

Vindicating Research Outputs.

Achieving the goals of Secondary Publishing Rights and Rights Retention in Ireland by means of a *draft* Copyright and Related Rights (Research Outputs and Open Access) Bill 2024

Background: The aim of this draft Bill is to underpin and vindicate the rights of researchers and their employers and funders to publish publicly-funded research outputs on open access platforms. This is often cast in the language of a secondary publishing right and/or of a retained right. The approach in the short draft Bill (below) is slightly different. It does not propose secondary publishing rights and/or retained rights *in those terms*. This would unravel existing carefully calibrated copyright balances. Instead, the Bill builds on distinctions and definitions in existing legislation to provide a obligation on authors' employers, and a non-copyright additional right to authors and funders, to make research outputs available to the public by means of an open repository. This short Bill tries to avoid too much detail and technicality, the better to understand and adopt the solutions proposed here. In this way, research outputs are vindicated, and the goals of secondary publishing rights and rights retention are achieved in Ireland, without disturbing the balances in existing copyright legislation.

Section 1, on short title and commencement, is a standard clause.

Section 2, on definitions, integrates this Bill with previous legislation, including

- the Ombudsman Act, 1980
- the Patents Act, 1992,
- the Copyright and Related Rights Act, 2000,
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19),
- the Copyright and Other Intellectual Property Law Provisions Act 2019,
- the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021 (S.I. No. 376/2021),
- the Higher Education Authority Act 2022, and
- the Research and Innovation Act 2024;

and it then provides additional definitions necessary for the Bill itself. For ease of reference, the main provisions of these pieces of legislation to which the Bill refers are set out at the end of this document, after the text of the draft Bill.

The main provision in the Bill (section 4(2)(a) below) is the obligation on the employers of authors to make publicly funded research outputs available to the public by means of an open repository, the right of authors and funders to do so, and the right of authors, employers and funders to make other research outputs similarly available. The building blocks of that provision are defined in section 2.

A key concept in copyright, and in this Bill, is the "author" of the relevant work. Section 21 of the Principal Act provides for interpretation of author for the purposes of copyright, and that definition is adopted in this Bill. Section 22 of the Principal Act provides for "works of joint authorship", and that concept too is adopted in this Bill. Section 23 of the Principal Act provides for first ownership of copyright, and this Bill does not amend or affect that in any way. Hence, this Bill builds on the distinction between author and first owner of copyright inherent in sections 21 and 22 of the Principal Act, on the one hand, and section 23 of the Act, on the other; it utilizes the former without disturbing the latter.

Another key concept in copyright, and in this Bill, is the relevant "work". The definition in the Principal Act is adopted, and performances as defined in that Act are included.

There are two new definitions in section 2: "open repository" and research "outputs". The former is derived from international best practice. For the latter, the definition of "research" in the Research and Innovation Act 2024 is adopted here. The definition of "output" builds, in two ways, upon the definition of "work" already described. First, on the one hand, it defines the context in which the work is produced. This, as well as the reference to performances, enables appropriate non-traditional research outputs to be covered by the obligations in the Bill. Second, on the other hand, outputs that are not intended primarily to be research outputs are expressly excluded from the obligations in the Bill. This is a difficult line to walk; and it may be that, in practice, some cases may arise where this definition is unnecessarily over- or under-inclusive. To address this concern, section 3(3) below permits the Minister to any necessary additional qualification to this definition of "output", provided that any such qualification is consistent with the purpose and substance of section 4.

"Publicly funded" is referred to but not defined in the 2021 Regulations, and that lead is followed here.

Section 3, on regulations and orders, is largely a standard clause, except for the addition of the express power in section (3) to amend the definition research "output", as already described above.

Section 4, on research outputs, is the heart of the Bill. The intention here is to ensure that publicly funded research outputs are Findable, Accessible, Interoperable and Reusable (FAIR).

Recall that "research" and "outputs" are defined in section 2 (above).

Subsection (1) provides that sections 21, 22 or 23 of the Principal Act shall not prevent the operation of this section, that the operation of Bill is without prejudice to the operation of section 23 of the Principal Act, and that contractual clauses that seek to exclude the rights conferred by the Bill are void.

