

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

Lees dit eerst:

Deze Europese consultatie stelt belangrijke vragen over de huidige auteursrechtelijke kaders rondom AI en wetenschappelijk onderzoek. Het bijgevoegde document bevat voorbeeldantwoorden, mede ontwikkeld door [Knowledge Rights 21](#), waarmee je eenvoudig je eigen reactie kunt vormgeven om de belangen van de academische wereld te verdedigen op het gebied van secundaire publicatierechten (Taverne), tekst- en datamining en contractuele beperkingen. Neem de grijs gearceerde antwoorden over, pas ze aan en vul de consultatie **voor 3 november** in via <https://ec.europa.eu/eusurvey/runner/targetedconsultationcopyright> om direct je stem te laten horen!

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) at most 3 answered row(s)

	1	2	3
Legal uncertainty on the applicable copyright rules, including with regard to the application of the text-and data mining exception	X		
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 and 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			X
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		X	

Other: please explain 200 character(s) maximum

The undermining of the effectiveness of existing rules around AI training due to contractual practices by rightholders. Requirements for archival institutions to communicate TDM-opt-outs and their additional administrative costs.

3b. As an AI provider/data aggregator/research organisation/other user, what are the main barriers or obstacles you have encountered in relation to copyright, including for the application of the EU copyright legal framework for any AI uses? (choose five)

- 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
- Uneven level playing field between non-EU providers and EU-based providers
- Lack of a marketplace with relevant copyright protected content that can be used in the context of AI or lack of technical solutions for automated licensing at scale
- Counterparties are unwilling to engage in licensing
- Limited bargaining position in licensing negotiations, in particular for SMEs and start-ups
- 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)
- Difficulty to determine whether a work is copyright-protected, which rights need to be cleared/licensed and/or to identify the relevant rightholders
- Difficulty to identify and comply with reservation of rights (opt-out) under the TDM exception, including lack of standardised opt-out technical protocols that can be operationalised at scale
- Risk of exposure of trade secrets due to existing transparency requirements
- Transaction costs related to licensing, including the need to clear rights with multiple rightholders
- Litigation or dispute-resolution costs
- Other:

4b. As an AI provider/data aggregator/research organisation/other user, how have these difficulties or uncertainties in relation to copyright identified under question 3b affected your organisation? (select all that apply)

- Increased compliance and litigation costs

- Limited ability to scale-up
- Reduced investment into AI development in the EU including possible relocation of certain AI development activities outside of the EU
- Limited access to high-quality and diverse data for AI training and development
- High costs for SMEs and start-ups to access copyright-protected content
- Reduced competitiveness of AI providers and 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)
- No significant effect
- Other: please specify

The current copyright framework hampers Cultural Heritage Institutions (CHIs) and archives. The impossible administrative burden of clearing rights item-by-item—especially for complex archival materials and orphan works—prevents CHIs from fulfilling their public interest mandate to digitize and provide widespread access to European cultural heritage. Consequently, European AI models will suffer from a severe lack of historical context, artistic heritage, and linguistic diversity because our rich public datasets cannot be safely utilized.

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 enforcement of copyright and related rights 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

Question	1	2	3

<i>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</i>		x	
<i>Clarify the application of EU copyright rules (including territorial application for use of copyright-protected content for AI training and other AI uses</i>	x		
<i>Imposing an obligation on web crawlers and AI agents used to crawl content online to disclose identity and purpose</i>			
<i>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 optout, etc.) for a defined period</i>			
<i>Imposing an obligation on AI providers / dataset providers / data collectors of independent audit/certification on use of protected content</i>			
<i>Imposing an obligation on AI providers to provide information under NDA about use of protected content upon a substantiated request from CMOs/rightsholders and under certain conditions, as an alternative to the public disclosure of the top 10% of the top domain names of the websites scrawled as required in the Commission template for the public summary of training content under the AI Act.</i>			
<i>Providing for the possibility for courts/administrative authorities to impose disclosure obligations under certain conditions in the context of legal proceedings or mediation/arbitration</i>			
<i>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</i>			
<i>No need for additional mechanisms</i>			x
<i>Other: please specify</i>			

Explanation

Clarification of the current rules has the highest priority. The existing fragmentation creates legal uncertainty that chills innovation and cross-border collaboration. Clarifying these rules – particularly strengthening that research (facilitated) by heritage institutions is legitimate without payment or opt-out – would significantly reduce this friction.

Secondly, if opt-outs are to exist, they must be operationalized through standardized, machine-readable protocols and a common vocabulary. Currently, the lack of standardization makes it technically difficult to successfully comply with requested opt-out by rightsholders.

