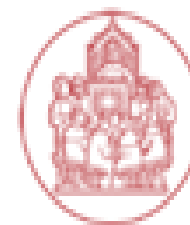


Improving access to and reuse of R&I results, publications and data for scientific purposes

The findings of a study launched in the context of Action 2 of the European Research Area (ERA) Policy Agenda



PPMi



Sant'Anna
Scuola Universitaria Superiore Pisa



26 February 2024

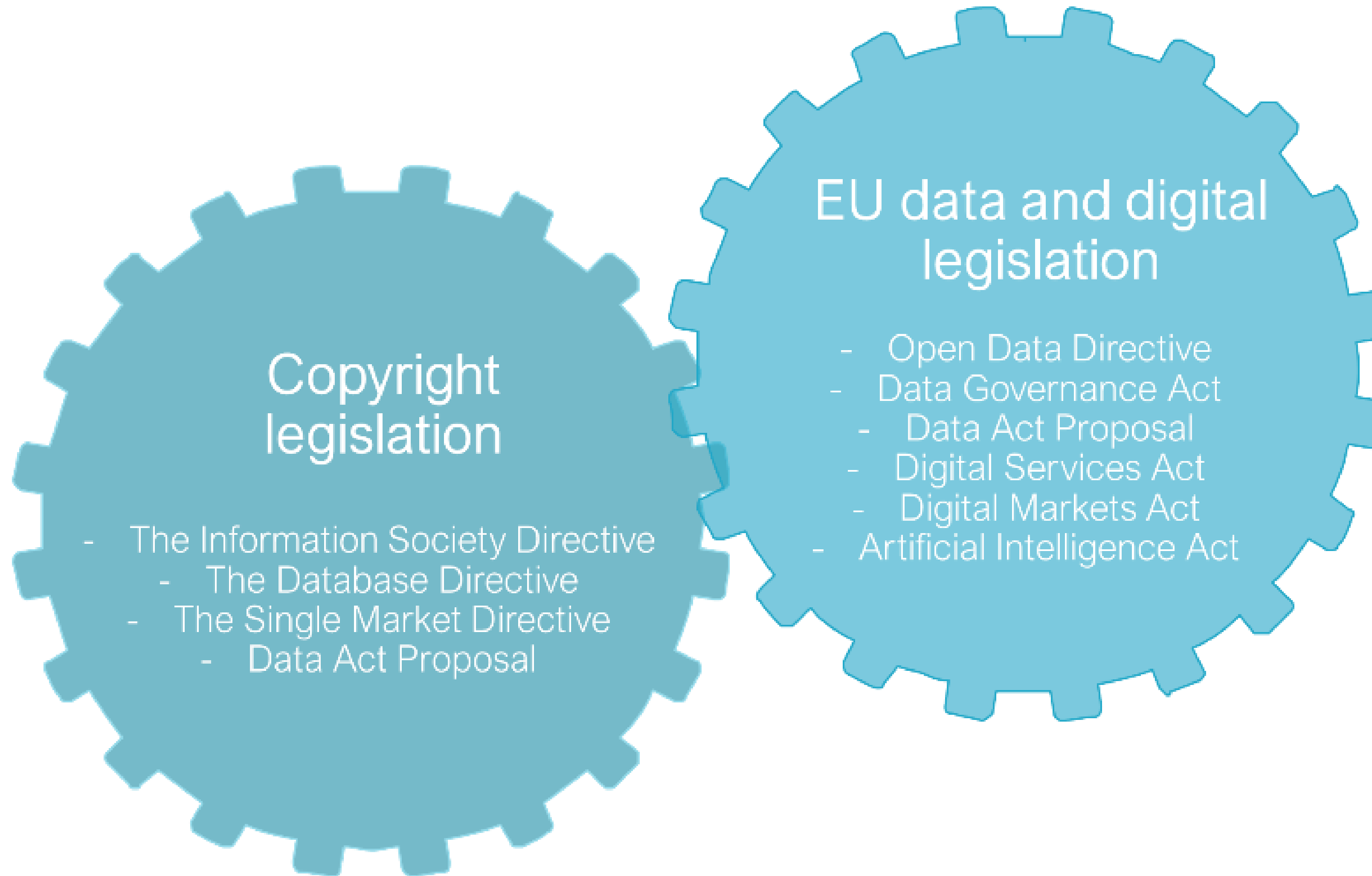
Overview of study framework, emphasis on dual work streams

Rūta Dėlkutė-Morgan, Research Manager, PPMI

Members of the Consortium



Scope of the study: Legislative and Regulatory Frameworks

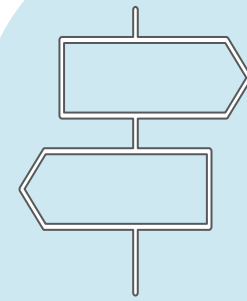


Scope of the study: Tasks



Task 1

Evaluate the concrete effects of the EU copyright framework on research.



Task 2

Further elaborate on areas in need of improvement and potential interventions, following the results of Task 1.



Task 3

Evaluate the effects of various potential interventions



Task 4

Identify the relevant provisions for researchers, research organisations, research infrastructures and research services providers under specific EU data and digital legislation.



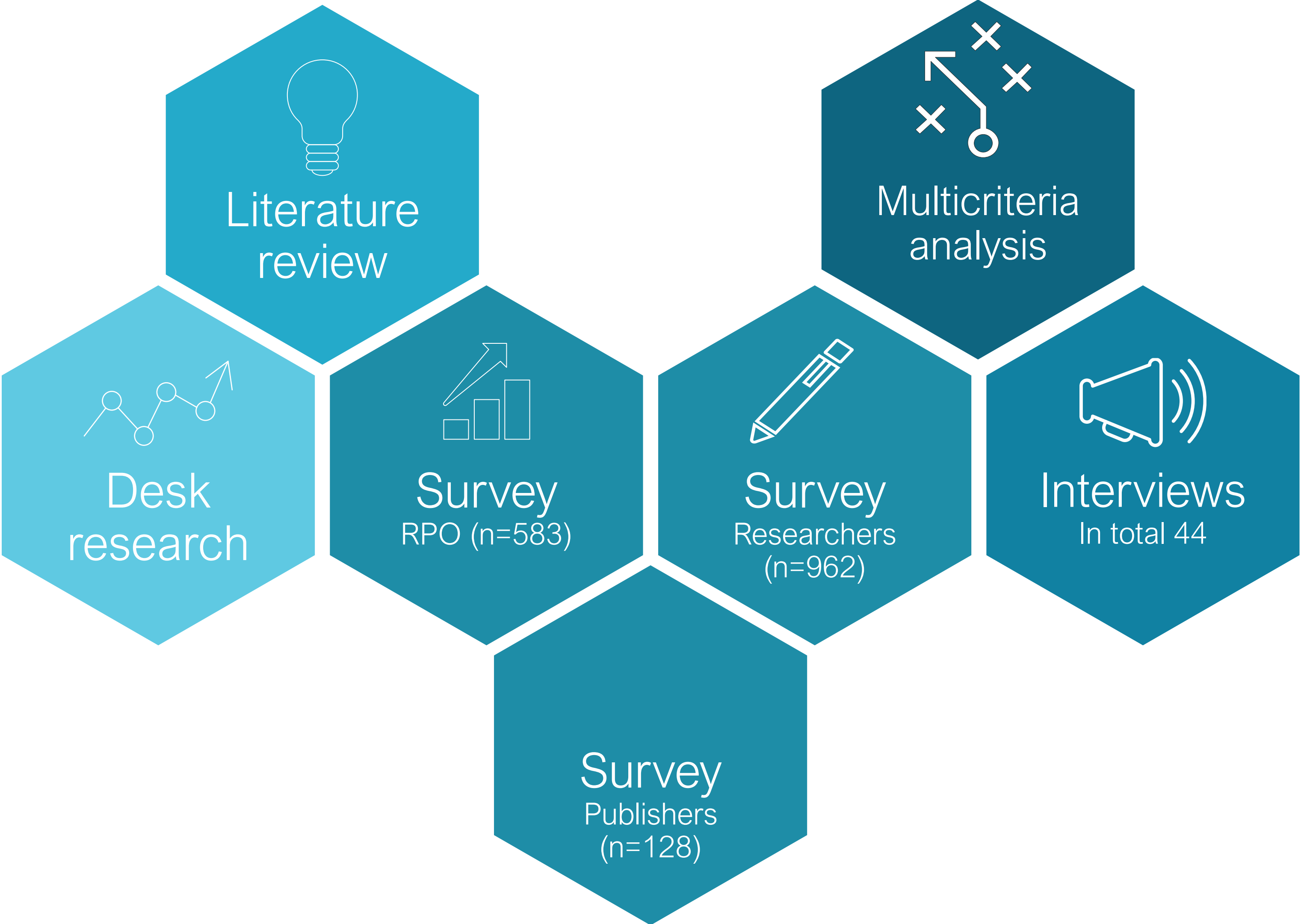
Task 5

Assess and present how researchers, research organisations, research infrastructures and research service providers can comply with the obligations and benefit from the rights under specific EU data and digital legislation.