Subsection (2) is the core of the Bill. Employers of authors must make publicly-funded research outputs available to the public by means of an open repository; authors and funders may do so; and employers, authors and funders may similarly make available research outputs that are not publicly funded. Where a research output is published in that way, then there must be a sufficient acknowledgement of the author and of the source of its first publication.

Since subsection (2)(a) requires employers, in the first instance, to make publicly funded research outputs publicly available, this effectively incentivises employers to develop workflows to encourage and support authors in making their research outputs available by means of an open repository. This workflow can also be used to exercise the other rights provided by the remainder of subsection (2).

Subsection (3), following international best practice, requires that research outputs published in open repositories be "interoperable". This concept is referred to but not defined in several Acts and statutory instruments (see, in particular, the European Union (Electronic Communications Code) Regulations 2022 (S.I. No. 444/2022) where the interoperability of services is a key obligation of service providers); and that lead is followed here.

Subsection (3) also adopts paragraph (1) of Regulation 7 of the 2021 Regulations and paragraph (4) of Regulation 10 of the 2021 Regulations. The former sets out the open format for the purposes of re-use of public sector data. The latter provides for the recommended Open Data Licence on foot of which such public sector data can be re-used; at present, the recommended licence is Creative Commons Attribution (CC-BY) 4.0 (see Department of Public Expenditure and Reform Circular 12/2016). But that licence is to be used where that is possible and appropriate. So, if another licence (such as another Creative Commons licence) is more appropriate, that may be used. Moreover, whatever licence is appropriate, subsection (5) (below) envisages that additional conditions may be imposed, provided that they are necessary.

Subsection (4) seeks to ensure that research outputs made available by an open repository are accessible to persons with a disability. Section 104 of the Principal Act (as amended by section 26 of the 2019 Act), and sections 104A-104B of the Principal Act (as inserted by section 27 of the 2019 Act) provide for access to works by persons with a disability. Section 104B(2) of the Principal Act provides that the electronic form of the relevant work

shall enable copies of the work to be made—

- (a) without undue difficulty,
- (b) which are easily navigated, and
- (c) which are capable of being modified.

And that requirement is incorporated into the Bill, to ensure that research outputs made available by an open repository are accessible to persons with a disability.

Subsection (5) requires that the open repository makes the research outputs available free of charge (reinforcing the same point made in the definition in section 2), and not subject to unnecessary conditions.

Subsection (6) provides that the right to make research outputs available by an open repository does not apply in various contexts, and in particular to works in respect of which third parties hold intellectual property rights. This means that the version of the research output thereby published is not the version published

by publishers, unless they have provided a licence to the author for such publication. Instead, it is a version of the manuscript created the author. This effectively permits the author's accepted manuscript to be made available by an open repository.

Section 5 amends section 288 of the Principal Act, to ensure that the definition of "qualifying performance" can be fully included in the definition of "work" in section 2 of the Bill on which the definition of research "output" is constructed.

Section 6 envisages that compliance mechanism will be can be made available consistently with the Higher Education Authority Act 2022 and the Research and Innovation Act 2024.

Section 6 permits enforcement by means of the Ombudsman Act, 1980.

This Bill currently consists of three Parts. Further Parts can be added to provide for additional or related matters that arise in the course of the ongoing work of the Scoir research project.

Finally, this is a draft, and **only a draft**. It contains ideas and principles to achieve the goal of underpinning and vindicating the rights of researchers and their employers and funders to publish publicly-funded research outputs on open access platforms. It is intended for discussion, and it will doubtless have to be edited, amended, added to, subtracted from, corrected, or revised. Any and all comments are encouraged and welcomed.



