

Consultation Feedback: CDSM

FEEDBACK SUBMISSION

Review of the Copyright in the Digital Single Market Directive

Directive 2019/790/EU – Call for Evidence

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Who We Are

The European Pirate Party (PPEU) is a pan-European political party representing Pirate Parties across EU Member States. We are grounded in the defence of digital rights, civil liberties, and democratic participation. We believe that creative work deserves real protection, that the people who create it deserve fair pay, and that the rules designed to serve them should actually do so in practice.

Our manifesto commits us to transparency in the governance of shared digital systems, free and open-source software, and the protection of fundamental rights in the digital sphere. Copyright law is part of that commitment: its purpose is to reward creators and enable the circulation of knowledge and culture, not to concentrate power in the hands of a small number of intermediaries.

We respond to this call for evidence because the CDSM Directive touches every area where our voice is most relevant: user rights and freedom of expression, the fair treatment of individual authors and performers, the use of creative works in the age of artificial intelligence, and the design of enforcement systems that must not compromise the open character of the internet.

Executive Summary

The CDSM Directive set out to create a fairer digital copyright environment for creators and users alike. Seven years on, that promise has been delivered unevenly. The Commission’s review is therefore timely, and we welcome both the review process and the ambition to complement it with a targeted legislative initiative.

Our response addresses five areas.

On Article 17, automated content filtering has been transposed inconsistently, and the fundamental-rights safeguards the Court of Justice required in Case C-401/19 have not been uniformly reflected in national law. The result is that the same upload may be protected in one Member State and suppressed in another.

On generative AI and training data, the current opt-out model under Article 4 places an unrealistic burden on individual creators. We ask the Commission to examine whether certain categories of commercial AI training require stronger consent mechanisms than the current opt-out framework provides, to establish a mandatory and searchable training-data registry, and to ensure that any licensing framework preserves the autonomy of individual creators and does not simply facilitate negotiations between powerful intermediaries.

On Article 15, the press publishers’ right has generated revenue for larger publishers without clear evidence that it reaches the journalists who produce the work. Its relationship to AI training data remains unresolved and must be addressed directly.

On user rights and digital ownership, private contracts and terms of service are being used to strip away rights that European law expressly grants. We ask the Commission to establish that statutory copyright exceptions cannot be contracted away. We also ask for a clear legal right to format shifting and interoperability for legally

acquired digital content, so that users do not lose practical access to works they have purchased simply because a platform withdraws support.

On orphan works, the current framework leaves a vast amount of European creative and cultural heritage legally inaccessible. We ask the Commission to extend preservation pathways beyond formal institutions to individual researchers and preservation communities.

On Articles 18 and 19, the individual remuneration and transparency rights that were meant to balance the relationship between creators and those who exploit their work have proven largely unenforceable, because authors and performers lack the practical tools to verify whether what they receive is fair.

On the proposed material reciprocity measure, we ask the Commission to publish a full TRIPS compatibility analysis and a performer-focused impact assessment before any legislative proposal advances. The artists most exposed to a reciprocity regime may be the same artists who stand to lose most from it.

On live event piracy, we support effective enforcement but oppose any dynamic blocking regime that lacks prior judicial authorisation, sunset provisions, and meaningful overblocking accountability. Italy's Piracy Shield experience provides clear evidence of what happens when those safeguards are absent.

Section 1: CDSM Directive Review – Article 17, Article 15, and Individual Creator Rights

Seven years on, the CDSM Directive's core promise of a fairer, more harmonised copyright environment for the digital single market has only been partially delivered. Directive 2019/790/EU has in practice fragmented into many distinct national transpositions: some Member States protect users meaningfully, others do not. The press publishers' right has generated revenue for larger incumbents more reliably than it has reached the journalists whose work makes those publishers viable. And the individual author rights introduced in Articles 18 and 19 remain, for most creators, rights they cannot practically enforce.