Copyright legislation

EU data and digital legislation

Overview of the Methodological Approach



Literature review goals for copyright legislation analysis

Dr. Caterina Sganga, Associate Professor of Comparative
Private Law, Sant'Anna

Study articulated around 3 pillars

- Mapping of EU and Member States' Open Science policies and interventions
- Mapping and assessment of EU and Member States' enablers and disablers for Open Science in copyright legislation
- Literature review (studies, reports, academic contributions) on interplay between Open Science and copyright legislation

GOAL: Laying the groundwork for surveys, assessment and development of policy options

Key findings 1: Member States' OS policies and interventions

- National approaches in alignment with EU policies and agenda, different timeliness
- Mostly soft law instruments, only a few legislative interventions (SPR-related)
- Access to scientific publications top priority (different tools, from CC to OA schemes and centralized agreements)
- Accessibility and reusability of data as second leading theme (DMP, FAIR principles)

Key findings 2: Enablers and disablers for OS in EU copyright legislations

- Wide range of research-specific E&Ls
- Useful array of research-complementary instruments in the acquis (E&Ls, licensing schemes, public domain)
- Provisions use broad language → more discretion to MSs
- Positive paradigm shift towards mandatory provisions, not overridable by contracts (see CDSMD)
- Research E&Ls tainted by optional nature, strict limitation to non-commercial uses, contractual overridability, lack of coverage of collaborative research
- Specific problem in Article 5(3)(a) ISD (teaching/research exception) impacting on its national implementations
- Uncertain notions and vague definitions (e.g. lawful use), strict purpose limitation
- Weak coordination between general and sector-specific Directives
- No EU-wide definition of authorship/ownership, detrimental to cross-border activities
- Boundaries of public domain not harmonized
- Broad scope of sui generis database right (Article 7 DBD); expansive reading of Articles 2 and 3 ISD
- Member States' discretion to introduce related right for scientific publications in public domain (Article 5 Term)

Key findings 3: Enablers and disablers for OS in Member States' implementations

- Most MSs implemented optional research-specific E&Ls, except Article 9(2)(b) DBD (20 MSs) and Article 6(2) DBD (only a handful)
- High degree of harmonization of instruments complementary to research-specific E&Ls
- Some MSs show higher degree of flexibility towards research activities via additional E&Ls, licensing schemes, introduction of SPRs
- Optional nature and vague language of E&Ls lead to fragmented transpositions of most provisions (low harmonization)
- Additional limitations in purpose constraints effectiveness of complementary provisions for OS goals
- Diverging court interpretations of key concepts add further legal uncertainties for cross-border activities
- Transposition of general ISD research exception (Article 5(3)(a)) tainted with problems
- Focus on education rather than on research
- Divergences in beneficiaries, works covered, permitted uses + introduction of additional limitations, remuneration requirements and conditions of applicability

Key findings 4: Literature review (studies, reports, academic contributions)

Obstacles to OS in EU copyright acquis clustered into four interrelated and interdependent categories

(1) Legislative strategies of the EU

- Terminology not always consistent and clear
- Divergences in formulation of key features of mandatory and optional E&Ls.
- Contractual overridability of E&Ls risks differential treatment of beneficiaries.
- Optional E&Ls cause problematic fragmentation of national solutions

(2) Divergent national implementations, worsened by national judicial decisions, causing fragmentation and rigidity

(3) Interaction of copyright and data-related legislation

- Lack of coordination of DBD with other acts + outdated nature (e.g. no distinction on acts concerning data, essential for AI)
- Article 7 DBD too expansive; hardship in licensing public sector information.
- Problems related to Article 4 CDSMD (contractual limitations and TPMs)

(4) Need to reconsider importance of regulation (and harmonization) of copyright contracts as complementary tool

- No EU harmonization of assignment and licensing of © over publicly-funded research
 - Need to consider introduction of EU-wide SPR
-

Multi-criteria and feasibility assessment approach

Rūta Dėlkutė-Morgan, Research Manager, PPMI

Multicriteria analysis

Our approach

- Analysis builds on the interview and survey data collected;
- Policy options organised in four clusters (2 in pillar 1 and 2 in pillar 2).

CRITERIA:

- **Social/impacts on science** (IPR, Quality control and improvement of research, Advancing scientific knowledge/innovation through the availability of research, Creation of and access to diverse research and results, Collaboration Opportunities);
- **Economic impacts** (Sectoral competitiveness, Conduct of business).

RANKING	+++	++	+	0	-	--	---
IMPACT COMPARED WITH BASELINE SCENARIO	SUBSTANTIAL AND DIRECT BENEFIT FOR STAKEHOLDERS	SIGNIFICANT AND DIRECT BENEFIT FOR STAKEHOLDERS	MODEST OR INDIRECT BENEFIT FOR STAKEHOLDERS	NO CHANGE COMPARED TO BASELINE	COSTS ARE MINIMAL	COSTS ARE MODEST TO HIGH	COSTS ARE SUBSTANTIAL

Results: estimated advantages and/or benefits

Summary of multicriteria analysis by the type of impact

Option	Social impact/impact on science	Economic impact
Pillar 1: EU-wide SPR	++	--
Pillar 1: alternative solutions	++	+
Pillar 2: general research exemption	++	+
Pillar 2: exemption of specific types of research use	++	-

Results: estimated advantages and/or benefits

Summary of multicriteria analysis by the type of stakeholder

Option	Impact on researchers	Impact on RPOs	Impact on publishers
Pillar 1: EU-wide SPR	+	++	--
Pillar 1: alternative solutions	++	++	+
Pillar 2: general research exception	++	++	+
Pillar 2: exemption of specific types of research use	++	++	--



