

EU copyright legislation and access to and reuse of publications and data
(EC Workshop 23 June 2022 – presenting and discussing 2 studies of independent experts)

LERU intervention - observations and recommendations

Study on copyright and related rights and access to and reuse of publications, including Open Access

General observations

LERU welcomes the study offering a detailed and insightful legal analysis into some of copyright's most complex issues. We would like to point out however that while copyright is an essential element in the regulation and dissemination of knowledge, we cannot reduce science and the scientific method to what copyright allows. The formulation and adoption of modern copyright rules have been disproportionately influenced by rightsholders, leading to some sort of superiority of copyright rules over the norms of science, leaving science to the exclusive interest of commercial players.

Recommendations

Therefore, a first LERU recommendation is to make **a clear statement that copyright rules are not set in stone but can and should be changed if science (as well as society at large) need that.**

More specifically, LERU calls for an EU legislative intervention adjusting copyright laws which are unreasonably contrasting with open access goals. Examples are expanding and making mandatory the exception for teaching and research (and removing the confusing term “for illustration”) and for quotation. OA obligations and mandates for publicly funded research should be expanded, the Rights Retention Strategy should be developed further, and Secondary Publication Rights should be implemented in their widest possible forms at the European level.

Finally, **LERU supports the conclusion reached in the study** regarding the relationship between academic freedom and open access/open science, as stated on page 33 **“that OA does not interfere with academic freedom”**. OA/OS reinforce and protect academic freedom. What threatens academic freedom is the current commercial scientific publishing business model, their implementing contractual agreements, leaving very little choice to individual authors (or even universities/university libraries) and the value that RPOs and RFOs still attribute to arbitrary indicators (e.g., impact factor) for the assessment of their employees.

Study on copyright and related rights and access to and reuse of data

General observations

The study clearly brings out that in the Charter of Fundamental Rights of the European Union both copyright on one hand and freedom of expression of information and the freedom of science on the other hand are fundamental rights. Scientific research falls under the latter two rights. All these rights must be balanced because there is no hierarchy between fundamental rights, they have the same status. Yet the study notes a disbalance between these rights.

Recommendations

LERU agrees with this conclusion and supports the amendments in legislation proposed by the study to correct this imbalance. Data used and data generated during scientific research should be shared via means such as open access publications with (1) all researchers in a(n international) research group, (2) the interested academic community and (3) with the public in general.

LERU agrees with all recommendations in the Executive Summary, we will highlight and comment a few:

1. As scientific research is connected with the fundamental rights mentioned of the EU Charter, LERU recommends adapting the text in certain secondary legislation: **instead of making use of various and splintered “exceptions” the legislation should clearly refer to the “right to research”**.
2. Data resulting from scientific research must be compliant with the OA/OS practices under Horizon Europe and additionally in line with the FAIR principles. LERU stresses that secondary legislation should provide a way to researchers to share their scientific output according to the FAIR principles, **even when their data contain copyrighted material or are taken from protected databases**.
3. **LERU agrees with the study when it points out that research data (when triggering copyright thresholds) are Three-Step Test compliant ipso facto**.
4. **LERU agrees there is a need for further harmonization and even more ambitiously unification of EU copyright law**. The current situation where EU copyright rules are scattered in a patchwork of 12+ Directives and Regulations contributes to uncertainties in this field, harming disproportionately more weaker parties such as researchers and research institutions.
5. The study ends with the advice **to develop non-legislative initiatives that pave the way for the injection of copyright-related data and metadata that result from research projects into data improvement processes in the creative sector**. While LERU is in principle not against this advice, it is **hesitant, as in the past more often than not creative industries have misused these “opportunities” to their own ends**, having made use of open access to create new business models where researchers were forced to step into, and institutions ended up having to spend considerable parts of their public funds to commercial companies via non-negotiable contracts.

Conclusion

In conclusion, LERU applauds the DG R&I for having commissioned these studies. For the most part LERU agrees with the findings and recommends the implementation of the recommendations.