

# An EU copyright & data legislative & regulatory framework fit for research

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**#EUResearchArea**

# Council Conclusions on the Future Governance of the ERA, November 2021

## ERA Policy Agenda 2022-24

ERA Actions	Outcomes
<b>1. Enable the open sharing of knowledge and the re-use of research outputs, including through the development of the European Open Science Cloud (EOSC)</b>	<ul style="list-style-type: none"><li>• Deploy Open Science principles and identify Open Science best practices</li><li>• Deploy the core components and services of EOSC and federate existing data infrastructures in Europe, working towards the interoperability of research data</li><li>• Establish a monitoring mechanism to collect data and benchmark investments, policies, digital research outputs, open science skills and infrastructure capacities related to EOSC</li></ul>
<b>2. Propose a EU copyright and data legislative and regulatory framework fit for research</b>	<ul style="list-style-type: none"><li>• Identify barriers and challenges to access and reuse of publicly funded R&amp;I results and of publications and data for scientific purposes, and identify potential impacts on research, through an analysis of relevant provisions under EU copyright and data legislation and related regulatory frameworks, and of relevant institutional and national initiatives</li><li>• Propose legislative and non-legislative measures to improve the current EU copyright and data legislative and regulatory frameworks</li></ul>
<b>3. Advance towards the reform of the Assessment System for research, researchers and institutions to improve their quality, performance and impact</b>	<ul style="list-style-type: none"><li>• Analysis of legal and administrative barriers at national and trans-national level for a modern research assessment system</li><li>• Create a coalition of European research funders and research performers who agree on a new approach for research assessment, following wide and inclusive consultations at European and international level</li><li>• Implementation plan of the coalition to roll-out the new approach, including pilots in different domains</li></ul>

# Overall objective

A **European Research Area** in which scientific knowledge and technology circulate freely -as ambitioned in Article 179 TFEU- implies that:

- ✓ scientific outputs are accessible and reusable,
- ✓ access and reuse of data for research purposes is supported.

An **adequate legislative and regulatory framework fit for research** is a necessary condition to deliver on this objective.



# Some of the concerns expressed by stakeholders



UNIVERSITY OF AMSTERDAM

## Protect independent and public knowledge

*A concise version of this speech was delivered by Rector Magnificus Karen Maex in Dutch on 8 January 2021 during the Dies Natalis.*

### 1. Independent public knowledge: the role of libraries, monasteries and universities

In the year 48 BC, the celebrated library at Alexandria

both the sheer amount of knowledge and possibilities for its dissemination grew, large new public libraries began to emerge.

As well as gathering and disseminating knowledge in the form of texts and books, university libraries were also concerned with gathering existing and new



context, notes and knowledge thanks. Or, to put it not only connect and facilitate and mental and. This function is

## Which Role for Research in the Future Data Act?

### Science Europe Response to the European Commission Inception Impact Assessment for a Data Act

Access, interoperability, and the use of high-quality data are cornerstones of research and innovation. Science Europe, therefore, welcomes the initiative of the European Commission, as outlined in the European Strategy for Data from 19 February 2020, to create a single market for data that would enable the digital transformation of society through more and better access to data.

## LERU NEW YEAR'S DEBATE

21.12.2021

### University Autonomy threatened by EU Data Policy?

CESAER

COAR



## Scientific knowledge must be protected to ensure a Europe fit for the digital age

Joint statement dated 24 January 2022

CESAER, COAR and LIBER welcome the strong focus of the European Commission towards a [A Europe fit for the digital age](#) as part of its [priorities from 2019 to 2024](#).

We are convinced that the importance of research and education needs a strong focus within these initiatives and call upon the EU institutions to (i) acknowledge the unique position of universities and other research performing organisations in the provision of digital services and infrastructure directed towards the common good and (ii) provide for an overarching legal framework excluding university and research related repositories and corresponding infrastructures from market-oriented EU legislation, in order to prevent any unintended collateral damage from current and future EU legislation aimed at commercial players.

The range of policies and legislation proposed by the Commission aimed at shaping the digital transformation includes the [Digital Services Act \(DSA\)](#), the [Regulation laying down harmonised rules on artificial intelligence](#), the [Data Governance Act](#), the [Data Act](#) and the upcoming review of the [Database Directive](#). These follow the [Copyright in the Digital Single Market Directive](#), [Open Data Directive](#) and the [General Data Protection Regulation](#).

