Knowledge for a Stronger Europe

KR21's policy recommendations
for the 2024 elections and the
next European Commission

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and the next European Commission**

Over the coming years, Europe needs to find answers to major economic, scientific and environmental challenges. Key to this will be making the most of the digital revolution in order to achieve Europe's potential.

Knowledge Rights 21 believes in a forward-looking open Europe that embraces collaborative R&D and data-driven innovation (AI, IoT, Big Data etc). As a consequence, it is vital that Europe develops a truly digital public infrastructure [1] for research and education, as a precondition for economic, social, democratic and environmental sustainability.

To achieve our full potential, over the next five years, the European Union must:

• Make the European Research Area a reality by creating a legal framework that facilitates cross-border collaborations and the sharing of knowledge
• Ensure legal, and as a consequence public access to research and education
• Centre the needs of researchers and educators in the wider policy agenda

Complementing the European Union's existing funding programmes, this paper sets out a vision for achievable legislative and non-legislative steps that can be taken over the next five years to achieve its full economic and societal potential.

The situation today
New technologies cause disruptive societal and economic change. We have already seen huge benefits and challenges in the digital world, and as a result it is becoming ever clearer that policy change is required in how information is created, shared, utilised and in turn re-used.

[1] See UNDP's example: Digital public Infrastructure

On the one hand, citizens, researchers and scientists have more access to information than ever before. Moreover, new tools and models, not least e-commerce and artificial intelligence (AI), create exciting possibilities to achieve our social, economic and environmental goals. At the same time, technology has also enabled information monopolies and dysfunctional markets that fall far short of supporting innovation, competition, and the public interest.

At its heart this is an issue of competitiveness. Europe currently lacks any major player in technology and e-commerce markets and already lags far behind the United States, China and Japan in technologies such as AI – a gap that will only get worse if new innovation-friendly measures are not adopted. [2]

This is also an issue of rights and equity. Today, not every individual, institution or even Member State has the same ability to perform, and to benefit from, research, innovation and education. Despite the right to science and education being clearly established in international law,[3] Europe is far from making a reality of this for all in the digital age.

Yet there is cause for optimism. Europe is rich in information, data and talent. It has a powerful programme of funding for research which has already advanced key principles of openness and reuse. It also has the structures necessary to support data-driven cutting-edge research, and so compete and collaborate in international markets.

We can close the ever-widening digital divide with leading countries and regions in terms of scientific, education and economic performance. This is possible through a mixture of legislative and non-legislative steps, set out below. In doing so, we will help to deliver on a human- and future-centred digital public infrastructure, both through finding the right settings for success, as well as by supporting the creation and application of knowledge that flows through it.

While the proposals made here are focused on actions at the level of the European Union, many will either require implementing action nationally, or indeed could already be taken forward by national and regional authorities.

Executive Summary

Europe can build a stronger future for its citizens by supporting its researchers and educators. With growing recognition of the weaknesses of current models of regulation and implementation, there is an opportunity in the coming five years to effect real change, at the European and national levels.

To achieve this, we set out twelve actions, under the following three key headings. We believe that Europe must:

Make the European Research Area a reality
In order to make a reality of the European Research Area – a single, borderless space for research, innovation and technology across the EU – a fundamental change in Europe's approach is needed. Despite cross-border research being a significant focus of EU research policies and funding, the reality is that the fragmentation of EU law does not support collaborative research across 27 different jurisdictions. The fifth freedom of the European Union – freedom of movement of knowledge, information and data – must be brought to life.

Ensure access to research and education
Uneven possibilities to access research outputs risk deepening existing divides within Europe, as well as slowing the circulation of ideas and subsequent further innovation. It is time for action to ensure that education and research – and especially publicly funded research – can be enjoyed by the public across the whole of Europe. More broadly, Europe must look again at markets and data access regimes from the perspective of supporting research and innovation.

Centre researchers' and educators' needs in the wider policy agenda
Europe's researchers and educators must be empowered to fulfil their missions, without undue restrictions, be they from law, contract, or technological tools. They need laws that adapt to changing times, and that enable cross-border collaborations within Europe as well as international cooperation. This requires both a prioritisation of their needs in individual pieces of sectoral legislation, but also a drive for more comprehensive legislation in favour of research and education, and an ongoing focus on these as priorities.

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[2] McKinsey Global Institute: Tackling Europe's gap in digital and AI
[3] Universal Declaration of Human Rights, Article 26

Twelve Point Action Plan

Recommendations to Europe
for legislative, regulatory and policy change

A. BUILD A DIGITAL PUBLIC INFRASTRUCTURE FOR THE EUROPEAN RESEARCH AREA

1. Make the freedom of movement of knowledge – the fifth freedom – core to the EU's wider actions.
2. Introduce a stand-alone Research and Education Act at the EU level.
3. Future proof and harmonise research flexibilities in copyright law through the introduction of open norms.
4. Establish structures at the College of Commissioner level to provide ongoing support for digital public research and education infrastructures.
5. Modernise the impact assessment process to safeguard collaborative and high-performing research and education.