**An Bille Cóipchirt agus Ceart Gaolmhar (Aschuir Thaighde agus Rochtain
Oscailte) 2024**
Copyright and Related Rights (Research Outputs and Open Access) Bill 2024

Mar a tionscnaíodh

As initiated

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Acts Referred to

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| Copyright and Other Intellectual Property Law Provisions Act 2019 | 2019, No. 19 |
| Copyright and Related Rights Act, 2000 | 2000, No. 28 |
| Higher Education Authority Act 2022 | 2022, No. 31 |
| Ombudsman Act, 1980 | 1980, No. 26 |
| Patents Act, 1992 | 1992, No. 1 |
| Research and Innovation Act 2024 | 2024, No. 15 |



**An Bille Cóipchirt agus Ceart Gaolmhar (Aschuir Thaighde agus Rochtain
Oscailte) 2024**
Copyright and Related Rights (Research Outputs and Open Access) Bill 2024

BILL

entitled

AN ACT TO AMEND THE COPYRIGHT AND RELATED RIGHTS ACT, 2000, TO ENSURE
THE PUBLICATION OF PUBLICLY FUNDED RESEARCH OUTPUTS IN OPEN
REPOSITORIES, AND TO MAKE PROVISION FOR RELATED MATTERS.

Be it enacted by the Oireachtas as follows:

PART I

Preliminary and General

1. Short title and commencement.

- (1) This Act may be cited as the Copyright and Related Rights (Research Outputs and Open Access) Act 2024.
- (2) This Act and the Principal Act, as amended, may be cited together as the Copyright and Related Rights Acts 2000 to 2024.
- (3) This Act shall come into operation on such day or days as the Minister may by order or orders either generally or with reference to any particular purpose or provision appoint, and different days may be so appointed for different purposes or different provisions of this Act.

2. Interpretation.

(1) In this Act, unless the context otherwise requires—

"Act of 1980" means the Ombudsman Act, 1980;

"Act of 2019" means the Copyright and Other Intellectual Property Law Provisions Act 2019;

"Act of 2022" means the Higher Education Authority Act 2022;

"Act of 2024" means the Research and Innovation Act 2024;

"author" has the meaning assigned to it in section 21 of the Principal Act, whether or not he or she is the first owner of copyright for the purposes of section 23 of the Principal Act;

"Directive" means Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19);

"innovation" has the meaning assigned to it in section 2 of the Research and Innovation Act 2024, and subsection (2) of that section shall apply;

"joint authorship" has the meaning assigned to it in section 22 of the Principal Act; provided that—

- (i) references to "joint authors" shall be construed accordingly,
- (ii) for the avoidance of doubt, subsection 2(8) of the Principal Act shall apply, and
- (iii) this paragraph shall apply whether or not any or some or all of the joint authors is or are the first owner or owners of copyright for the purposes of section 23 of the Principal Act;

"make available" has the meaning assigned to it in Article 3 of the Directive, in section 40 of the Act of 2000, and in section 205 of the Act of 2000;

"Minister" means the Minister for Enterprise, Trade and Employment;

"open repository" means a sustainable, trusted, online storage and retrieval platform where research outputs and other works are

- (a) stored and preserved, without charge to the party submitting the research output or other work, and
- (b) made available to the public free of charge.

"Principal Act" means the Copyright and Related Rights Act, 2000;

"qualifying performance" has the meaning assigned to it in section 288 of the Principal Act;

"Regulations" means the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021 (S.I. No. 376/2021);

"research" has the meaning assigned to it in section 2 of the Research and Innovation Act 2024, and subsection (2) of that section shall apply;

"outputs", subject to section 3(3), includes works that are—

- (a) produced in academic, educational, innovation, intellectual, research, scholarly, scientific, technical, or other similar, contexts, and
- (b) intended by their author or joint authors primarily to further such purposes or interests;

"work"—

- (a) has the meaning assigned to it in section 2 of the Principal Act, and
- (b) includes a performer's qualifying performance.

- (2) A word or expression used in this Act that is also used in the Directive, or the Principal Act, or the Act of 2019, or the Regulations has, unless the context otherwise requires, the same meaning in this Act as it has in the Directive, or Principal Act, or the Act of 2019, or the Regulations, as the case may be.

3. Regulations and orders

- (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect.
- (2) Where a provision of this Act requires or authorises the Minister to make regulations, such regulations may—
 - (a) make different provision for different circumstances or cases, classes or types, and
 - (b) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Without prejudice to the generality of this section, the Minister may, by regulation, prescribe any necessary additional qualification to the definition of "output" provided for in section 2; provided that any such qualification is consistent with the purpose and substance of section 4.
- (4) Every order (other than an order under section 1(3)) and regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after the order or regulation is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation, as the case may be, shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

PART II

Research outputs

4. Research outputs.

- (1)
 - (a) For the avoidance of doubt, it is not an infringement of the rights conferred by the Principal Act to undertake any act pursuant to this section.
 - (b) In particular, nothing in sections 21, 22 or 23 of the Principal Act shall prevent the operation of this section.