Each of these failures has a different cause, but they share a common thread: the choice to legislate by Directive, leaving wide discretion to Member States, produced divergent outcomes that undermine the single market rationale for EU action in the first place.

Article 17: upload filtering and the fundamental-rights record

Article 17 has, as predicted, driven the widespread adoption of automated content-recognition systems across major platforms. The Court of Justice addressed the validity of that outcome in Case C-401/19 (Poland v Parliament and Council), decided on 26 April 2022. The Court upheld Article 17 but set clear conditions: filtering tools that cannot distinguish lawful from infringing uploads must not block content before it goes up, and the in-platform complaint mechanism in Article 17(9) is not a substitute for protecting parody, criticism, and quotation from automated removal in the first place.

Member States have transposed those conditions inconsistently. Germany and Austria built genuine ex ante protections into their implementing laws. Spain and Italy went the other way, requiring that disputed uploads remain down until a dispute is resolved, which arguably sits uneasily with the protections emphasised by the Court. Most other Member States adopted Article 17 without adding the fundamental rights safeguards the Court said were necessary, leaving the fundamental-rights balance to be worked out by national courts case by case.

The Commission's June 2021 guidance, which limits automated blocking to content that is "manifestly infringing", pointed in the right direction. But guidance does not bind platforms, does not correct non-compliant national implementations, and does not give users whose expression is wrongly suppressed a clear legal basis to challenge what has happened to them. Automated prior restraint cannot understand context, and there is no adequate remedy for expression that has already been silenced.

Article 15: the press publishers' right and AI training data

Article 15 created a new exclusive right over digital uses of press publications without clear evidence that the existing copyright framework was failing to protect press publishers. Its national implementations have been as fragmented as Article 17's, and the exclusive right has not translated reliably into revenue for the people who actually create journalism.

Part of the problem is structural. Article 15 treats press publishers as a homogeneous class, but the market is not homogeneous: it includes large dominant groups alongside local newsrooms operating on tight margins. The guarantee in Article 15(5) that a share of licensing revenue should reach individual journalists is welcome in principle, but without an enforceable mechanism it is largely symbolic.

The relationship between Article 15 and AI training data is also unresolved. It is not yet settled whether using press publications as training data for AI systems falls within the scope of Article 15 at all. If it does, the same author-share logic must apply: any licensing income derived from journalistic content used for AI training should reach

individual journalists, not just publishers. The review should take a clear position on this rather than leaving it to litigation.

Articles 18 and 19: remuneration rights that creators cannot use

Article 18 introduced a principle of appropriate and proportionate remuneration for authors and performers, and Article 19 introduced transparency obligations designed to give creators access to the information they need to assess whether what they receive is fair. Both provisions were intended to rebalance the relationship between individual creators and the publishers, producers, and platforms that exploit their work.

In practice, neither provision has achieved that goal. Article 18 creates a right to seek contract adjustment, but exercising it means an individual author taking legal action against their own publisher or producer, which is not a realistic option for most creators. Article 19 transparency means very little without enforceable access to actual exploitation data: an author cannot know whether their remuneration is appropriate if they have no way to verify what their work has actually earned. Collective agreements and platform-level arrangements can further dilute these protections by setting terms that override individual entitlements without individual consent.

Contracts that override the law

A recurring problem across the digital copyright landscape is that private contracts and terms of service are used to take away rights that European law expressly grants. Platforms, publishers, and service providers often include clauses in user agreements that prevent individuals from exercising statutory exceptions, whether that is the right to make a backup copy, to study how a piece of software works, or to access a work for research or educational purposes. When a private contract can override a public law right in practice, the right risks becoming meaningless for anyone who wishes to use a platform or service.

This is not a hypothetical concern because it affects researchers, educators, archivists, and ordinary users every day. The targeted initiative should establish clearly that statutory copyright exceptions cannot be contracted away. If European law gives a citizen, a researcher, or a preservation institution the right to access or use a work in a particular way, a terms of service agreement should not be permitted to remove that right. The hierarchy between public law and private contract needs to be made explicit and enforceable.