B. FACILITATE ACCESS TO RESEARCH

6. Make all publicly funded research immediately and openly accessible through a secondary publishing obligation in law, and support retention of rights by researchers and institutions.
7. Investigate dysfunctions in knowledge and information markets, and then identify and roll out required regulatory and competition interventions, starting with poorly functioning eBook markets.
8. Create a right of fair access to data and knowledge for research, innovation and education purposes.

C. ENABLE THE WORK OF RESEARCHERS AND EDUCATORS BY CENTRING RESEARCH AND EDUCATION WITHIN THE EU'S INNOVATION POLICY AGENDA

9. Facilitate tech transfer and boost innovation by removing artificial barriers to commercial research, in line with our competitors.
10. Prohibit contract and technological barriers from stopping education and research.
11. Safeguard research and education institutions from unfair contracts by offering them stronger protection.
12. Limit the liabilities of individuals and institutions undertaking research and educational activities in good faith.

A. Build a digital public infrastructure for the European Research Area

01 / Make the freedom of movement of knowledge - the fifth freedom - core to the EU's wider agenda

The Treaty on the Functioning of the European Union (TFEU) underlines that in addition to the traditional four freedoms of movement – goods, services, people and capital – there is a fifth pillar included in Article 179: the freedom of movement of knowledge. As the EU has just celebrated the 30th anniversary of the Single Market, it is time to recognise this fully and practically through a strategy for making it a reality.

Recommendation
The European Commission should develop a political strategy for a Knowledge Union in order to deliver on the 'Fifth Freedom'. This should be broad-based, ensuring that the connections between actions in different policy areas are fully taken into account, and aim to maximise the future welfare of the EU, its Member States and citizens by prioritising access to knowledge. Without modernising copyright and other digital bodies of law, collaborations and the free flow of knowledge across borders in the European Research Area cannot effectively be achieved.

02 / Introduce a stand-alone Research and Education Act at the EU level

Despite work to develop a European Research Area, the EU's approach to key relevant policies, including AI, R&D, platform regulation, education and learning is deeply fragmented. Even though significant portions of its budget go to support projects in these sectors, legislation continues to be piecemeal and unharmonised. Where the needs of research and (higher) education are considered when crafting new laws, they are often little more than an afterthought.

At the heart of this is the fact that the current distribution of legislative competencies does not facilitate law-making focused on research and education.

Recommendation
To effectively support European research and education, we need a dedicated standalone legislative instrument. We believe that a Research and Education Act would be the best mechanism to make these sectors truly digital and also deliver the legislative changes put forward in this Action Plan for change more broadly. This should be led by the Commissioner(s) whose primary focus is research and education.

03 / Future-proof research flexibilities in copyright law and facilitate harmonisation

European researchers, taxpayers and businesses deserve laws governing access to and reuse of information that are up to date. However, the European approach to intellectual property is currently inflexible and leads to a chaotic and unharmonised legal landscape. This impedes Europe's ability to make the most of the dynamic changes we see in technology and AI markets, and chills cross-border research collaboration.

This is encapsulated by the fragmented transposition of the already weak AI provisions in the Directive on Copyright in the Digital Single Market Directive. This seriously undermines the functioning of the European Research Area, and in particular the potential for European AI champions to emerge. By contrast, a number of civil and hybrid legal jurisdictions elsewhere in the world recognise copyright law as a tool of economic policy to support science, technology, business and R&D, and have successfully adopted more flexible approaches. [4]

Recommendation

In order to deepen the European Research Area we need to learn from research and innovation-friendly countries and introduce flexibility into our IP framework in the form of so-called "open norms". It is not possible to predict future technologies, and our universities and businesses do not have the luxury of waiting years for the law to be updated. The presence of an open norm in copyright law will help compensate for the uneven and fragmented transposition of EU law, and as a consequence further enable harmonisation and cross border research collaboration.

[4] For example, Japan, Israel, Singapore and Taiwan

04 / Establish structures at the College of Commissioner level to provide ongoing support for European digital public research and education infrastructures

There needs to be an ongoing focus in the EU's planning and action on the future. This cannot just be declaratory, but needs structures in place in order to ensure monitoring, accountability, and a constant reflection on how the Union can do better. This is, in particular, the case around copyright, which shapes how information in the internet age can be accessed and shared. We need to ensure that decision-making in this area is focused on public interest goals – not least scientific and societal advancement – rather than almost entirely on the interests of the entertainment industry as is the case now.