We advise against introducing further enforcement mechanisms. Proposals such as mandatory independent audits, new disclosure obligations in legal proceedings, or rebuttable presumptions of infringement will only serve to duplicate existing requirements under the AI Act (such as the detailed training summaries) and create a landscape of permanent litigation. These heavy-handed enforcement tools will disproportionately harm the public sector by driving up compliance costs and ensuring that only the largest, best-funded tech monopolies can afford to develop AI in Europe.

7. 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
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		x			
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		x			

Please explain your answers to the question above 1000 character(s) maximum

Our positive ratings reflect the urgent need to reduce legal friction. Clarifying EU copyright rules ensures CHIs can operate without fear of infringement. Furthermore, operationalizing opt-outs through standard, machine-readable protocols is essential; without shared vocabularies, verifying opt-outs at scale is technically impossible for those compiling large datasets.

We oppose the introduction of complicated enforcement obligations—including mandatory record-keeping, independent audits, court disclosure, and rebuttable presumptions of use. These measures duplicate existing AI Act transparency requirements and introduce administrative and financial burdens that will disproportionately harm public sector institutions. These rules could effectively lock open and public-interest actors out of European AI development.

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).

	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		X	
No need for additional measures	X		X
Other - please specify			

Please explain your answer and share your views on the mechanisms listed above, including on the conditions of application: 1500 character(s) maximum

For the training of generative AI, we select "No need for additional measures." Introducing new statutory compensation obligations, mandatory collective licensing, or state-backed marketplaces can severely damage the European AI ecosystem. These mechanisms inevitably favor large, proprietary tech platforms that can afford bulk licensing, while shutting out cultural heritage institutions (CHIs), including archives, who rely on text and data mining (TDM) for public-interest innovation. The focus should remain on clarifying existing TDM exceptions, not creating new financial barriers to data access.

In the cultural heritage sector, creating mandatory licensing marketplaces or compensation obligations for TDM would financially paralyze non-profit archives, effectively locking European historical data out of the AI ecosystem.

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. Options: Strong negative impact/Moderate negative impact/Neutral/Moderate positive impact/Strong positive impact

	Strong negative	Moderate negative	Neutral	Moderate positive	Strong positive
Supporting the development of a marketplace for licensing copyright protected content for AI uses, for example through technical solutions for automated licensing at scale		x			
Develop model contractual clauses for licenses covering AI uses				x	
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			x		
Promoting collective licensing, in particular through the use of extended collective licensing (ECL), if and where appropriate		x			
Introducing a fair compensation obligation for the uses falling under the exception in Article 4 DSM which have not been reserved by the rightholders		x			
Introducing a remuneration right for certain uses of copyright-protected content by generative AI models/systems providers or other relevant actors			x		
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

We oppose the introduction of new licensing marketplaces, fair compensation obligations, for TDM and AI uses if they limit the existing possibilities that are available through article 3 CDSM. New mechanisms should not have a negative impact on the public sector. They carry the threat of imposing stronger, paywalled restrictions on text and data mining, effectively overriding existing statutory exceptions that are needed for scientific research and cultural preservation.

Mandating good faith negotiations, model clauses, or Extended Collective Licensing (ECL) inherently favors large, well-resourced tech companies and corporate publishers. These structures would create financial and administrative barriers for university spin-offs, non-profit archives, and open-source startups, locking them out of the European AI ecosystem. We need robust, unencumbered exceptions for research and public-interest innovation, not new layers of mandatory licensing or compensation.

AI-generated imitations of performers

4. Do you consider that there is a need for specific rules at EU level, to address the use of performers' likeness in AI-generated content?

- Yes
- No, the existing protection is sufficient
- No opinion

5. Taking into account the rationale, nature and scope of copyright protection, do you think that EU copyright legislation would be appropriate to address these issues or that this issue should be addressed through other legal means? 1000 character(s) maximum

EU copyright legislation is not the appropriate framework for addressing the misuse of individuals' personal characteristics through AI-generated deepfakes. Copyright and related rights are designed to protect original creative expressions in order to support markets for creative works and incentivise further creative activity. Extending such protection to personal features such as one's voice and likeness does not align with this rationale and would undermine the coherence of copyright law. A general personality rights framework, protecting individuals' autonomy and self-determination, is better suited to addressing these harms. Where existing protections prove insufficient, the EU should strengthen enforcement mechanisms, including effective notice-and-action procedures under the Digital Services Act.