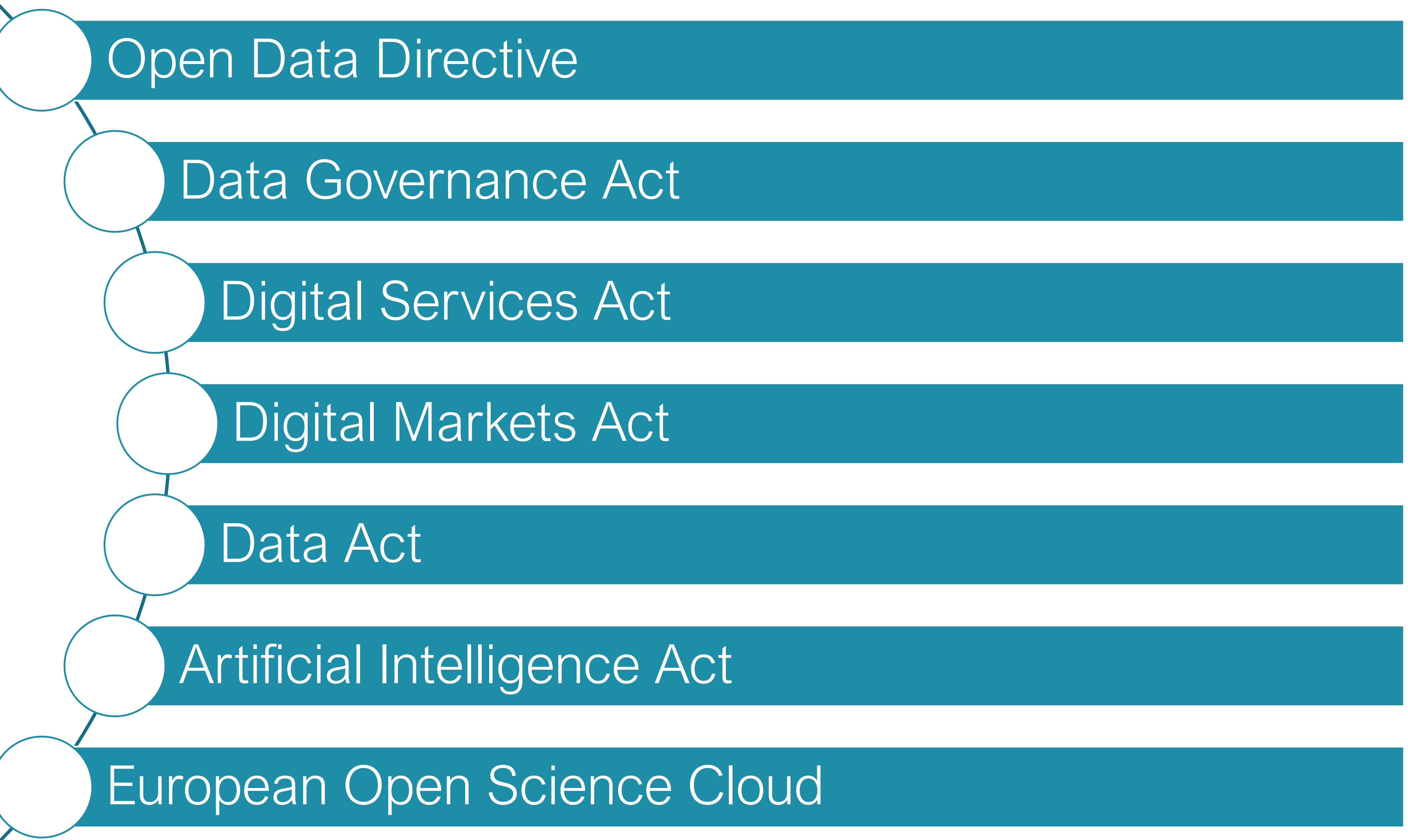
PPMi



EU Data and Digital Legislation Analysis

Study Approach Overview

Buijs Doris; Buri Ilaria; Frigeri Matteo; Irion
Kristina; Karabuga Emircan; King Leona;
Margoni Thomas; Schirru Luca; Stähler
Leander; van Eechoud Mireille



First Part

- Individual approach to each of the legislative texts and EOSC
- highlights the relevant provisions and describe the rights and obligations of researchers and research organisations

Second Part

- provides an analysis of the multiple interactions among the surveyed instruments
- analyses how researchers and research organisations can comply with the obligations and benefit from the rights they may have under these acts

Third Part

- provides a set of recommendations on the legislative and non-legislative levels
- recommendations are "Instrument-specific" and "overarching"

Potential update of copyright exceptions for research use

Dr. M.R.F. Martin Senftleben, Professor of Intellectual Property Law, Institute for Information Law (IVIIR) at the Amsterdam Law School

Dr. Kacper Szkalej, Researcher in Intellectual Property Law, Institute for Information Law (IVIIR) at the Amsterdam Law School

CJEU: balancing within copyright legal framework

Copyright (Art. 17(2) Charter)

- Broad exclusive rights
(protection = rule)

Right to research (Art. 11 and 13 Charter)

- Specific exceptions for research
(illustration? National requirements?)
- Three-step test: additional criteria
(Art. 5(5), Art. 7(2) CDSMD)
- Technological protection measures
(Art. 6(4) ISD, Art. 7(2) CDSMD)
- Contractual restrictions
(Art. 6(4) ISD, Art. 7(1) CDSMD)

CRR-01.1: harmonised, mandatory, general research exemption

- From divergent national approaches to **uniform rule**
- Templates: Art. 5(3)(a) ISD, 9(b) DBD, 10(1)(d) RLD
- RPOs: 47.8% **strong support**, 33.6% rather favour
- Publishers (commercial): 75.7% **not support at all**, 10.8% rather reject
- Publishers (institutional): 0% not support at all, 14.3% rather reject
- Reference points for **legislative intervention**:
 - No confinement to specific types of research use or research tools
 - Three-step test as a balancing tool (Art. 5(5) ISD)
 - No contractual override (Art. 7(1) CDSMD)

CRR-01.2: barriers due to access requirements

- Significant barriers due to lack of **subscriptions**
- Researchers: **80.0% (635)** report challenges
- No focus on subscriptions: Art. 5(3)(a) ISD, 9(b) DBD, 10(1)(d) RLD
- Reference points for **non-legislative intervention**:
 - Lawful access examples (Recital 14 CDSMD)
 - Data-related access (Art. 40 DSA)
 - **Transnational consortia** (subscription one partner = lawful access all partners)
- Publishers (commercial): **75.0% strongly against**, 11.1% rather reject
- Publishers (institutional): 100.0% strongly in favour

CRR-01.3: technological protection measures (TPMs)

- Researchers: **59.6% (473)** access problems due to TPMs
- RPOs: 39.6% problems every week or month, 35.4% every 3 to 6 months
- Reference points for **legislative intervention**:
 - Safeguard measures: Member States and Commission (Art. 6(4) ISD)
 - Include further exceptions: temporary copying, quotation (Art. 5(1), 5(3)(d) ISD)
 - **No contract supremacy** (Art. 7(2) CDSMD)
- Publishers (commercial): **68.4% strongly against**, 10.5% rather reject
- Publishers (institutional): 83.3% strongly in favour, 16.7% rather reject
- Non-legislative: encourage Member State measures (Art. 6(4) ISD)

CRR-02: relaxing non-commercial use requirement

- Outdated: funding schemes encouraging **public-private partnerships**
- RPOs: 14.1% problems every week or month, 25.6% every 3 to 6 months
- RPOs: **32.6% strongly support** clarification, **35.6% support**
- Reference points for **legislative intervention**:
 - Abandon altogether, rely on three-step test (Art. 10(1)(d) RLD)
 - Switch to research organisation level (Art. 3 and 2(1) CDSMD)
- Non-legislative: flexible approach to non-commercial use requirement

CRR-03: guidance on text and data mining (TDM)

- Researchers: 20.7% (164) refrain from TDM due to infringement fears
- Non-legislative: **better understanding, more awareness** (Art. 3 CDSMD)
- RPOs: **90.0% in favour** or strongly in favour of guidance
- publishers: **51.0% in favour** of strongly in favour of guidance
- Reference points for **non-legislative guidance**:
 - Lawful access requirement (examples Recital 14 CDSMD)
 - Machine-readable rights reservation (Art. 4(3) CDSMD)
 - Best practices in data sharing rules (Art. 5(3)(a) ISD)
 - Investigative journalism units as research organisations (Art. 2(1) CDSMD)

CRR-04: umbrella licensing and lumpsum remuneration

- **Highly aggregated results:** insufficient detail due to limitations of research
- RPOs: 38.0% strong **support**, 39.6% support
- Publishers (commercial): 55.9% strongly **against**, 20.6% rather reject
- Publishers (institutional): 57.1% strong support, 28.6% rather reject
- **Inconclusive:** further research advisable

Potential introduction of an EU-wide Secondary Publication Right

Dr. Caterina Sganga, Associate Professor of Comparative
Private Law, Sant'Anna

Why an EU-wide Secondary Publication Right?