- (c) The provisions of this Act shall be without prejudice to the operation of section 23 of the Principal Act.
 - (d) Where an act is required or permitted under this Act, any term or condition in any agreement which purports to prohibit, exclude or restrict that act shall be void.
- (2)
- (a) In the case of a research output that is publicly funded in whole or in part, the employer of the author of the research output shall make or cause to make the research output available to the public by means of an open repository.
 - (b) In the case of any such research output, where there is more than one joint author, the employer or employers of any joint author or authors may make or cause to make that research output available to the public by means of an open repository, and this shall be sufficient to discharge the obligation of any other employer pursuant to paragraph (a); provided that this shall not prevent any other employer making or causing to make that output available in like manner.
 - (c) In the case of any such research output, the author or a joint author of the research output, or his or her or their funder or funders, may make or cause to make the research output available to the public by means of an open repository, and this shall be sufficient to discharge the obligation of any employer or employers pursuant to paragraph (a); provided that this shall not prevent any other employer, joint author or funder making that output available in like manner.
 - (d) In the case of any other work, the author or a joint author of the work, or his or her or their employer or employers, or his or her or their funder or funders, may make or cause to make the work available to the public by means of an open repository.
 - (e) A research output or other work that is made available pursuant to this section shall be accompanied by a sufficient acknowledgement of the author and, where relevant, the location of its first publication.
- (3) All research outputs or other works made available pursuant to subsection (2), and all metadata in such research outputs and other works, shall—
- (a) be interoperable,
 - (b) be made in an open format that complies with paragraph (1) of Regulation 7 of the Regulations, and

- (c) be made available pursuant to a suitable open public licence, which shall, where possible and appropriate, be the standard licence published from time to time by the Minister pursuant to paragraph (4) of Regulation 10 of the Regulations.
- (4) Research outputs or other works made available by means of an open repository shall, where practicable, comply with section 104B(2) of the Principal Act (as inserted by section 27 of the 2019 Act).
- (5) The use and re-use of research outputs or other works made available pursuant to this section shall—
 - (a) be free of charge, and
 - (b) not be subject to conditions unless the conditions are in accordance with paragraphs (2) and (3) of Regulation 10 of the Regulations.
- (6) Sub-section (2) shall not apply to any research output or other work—
 - (a) access to which, or publication of which, is excluded under any rule of law or enactment other than the Principal Act,
 - (b) that amounts to a trade secret for the purposes of the European Union (Protection of Trade Secrets) Regulations 2018 (S.I. No. 188/2018),
 - (c) that it is necessary to be kept confidential to ensure that it is not a prejudicial disclosure for the purposes of sections 11 and 12 of the Patents Act, 1992, or
 - (d) in respect of which a third party holds intellectual property rights, except where such intellectual property rights derive from publicly funded research upon which the research output is based, including where such a third party is—
 - (i) the author's employer,
 - (ii) another employee of the author's employer,
 - (iii) a joint author, or
 - (iv) a funder of publicly funded research that has funded, in whole or in part, the research from which the intellectual property rights derive.

5. Amendment of section 288 of the Principal Act.

Section 288 of the Principal Act is amended by inserting after "*Part VI*" the following: "and the Copyright and Related Rights (Research Outputs and Open Access) Act 2024".

PART III

Compliance and enforcement

6. Compliance.

- (1) The achievement of the obligations and rights set out in section 4 shall constitute a national policy or objective with regard to higher education and research for the purposes of section 35(4)(b) of the Act of 2022.
- (2) An tÚdarás um Ard-Oideachas may, pursuant to section 143 of the Act of 2022, prepare or adopt and issue guidelines, codes or policies to ensure the achievement of the obligations and rights set out in section 4.
- (3) Having regard to the objects of Taighde Éireann, pursuant to section 8 of the Act of 2024, to promote and support the contribution made by research and innovation and to strengthen the engagement of the research and innovation system with society, the Agency may, in awarding funding for research and innovation pursuant to Part 3 of the Act of 2024, take into account the extent to which applications for such funding ensure the achievement of the obligations and rights set out in section 4.