Recommendations

- **R1.1** Require implementing legislation to include enforceable ex ante protections for parody, criticism, and quotation, consistent with Case C-401/19. Guidance is not sufficient; the standard must be written into primary law.
- **R1.2** Clarify in the targeted initiative whether Article 15 covers the use of press publications as AI training data. If it does, make an enforceable share of any licensing revenue reaching individual journalists a condition of any licence granted.
- **R1.3** Strengthen Articles 18 and 19 by giving authors and performers a direct, individually enforceable right to request an audit of exploitation data from any contractual partner, without requiring collective management organisation intermediation and without making litigation the only realistic remedy.
- **R1.4** Treat the divergent Article 17 and Article 15 implementations as evidence that Directives with wide Member State discretion cannot reliably harmonise fundamental-rights-adjacent provisions. Consider directly applicable Regulations for the targeted initiative.
- **R1.5** Introduce an explicit provision confirming that statutory copyright exceptions take precedence over contractual terms and terms of service. No private agreement should be permitted to prevent a user or institution from exercising a right that EU law grants.

Section 2: Generative AI, Training Data, and Creator Rights

A framework that was not designed for this

The review of the CDSM Directive takes place at a moment when generative AI is challenging many of the assumptions on which current copyright law is based. The existing framework was not designed for systems capable of training on billions of texts, images, recordings, and other creative works. While the CDSM Directive and the AI Act together provide some tools for addressing these developments, they do not yet offer a satisfactory balance between innovation, creator rights, and fundamental freedoms.

The opt-out model and its limits

One of the clearest examples is Article 4 of the CDSM Directive, which allows text and data mining for commercial purposes unless rights holders explicitly opt out. This mechanism may have appeared reasonable when it was

adopted, but it is increasingly difficult to justify in the context of generative AI at scale. In practice, the burden falls on individual creators to discover whether their works have been used and to take active steps to prevent such use. For large publishers or corporate rights holders this may be manageable. For individual authors, musicians, photographers, journalists, and artists, it is often not realistic.

The current framework effectively assumes consent unless a creator can successfully object. This creates a significant imbalance between individual creators and large AI developers who possess far greater technical and financial resources. The Commission should therefore assess, drawing on evidence gathered through this consultation, whether certain categories of commercial generative AI training require stronger consent mechanisms than the current opt-out framework provides. That assessment should consider what approach would better reflect the principle that creators retain meaningful control over the use of their works, consistent with the protection of property rights under Article 17 of the Charter of Fundamental Rights.

At the same time, any reform must remain proportionate. Scientific research, educational activities, and other public-interest uses should continue to benefit from broad exceptions, ensuring that copyright law does not become a barrier to knowledge, innovation, or democratic access to information.

Transparency as a precondition for rights

Transparency is equally important here. The AI Act requires providers of AI models to publish summaries of the training data they have used, but it remains unclear whether those summaries will provide information that is sufficiently detailed to be useful in practice. A creator cannot exercise their rights if they cannot determine whether their work has been used at all.

Transparency should not be treated as a formality. It is a precondition for the exercise of rights. For this reason, the European Union should establish a mandatory and searchable training-data registry. Such a system would allow creators to verify whether their works have been used in AI training, challenge unauthorised uses, and engage in licensing discussions where appropriate. This approach would also reflect principles already embedded in European data protection law: under the GDPR, transparency is recognised as essential because individuals cannot exercise their rights when information about data processing is hidden from them. The same principle should apply here. Rights that cannot be verified or enforced risk becoming largely theoretical.

Collective licensing and the risk of concentration

The Commission is exploring various licensing solutions, including collective licensing schemes, mediation procedures, and arbitration mechanisms. These proposals may offer practical advantages, but they also carry risks that should not be overlooked. Collective licensing can simplify transactions, but it can also concentrate power in large collective management organisations, major publishers, and dominant market actors. There is a real danger that systems designed to improve efficiency end up reducing the autonomy of the very creators they are intended to support.