- Empowering scientific authors and rebalancing bargaining powers in publishing contracts
- Ensuring greater availability of publicly-funded research
- Not an E/L but a right subject to specific conditions to strike a balance between conflicting interests

- **Harmonized and EU-wide** to provide one single legal framework which could
 - increase researchers' awareness
 - facilitate collaborative cross-border endeavors
 - avoid fragmentation of contractual practices in the internal market and European Research Area

SPR in 6 Member States

FEATURES	DE (2013)	NED (2015)	AT (2015)	FR (2016)	BE (2018)	BG (2024)
Source	UrhG, §38	AW, Art.25fa	UrhG, §37a	CPI, Art. L.533-4	CDE, Art.XI.196	Bulgarian Copyright Act, Art.60
Subject matter	<ul style="list-style-type: none"> Scientific contributions Appeared in collections periodically published at least 2 times a year 	<ul style="list-style-type: none"> Short works of science No limitation as to venue of first publication 	<ul style="list-style-type: none"> Scientific contribution by member of staff of research institutions Appeared in collections periodically published at least 2 times a year 	<ul style="list-style-type: none"> Scientific writing (<i>écrit</i>) Published in a periodical issued at least once a year 	<ul style="list-style-type: none"> Scientific article Published on a periodical (number of issues not specified) 	Scientific work
Requirements	Research publicly funded for > 50%	Research financed entirely/partly publicly	Research publicly funded for at least 50%	<ul style="list-style-type: none"> Research publicly funded for at least 50% Agreement of all co-author(s) required 	Research publicly funded for at least 50%	Research publicly funded, in whole or in part Publisher to be informed
Overrides contrary contractual clauses?	Y	Y (Article 25h AW)	Y	Y	Y	Y
Version limitation	Only for AAM version	No limitation	Only for AAM version	Only for AAM version	Only for AAM version	No limitation
Content of SPR	Right to make the contribution available to the public	Right to make the work available to the public free of charge	Right to make the contribution publicly accessible	Right to make available the contribution free of charge in an open format, by digital means	Right to make the manuscript available to the public free of charge	Right to make the work or parts thereof available to the public
Embargo	1 year after 1 st publication	after a reasonable period	1 year after 1 st publication	6 month (science, technology and medicine) or 1 year (humanities and social science) after 1 st publication	6 month/1 year after 1 st publication, but can be shorter (if so provided by contractual licensor) or longer (by law)	None
Use limitation	Non-commercial purposes	NO limitation (type of use not specified)	Non-commercial purposes	Non-commercial purposes	NO limitation (type of use not specified)	Non-commercial purposes

Policy options

Broad range of scientific output

- National SPR limited to journal articles
- RPOs advocate for it to increase OA, publishers highlight need to change business model (% dependent on revenue)

LEGISLATIVE MEASURES

- Fully harmonized EU regime covering broader range of products, to overcome obstacles to full OS (esp DB protection)
- Must investigate interplay with data regulation

NON-LEGISLATIVE MEASURES

- Stakeholders' dialogue for best practices to back development of common national approaches
-

Low threshold for public funding

- Imbalance/problems → large part of research is in public-private partnership
- Problems esp. in applied sciences
- RPOs in favour to increase OA; lower concerns among publishers

LEGISLATIVE MEASURES

- If E/L – limits in three-step test?
- If A's right – unaffected by % of funding

NON LEGISLATIVE MEASURES

- Unlikely to solve problem, but SH dialogue to discuss best practices to prevent overly restrictive public funding requirements

Cover version of record

- Limitation to AAM prevails in MSs
- VOR essential for accurate reference, no multiple version circulating
- Commercial Ps more against it for disruptive effects on business models

LEGISLATIVE MEASURES

- Protection of publisher's creative choice in typesetting/layout?
- Three-step test analysis if SPR = E/L
- Need to assess business models more broadly – what really erode business?

NON-LEGISLATIVE MEASURES

- Too diverging positions → best practices may not be helpful
- One-stop shop repository (ORE)

Policy options (ii)

Minimise embargo periods

- Differences among MSs
- RPOs prefer no/short embargo; Ps indicate need to reshape business model (lower ROI)

LEGISLATIVE MEASURES

- Careful balance needed + need for three-step test analysis if E/L
- Need to assess business models and impact more broadly

NON-LEGISLATIVE MEASURES

- Unlikely to be effective
-

No limit to non-commercial use

- Divergences in MSs may cause problems (private-public partnership)
- RPOs advocating for broader uses ; Ps indicate need to change bus model

LEGISLATIVE MEASURES

- OA goals need no confinement to specific type of re-uses
- Need for balancing conflicting interests and analysis of legal requirements (3ST and necessary changes in business models)

NON-LEGISLATIVE MEASURES

- Unlikely to solve problems – only to encourage MSs to follow less strict approach when amending law

Umbrella licensing and remuneration schemes

- Can raise problems
- Difficult to assess SHs' perception (too many different schemes)
- Problems: (a) unbalance in bargaining power; (b) unpredictability and national fragmentation of contractual solutions

- Ps against it; RPOs in favour

LEGISLATIVE MEASURES

- Intervention on copyright contract law
- From exclusive to remuneration rights

NON-LEGISLATIVE MEASURES

- SHs' dialogue to identify common ground for umbrella solution based on ECLs examples, Marrakesh and CMOD

Impact of EU Data and Digital Legislation on Research



Buijs Doris; Buri Ilaria; Frigeri Matteo; Irion Kristina; Karabuga Emircan; King Leona; Margoni Thomas; Schirru Luca; Stähler Leander; van Eechoud Mireille

Objectives:

The study has **two interconnected objectives**:

- **Identify** the relevant provisions for researchers, research organizations, research infrastructures and research service providers (i.e., scientific repositories and scientific publishing platforms) in the DDL and EOSC (*first part of the study*);
 - **Analyze** how researchers, research organizations, research infrastructures and research service providers can comply with the obligations and benefit from the rights they may have under these acts (*second part of the study*).
-

Simplified ToC

1. Introduction

2. Open Data Directive

3. Data Governance Act

4. Digital Services Act

5. Digital Markets Act

6. Data Act

7. Artificial Intelligence Act (proposal)

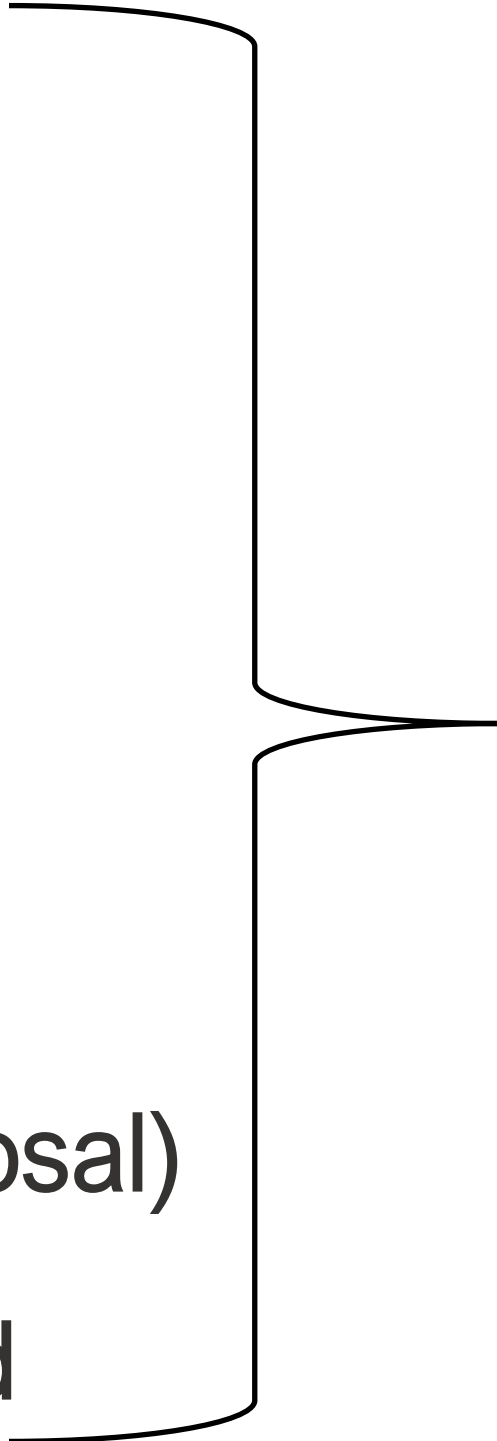
8. European Open Science Cloud

9. Interplay between relevant legislative acts and frameworks

10. Synthesis: Main opportunities and challenges for research under the EU DDL

11. Recommendations on the legislative and non-legislative levels

12. References

- 
- Individual approach
 - highlight the provisions and describe the rights and obligations of each legal instrument that could become relevant for researchers and research organisations

Simplified ToC

1. Introduction
2. Open Data Directive
3. Data Governance Act
4. Digital Services Act
5. Digital Markets Act
6. Data Act
7. Artificial Intelligence Act (proposal)
8. European Open Science Cloud
9. Interplay between relevant legislative acts and frameworks
10. Synthesis: Main opportunities and challenges for research under the EU DDL
11. Recommendations on the legislative and non-legislative levels
12.