# Ongoing EC analysis: main EU data & digital legislation concerned

	Open Data Directive (ODD)	Data Governance Act (DGA)	Data Act (DA)	Digital Services Act (DSA)	Digital Markets Act (DMA)
State of play	<b>Adopted in 2019.</b> Transposition was due by 17 July 2021.	<b>Published</b> in the EU Official Journal <b>on 3 June 2022.</b>	<b>EC proposal</b> adopted on 23 February 2022.	<b>Published</b> in the EU Official Journal <b>on 27 October 2022.</b>	<b>Published</b> in the Official Journal of the EU <b>on 12 October 2022.</b>
Scope	The Open Data Directive <b>replaces the Public Sector Information (PSI) Directive.</b> It mandates that data held by public sector bodies must be made available for commercial and non-commercial re-use and introduces the concept of high-value datasets.	The Data Governance Act <b>aims to create a framework that encourages greater reuse of data.</b> It aims to facilitate the reuse of certain categories of protected public-sector data and foster data altruism across the EU.	The Data Act aims to facilitate <b>access to and use of data, including business-to-business, business-to-consumers and business-to-government.</b> It aimed to review the Database Directive	The Digital Services Act <b>regulates the obligations of digital services that act as intermediaries.</b> It aims to create an EU-wide uniform framework on the handling of illegal or potentially harmful content online, the liability of online intermediaries and the protection of users' fundamental rights online.	The Digital Markets Act introduces <b>rules for platforms that act as “gatekeepers” in the digital sector.</b> It aims at preventing gatekeepers from imposing unfair conditions on businesses and consumers and at ensuring the openness of important digital services.
Main relevance for research	<b>Article 10</b> on open access policies & publicly funded research data (+ recital 28).	<b>Reuse of public sector data for scientific research purposes and reuse of data held by research organisations</b> organised as public sector bodies.	<b>Data sharing for scientific research purposes</b> under the B2B/B2C and B2G provisions. Exercise of the possible sui generis database rights by data holders (recital 63).	<b>Possible impact</b> on research, researcher stakeholders' operations, infrastructures and services.	<b>Possible impact</b> on research, researcher stakeholders' operations, infrastructures and services.

# Ongoing EC analysis: main EU copyright legislation concerned

	Database Directive	Information Society Directive	Copyright in the Digital Single Market Directive
State of play	Adopted in 1996.	Adopted in 2001.	Adopted in 2019. Transposition was due by 7 June 2021.
Scope	<p>The Database Directive seeks to provide <b>legal protection for databases</b> which has two aspects:</p> <ul style="list-style-type: none"> <li>• <b>copyright protection</b> for the intellectual creation involved in the selection and arrangement of materials;</li> <li>• <b>sui generis protection</b> for a substantial investment (financial and in terms of human resources, effort and energy) in obtaining, verifying or presenting the contents of a database.</li> </ul>	<p>The directive <b>harmonises key rights granted to authors and neighbouring rightholders</b> (the reproduction right, the right of communication to the public and the distribution right) <b>and — to a lesser degree — exceptions and limitations to these rights</b>. It also harmonises the protection of technological measures and of rights management information, sanctions and remedies.</p>	<p>The directive has 3 main objectives:</p> <ul style="list-style-type: none"> <li>• to <b>adapt certain key exceptions</b> to copyright to the digital and the cross-border environment;</li> <li>• to <b>improve licensing practices</b> and ensure wider access to content; and</li> <li>• to <b>achieve a well-functioning marketplace for copyright</b>.</li> </ul>
Main relevance for research	<b>Exception for scientific research</b> (article 5).	<b>Exceptions</b> to restricted acts (art. 6) and to the sui generis right (art. 9) <b>for scientific research</b>	<b>Exceptions for Text and Data Mining (TDM)</b> (arts. 3&4 and corresponding recitals). <b>Exclusion of scientific repositories from the scope of article 17</b> on the use of protected content by online content-sharing service providers.

# Outcomes

## Identification of barriers, challenges and potential impacts of EU copyright and data legislation on research:

- Four independent experts' studies on EU copyright and access and reuse of publications and data and on data and digital legislation and research
  - ❑ [Study on the Open Data Directive, Data Governance and Data Act and their possible impact on research](#)
  - ❑ [Study on the Digital Services Act and Digital Markets Act and their possible impact on research](#)
  - ❑ [Study on EU copyright and related rights and access to and reuse of data](#)
  - ❑ [Study on EU copyright and related rights and access to and reuse of scientific publications, including open access](#)
- Two online workshops in June 2022
- Evidence gathering and meetings with experts
- Finalisation of the identification of barriers, challenges and potential impacts on research



# Further expected outcomes

**Study to assess the impacts of possible legislative & non-legislative measures in the field of EU copyright and data legislation**

**Guidance for research organisations on EU data and digital legislation**

**Proposal of potential legislative & non-legislative measures**

Possible measures could include:

- Compiling research-related provisions in a structured way
- Guidelines regarding the application of relevant legislative instruments
- Specific legislative initiatives (e.g. making research exceptions in copyright legislation mandatory, EU secondary publication right?)
- Sectoral directive and/or regulation amending existing legislation in the form of a “Digital Research or Knowledge Act”



# Thank you!

## For more info:

Commission's website on the European Research Area:

[https://research-and-innovation.ec.europa.eu/strategy/strategy-2020-2024/our-digital-future/european-research-area\\_en](https://research-and-innovation.ec.europa.eu/strategy/strategy-2020-2024/our-digital-future/european-research-area_en)



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