

# Legal issues on Open Science:

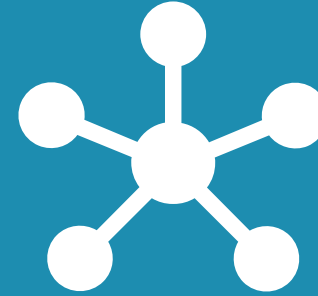
## Non-personal data and tools for enabling knowledge sharing

Dr. Luca Schirru  
Postdoctoral Researcher (Centre for IT & IP Law – CiTiP)

Workshop "Open science, a landscape under construction with a horizon of possibilities"  
CIEM - Universidad de Cantabria, Spain  
Nov. 11-13, 2022

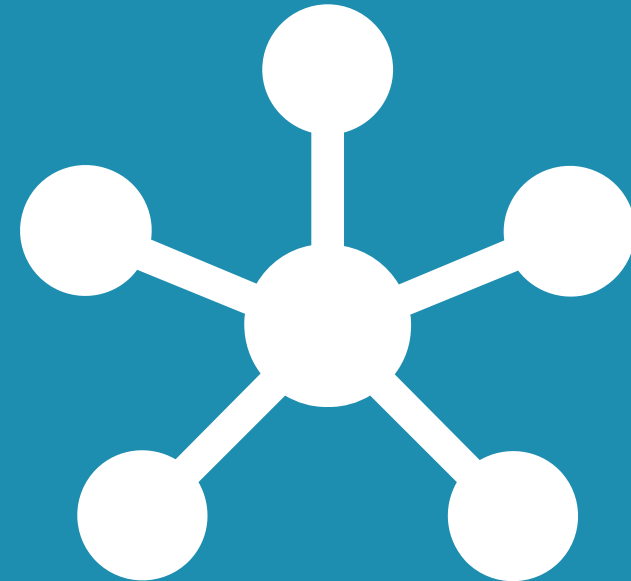


1. Legal Framework on Data
2. Enabling Open Science
3. Skills4EOSC

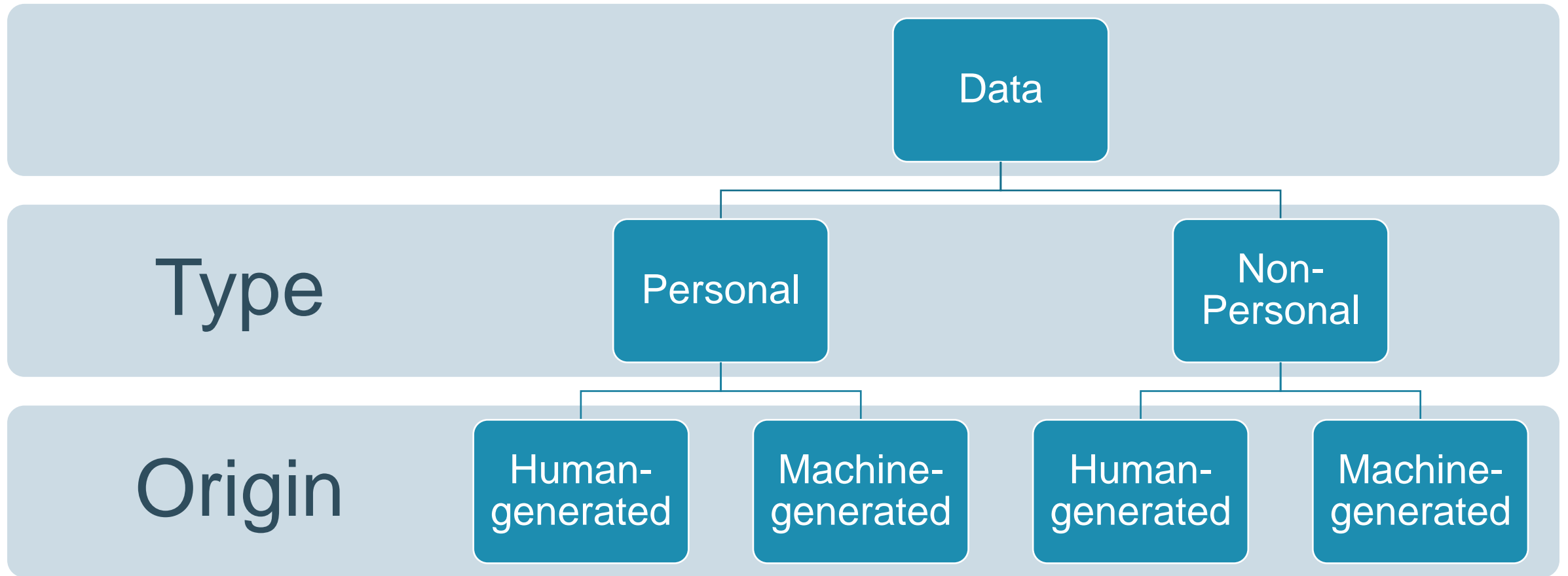


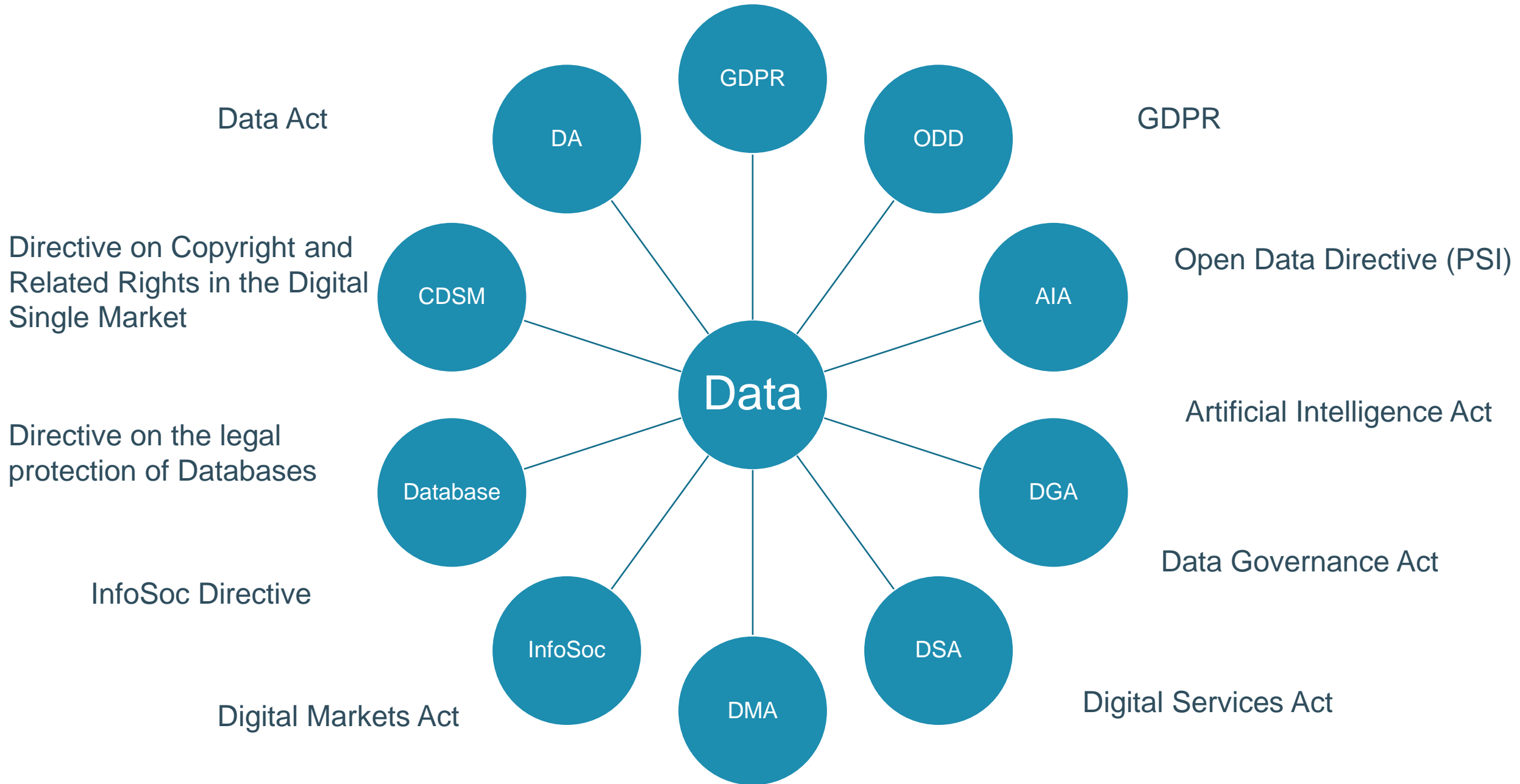
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# Legal Framework on Data