References

1. Methodology

Desk Research

- **Main** methodological tool
- Relied on multiple sources: main legal databases; official websites of the European Parliament, the European Commission, the Council and; the CJEU
- Relevant knowledge base categorized in (a) legislation, (b) policy documents, (c) doctrine, studies, and project deliverables
- Identified gaps in the literature were the basis for **surveys** and **interviews**

1. Methodology

Surveys

Desk Research

- Integrative tool
- DDL-related questions in surveys shared with (i) researchers, (ii) research performing organisations (RPOs) and (iii) publishers;
- In general, aimed to understand the perspective of these stakeholders when it comes to DDL and EOSC (challenges? Opportunities? Examples)

1. Methodology

Expert
interviews

Exploratory
Interviews

Surveys

Desk Research

- **7 exploratory interviews**
- contributed to obtaining a general overview of the main topics and priorities within the policy, scientific and business communities involved in the research ecosystem
- **18 expert interviews**
- Semi-structured interviews
- Filling the gaps
- Purposeful sampling: (I) subject matter; (ii) representativeness; (iii) geography

9. Interplay between relevant legislative acts and frameworks

Main objective: to provide an analysis of the **multiple interactions** among the surveyed instruments

First part discusses three overarching concepts are discussed in further: (i) data; (ii) research and (iii) research organisations.

Specific objectives: i) to highlight the presence, even if only implicitly, of research as a key regulatory element in DDL; and ii) to point out possible areas of improvement at the definitory or coordinatory levels.

Second Part identifies specific links and connections in DDL and assess their relationship.

Specific objective: to enhance legal certainty and identify opportunities and potential obstacles for a coordinated and consistent interpretation of DDL.

Structure: each section on a particular overlap is divided as follows: (a) the provisions involved in the interplay, (b) the nature of the interplay and (c) the analysis of this interplay. For systematic treatment (b) the interplay is classified as:

- Consistent;
 - Complementary/clarification;
 - Derogation/exemption;
 - Contradiction;
 - Unclear.
-

9. Interplay between relevant legislative acts and frameworks (Part 1)

RESEARCH ORGANISATION (DEFINITION)					
DATA ACT	CDSM	DIGITAL SERVICES ACT	OPEN DATA DIRECTIVE	DATA GOVERNANCE ACT	ARTIFICIAL INTELLIGENCE ACT (PROPOSAL)
<p>DEFINITION OF RESEARCH ORGANISATION? NO</p> <p>SEEMS TO ECHO, IN PART, THE CDSM DISTINCTION BETWEEN NOT-FOR-PROFIT RESEARCH AND PUBLIC INTEREST RESEARCH (ART. 21, ART. 2(1), REC. 76, DA)</p>	<p>DEFINITION OF RESEARCH ORGANISATION? YES, BY DESCRIBING THEIR CHARACTERISTICS ("PRIMARY GOAL ... IS TO CONDUCT SCIENTIFIC RESEARCH OR TO CARRY OUT EDUCATIONAL ACTIVITIES INVOLVING ALSO THE CONDUCT OF SCIENTIFIC RESEARCH.")</p> <p>MAY ALSO ENCOMPASS PRIVATE AGENTS, IF PURSUING A PUBLIC INTEREST MISSIONS RECOGNIZED BY THE MS OR REINVESTS ALL ITS PROFITS IN ITS SCIENTIFIC RESEARCH</p> <p>TO BE A PSB IS NOT A FORMAL REQUIREMENT</p>	<p>DEFINITION OF RESEARCH ORGANISATION? EXPLICITLY REFERS TO THE DEFINITION PROVIDED IN THE CDSM (ART. 40(8), DSA)</p>	<p>DEFINITION OF RESEARCH ORGANISATION? NOT DIRECTLY.</p> <p>APPROACH FOCUSED ON PSBS (INCLUDES UNIVERSITIES AND OTHER INSTITUTIONS UNDER PUBLIC LAW, AND CERTAIN PRIVATE ENTITIES)</p> <p>DEFINES UNIVERSITIES</p> <p>CITES BUT DOES NOT DEFINE RPOS AND RFOS'</p>	<p>DEFINITION OF RESEARCH ORGANISATION? NOT DIRECTLY.</p> <p>ADOPTS THE SAME DEFINITION OF PSB OF THE ODD</p> <p>DOES NOT DEFINE UNIVERSITIES</p> <p>DOES NOT DISTINGUISH RPOS FROM UNIVERSITIES AND/OR LIBRARIES</p>	<p>DEFINITION OF RESEARCH ORGANISATION? NO.</p> <p>REFERS TO RESEARCHERS AS INDIVIDUALS (E.G. RESEARCHERS; SCIENTISTS. SEE AI ACT EP, ART 69(3), REC 45, REC 61A, REC 85, ART 53 A, REC 85).</p>



9. Interplay between relevant legislative acts and frameworks (Part 2)

Section	Interplay
9.2.1	Open Data Directive and Data Governance Act
9.2.2	Open Data Directive and Data Act
9.2.3	Open Data Directive and EU copyright law
9.2.4	Data Governance Act and EU copyright law
9.2.5	Data Governance Act and Data Act
9.2.6	Data Governance Act and Digital Services Act
9.2.7	European Open Science Cloud and EU copyright law
9.2.8	European Open Science Cloud and Data Act
9.2.9	European Open Science Cloud and Open Data Directive
9.2.10	Data Act and EU copyright law (Database Directive)
9.2.11	Artificial Intelligence Act and EU copyright law
9.2.12	Digital Services Act and Digital Markets Act
9.2.13	Digital Services Act and EU copyright law
9.2.14	Digital Services Act and Open Data Directive

10. Synthesis: Main opportunities and challenges for research under the EU DDL

Main objective: aims to present if and how researchers, research organisations, and other actors of the research ecosystem can comply with the rights and obligations deriving from the DDL & EOSC

Researchers and Research Organisations as *users* of data

Opportunities

- Wider availability and reusability of Pub. Sec. Data
- Wider availability of (FAIR) research data
- Access to Priv. Sec. Data
- Clarity over charging fees

Challenges

- Complexity/Legal uncertainty in data access
- Challenges from the interplay of DDL and EOSC
- Academic Freedom and increased influence of 3rd parties

Researchers and Research Organisations as *providers* of data

Opportunities

- Wider availability of resources to enable (re)use and sharing of data
- Recouping costs for provision of data

Challenges

- Legal uncertainties
- Compliance costs
- Lack of incentives to register DAO
- Academic Freedom

Researchers and Research Organisations as *users* of data (example)

OPPORTUNITIES <i>(RESEARCHERS' ACCESS TO PRIVATE SECTOR DATA)</i>	
<p>EOSC/DATA SPACES/ DATA ACT B2G DATA SHARING OBLIGATIONS (DATA ACT)</p> <p>(MOSTLY) INDIRECT APPROACH THAT TAKES THE FORM OF A SEMI-REGULATED MARKET FOR DATA OR, IN OTHER WORDS, OF COMMON EUROPEAN DATA SPACES.</p> <p>DATA HOLDERS CAN EXCHANGE DATA IN A SEMI-CONTROLLED AND TRUSTED ENVIRONMENT PROTECTIVE OF EU CORE VALUES</p> <p>FROM THIS PERSPECTIVE, THE MANY RULES ON FAIR, FRAND AND NON-ABUSIVE DATA TRANSACTIONS, AS WELL AS THOSE ON PORTABILITY, INTEROPERABILITY AND SWITCHING OF PROCESSING SERVICES CAN BE APPRECIATED IN THEIR FULL POTENTIAL.</p>	
<p>DIGITAL MARKETS ACT TRANSPARENCY OBLIGATIONS IMPOSED ON GATEKEEPERS</p> <p>RULES ON ACCESS TO DATA RELATING TO ADVERTISING AND REAL-TIME DATA GENERATED IN THE USE OF THE RELEVANT CORE PLATFORM SERVICE (ART. 6(10) DMA)</p>	<p>DIGITAL SERVICES ACT ART. 40 DSA REPRESENTS A RATHER INNOVATIVE PROVISION THAT COULD ALLOW RESEARCHERS TO ACCESS PRIVATELY HELD DATA PREVIOUSLY UNAVAILABLE.</p> <p>IT ENABLES RESEARCHERS, UNDER SEVERAL SPECIFIC CONDITIONS, TO GAIN ACCESS TO THE DATA OF THE VLOPS AND VLOSES.</p>