7. Enforcement.

- (1) Where-
 - (a) an employee of any employer mentioned in the relevant Schedule has been adversely affected by a failure of the employer to comply with its obligation pursuant to section 4(2)(a), and
 - (c) that obligation has not otherwise been discharged pursuant to section 4(2)(b) or section 4(2)(c),then the employee may make a complaint concerning that failure to the Ombudsman pursuant to section 4(3)(a) of the Act of 1980.

- (2) The Ombudsman may, pursuant to section 4(3)(b) of the Act of 1980, undertake an investigation into the compliance by any body mentioned in the relevant Schedule with its obligations pursuant to section 4(2)(a).
- (3) For the purposes of this section, "the relevant Schedule" is the First Schedule to the Act of 1980 (as amended by Part 1 of the Schedule to the Ombudsman (Amendment) Act, 2012).

Main provisions of pieces of legislation to which the Bill refers

Ombudsman Act, 1980

<https://www.irishstatutebook.ie/eli/1980/act/26/enacted/en/html>

4. Functions of the Ombudsman

- (1) The Ombudsman shall be independent in the performance of his functions.
- (2) Subject to the provisions of this Act, the Ombudsman may investigate any action taken by or on behalf of a Department of State or other person specified in Part I of the First Schedule to this Act (being an action taken in the performance of administrative functions) where, upon having carried out a preliminary examination of the matter, it appears to the Ombudsman—
 - (a) that the action has or may have adversely affected a person (other than a Department of State or other person specified in the First or Second Schedule to this Act), and
 - (b) that the action was or may have been—
 - (i) taken without proper authority,
 - (ii) taken on irrelevant grounds,
 - (iii) the result of negligence or carelessness,
 - (iv) based on erroneous or incomplete information,
 - (v) improperly discriminatory,
 - (vi) based on an undesirable administrative practice, or
 - (vii) otherwise contrary to fair or sound administration.
- (3) The Ombudsman shall not investigate an action unless—
 - (a) a complaint has been made to him in relation to the action by a person (other than a Department of State or other person specified in the First or Second Schedule to this Act), or
 - (b) it appears to him, having regard to all the circumstances, that an investigation under this section into the action would be warranted.

...

Patents Act, 1992

<https://www.irishstatutebook.ie/eli/1992/act/1/enacted/en/html>

11. Novelty.

- (1) An invention shall be considered to be new if it does not form part of the state of the art.
- (2) The state of the art shall be held to comprise everything made available to the public (whether in the State or elsewhere) by means of a written or oral description, by use, or in any other way, before the date of filing of the patent application.
- (3) Additionally, the content of a patent application as filed, of which the date of filing is prior to the date referred to in subsection (2) and which was published under this Act on or after that date, shall be considered as comprised in the state of the art.
- (4) The provisions of subsections (1), (2) and (3) shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in subsection (4) of section 9 provided that its use for any method referred to in the said subsection (4) is not comprised in the state of the art.

12. Non-prejudicial disclosures.

- (1) For the application of section 11 a disclosure of the invention shall not be taken into consideration if it occurred not earlier than six months preceding the filing of the patent application and if it was due to, or in consequence of—
 - (a) a breach of confidence or agreement in relation to, or the unlawful obtaining of the matter constituting, the invention, or
 - (b) the fact that the applicant or his legal predecessor has displayed the invention at an international exhibition which is either official or officially recognised under the Convention on International Exhibitions signed at Paris on the 22nd day of November, 1928, or any subsequent treaty, convention or other agreement replacing that Convention: Provided that the exhibitor states, when making the patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions prescribed.
- (2) The Minister may for the purpose of subsection (1) prescribe a period other than the six months specified in that subsection and circumstances other

than those specified in paragraph (a) or (b) of that subsection where the Minister is satisfied that it is necessary to do so in order to give effect to any treaty or international convention to which the State is or becomes a party and the said subsection shall be construed accordingly.

