Why Europe needs a Secondary Publishing Right in the ERA Act now

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Including a harmonised European Secondary Publishing Right (SPR) in the European Research Area (ERA) Act is strategically important. Leaving it for subsequent legislation would add complexity for the academic sector and hamper its ability to make full use of the opportunities the ERA Act provides.

SPRs grant authors the right to upload an output based on publicly funded research in an open access repository or elsewhere, even if the output is already published, such as in a closed journal behind a paywall.

They can clearly contribute to Europe's research and innovation capacity by facilitating the free circulation of scientific knowledge, in line with Article 179 TFEU and the objective of the ERA.

However, unless an SPR is included in the ERA Act, it risks increasing publication costs for Europe's researchers and research institutions.

The ERA Act promises to bring together relevant rules for researchers, research-performing organisations, and the overall research and innovation ecosystem in one place. It will facilitate attracting and retaining talent, in line with the Choose Europe agenda.

Europe cannot effectively and economically fulfil its Open Access goals without ensuring that its researchers and research institutions have the clear right to do so and without facing an increasingly unaffordable bill. It is imperative that an SPR is introduced therefore without delay as it is a necessary counterpart for Europe to deliver on Open Access.

Simplifying the upcoming copyright reform by addressing SPR in the context of the ERA Act therefore would bring benefits on all sides – a stronger basis for advancing open access, and a more straightforward copyright reform when this is finalised.

BACKGROUND

SPRs grant authors the right to upload an output based on publicly funded research to an open access repository, even if the output is already published elsewhere. Secondary Publication Rights (SPRs) provide a legal guarantee to researchers, research-performing organisations and publishers, ensuring that publicly funded research remains accessible. Public access to publicly funded research discoveries is critical to drive further research, innovation and knowledge valorisation, maximising the impact of public investment.

These objectives are central to competitiveness, helping Europe translate research excellence into marketable innovation, as well as the realisation of the European Research Area.

SPRs also address structural market imbalances in scholarly publishing. Despite widespread national and institutional efforts across the Union to achieve open access through requirements and recommendations, some publishers require researchers to agree to contractual terms that waive their ability to share publicly funded outputs. Without an SPR, researchers remain structurally weaker parties in contractual negotiations.

Providing more access to knowledge across Europe through a simplified harmonised SPR will ultimately support the development of new products and services across the economy, far beyond the scholarly publishing sector. In particular, it provides a solution for start-ups, scale-ups, and SMEs, which often lack the resources to access paywalled scientific content.

Importantly, sensitive information will remain safeguarded in line with the commitment to being “as open as possible, as closed as necessary” and to upholding FAIR principles more generally.

SPRs are therefore strongly supported both by the research community (as underlined in a Commission report) and Member States, as set out in the Council Conclusions of May 2023 on scholarly publishing.

We are calling for a European SPR which would raise standards to match those of countries that recently updated their national legislation, reducing regulatory fragmentation and confusion in cross-border research and innovation projects.

To effectively advance open science, promote harmonisation, and boost the competitiveness of the EU's R&I ecosystem, SPR provisions in the ERA Act should include:

- **Zero embargo**: in line with open access requirements already in place across Europe and called for in the May 2023 Council Conclusions on scholarly publishing, an EU SPR framework should allow for immediate and simultaneous publication in a journal (or elsewhere) and in an open access repository.
- **Version**: at a minimum, the author-accepted manuscript should be covered by the Right, but there should be a clear possibility to also share the version of record.
- **A broad range of research output types and funding forms**: a weakness of some existing SPR frameworks has been the use of narrow definitions of research outputs or unclear definitions of what counts as public funding. Broader definitions will help realise the ERA and the fifth freedom.
- **Enable maximum use**: an EU SPR should ensure that research outputs deposited in repositories are made available under an open licence, allowing knowledge valorisation, as is already the case for publicly funded research data under the Open Data Directive.
- **Non-waivability**: without explicit non-overridability by contract, the right's effectiveness would be significantly undermined in practice. Contracts with publishers that prevent the immediate republication of the author-accepted manuscript should therefore be rendered unenforceable. Researchers should not be left in a situation where it is legally unclear whether exercising a legal right violates contractual terms.