CHALLENGES <i>(COMPLEXITY AND LEGAL UNCERTAINTY IN DATA ACCESS AND REUSE FOR RESEARCH PURPOSES)</i>	
<p>DATA ACT COMPLIANCE WITH THE CONDITIONS IN ART. 21 DA</p> <p>WHILE ART. 43 CLARIFIES IOT DATA ARE NOT PROTECTED UNDER SGDR, THERE IS A LACK OF CERTAINTY CONCERNING OTHER IPRS (BROAD DEFINITION OF DATA MAY ENCOMPASS MATERIALS PROTECTED BY COPYRIGHT AND RELATED RIGHTS)</p>	<p>ARTIFICIAL INTELLIGENCE ACT (PROPOSAL)</p> <p>UNCERTAINTY REGARDING THE CONDITIONS UNDER WHICH RPOS WILL BE DEEMED PROVIDER MAY HINDER ACTS OF SHARING TRAINING DATASETS OR AI SYSTEMS</p> <p>AMBIGUITY OF THE EXEMPTION FOR AI COMPONENTS MADE AVAILABLE UNDER OS LICENSES</p> <p>IF EXEMPTION IS LIMITED TO AI COMPONENTS AND NOT AI SYSTEMS, IT MAY HAVE A CHILLING EFFECT ON RESEARCH ORGANISATIONS BY SUGGESTING THAT MERE DATA AND/OR OTHER AI CANNOT BE MADE AVAILABLE UNLESS UNDER OS LICENSES</p>



Researchers and Research Organisations as *providers* data (example)

OPPORTUNITIES
(WIDER AVAILABILITY OF LEGAL AND TECHNICAL RESOURCES TO ENABLE AND FOSTER ACCESS, (RE)USE AND SHARING OF DATA)

EOSC/DATA ACT

OUTPUTS FROM EOSC-RELATED PROJECTS CAN SERVE AS VALUABLE TOOLS FOR RESEARCHERS AND RESEARCH ORGANISATIONS, OFFERING INSIGHTS AND FACILITATING TAILORED LEGAL COMPLIANCE ACROSS VARIOUS RESEARCH-RELATED AREAS

ON THE **DDL DIMENSION**: DATA ACT INTEROPERABILITY REQUIREMENTS MAY PROVIDE IMPORTANT TECHNICAL BENCHMARK FOR DATA SHARING IN THE EU, ESPECIALLY WITHIN THE CONTEXT OF DATA SPACES AND THE EOSC, AND THUS, IN THE LONG-TERM, FACILITATE ACCESS AND SHARING OF DATA, AS WELL AS RESEARCH COLLABORATIONS.

CHALLENGES
(LEGAL UNCERTAINTIES)

OPEN DATA DIRECTIVE/DATA GOVERNANCE ACT/ DIGITAL SERVICES ACT

OPEN DATA DIRECTIVE
UNCERTAINTY ON THE KIND OF REPOSITORIES IN SCOPE AND THE MEANING OF PUBLICLY FUNDED RESEARCH.

OPEN DATA DIRECTIVE AND DATA GOVERNANCE ACT
POTENTIAL DISCREPANCIES BETWEEN THE ODD AND THE DGA CONCERNING THE TREATMENT OF RPOS AND THE CONCEPT OF RESEARCH DATA.

SCOPE OF APPLICATION FOR EDUCATIONAL ACTIVITIES, LIBRARIES, RESEARCH FUNDING ORGANISATIONS AND PUBLIC-PRIVATE PARTNERSHIPS WHICH ALSO DO NOT FULLY CONVERGE BETWEEN ODD AND DGA.

OPEN DATA DIRECTIVE AND DIGITAL SERVICES ACT
LEGAL UNCERTAINTY ON WHETHER RESEARCH DATA REPOSITORIES IN SCOPE OF THE ODD WOULD ALSO FALL WITHIN THE SCOPE OF THE DSA.

OVERARCHING

RULES STEMMING FROM EU LAW, NATIONAL LAWS, INTERNATIONAL TREATIES AND OTHER DIFFERENT SOURCES (E.G. FUNDERS' REQUIREMENTS, INSTITUTIONAL POLICIES, JOURNALS' REQUIREMENTS) CAN OVERWHELM RESEARCHERS, GENERATE LEGAL UNCERTAINTY, AND GENERATE SIGNIFICANT COMPLIANCE COSTS.

ARTIFICIAL INTELLIGENCE ACT (PROPOSAL)

UNCERTAINTY WHETHER RESEARCH ORGANISATIONS SHOULD COMPLY WITH OBLIGATION TO PROVIDE A "DETAILED SUMMARY" OF THE COPYRIGHT PROTECTED TRAINING DATA. ARE THEY PROVIDERS? WHAT REPRESENTS A "DETAILED SUMMARY"?

11. Recommendations on the legislative and non-legislative levels (examples)

Main objective: provide a set of recommendations on the legislative and non-legislative levels, with the overarching goal of optimizing the alignment of EU Data and Digital Legislation and EOSC with the need of promoting scientific research

Structure: Key findings and recommendations are divided in "Instrument-specific" and "overarching key findings and recommendations"

Targeted profiles: recommendations are addressed to (a) Researchers and Research Organisations; (b) Law- and Policymakers; (c) Interpreters and Enforcers and (d) Private Sector

11. Overarching recommendations to law- and policymakers (examples)

A) Key terminology and concepts related to scientific research and the actors within the research ecosystem should be consistent across the different legislative interventions.

B) The variety of specific and often divergent data access and reuse regimes creates a complex regulatory system that risks overburdening researchers and research organisations with compliance costs. It is advisable to evaluate the feasibility of developing a coordinated, homogeneous and horizontal set of data access and reuse provisions for scientific research (Business to Research, B2R).

11. Overarching recommendations to law- and policymakers (examples)

C) Scientific research should be the clear policy and regulatory objective of provisions relating to scientific research, not simply a tool employed to achieve different goals. Examples may be found in Art. 40 DSA or in the B2G provisions of the DA. In both cases researchers are granted specific access frameworks, but the ultimate goal is not scientific research.

D) Going forward, due consideration should be given to the fundamental right to academic freedom, ensuring that DDL adequately safeguards academic freedom at the level of institutions and researchers.