- (3) Where a statement appears in the Journal stating that an international exhibition specified in the statement is or was an international exhibition of the class referred to in subsection (1), then for the purposes of this section the statement shall be evidence that the international exhibition specified therein is or was an international exhibition of such class.

Copyright and Related Rights Act, 2000

<https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/index.html>

2. Interpretation.

...

“work” means a literary, dramatic, musical or artistic work, sound recording, film, broadcast, cable programme, typographical arrangement of a published edition or an original database and includes a computer program ...

...

21. Interpretation of author.

In this Act, “author” means the person who creates a work and includes:

- (a) in the case of a sound recording, the producer;
- (b) in the case of a film, the producer and the principal director;
- (c) in the case of a broadcast, the person making the broadcast or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, without alteration, the person making that other broadcast;
- (d) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
- (e) in the case of a typographical arrangement of a published edition, the publisher;
- (f) in the case of a work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken;
- (g) in the case of an original database, the individual or group of individuals who made the database; and
- (h) in the case of a photograph, the photographer.

22. Works of joint authorship.

- (1) In this Act, “a work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.
- (2) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.
- (3) A broadcast shall be treated as a work of joint authorship if more than one person makes the broadcast and the contribution of each person is not distinct from that of any of the others involved in making that broadcast.
- (4) References in this Act to the author of a work shall, unless otherwise provided, be construed, in relation to a work of joint authorship, as references to all of the authors of the work.

23. First ownership of copyright

- (1) The author of a work shall be the first owner of the copyright unless—
 - (a) the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary,
 - (b) the work is the subject of Government or Oireachtas copyright,
 - (c) the work is the subject of the copyright of a prescribed international organisation, or
 - (d) the copyright in the work is conferred on some other person by an enactment.

...

40. Making available right.

- (1) References in this Part to the making available to the public of a work shall be construed as including all or any of the following, namely:
 - (a) making available to the public of copies of the work, by wire or wireless means, in such a way that members of the public may access the work from a place and at a time chosen by them (including the making available of copies of works through the Internet);
 - (b) performing, showing or playing a copy of the work in public;
 - (c) broadcasting a copy of the work;
 - (d) including a copy of the work in a cable programme service;

- (e) issuing copies of the work to the public;
 - (f) renting copies of the work;
 - (g) lending copies of the work without the payment of remuneration to the owner of the copyright in the work,
and references to “lawfully making available to the public” shall mean the undertaking of any of the acts referred to in paragraphs (a) to (g) by or with the licence of the copyright owner.
- (2) References in this Part to the making available to the public of copies of a work shall include the making available to the public of the original of the work.
- (3) Subject to subsection (4), the provision of facilities for enabling the making available to the public of copies of a work shall not of itself constitute an act of making available to the public of copies of the work.
- (4) Without prejudice to subsection (3), where a person who provides facilities referred to in that subsection is notified by the owner of the copyright in the work concerned that those facilities are being used to infringe the copyright in that work and that person fails to remove that infringing material as soon as practicable thereafter that person shall also be liable for the infringement.
- (5) Without prejudice to subsection (4), the Minister may prescribe the form of the notice to be given under that subsection and the form shall specify—
- (a) the name and address of the person claiming to be the owner of the copyright in the work concerned,
 - (b) the grounds that the person requesting the removal of material has for such removal, and
 - (c) a list of the material which is to be removed.
- (6) References in this Part to “performance”, in relation to a work, shall include—
- (a) delivery, in the case of lectures, addresses, speeches and sermons, and
 - (b) any means of presentation of sounds or images, or any combination of sounds or images or representations thereof, including presentation by means of a sound recording, film, broadcast or cable programme of the work.
- (7) Where copyright in a work is infringed by its being performed, played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representations

thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representations thereof, are sent shall not be regarded as liable for the infringement and a performer shall not be regarded as liable for the infringement to the extent that the infringement relates to his or her activity as a performer.

- (8) There shall be a right of the owner of copyright to make available to the public copies of a work or to authorise others to do so which shall be known and in this Part referred to as the “making available right”.

