

Kluwer Copyright Blog

ALLEA Statement in Support of Secondary Publication Rights for Scholarly Articles

P. Bernt Hugenholtz (Institute for Information Law (IViR)) · Wednesday, October 23rd, 2024



The European Federation of Academies of Sciences and Humanities (ALLEA) has for many years supported the move away from proprietary models of scholarly publishing towards Open Access (OA).^[1] ALLEA, therefore, welcomes the recognition in the laws of an increasing number of European countries of so-called ‘Secondary Publication Rights’ (SPRs) that allow publicly funded researchers to make their published articles available on institutional websites and non-profit online repositories, regardless of persistent contractual practices that require authors to transfer their copyrights to commercial publishers. SPRs are proving to be strong enablers of OA to publicly funded research output, without the excessive costs associated with Gold OA models. ALLEA therefore calls upon the European Union (EU) to initiate harmonising legislation that would accord SPRs to scientific researchers in all 27 Member States of the EU.

Secondary Publication Rights as Enablers of (Green) Open Access

SPRs are rights under copyright law that allow authors of publicly funded scientific research to post their published works on institutional websites and repositories, without the need for permission from the publishers that often own the copyrights. First introduced in Germany in 2014, SPRs currently exist in six Member States of the EU: Germany, the Netherlands, Austria, France, Belgium, and most recently, Bulgaria.^[2] A legislative proposal to introduce SPRs in Italy is pending.^[3] SPRs reflect the age-old practice of circulating scientific writings in parallel to formal publication in academic journals. Although national rules vary, all the current SPR-regimes permit scientific articles that are the result of (fully or partially) publicly funded research to be shared online by their authors for non-profit purposes, typically following an embargo period.

As a recent study conducted for the European Commission reveals, researchers and research-performing organisations in countries where SPRs are operational experience these new rights as important instruments in achieving OA by allowing publicly funded works to be made widely

available online, with no costs incurred by the research community; this is in stark contrast to the hefty Article Processing Charges (APCs) that Gold OA models commonly require.^[4] While SPRs do not secure the same benefits as the Gold OA Model, they do enable unrestricted access to the products of publicly funded research output at zero cost to researchers, research institutions, journalists, policymakers, and members of the general public.

Research institutions can further build on SPRs by developing policies that raise awareness and encourage researchers to publish outputs in repositories. For example, in the Netherlands several universities have introduced an institutional ‘opt-out’ model, where the university’s research output is archived in repositories by default – unless authors expressly opt out.^[5]

In addition to fostering wide dissemination of publicly funded research, SPRs can help research-performing organisations lower the ever-growing costs of acquiring scientific publications or obtaining online access to the databases of commercial publishers. In many cases, non-profit repositories that hold versions of published articles provide adequate substitutes to proprietary scientific publication platforms. SPRs may therefore make research-performing organisations less dependent on increasingly expensive commercial subscription bundles.^[6]

Need for a Harmonised Approach in Europe

As studies conducted for the European Commission illustrate,^[7] the introduction of SPRs has clear benefits for the research community and is an important enabler of Green OA policies. These studies, however, also point out that the effectiveness of SPRs is hampered by the diversity of current rules across Europe. While some Member States, such as Germany and France, have introduced SPRs in recent years, other countries are still hesitant or awaiting an EU-led initiative.

In those six Member States where SPRs do exist, the rules regarding the conditions and scope of the right vary considerably. For example, while some countries limit the SPR to the *Author Accepted Manuscript (AAM)*, i.e., the final version of the article submitted to the publisher, the laws in other countries also extend to the printed version, the so-called *Version of Record (VoR)*. Rules also differ with regard to the embargo periods imposed on researchers that wish to share their publications, with windows ranging from zero to 12 months.^[8] In all countries where they exist, the SPR applies to research that is fully or partially funded by public resources, with several EU Member States setting the threshold at 50%. In most countries, the right is limited to scientific articles published in periodicals, but criteria establishing what constitutes a ‘periodical’ vary widely. Monographs, scholarly books, and other one-off publications are often excluded.

These differences in national regimes make it hard for researchers that are part of European research collaborations and networks to benefit from the SPRs accorded to them under national laws. Furthermore, national variations also affect legal certainty and transparency, and thus complicate raising awareness among the scientific community in Europe.

ALLEA therefore endorses the conclusions of recent studies and calls for actions,^[9] which encourage the EU to establish harmonised rules that would make SPRs apply uniformly across the entire bloc. ALLEA requests the new European Commission to prioritise this in its legislative

agenda.

In doing so, the EU would take an important step towards operationalising the 2018 European Commission Recommendation on making scientific publications resulting from publicly funded research available via OA by 2020, in particular, that access to scientific publications “be granted as soon as possible, preferably at the time of publication, and in any case no later than six months after the date of publication (no later than 12 months for social sciences and humanities)”.^[10]

Contours of a Harmonised SPR

ALLEA recommends that an EU-wide harmonised SPR be shaped as follows:

Subject matter

The SPR should apply to all published scientific articles, studies, dissertations, reports, and conference proceedings, insofar as these are the product of research that is publicly funded, directly or indirectly, by at least 50%. Note that this would include all research outputs produced by researchers employed in state-funded universities and research institutions.

Embargo

With the accelerated pace of scientific output and the need to adequately respond to today’s societal challenges, embargo periods are generally unnecessary impediments to the timely dissemination of publicly funded research. Preprint and AAM versions should therefore be immediately available for posting without embargo. However, to allow publishers to recoup investments in journal publication, a short (e.g., three-month) embargo period from the date of formal publication to posting of VoRs could be justified. An embargo period could also be justified with regard to publication products that require more substantial publisher investment, such as edited conference proceedings, commentaries, and the like.