Keynote Speakers from Stakeholder Groups



Plan S

Making full & immediate
Open Access a reality

The cOAlition S Rights Retention strategy

WORKSHOP | Improving access to and reuse of R&I
results, publications and data for scientific purposes

26 February 2024

Johan Rooryck | Executive Director, cOAlition S





Plan S: strong principle

- Plan S: “With effect from 2021, **all scholarly publications** on the results from research funded by public or private grants provided by national, regional and international research councils and funding bodies, **must be published in Open Access Journals**, on Open Access Platforms, or made immediately available through Open Access Repositories **without embargo.**”
- All peer-reviewed papers must be immediate Open Access with **a CC-BY license or equivalent.**

Plan S: three routes to compliance

Route 1

Full Open Access venues

- Authors publish in Open Access journal or platform indexed by *Directory of Open Access Journals* (DOAJ)
- cOAlition S funders financially support publication fees for author

Route 2

Subscription journals

- Authors publishing in a subscription journal **must** make the Version of Record or Author Accepted Manuscript instantly available in a repository
- *NOT* financially supported by cOAlition S funders

Route 3

Journals under a transformative arrangement

- Authors publish in a journal with a Transformative Arrangement.
- cOAlition S funders

- Author rights retention goes beyond compliance

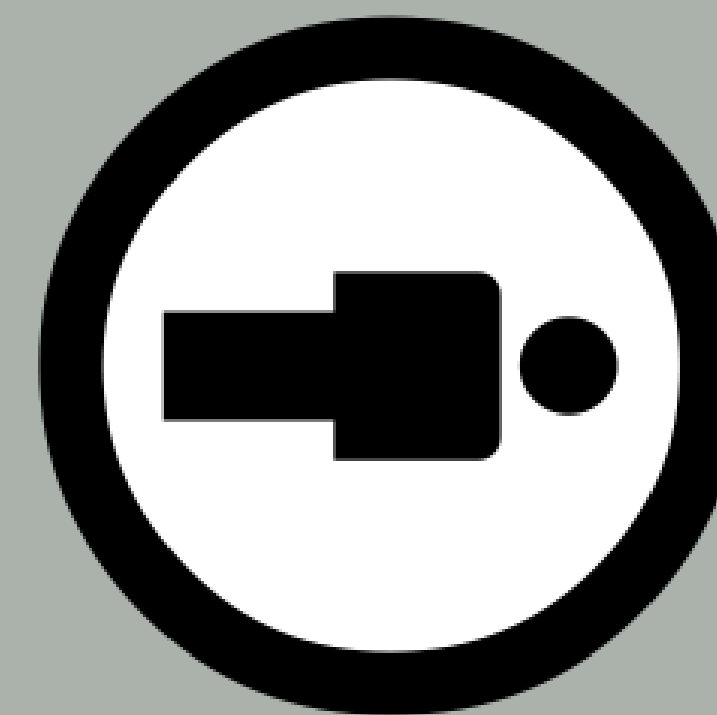
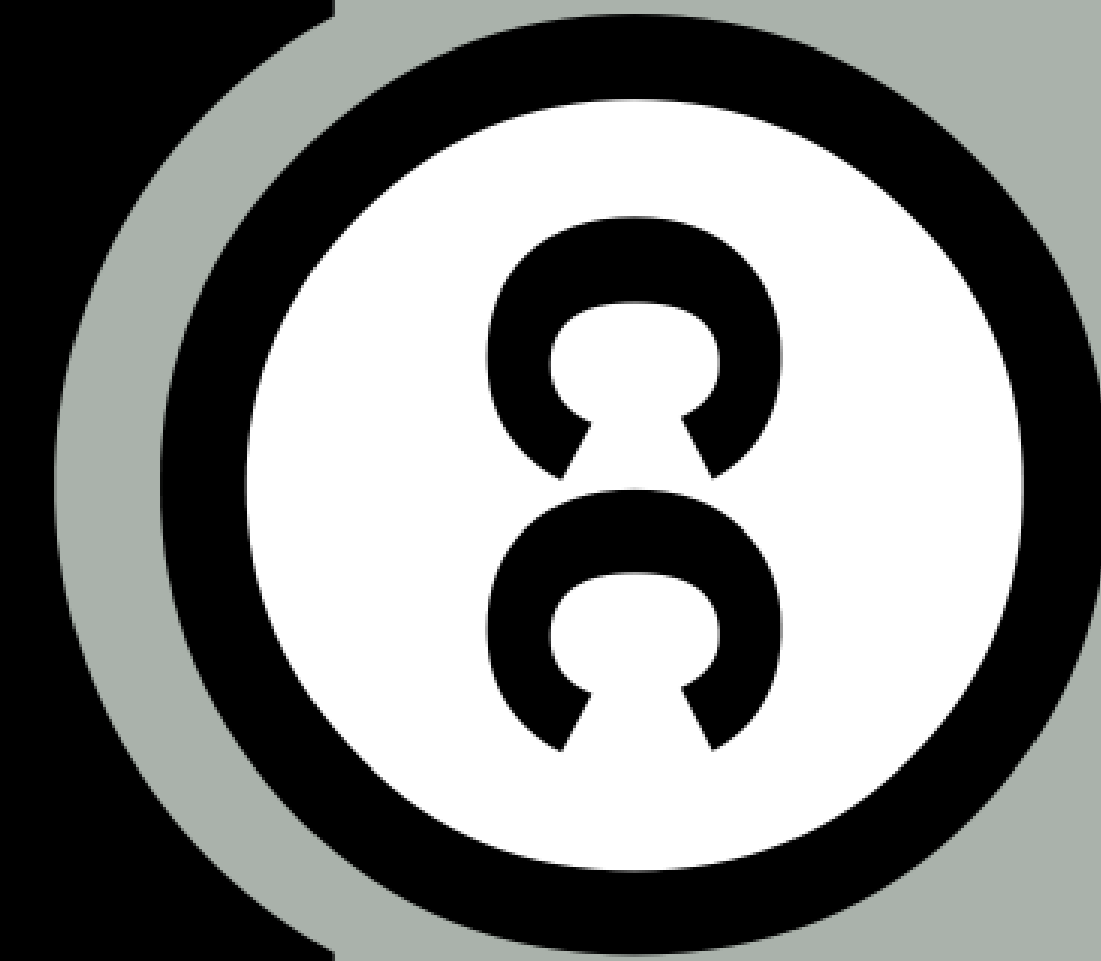
Route 2 and Rights Retention

Plan S Principle 1:

"Authors or their institutions retain copyright to their publications. All publications must be published under an open licence, preferably the Creative Commons Attribution licence (CC BY)"

- ⦿ Many researchers do not fully understand that they are the original copyright holders of their papers.
- ⦿ The copyright owner decides how to licence their work.
- ⦿ Open Access starts at the source: the author who stops giving away their rights.
- ⦿ A researcher granting a CC BY licence to their work keeps sufficient intellectual rights to (a) **reuse all materials** in it and (b) **share it in a repository** and with anyone else.

BY





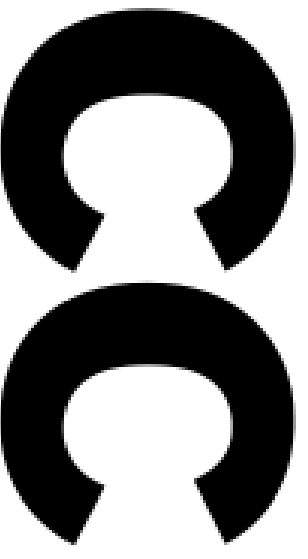
Rights Retention Strategy (RRS)

The RRS is based on a simple principle:

- The peer-reviewed Author Accepted manuscript (AAM) is the intellectual creation of the authors and belongs to them.
- To assert ownership, the author – as the original copyright holder – applies a CC BY license to the AAM arising from their submission.
- Delivering publication services does not entitle publishers to ownership of the AAM, which remains the intellectual property of the author. Publication services should be paid for, but not with ownership of the AAM.
- Funders and universities should ensure that their researchers are not deprived of essential intellectual property rights, a valuable asset.

Route 2 and Rights Retention

- ⦿ cOAlition S grant conditions stipulate that authors who want to publish in subscription journals must deposit a copy of the Author Accepted Manuscript of their paper in a repository **at publication**.
- ⦿ **But:** authors often sign Copyright Transfer Agreements with the publisher that **prevent** depositing a copy immediately.
- ⦿ **Rights Retention Strategy (RRS):**
cOAlition S grantees are required via their grant conditions to inform publishers that **a prior CC BY licence is applied to any future Author Accepted Manuscript (AAM)** arising from their submissions.
- ⦿ By asserting the application of a CC BY license on their paper, authors retain sufficient intellectual rights to deposit a copy of the AAM in an Open Access repository at publication.
- ⦿ Since the CC BY licence to the future AAM is in place **prior** to the publisher's agreement, that CC BY licence takes **legal precedence** over conflicting language in that later publication agreement.



BY

Rights Retention Strategy (RRS)

What authors need to do

1. To inform the publisher that they are using the RRS, cOAlition S funded researchers should include the following templated language in their submissions:

“This research was funded, in whole or in part, by [Organisation Name, Grant #]. A CC BY licence is applied to the AAM arising from this submission, in accordance with the grant’s open access conditions.”