104B. Electronic form of relevant work

- (2) The electronic form of the relevant work shall enable copies of the work to be made—
- (a) without undue difficulty,
 - (b) which are easily navigated, and
 - (c) which are capable of being modified.

(as inserted by section of 27 of the 2019 Act).

205. Making available to public copies of recordings of qualifying performances.

- (1) Subject to subsection (2), a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.
- (2) Where a copy of a sound recording is—
- (a) played in public, or
 - (b) included in a broadcast or cable programme service,
- the right conferred by this section shall be deemed to be satisfied by the payment of equitable remuneration as specified in section 208.
- (3) A reference in Parts III and IV to the making available to the public of copies of a recording shall include the making available to the public of the original recording of the live performance.
- (4) There shall be a right conferred by this section which shall be known and in Parts III and IV referred to as the “making available right”.
- (5) A reference in Parts III and IV to the making available to the public of copies of a recording of a qualifying performance shall include—
- (a) making available to the public of copies of a recording, by wire or wireless means, in such a way that members of the public may access

the recording from a place and at a time individually chosen by them, including the making available of copies of recordings through the Internet,

- (b) showing or playing a copy of the recording in public,
 - (c) broadcasting a copy of the recording,
 - (d) including a copy of the recording in a cable programme service,
 - (e) issuing copies of the recording to the public,
 - (f) renting copies of the recording, or
 - (g) lending copies of the recording without the payment of remuneration to the rightsowner.
- (6) The making available right is infringed by a person who, without the consent of the performer, undertakes or authorises another to undertake any of the acts referred to in subsection (5).
- (7) Subject to subsection (8), the provision of facilities for enabling the making available to the public of copies of a recording of a performance shall not of itself constitute an act of making available to the public of copies of the recording.
- (8) Without prejudice to subsection (7), where a person who provides facilities referred to in that subsection is notified by the rightsowner that those facilities are being used to infringe any of the rights conferred by Parts III and IV and that person fails to remove that infringing material as soon as is practicable thereafter, that person shall also be liable for the infringement.
- (9) Without prejudice to subsection (8), the Minister may prescribe the form of the notice to be given under that subsection and the form shall specify—
- (a) the name and address of the person claiming to be the owner of the rights in the recording concerned,
 - (b) the grounds that the person requesting the removal of material has for such removal, and
 - (c) a list of the material which is to be removed.
- (10) Where the making available right is infringed by a copy of a recording being played or shown in public, by means of apparatus for receiving sounds, images or data or any combination of sounds, images or data, or the representations thereof, conveyed by any means, the person by whom sounds, images or data or any combination of sounds, images or data, or the representation thereof, are sent shall not be regarded as liable for the infringement.

288. Qualifying performance.

A performance is a qualifying performance for the purposes of the provisions of this Part and *Part IV* if it is given by a qualifying individual or a qualifying person, or takes place in a qualifying country, territory, state or area, in accordance with this Chapter.

This is the section as it currently appears. It will be amended by section 4 of the Bill to accommodate the definition of "work" in section 2 of the Bill on which the definition of research "output" is constructed, and it will then provide as follows:

288. Qualifying performance.

A performance is a qualifying performance for the purposes of the provisions of this Part and *Part IV* and the Copyright and Related Rights (Research Outputs and Open Access) Act 2024 if it is given by a qualifying individual or a qualifying person, or takes place in a qualifying country, territory, state or area, in accordance with this Chapter.

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10–19)

<https://eur-lex.europa.eu/eli/dir/2001/29/oj>

Article 3

Right of communication to the public of works and right of making available to the public other subject-matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.
2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

- (a) for performers, of fixations of their performances;
 - (b) for phonogram producers, of their phonograms;
 - (c) for the producers of the first fixations of films, of the original and copies of their films;
 - (d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.
3. The rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.

The European Union (Open Data and Re-use of Public Sector Information) Regulations 2021 (S.I. No. 376/2021).

<https://www.irishstatutebook.ie/eli/2021/si/376/made/en/html>

7. Available formats.

- (1) Where a public sector body or a public undertaking makes a document available for re-use it shall make the document available in any pre-existing format or language, by electronic means where possible and appropriate, in a format that is open, machine-readable, accessible, findable and re-usable, together with its metadata, and the format and metadata shall, where possible, comply with formal open standards.