Any future licensing framework must be assessed not only from the perspective of market efficiency but also from the perspective of individual creator rights. Creators should retain the ability to make decisions about the use of their works, and no collective arrangement should deprive them of the possibility to negotiate independently or to refuse participation altogether. Dispute-resolution mechanisms must also be accessible to individual creators and small rights holders, rather than functioning primarily as tools for large organisations with significant legal resources. Copyright law should empower creators, not merely facilitate negotiations between powerful intermediaries.

AI-generated impersonation and the limits of existing protection

The growing ability of AI systems to imitate voices, appearances, and performance styles raises a further challenge. Existing copyright and related-rights frameworks provide only limited protection against AI-generated impersonation. The unauthorised commercial use of a performer's voice or likeness can undermine both their economic interests and their personal dignity, and there is a legitimate case for additional legal protection in this area.

However, any new protection must be carefully designed. Excessively broad rights could create significant risks for freedom of expression and artistic freedom. Political satire, parody, and commentary play an important role in democratic societies and are protected under Articles 11 and 13 of the Charter. New rules aimed at preventing commercial exploitation should not become tools for restricting legitimate speech or creative expression. Explicit safeguards for parody, satire, criticism, research, and transformative use are therefore essential.

Avoiding a framework that entrenches dominant actors

More broadly, the Commission should avoid creating a regulatory framework that can only be navigated by the largest technology companies, publishers, and collecting societies. Excessively complex licensing structures,

expensive compliance obligations, and proprietary technical standards risk reinforcing existing market concentration. Such an outcome would undermine competition, limit opportunities for smaller creators and developers, and create barriers for free and open-source AI projects, independent researchers, and public-interest innovation.

The challenge facing the European Union is not simply how to protect copyright in the age of AI. It is how to ensure that copyright continues to serve its broader public-interest purpose. Future reforms should strengthen transparency, creator autonomy, and fair remuneration, while preserving freedom of expression, scientific research, and open technological development.

Format shifting, DRM, and the right to access what you purchase

A related concern is the legal status of format shifting and platform interoperability for legally acquired digital content. When a digital distributor shuts down its servers or removes a product from the market, users frequently lose access to content they have purchased, because that content is locked behind proprietary Digital Rights Management systems that cannot be transferred or converted. Consumers should not lose practical access to legally acquired digital works solely because a platform withdraws support or ceases operation.

This matters for the broader AI and copyright discussion too. A regulatory framework that reinforces proprietary technical standards and DRM lock-in concentrates market power in the hands of a small number of dominant platforms, at the direct expense of users and smaller actors. The targeted initiative should create a clear legal right for individuals to shift the format of legally acquired digital content for personal use and to move that content between devices and platforms.

Recommendations

- **R2.1** Commission to assess, with reference to evidence gathered through this consultation, whether certain categories of commercial generative AI training require stronger consent mechanisms than the current opt-out framework provides, while maintaining broad exceptions for scientific research, education, and other public-interest uses.
- **R2.2** Establish a mandatory and searchable training-data registry, enabling creators to verify whether their works have been used in AI training and to seek licensing or redress where appropriate.
- **R2.3** Require that AI training-data summaries under the AI Act be sufficiently detailed to be actionable in practice, not merely a formality. The standard of transparency should be set in light of the rights it is intended to enable.
- **R2.4** Ensure that any collective licensing framework for AI training preserves the right of individual creators to negotiate independently and to opt out of collective arrangements altogether.
- **R2.5** Introduce targeted legal protection against the unauthorised commercial use of AI-generated impersonations of performers' voices, appearances, and styles, with explicit safeguards for parody, satire, criticism, research, and transformative use.
- **R2.6** Assess any new AI-copyright framework for its impact on smaller creators, independent developers, and free and open-source AI projects, and avoid compliance structures that can only realistically be met by large market actors.
- **R2.7** Establish a clear legal right for individuals to shift the format of legally acquired digital content for personal use and ensure that technological protection measures do not prevent the effective exercise of that right. In doing so, the targeted initiative should build upon the principle already recognised in Article 6(4) of Directive 2001/29/EC, namely that technological protection measures should not deprive beneficiaries of copyright exceptions of their practical effect.

