an open-ended research exception granting broad access to copyrighted resources.

#### AN EU-WIDE RESEARCH EXCEPTION

→ EU law should grant researchers and their organisations broad and flexible rights to use copyrighted materials in the context of scientific research activities under a mandatory EU-wide copyright exception with cross-border effect.



Read more:

Nobody puts research in a cage:

Researchers' perspectives on working with copyright

# ENSURE ACCESS TO PUBLICLY FUNDED RESEARCH

Published research outputs often end up locked behind paywalls, unavailable to many researchers and the broader public, impeding scientific — and human — progress. This contradicts the primary goal of research, which is to maximise its impact by sharing its results as widely as possible.

Research funded by the EU is no exception to this. In many cases, European taxpayers are essentially asked to pay twice: once for funding the research, and again for accessing the final publication. This significantly impedes access to knowledge. In a 2024 survey commissioned by the European Commission, 80% of researchers reported significant barriers in accessing copyrighted resources due to lack of subscriptions.

An EU-wide obligation to republish, together with a secondary publishing right, would go a long way towards protecting authors and solving access problems, as it would make open access mandatory and ensure that researchers retain the right to make their publications available in open access regardless of contractual rights demanded by publishers.

### A FRAMEWORK TO REPUBLISH PUBLICLY FUNDED RESEARCH IN OPEN ACCESS

- → EU law should require the republication of publicly funded research outputs, immediately upon publication, in an open access repository under an appropriate open licence.
- → EU law should grant the author the unwaivable and inalienable right to republish publicly funded research outputs, immediately upon publication, in an open access repository under an appropriate open licence.
- → EU law should further grant cultural heritage institutions and other knowledge institutions the right to republish publicly funded research outputs, immediately upon publication, under an appropriate open licence.



Read more:

POLICY PAPER #17

Access to publicly funded research



# Promote digital adaptation

#### PROTECT THE RIGHT TO E-LEND

In a world where information is increasingly accessed digitally, library users expect and need access to ebooks. However, libraries face significant barriers to transition their lending practices from analogue to digital. In recent years, it has become increasingly common for publishers and aggregators to limit access to ebooks through libraries, by imposing highly restrictive licensing conditions, demanding excessive prices or simply denying ebook licences to libraries altogether.

As a result of these practices, many libraries face challenges in acquiring new works and developing their own permanent digital collections. For example, in Germany only 7% of recently published ebooks are available to library users; the majority of the digital catalogue available to library users comprises only ebooks published in the mid 2010s or before that.

To overcome these obstacles, libraries could digitise "independently" and e-lend works in their collections. However, e-lending based on digitised physical books lacks a clear legal framework.

#### AN EU-WIDE E-LENDING EXCEPTION

- → EU law should grant libraries the right to conduct e-lending of works in digital form (including digitally born works and digitised works in their collections), subject to the conditions defined in the CJEU case law, under a mandatory EU-wide copyright exception with cross-border effect.
- ightarrow EU law should further clarify that libraries have the right to digitise works in their collections.



Read more:

POLICY PAPER #19

E-lending

# AFFIRM THE RIGHT TO OWN AND LICENSE DIGITAL WORKS

The increasing reliance on licences to access digital formats has made it considerably more difficult for knowledge institutions to obtain, retain and provide access to new works. This is because licences simulate temporary rentals, allowing publishers to exercise much stronger control over their publications.

Licences to institutions are overly restrictive or prohibitively expensive almost to the point of being a privilege. Institutions are also forced to repurchase the same materials on a regular basis and some licensors even refuse to license them altogether. Libraries have been particularly affected by these abusive practices, but they are not alone. A 2024 survey commissioned by the European Commission reveals that more than 40% of researchers have been unable to obtain permission from the rights holders to get access to knowledge resources.

These shifts in the European knowledge market increase the vulnerability of knowledge institutions to market influences. This affects their public service mission and, by extension, the ability of their users to exercise their fundamental rights.

#### **ACCESS RIGHTS FOR BENEFICIARIES OF EXCEPTIONS**

→ EU law should grant individual users access rights to digital works, to the extent necessary to secure the effective exercise of their rights under a copyright exception, where the copyright owner already markets such digital works and provided that facilitating access to digital formats does not place an undue burden on the copyright owner.

#### AN OBLIGATION TO LICENSE TO KNOWLEDGE INSTITUTIONS

→ EU law should introduce an obligation on rights holders to facilitate effective access to digital works to knowledge institutions, through licences or other means, under fair and reasonable conditions.

#### MAKE UNFAIR LICENSING TERMS UNENFORCEABLE

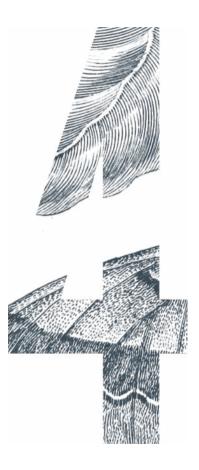
→ EU law should establish that licensing terms made available to knowledge institutions must be adequate to their needs. Contractual provisions in licence agreements that prohibit knowledge institutions from performing their public interest mission, restrict lawful uses or require the transfer of users' usage data shall be unenforceable.



Read more:

POLICY PAPER #21

Right to license and own digital materials



# Shield institutions from legal risk

# LIMIT THE LEGAL EXPOSURE OF KNOWLEDGE INSTITUTIONS

Individuals and organisations who frequently interact with copyrighted material in a professional capacity are often overwhelmed when it comes to determining what they may or may not do. Copyright laws are challenging to navigate for seasoned experts and almost impossible for everybody else, causing legal uncertainty, in particular in cross-border contexts.

As a result, institutions may be forced to make complicated choices between potentially risking infringement or passing up on opportunities to create or preserve knowledge by not using certain materials. A number of surveys highlight the chilling effect that these uncertainties in the copyright laws produce on researchers and educators. Libraries and archives have also repeatedly called attention to the uncertainties they face in dealing with the EU copyright framework.

Currently, it is left up to Member States to decide whether actors who are unaware of their copyright infringement should be required to pay damages.

A harmonised EU approach that shelters knowledge institutions by limiting the legal exposure they might face in the event of copyright infringement would dispel much of the fear around litigation.

#### A LIMITATION OF LIABILITY

→ EU law should provide that knowledge institutions should not be required to pay damages for using copyrighted works if they act in a responsible and prudent way, believing or having reasonable grounds to believe that they have acted in accordance with copyright law.



Read more:

POLICY PAPER #18

Limitation of liability for knowledge institutions

#### **ABOUT COMMUNIA**

The COMMUNIA Association for the Public Domain 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

For more information on COMMUNIA visit our website www.communia-association.org
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# FOUR ACTIONS TO EMPOWER KNOWLEDGE INSTITUTIONS IN THE DIGITAL AGE

#### ACTION 1.

# PROTECT THE PUBLIC DOMAIN

- → No copyright on data
   and public sector works
   → EU-wide right to use
   public speeches
- → No restrictions on using Public Domain heritage

#### ACTION 2.

#### UNLOCK RESEARCH

- → EU-wide right to research
- → Obligation to republish publicly funded research in open access

#### ACTION 3.

# PROMOTE DIGITAL ADAPTATION

- → EU-wide right to e-lend
- → Access rights

for individual users

→ Obligation to license digital works to institutions under fair terms

#### ACTION 4.

# SHIELD INSTITUTIONS FROM LEGAL RISK

→ Limitation of liability for institutions