10. Standard licences.

- (1) Where a public sector body or public undertaking makes documents available for re-use, the re-use of the documents shall not be subject to conditions unless the conditions are in accordance with paragraph (2).
- (2) Any applicable conditions for the re-use of documents shall—
- (a) be objective, proportionate, non-discriminatory and justified on grounds of an objective of public interest,
 - (b) not unnecessarily restrict possibilities for re-use, and
 - (c) not be used to restrict competition.
- (3) Subject to Regulation 8(8), any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use, including for cross-border re-use.

- (4) A public sector body or public undertaking shall, where possible and appropriate, use the standard licence for the re-use of documents published from time to time by the Minister.

A Ministerial Circular provides that the recommended Open Data Licence is **Creative Commons Attribution (CC-BY) 4.0**.

[See Department of Public Expenditure and Reform Circular 12/2016 <https://circulars.gov.ie/pdf/circular/per/2016/12.pdf> which does not seem to have been updated after S.I. No. 376/2021 On Creative Commons Attribution (CC-BY) 4.0, see <https://creativecommons.org/licenses/by/4.0/deed.en>].

The European Union (Protection of Trade Secrets) Regulations 2018 (S.I. No. 188/2018)

<https://www.irishstatutebook.ie/eli/2018/si/188/>

Higher Education Authority Act 2022

<https://www.irishstatutebook.ie/eli/2022/act/31/enacted/en/html>

35. Performance framework

- (1) An tÚdarás shall, with the approval of the Minister, prepare and establish a performance framework for the higher education and research system (in this section referred to as a “performance framework”) at intervals of not less than once every 5 years and may publish the performance framework in such manner as it considers appropriate.

...

- (4) An tÚdarás shall, in preparing a performance framework, have regard to the following:
- (a) the strategy for tertiary education under section 33, taking account of the diversity of functions, objects and priorities of different higher education providers,
 - (b) national policy and objectives with regard to higher education and research, and

- (c) the matters and outcomes whose implementation is sought to be prioritised.

143. Guidelines, codes and policies

- (1) An tÚdarás may prepare or adopt and issue guidelines, codes or policies to designated institutions of higher education for any purpose relating to this Act and concerning—
 - (a) any matter or thing referred to in this Act or any other enactment, and
 - (b) the implementation of any policy or objective of the Minister or the Government.

...

- (4) An tÚdarás shall send a copy of the guidelines, codes or policies under subsection (1) to the designated institutions of higher education.
- (5) An tÚdarás shall publish the guidelines, codes or policies prepared or adopted by it under this section in such manner as An tÚdarás considers appropriate.

...

The Research and Innovation Act 2024

<https://www.irishstatutebook.ie/eli/2024/act/15/enacted/en/html>

2. Interpretation

- (1) In this Act—

...

“innovation” means the development and use of new ideas, methods, products, processes, policies and services where they have not been used previously;

...

“research” means creative and systematic work in any discipline that is undertaken in order to increase the stock of knowledge (including knowledge of humankind, culture and society) and to devise new applications of available knowledge;

...

8. Objects of Agency

The Agency shall have regard to the following objects in performing its functions:

- (a) to promote the attainment and maintenance of excellence in the standard and quality of research and innovation undertaken;
- (b) to support the undertaking of research and innovation in all fields of activity and disciplines by researchers with different levels of knowledge, experience and specialist skills in such fields or disciplines;
- (c) to promote and support the contribution made by research and innovation to economic, social, cultural and environmental development and sustainability in the State;
- (d) to strengthen the engagement of the research and innovation system with—
 - (i) the Government, Ministers of the Government and bodies (whether statutory or otherwise) which are funded wholly or partly by public moneys, and
 - (ii) enterprise, non-governmental organisations, cultural institutions and society generally;
- (e) to promote and develop the reputation of the State internationally as a location that is favourable for undertaking research and innovation;
- (f) to advance the principles of equality, diversity and inclusion with regard to opportunities to undertake research and innovation and in the undertaking of that research and innovation.