Section 3: Single Equitable Remuneration and Material Reciprocity

The legal background

The Commission is considering introducing a principle of material reciprocity into the single equitable remuneration right under Article 8(2) of Directive 2006/115/EC on Rental and Lending Rights. Its stated aim, pursued since the July 2022 call for evidence and restated in the current call for evidence (Ref. Ares (2026)4845636), is to prevent royalties being diverted away from European performers and producers and to

improve the competitiveness of the European music market. That framing is worth examining carefully on its own terms.

The Court of Justice's judgment in RAAP (Case C-265/19), delivered on 8 September 2020, is the legal foundation the Commission relies on. The Court held that Article 8(2) requires a single equitable remuneration to be paid, and shared, with both performers and producers regardless of nationality, and that a Member State may not exclude third-country nationals on its own initiative, because this is an area of exclusive Union competence. The Court also confirmed that limitations on that right may be introduced by the EU legislature, provided they comply with Article 52(1) of the Charter of Fundamental Rights.

The Commission reads this as authority to introduce an EU-level reciprocity rule. That reading is correct on the narrow question of who may act. It does not, however, establish that any particular use of that power would be lawful. RAAP identified the competence. It did not pronounce any specific limitation proportionate.

The proportionality question

Any limitation on the remuneration right must, under Article 52(1) of the Charter, be provided for by law, respect the essence of the right, and be proportionate to a genuine objective of general interest. A general reciprocity rule, applied not in response to specific third-country reservations but as a broad trade instrument, may go further than the discretion the Court identified. RAAP answers who has the power to legislate. It does not answer whether every possible measure would be proportionate.

On the international trade dimension, reciprocity raises questions under the World Trade Organization framework. The most-favoured-nation principle in Article 4 of the TRIPS Agreement requires that any advantage granted to the nationals of one WTO Member be extended immediately and unconditionally to the nationals of all Members. The national treatment obligation in Article 3 is also potentially engaged. There are carve-outs, including for rights not provided for under TRIPS itself, so the position is genuinely contested rather than plainly unlawful. That is precisely why it needs to be analysed openly, and why the analysis must be published before any legislative proposal advances.

The current call for evidence commits to an impact assessment and a targeted economic study, but it does not commit to a published WTO and TRIPS compatibility analysis. Asking stakeholders to comment on a reciprocity proposal without disclosing the Commission's trade law assessment is asking them to engage with an incomplete picture.

The risk to the people the measure is meant to help

The likely impact on EU performers makes this concern more pressing. The artists most exposed to a reciprocity regime are those whose recordings are played in the third countries that currently withhold remuneration. Those are also the artists with most to gain from securing that remuneration rather than from forfeiting their EU income as a form of trade leverage. A measure framed as protecting EU artists may in practice fall hardest on the very people it was designed to help.

Withholding remuneration that would otherwise be owed is a restriction on a property right that RAAP recognised. Under Article 17 of the Charter, read with Article 52(1), it must be shown to be proportionate, not merely expedient. These questions cannot be adequately assessed without a comprehensive impact assessment focused specifically on the consequences for EU performers and their collective management organisations.

If reciprocity is pursued

If, after full analysis, the Commission still proposes a reciprocity measure, minimum safeguards must be built in from the outset. The designation of covered third countries should be transparent, reasoned, and subject to periodic review. It should be preceded by a genuine opportunity for individual performers and collective management organisations to make representations, rather than a process mediated exclusively through large industry actors. An explicit carve-out should protect remuneration in any case where withholding it would disproportionately harm EU performers. These are the minimum conditions under which a reciprocity measure could be reconciled with the proportionality and transparency principles that govern this response.