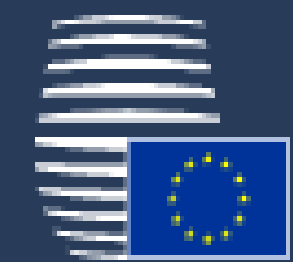
2. On publication: make AAM open access in a repository
3. Contact their funder (or library) in case of disagreement with or obfuscation by the publisher

The RRS is receiving broad support...

- UNESCO declaration of November 2021; G6 declaration, December 2021; EUA OS Agenda 2025;
- European Council, June 2022: *"CONSIDERS that the authors of research publications or their institutions should retain sufficient intellectual rights to ensure open access"*
- EU Council Conclusions (May 2023: Rights Retention by authors – who should assert CC BY on all their articles – is a priority.
- About 50 universities in the UK and 14 in Norway have adopted or will be adopting institutional rights retention policies (IRRP). **IRRP are more powerful** than funder mandates: universities are the direct employers of researchers, and Rights Retention becomes a contractual obligation.
- CNRS and UDICE in France strongly recommend the use of Rights Retention.



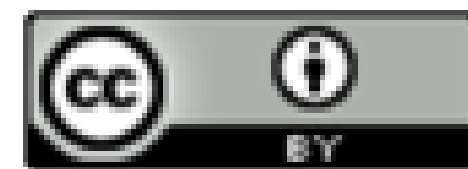
The EUA Open Science
Agenda 2025



European Council
Council of the European Union

Further information

- cOAlition S website - Rights Retention Strategy
<https://www.coalition-s.org/rights-retention-strategy/>
- Implementation roadmap for cOAlition S organisations
<https://www.coalition-s.org/plan-s-funders-implementation/>
- Journal Checker Tool: <https://journalcheckertool.org/>
- Creative Commons licences: <https://creativecommons.org/>
- email: info@coalition-s.org



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Open Access, Copy Rights and Accessibility

A researcher's view

Dr. Christian Manteuffel

Research Institute for Farm Animal Biology (FBN, Germany)



Publishing as a Business

Subscription journals

- printed articles required to transfer the copy right to the publisher
- digital articles - subscription hinders accessibility of research results

Solution Open Access journals?

- pay the publisher to grant Creative Common copy right

Comparison of the business models

Paying for subscription – the content is paid – incentive for good content

Paying for being published – article is paid – incentive to max publications



Open Access Business Model

Example – publisher MDPI:

- https://www.mdpi.com/journal/sensors/special_issues
- About 1500 „special issues“ planned until 2025 – assume 4 articles / issue
- 4 articles x 2000 Euro x 1500 issues = 12 m. Euro in 2024 alone
- MDPI has 435 journals: 12.000.000 Euro x 435 journals

up to 5.2 bn. Euro per year (worldwide)

- **Germany 2017:** ~100.000 articles, 60% OA = ~**120 m. Euro**
- **publication costs form a dissemination barrier**
 - discrimination of early career researchers
 - discrimination of low income countries



Motivation

Current state

- countries pay billions to enable free access to their own contents

Actual cost

- peer review management software, host PDFs on a webserver
- making up „special issues“ and writing invoices

Why do we pay?

- research is evaluated by number of articles with high impact factor
- PhD's regulations often require publications in impact factor journals
- **political funding regulations dictate to use “established journals”**
- **high publication costs are the main reason why an SPR is needed**



Alternatives

The digital age

- only printed articles needed an Impact Factor (estimate offline readership)
- online articles are accessible - regardless of the journals reputation
- „impact“ can be measured at the level of an article - regardless of the journal

Cost effective accessibility

- **eliminate the journal Impact Factor as evaluation criterion for research**
- **fund diamond open access publishing** via the research institutions (they already do all the work - no business model needed)
- fund independent and free peer reviewing platforms
- dictate an API for article metrics (views, citations) to ensure interoperability





Dummerstorf

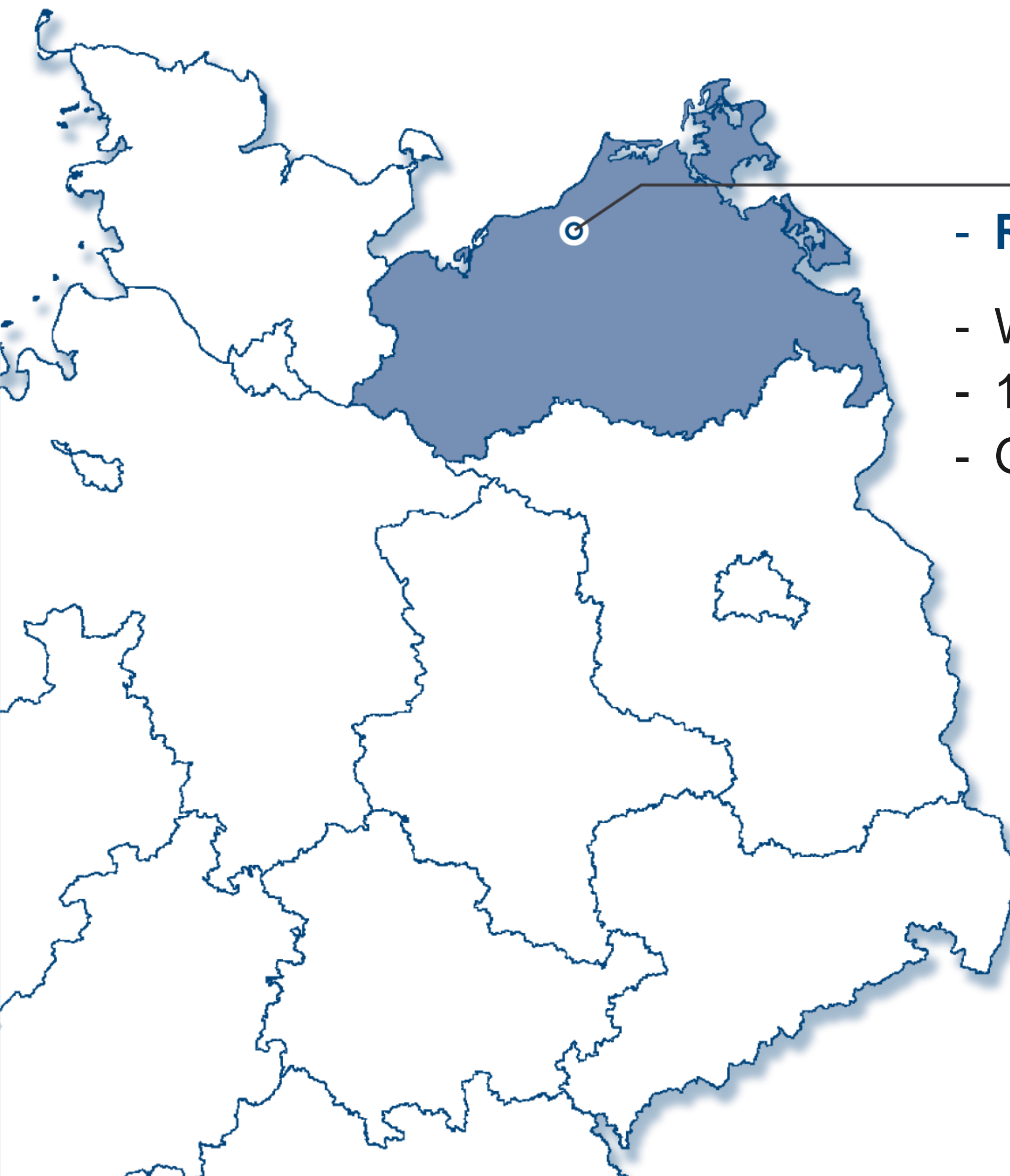
- **Research Institute for Farm Animal Biology (FBN)**
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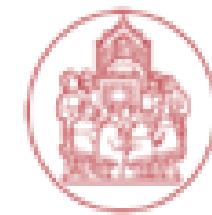
E-Mail: christian.manteuffel@fbn-dummerstorf.de



Thank you!



PPMi



Sant'Anna
Scuola Universitaria Superiore Pisa

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CENTRE FOR IT & IP LAW

ivir
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Informatierecht
Institute for
Information Law