Internationally, there are strong, working examples of bodies which are part of the executive office, mandated to ensure that law, regulation and policy favours innovation that in turn serves the widest goals of economic and societal advancement.

Recommendation

Europe should establish structures which ensure an ongoing focus on equitable research, innovation and education. 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 achieving this goal.

05 / Modernise the impact assessment process to safeguard collaborative and high-performing research and education

Some of the most successful and important commercial innovations have their roots in cutting-edge research carried out by universities and publicly funded research centres. The internet, numerous medical discoveries and a number of the cutting-edge AI models to name but a few, all originate from public institutions very often working together.

Yet the EU's Innovation Principle, the key reference in assessing the impact of proposed legislation and regulation, is currently entirely focused on the private sector. As a result, the full impacts of new digital and IP related legislation on re-search and innovation – especially collaborative and cross border working – are all too often left unexplored in the impact assessment process which is under-taken when scoping new laws. [5]

Recommendation
The EU's regulatory impact assessment process – and in particular its Innovation Principle – must be updated to reflect that much innovation originates in the public sector. Any legislation and regulatory activity with an impact on research and education must ensure that these sectors are taken into account, and that relevant voices and expertise are reached out to and consulted. [6]

[5] Liber: Joint Statement: The Digital Services Act – Education and Science Require Better Policy Making Procedures
[6] Knowledge Rights: Asleep at the wheel

B. Facilitate access to research

06 / Open up publicly funded research now

The Open Data Directive has promoted access to publicly funded data under the principle 'as open as possible, as closed as necessary' by default. Despite the widespread take up of open access, 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. Some open access business models also risk exacerbating concerns about equity and financial sustainability. [7] This creates domestic and international disparities that risk deepening existing economic divides. In the meanwhile, efforts to enable researchers or their institutions to retain rights over their own work and publish them openly are too easily undermined by the imbalance of power that exists between authors, institutions and publishers.

Recommendation
Europe should introduce a pan-European obligation which enables researchers and their institutions to immediately republish publicly funded research in freely accessible online repositories, under an open licence, irrespective of where it was first published. Such a *"secondary publishing obligation"* can draw on the examples of Spain, the UK and United States,[8] and should clarify that nothing can override the ability of researchers or their institutions to exercise this. It should also guarantee the option for authors and institutions to retain rights in works. This work should take place within the context of wider efforts to advance open access and science, and in particular to advance "diamond open access" – a form of publishing for which neither the reader nor the author is charged.

[7] The open access model referred to is "gold open access" where research funders pay very often the largest incumbent publishers to publish an article. This detracts from support of fully open access publishing including publication from a variety of different bodies including investment by research funders themselves in publishing platforms. For more information on this point see Science Europe, European University Association and The Guild.
[8] These countries were chosen as they provide immediate access to publicly funded research through a combination of funder policies and secondary publishing obligations in law. For example in 2022, the White House OSTP updated its open access guidance to ensure that as of January 2026 all federal government funded research shall be made freely available to the public upon publication, thus removing all publisher embargo periods. In Spain, the amended 14/2011 Law on Science, Technology and Innovation creates an immediate obligation for publicly funded research to be published in an open repository.

07 / Investigate the functioning of information markets

Digital technologies have, in addition to creating high levels of market concentration, given an unprecedented degree of control over access to and use of information. Akin to the market dominance of GAFAM,[9] vitally important scientific publishing markets are now also characterised by high levels of market concentration, as well as high profitability.

Dominant players in scientific information markets have also moved into adjacent markets and are investing in hosting, tracking and a myriad of data analysis services – giving them oversight over the entire end-to-end science workflow. This raises important questions about competition, vertical integration, and digital lock-in for research. [10]

Recommendation
The European Commission must carry out a comprehensive investigation into the operation of information markets from the perspective of competition law and policy, in order to identify regulatory and competition interventions to overcome identified market distortions. One priority area for this should be the dysfunctional eBook market. [11]

[9]   Google, Apple, Facebook (Meta Platforms), Amazon and Microsoft.

[10] See Elsevier, Springer etc

[11] See call from over 30 European library associations calling for regulation of eBook markets

08 / Create a right of fair access for research & development

Innovation and competition require not only the right to reuse information, but to access it in the first place. Without this, globally competitive R&D and technological innovation simply cannot take place. And yet, barriers to information access have been created by the switch from copyright law to contracts brought about by the shift from analogue to digital materials. Publishers are routinely refusing to license eBooks to universities. [12] Licensing film and audio is also frequently impossible for educational establishments.