Recommendations

- **R3.1** Commission to produce and publish a full WTO and TRIPS compatibility analysis before any legislative proposal on material reciprocity advances, in time for meaningful stakeholder comment.
- **R3.2** Commission to conduct and publish a comprehensive impact assessment of the consequences of a reciprocity measure specifically for EU performers and their collective management organisations, before adopting a position.
- **R3.3** If reciprocity is proposed, the designation of covered third countries must be transparent, reasoned, subject to periodic review, and preceded by a genuine consultation process open to individual performers and not only industry bodies.
- **R3.4** Any reciprocity measure must include an explicit carve-out protecting remuneration in cases where

withholding it would disproportionately harm EU performers.

Section 4: Online Piracy, Live Events, and Enforcement Architecture

The prior question: capacity or design?

The Commission's own assessment of its 2023 Recommendation on live event piracy acknowledges that it had limited positive effect. Before legislating further, the Commission should resolve a prior question: is the enforcement gap primarily one of legislative design, or of administrative and judicial capacity to apply the tools that already exist?

The Recommendation itself notes that rights holders can already rely on remedies under the Enforcement Directive 2004/48/EC and the Digital Services Act, and that implementation depends on the nature of the intermediary services involved. That comes close to acknowledging that the existing framework is adequate in design but unevenly applied. Where the gap is primarily one of capacity, new legislation compounds the problem rather than resolving it. The Commission should assess DSA enforcement in the live-event piracy context before legislating new intermediary obligations.

Dynamic blocking orders and the Charter

Dynamic blocking orders are the Commission's primary proposed remedy for live piracy. The relevant legal framework is provided by Articles 11 and 47 of the Charter and by the European Court of Human Rights' judgment in *Yildirim v Turkey* (2012). Blocking without a strict legal framework and without judicial authorisation constitutes a disproportionate interference with freedom of expression, regardless of how legitimate the underlying enforcement objective is. Prior judicial authorisation should be regarded as the default safeguard necessary to satisfy Articles 11 and 47 of the Charter.

The overblocking risk is not hypothetical. Italy's Piracy Shield, launched in February 2024 to combat live sports piracy, was designed to allow rights holders to demand that domains and IP addresses be blocked within 30 minutes and without prior judicial review. The consequences have been documented by independent researchers and reported widely. Research by University of Twente scholars confirmed that the system routinely blocked legitimate services for extended periods. In one widely reported incident, a Google CDN misconfiguration caused Italian ISPs to block access to Google Drive and YouTube, preventing users across the country from accessing their own files. By mid-2025, the accumulation of incidents had prompted concerns among stakeholders and reports that the European Commission was examining the compatibility of Piracy Shield with Article 9 of the DSA and the Charter's guarantees on freedom of expression.

The contrast with the UK High Court's Premier League dynamic injunctions is instructive. Those orders required judicial authorisation, a proportionality assessment, and evidence of no overblocking before any renewal. Proportionality is achievable. The Italian experience shows what happens when it is treated as optional.

Scope creep and general-purpose blocking infrastructure

A further concern is trajectory. Italy extended Piracy Shield from live sports to films, television series, and music in August 2025, following lobbying by major entertainment industry bodies. A regime designed for a specific and time-sensitive enforcement problem became general-purpose blocking infrastructure within eighteen months of its launch. Without a statutory limit on scope, that is the default trajectory for any EU-level blocking mechanism.

New obligations on app stores and payment intermediaries are not unreasonable in principle. In practice, app store removal obligations concentrate enforcement gatekeeping in Apple and Google, actors whose decisions in copyright contexts are not subject to adequate independent review and whose commercial interests do not always align with proportionate enforcement. The Commission must assess whether DSA enforcement in this context has been fully and consistently deployed before legislating new obligations on intermediaries.