Authorised use

A harmonised SPR should allow authors to post their research in a variety of suitable fora that do not directly compete with the original publisher, including non-profit repositories, institutional and university websites, personal web pages, and social media.

Binding nature

The SPR should apply regardless of the copyright ownership of the publication, or of any contractual restriction in the publishing agreement. The SPR of EU-based researchers should apply even when the publishing contract designates the law of a non-EU country as applicable law. In other words, publishers should not be able to prevent EU authors from exercising their SPR.

Other conditions

In all cases, authors should be obliged to duly mention the source of first formal publication.

About ALLEA

ALLEA is the European Federation of Academies of Sciences and Humanities, representing more than 50 academies from about 40 countries in Europe. Since its foundation in 1994, ALLEA speaks out on behalf of its members on European and international stages, promotes science as a global public good, and facilitates scientific collaboration across borders and disciplines. Learn more [here](#).

About this Statement

This ALLEA statement has been prepared by the ALLEA [Permanent Working Group on Intellectual Property Rights \(PWGIPR\)](#), with Prof P. Bernt Hugenholtz as principal author. Through its working groups and expert task forces, ALLEA provides input on behalf of European academies to pressing societal, scientific, and science-policy debates, and their underlying legislations. With its work, ALLEA seeks to ensure that science and research in Europe can excel and serve the interests of society.

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^[1] See ALLEA statements, “[ALLEA response to Plan S](#)” (2018), “[Ethical Aspects of Open Access: A Windy Road](#)” (2018), and “[ALLEA Statement on Open Access Publication under “Big Deals” and the New Copyright Rules](#)” (2022).

^[2] European Commission: Directorate-General for Research and Innovation, *Improving access to and reuse of research results, publications and data for scientific purposes: study to evaluate the effects of the EU copyright framework on research and the effects of potential interventions and to*

identify and present relevant provisions for research in EU data and digital legislation, with a focus on rights and obligations, (Publications Office of the European Union, 2024). Available from: <https://doi.org/10.2777/633395>; [accessed on 09/10/2024]

^[3] Caso, Roberto & Dore, Giulia, *Academic copyright, open access and the “moral” second publication right* (2021). Available from: <https://doi.org/10.5281/zenodo.5764841>; [accessed on 09/10/2024]

^[4] See reference 2, EC DG RTD, *Improving access to and reuse of research results, publications and data for scientific purposes*, p.84. See also “ALLEA Statement on Open Access Publication under “Big Deals” and the New Copyright Rules” (2022).

^[5] Radboud University, ‘Opt-out procedure open access’, *Radboud University* (2024). Available from: <https://www.ru.nl/en/staff/researchers/publishing-research/open-access-publishing/automatic-publication-after-6-months/opt-out-procedure-open-access>; [accessed on 09/10/2024]

^[6] SPARC, ‘Unbundling profile: MIT Libraries’, *SPARC* (2024). Available from: <https://sparcopen.org/our-work/big-deal-knowledge-base/unbundling-profiles/mit-libraries/>; [accessed on 09/10/2024]

^[7] See reference 2, EC DG RTD, *Improving access to and reuse of research results, publications and data for scientific purposes*; European Commission: Directorate-General for Research and Innovation and Angelopoulos, Christina, *Study on EU copyright and related rights and access to and reuse of scientific publications, including open access – Exceptions and limitations, rights retention strategies and the secondary publication right*, (Publications Office of the European Union, 2022). Available from: <https://data.europa.eu/doi/10.2777/891665>; [accessed on 09/10/2024]

^[8] See Table 4 in reference 2, EC DG RTD, *Improving access to and reuse of research results, publications and data for scientific purposes*, pp.61-62.

^[9] See studies mentioned in references 2, EC DG RTD, *Improving access to and reuse of research results, publications and data for scientific purposes*, and reference 7, EC DG RTD and Angelopoulos, C., *Study on EU copyright and related rights and access to and reuse of scientific publications, including open access*; Knowledge Rights 21, *A Position Statement from Knowledge Rights 21 on Secondary Publishing Rights* (2022). Available from: <https://www.knowledgerights21.org/wp-content/uploads/2022/10/Secondary-Publishing-Rights-Position-Paper.pdf>; [accessed on 09/10/2024]

^[10] European Commission, ‘Commission Recommendation (EU) 2018/790 of 25 April 2018 on access to and preservation of scientific information’, *Official Journal of the European Union* (2018). Available from: <https://eur-lex.europa.eu/eli/reco/2018/790/oj>; [accessed on 09/10/2024]

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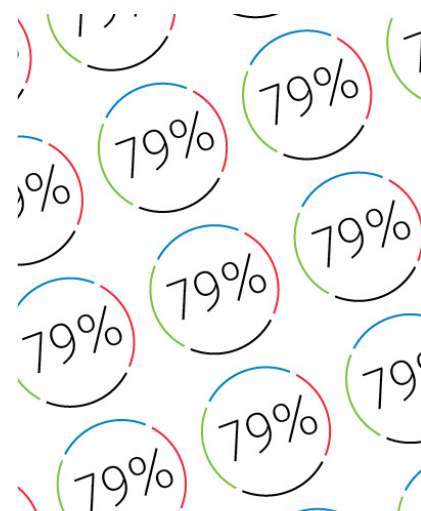
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