Furthermore, researchers do not necessarily find it easy to access data. They are often locked out from the data and algorithms of super-platforms, despite these being vital for their work. Recent efforts to address the issue have fallen short, with the EU's Digital Services Act, the Data Act and the AI Act offering only very limited and bureaucratic possibilities for researchers. While draft EU health data legislation is better insofar as it focuses on ways to enable access, it is clearly limited only to just one sector.

Recommendation
We believe that in order to promote innovation in Europe and safeguard scientific advancement, researchers need a comprehensive right of fair access to all types of information for the purpose of education and research. This applies both in terms of raw data to support their work, and to broader research and education materials. Access to these should not be dependent on arbitrary decisions.

[12] Knowledge Rights: A Position Statement from KnowledgeRights 21 on eBooks and eLending

C. Enable the work of researchers and educators by centring research and education within the EU's innovation policy agenda

09 / Facilitate tech transfer and boost innovation by removing artificial barriers to commercial research, in line with our competitors

Europe's laws currently impose an artificial and unhelpful distinction between commercial and non-commercial research, imposing significantly higher costs on science and commerce even when the impact on demand for original works is zero or negligible. This discriminates against Europe's SMEs and start-ups who operate in markets with much bigger players based in other jurisdictions, but also undermines knowledge transfer between universities and business.

Furthermore, Europe's failure to support knowledge transfer and commercial research condemns it to fall behind its competitors. As just one example, unlike the US, Japan, Israel, Singapore, and South Korea, commercial AI is in no meaningful sense supported by European copyright regimes, to the detriment of our own competitiveness and growth. Even public private partnerships on AI are rendered burdensome under current legislation.

Recommendation
Europe must align with its competitors and support its own research organisations and businesses, present and future, by removing the artificial distinction between non-commercial and commercial research, as allowed for by international law.

10 / Prohibit contract and technological barriers from stopping education and research

The reliance on contracts, rather than copyright law, in determining what can be done with digital information is creating insurmountable barriers for research and innovation. In addition to refusing outright to license materials, information providers place strict controls, reinforced by digital locks,[13] on what researchers can do with the materials they hold. As a result actions which are otherwise perfectly lawful for students, researchers and their institutions to perform are frequently removed by technological protection measures and contracts.

Even where there is the theoretical possibility to remove or circumvent digital locks, it remains too often unclear in the law how this can be done in reality.

Recommendation
The legislator must protect copyright exceptions for research, innovation and education from override by technological protection measures and contract terms. This will help ensure that actions that the law otherwise permits cannot be prevented by rightsholders. There also need to be quick and simple means of legally removing or circumventing digital locks that shut people and institutions out from uses deemed lawful by the legislator.

[13] Technological Protection Measures (TPMs) or Digital Rights Management (DRM)

11 / Safeguard research and education institutions from unfair contracts by offering them stronger protections

Whereas consumers are protected from unequal relationships with businesses by consumer protection law, research and educational institutions are not. And yet, these establishments face the same challenges around an unequal bargaining position, and so do not enjoy the power necessary to secure a fair contractual arrangement in negotiations.

Institutions can be further restrained by their obligation to fulfil public interest missions, as they must provide certain services to researchers, teachers and learners. This means that they can have little choice but to accept unfair contractual terms.

Recommendation

In order to support European R&D and data-driven innovation we believe that individuals and institutions undertaking research and educational activities should be provided with protection from unfair contracts, accompanied by meaningful and practical remedies where such contracts are entered into.

12 / Limit the liabilities of individuals and institutions undertaking research and educational activities in good faith

Legislation can be complex and difficult to understand. Even if researchers try their best to interpret the law, they may get it wrong. Faced with the risk of liability, they will often simply try to exclude any risk by limiting the scope of their research or abandoning it altogether. This can seriously harm the public interest – for example when relevant historical sources are disregarded or AI algorithms are not trained on vitally important data because of the fear of litigation.

Countries such as the United States and Israel allow researchers to avoid this chilling effect by providing for a limitation of liability on designated categories of organisation such as educational establishments, libraries and archives when acting in good faith. [14]

Recommendation

Researchers and their institutions should be able to benefit from a limitation on legal liability for mistakes carried out in good faith. The EU's rules on IP enforcement should be updated accordingly, in order to minimise the risk that they have a chilling effect on research as well as the historical record.

[14] For example, 17 U.S. Code § 504 - Remedies for infringement: Damages and profits

Knowledge
Rights
21

21st Century Access to
Culture, Learning & Research

The Knowledge Rights 21 (KR21) Programme is focused on bringing about changes in legislation and practice across Europe that will strengthen the right of all to knowledge. It is built on a conviction that knowledge is essential for education, innovation and cultural participation, and that everyone should have the possibility - in particular through libraries, archives and digitally - to access and use it.

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