Recommendations

- **R4.1** Prior judicial authorisation must be a statutory requirement for all dynamic blocking orders. Administrative authorisation alone does not satisfy Article 47 of the Charter.
- **R4.2** Any dynamic blocking order legislation must include: a statutory definition of the content categories subject to orders; automatic sunset provisions; mandatory overblocking monitoring with public reporting; rapid challenge mechanisms for affected third parties; and enforceable liability for overblocking.
- **R4.3** A publicly accessible registry of all active blocking orders must be a condition of any new regime.
- **R4.4** Commission to assess DSA enforcement in the live-event piracy context before legislating new

obligations on app stores, payment intermediaries, or other infrastructure actors.

■ **R4.5** An explicit statutory prohibition must prevent live event enforcement mechanisms from being applied to content categories beyond their original scope. Italy's extension from live sports to all audio-visual content within eighteen months illustrates why this safeguard matters.

Section 5: Copyright in Research and the Secondary Publication Right

The fragmentation problem

The optional copyright exception for scientific research under Directive 2001/29/EC (the Infosoc Directive) creates real challenges for cross-border research collaboration in the EU. Because it is optional, its scope and implementation vary significantly from Member State to Member State. Researchers working across borders must navigate a patchwork of different national rules, which creates legal uncertainty and discourages the kind of open collaboration that produces the best science.

The problem is compounded by the relationship between researchers and publishers. Academic researchers are frequently required to transfer their rights to publishers as a condition of publication in scientific journals. Once rights are transferred, the researcher often has no legal basis to share, archive, or reuse their own work without the publisher's permission, which may be withheld or subject to embargo periods. The work may have been publicly funded, but the results end up locked behind a paywall.

Orphan works and the cost of unclear ownership

A specific and longstanding form of fragmentation concerns orphan works. Orphan works are creative works that remain under copyright but whose rights holders cannot be identified or located. Under the current framework, anyone wishing to use such a work must either navigate a burdensome and often fruitless permissions process or refrain from using the work entirely, regardless of whether the rights holder would have any objection. The result is that a vast amount of European creative content, including a significant portion of the early computer and console game heritage, remains legally inaccessible despite the absence of an identifiable rights holder actively asserting rights over them.

This is a research and cultural heritage problem. Works that cannot be accessed cannot be preserved, studied, or built upon. The Orphan Works Directive 2012/28/EU created a mechanism for cultural heritage institutions to use orphan works under certain conditions, but its scope is limited and its practical uptake has been modest. The targeted initiative should go further, establishing a clear legal pathway for the presumption of lawful use following a diligent search where no rights holder can be identified or located after a defined period. Content preservation communities and individual researchers should not be required to obtain institutional status simply to archive works that no rights holder is actively protecting.

The case for a secondary publication right

A secondary publication right would allow authors of scientific works to make their work publicly available after a defined embargo period, regardless of any contractual terms agreed with a publisher. Several Member States have introduced such a right at national level, including Germany, France, and the Netherlands, which means there is practical experience to draw on and a basis for assessing what works.

EU-level action in this area would address both the fragmentation problem and the power imbalance between individual researchers and large academic publishers. A single, directly applicable rule would reduce legal uncertainty for researchers and institutions operating across borders, enable more consistent implementation of open access principles in publicly funded research, and strengthen the position of the research community relative to dominant publishing actors whose market power has been widely documented.

Any secondary publication right must be carefully calibrated. The Commission should consider the appropriate embargo period, the range of works covered, and how the right interacts with existing national provisions and contractual frameworks. The goal should be to enable researchers to share the results of their work without creating uncertainty for publishers who have made legitimate editorial and production investments.

Research exceptions and open access

More broadly, the existing research exception under the Infosoc Directive should be clarified and, where appropriate, strengthened. Research that benefits from public funding should not be locked away from the public that funded it. The open access principles already reflected in many national research funding frameworks should be supported by a copyright framework that makes compliance straightforward rather than legally uncertain.

