

Freedom of Movement of Knowledge – KR21 recommendations to make the Fifth Freedom a reality

In a [landmark report](#) from Enrico Letta released on April 17th, the former Italian Prime Minister, calls for R&I to be at the core of Europe's search for growth. Central to this proposal is a Single Market that places the free movement of research, innovation, knowledge and education – a Fifth Freedom – at its heart.

Concerned that the EU is losing ground economically to the US and others, Letta's vision is to embed "research and innovation drivers at the core of the Single Market". One barrier to this that the report identifies to greater innovation and prosperity is legal fragmentation across Europe where different countries have different regulations and laws.

To make this plan a reality, Europe will need to modernise the way it regulates the way knowledge is created, shared, accessed and applied. Given that copyright is the prime legal regulator of knowledge in its tangible form, making the fifth freedom and therefore the European Research Area a reality requires a modernisation of European copyright law. In doing so, Europe will better realise not only the potential of its investment in research, but also its potential to compete and contribute to addressing global challenges.

To support make the Fifth Freedom a reality, KR21 recommends:

A. Modernise laws that govern knowledge flows

- 1. Ensure that copyright laws support R&I and knowledge valorisation and cross-border collaboration.** *Unlike* the US and the innovation-oriented countries of East Asia, European copyright law frustrates and chills innovation by offering only limited support for research. In particular, it restricts provisions to facilitate research (known in copyright law as exceptions) to non-commercial research. This means that sharing information as part of a public-private partnerships (PPP) becomes virtually impossible in many instances undermining Europe's innovation potential. Furthermore, running in the face of EU funding and ever-closer international cooperation between universities and researchers, most of the education and research flexibilities in copyright law don't work across borders, frustrating collaboration and the free circulation of knowledge.

Solutions:

- i) As in other technology-oriented countries, introduce in EU law a copyright exception simply allowing for "research"** – thus doing away with the chilling unworkable commercial / non-commercial legal silos we have today.
 - ii) Ensure that copyright exceptions for research and education work across borders.** Mutual recognition of flexibilities in other countries can achieve this simply and easily. Institutions and individuals should be protected against efforts to take away flexibilities granted in law through contract terms and technological protection measures.
- 2. Support technological innovation in Europe and facilitate cross-border partnerships with an open and flexible approach to copyright:** EU copyright law creates little breathing space for new innovation and scientific advancement that involve information technologies because of its highly prescriptive approach to research and education flexibilities. Essentially all switches are off in the law to new innovative uses, unless "switched on" by the (always slow) introduction of rigid and prescriptive new copyright exceptions.

Solution: As with the innovation-friendly countries like the US, Japan, Singapore, South Korea, Taiwan, Israel etc Europe should introduce more open and flexible approaches to copyright law that allow breathing space for R&I.¹ This will also help ameliorate the legal fragmentation caused by EU Directives where implementation in each country is different. Furthermore an open norm will help solve many issues associated with the EU's poor support for AI in copyright law which unfortunately [promotes bias and poor models compared to those of our competitors](#).

¹ See Copyright and Open Norms in Seven Jurisdictions: Benefits, Challenges & Policy Recommendations https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4728782

- 3. Introduce a right of access to knowledge:** A fifth freedom cannot exist if knowledge cannot be accessed freely accessed in the first place. The shift to digital and resultant **demise of ownership means that university researchers can and are being denied access to knowledge.** Examples include [refusal to sell or license](#) universities digital books, film, music etc, publisher licenses preventing visiting students or citizen scientists from physically accessing a university's digital collections, through to social media companies refusing to give access to researchers to their algorithms. Furthermore, the failure to act to safeguard the right of access means that Europe's libraries can no longer be a library – they cannot longer develop stable collections or preserve cultural and scientific knowledge for the future.

Solution: As we see with positive developments around health data spaces, introduce an access right to knowledge under fair and equitable terms for Europe's educational establishments and their affiliates.

- 4. Ensure by law that publicly funded research is made freely available immediately:** Much publicly funded research is still off limits to taxpayers, as well as to institutions that struggle to buy the research their own staff have produced. Moreover, copyright law and publisher licences stop the publicly funded research being shared freely.

Solution: Introduce a [secondary publishing obligation in EU law](#) (SPR) ² that requires all publicly funded research outputs (from articles to trained AI models) to be made immediately publicly available under an open licence. (Bulgaria's new law is a good example of such rights.) This should be accompanied by strong government support for [Author Rights Retention](#) policies.

B. Structural Changes to Realise a Fifth Freedom

- 1. An empowered Directorate-General for Research and Innovation (DG RTD).** A meaningful commitment to promoting R&I requires a core DG with the powers and tools to deliver on the substantive elements of the agenda. Crucially this will require DG RTD to create a strong policy function that allows it to **draft and initiate new legislation.** This should include the introduction of a stand-alone Knowledge and Education Act that deals with existing legal fragmentations across EU copyright, data and digital laws and would implement the recommendations outlined herein.
- 2. Establish structures at the College of Commissioner level to provide ongoing support for digital public research and education infrastructures.** Taking the success of the European Open Science Cloud as a starting point, this should include the development of effective digital public infrastructures and the formation of a coherent research friendly intellectual property policy that facilitates the sharing of information across such infrastructures. Furthermore, we can learn from best practices internationally, and create an Intellectual Property and Digital Strategy Headquarters as part of the College of Commissioners, tasked with overseeing the functioning of a fifth freedom.
- 3. [Modernise the regulatory impact assessment process](#)** to safeguard collaborative and high-performing research and education. For all new laws, a “university check” and a “PPP check” are a prerequisite.
- 4. Evolve DG Competition (DG COMP) competencies** so that more effective treatment of market-wide structural issues is possible. Information technologies have created not only natural monopolies but with the shift to digital, the ability of research and education institutions, including libraries, to fulfil their missions is more vulnerable to market dysfunction than at any time in the last century. **As outlined in Section A.3** institutions are [no longer guaranteed the right to acquire information nor preserve our cultural and scientific memory for the long-term.](#) As a market-wide systemic issue and not the issue of one dominant player, competition law lacks the tools to deal with many of the digital issues that affect access to and the free circulation of knowledge. The evolution of new approaches and more resource for market investigations are key to making the Fifth Freedom a reality in Europe.

² Note that in 2023 in the US decided to ensure immediate open access to federally funded research.