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

Cultural Heritage Institutions and archives preserve valuable collections essential for digital humanities research. However, copyright uncertainty frequently prevents them from legally providing researchers with digital access to archival materials, especially across borders. Researchers are often forced to physically visit archive reading rooms to conduct text and data mining, which is entirely misaligned with modern digital research needs."

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

We believe the current exception is not fit-for-purpose. The non-mandatory nature of the exception has created a highly fragmented and confusing landscape. Very few have fully implemented the exception. This fragmentation hinders cross-border research collaborations. Additionally, the exception's strict distinction between non-commercial and commercial uses ignores the reality of modern science that relies on public-private partnerships and university spin-offs.

Finally, the exception offers no protection against contract overrides or technological protection measures (TPMs). Researchers frequently find that statutory exceptions are effectively nullified by unfair contract terms imposed by publishers, or by strategy selecting a forum outside of the EU to govern the contracts.

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

We need to overcome the structural barriers created by fundamentally misaligned national laws. Modern collaborative science requires a harmonised exception across the EU that eliminates the friction caused by variations in national laws. A legislative update is required to remove the outdated discrimination between non-commercial and commercial research, embracing the required innovation-friendly ecosystem that the EU needs. Finally, researchers and librarians and the archival community require legal certainty; the regulatory framework must be changed to explicitly prevent publisher contracts from overriding statutory exceptions and to ensure that Technological Protection Measures (TPMs) do not block lawful access to research materials.

3a. In your view, what are the changes related to the research exception under the Infosoc Directive which could be considered at EU level? (select all that apply)

- 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
- Other: please specify

Other: please specify 200 character(s) maximum

Establishing that the exception constitutes an overriding mandatory rule applicable to activities carried out within the Union, regardless of the governing law chosen in a licence agreement.

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					X
Clarifying the beneficiaries of the exception		X			

Clarifying the purpose of the exception, scope of permitted use and conditions of applicability		X			
Removing the non-commercial condition attached to the existing exception				X	
Allowing cross border uses of protected content under the exception					X
Ensuring that technological protection measures do not prevent beneficiaries from uses under the exception					X
Ensuring that the exception cannot be overridden by contracts					X

Please elaborate your answer: 1000 character(s) maximum

We need to remove structural barriers to modern research. Making the exception mandatory and allowing cross-border uses resolve some of the legal fragmentation that prohibits some cross-border collaboration. Removing the non-commercial condition aligns copyright with the reality of modern science, which relies heavily on public-private partnerships and university spin-offs.

Statutory exceptions are meaningless if they can be bypassed. Ensuring that contracts cannot override exceptions and that TPMs do not block lawful access will have a positive impact on research capabilities.

We need real legal certainty, "clarifying" beneficiaries, purposes, or scope will almost certainly lead to limiting the exception. Strict definitions risk inadvertently excluding legitimate actors, emerging scientific methods, or new technologies, ultimately stifling European innovation.

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

As institutions that both facilitate and conduct research on cultural heritage, our professionals face barriers in openly publishing their findings. Furthermore, when independent researchers utilize our public archival collections, their resulting publications are often locked behind publisher paywalls, preventing the archive and the general public from freely accessing the historical research based on our own public collections.

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

Other - Please explain: 1000 character(s) maximum

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 its 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			X		
The SPR would apply only to scientific journal articles and would allow authors to make publicly accessible the author accepted manuscript without embargo period				X	
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				X	
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					X
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					X

Please elaborate your answer: 1000 character(s) maximum

An EU-wide SPR is a necessary legislative addition to existing Open Access (OA) mandates. Without a strong SPR, OA mandates often simply force researchers to pay limitingly high Article Processing Charges (APCs) to publishers. Lessons from the Dutch 'Taverne' amendment (Art. 25fa) prove that limiting an SPR to 'short works' and allowing embargoes drastically reduces its impact. However, a harmonized, zero-embargo EU SPR covering all scholarly outputs ensures that publicly funded research translates directly into public knowledge, breaking the reliance on pay-to-publish models ensures that publicly funded research—including crucial historical and humanities research based on archival collections—translates directly into public knowledge.

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

Yes, SPR would have a stronger effect if it were triggered by any amount of public funding. A high public funding threshold (such as 50%) fails to reflect the reality of modern collaborative science, which frequently relies on complex public-private partnerships or mixed funding streams. An EU-wide SPR should apply to any research receiving public funding, without a strict percentage threshold. This ensures that the public interest in accessing and utilizing publicly supported research is not easily bypassed.

Furthermore, SPR should be considered as the backstop. To ensure optimal re-use and maximisation of the societal return on public investment, the SPR must come associated with the expectation of an open licence (such as CC BY). Only granting the right to read is insufficient;