Text and data mining for scientific research is already covered by a mandatory exception under Article 3 of the CDSM Directive, which is a positive baseline. However, the interaction between that exception and the Article 4

commercial TDM exception creates complexity in practice, particularly for research with mixed public and commercial applications. The targeted initiative should clarify these boundaries.

Recommendations

- **R5.1** Introduce an EU-level secondary publication right enabling authors of scientific works to make their work publicly available after a reasonable embargo period, regardless of contractual terms agreed with publishers.
- **R5.2** Clarify and strengthen the research exception under the Infosoc Directive to reduce legal uncertainty for researchers working across borders, and to ensure that the exception operates consistently across Member States.
- **R5.3** Clarify the boundary between the mandatory research TDM exception under Article 3 of the CDSM Directive and the commercial TDM exception under Article 4, particularly for research with mixed public and commercial applications.
- **R5.4** Ensure that the design of any secondary publication right draws on the practical experience of Member States that have already implemented such a right at national level, and that a comparative assessment of those implementations informs the EU-level approach.
- **R5.5** Establish an expanded legal framework for orphan works that permits lawful preservation and use following a diligent search where no rights holder can be identified or located, extending preservation pathways beyond formally recognised cultural heritage institutions to individual researchers and preservation communities.

Conclusion

The European Pirate Party's engagement with copyright reform goes back to the origins of the Pirate movement itself. Copyright law exists, in its original conception, not primarily to benefit creators as an end in itself, but to serve the wider public interest by encouraging the creation and circulation of knowledge and culture. Benefiting creators is the means by which that goal is pursued, not the goal itself. That distinction matters, because it sets the standard against which any reform must be measured: does it serve the public interest, including the interest of citizens as readers, viewers, listeners, and participants in culture, or does it serve only the interests of those who hold rights?

The CDSM Directive was a genuine attempt to modernise copyright for the digital environment. Its shortcomings are not failures of ambition but of implementation. Too much was left to Member State discretion, individual creator rights were introduced without the enforcement tools to make them real, the fundamental-rights safeguards the Court of Justice required were not consistently built into national law, and the framework arrived just before a wave of generative AI development that changed the context entirely.

The Commission's review, and the targeted initiative that will run alongside it, offer the opportunity to correct those shortcomings in a way that serves creators, users, and the public interest equally. Across our five sections, we ask the Commission to:

- make the safeguards required by Case C-401/19 a binding condition in primary law, not guidance.
- examine stronger consent mechanisms for certain categories of commercial AI training and establish a mandatory training-data registry.
- clarify Article 15's relationship to AI training data and ensure that licensing revenue reaches individual journalists.
- give individual authors and performers the practical tools to use their Articles 18 and 19 rights, including a direct right to audit exploitation data.
- publish a TRIPS compatibility analysis and a performer-focused impact assessment before advancing the reciprocity proposal.
- require prior judicial authorisation and meaningful overblocking accountability for any live event blocking regime, and resist scope expansion by statute.
- introduce an EU-level secondary publication right and clarify the research exceptions framework.
- ensure that statutory copyright exceptions cannot be overridden by private contracts and that users retain practical access to legally acquired digital content through interoperability and format-shifting rights.

The European Pirate Party believes that copyright law works best when it genuinely serves the people who create, and when users can trust that it will not be used to suppress legitimate expression. Both of those things require clear rules, enforceable rights, and enforcement systems that remain proportionate and accountable. The targeted initiative gives the Commission the opportunity to deliver all three.

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[Directive 2004/48/EC](#) of the European Parliament and of the Council on the enforcement of intellectual property rights (Enforcement Directive).

[Directive 2012/28/EU](#) of the European Parliament and of the Council on certain permitted uses of orphan works.

[Directive 2001/29/EC](#) of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (Infosoc Directive).

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