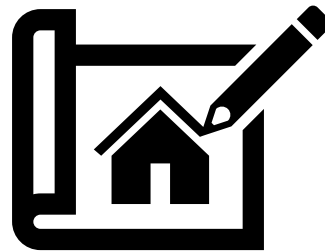
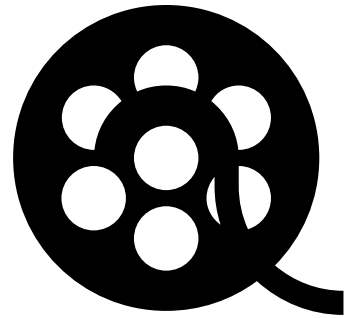


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# Data – non-personal – human-generated



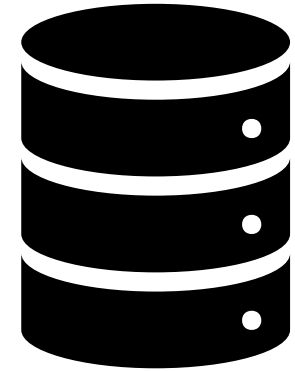
# Data – non-personal – human-generated

**Berne Convention:** (...) Article 2 (...) (1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramaticomusical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science

# Database – non-personal – human-generated

*Directive 96/9/EC*

Art. 1(2). [...]‘database’ shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.



Art. 3

1. In accordance with this Directive, databases which, **by reason of the selection or arrangement of their contents**, constitute the author's own intellectual creation shall be protected as such by copyright[...]
2. The copyright protection of databases provided for by this Directive **shall not extend to their contents** and shall be without prejudice to any rights subsisting in those contents themselves.



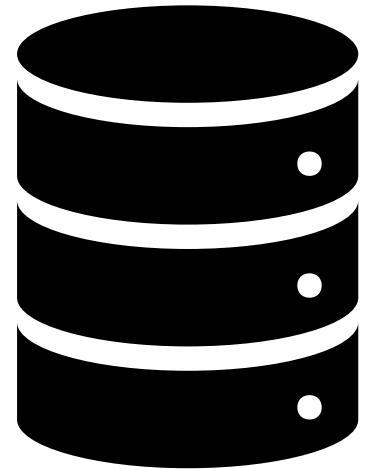
# Database – non-personal – human-generated

## ***SUI GENERIS RIGHT***

### *Article 7*

#### **Object of protection**

1. Member States shall provide for a right for the maker of a database which shows that there has **been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents** to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.



# Directive 2019/790 - CDSM

## *Article 3*

### **Text and data mining for the purposes of scientific research**

1. Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, and Article 15(1) of this Directive for **reproductions** and extractions **made by research organisations and cultural heritage institutions** in order to carry out, **for the purposes of scientific research**, text and data mining of works or other subject matter to which they have **lawful access**.
2. Copies of works or other subject matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.
3. Rightholders shall be allowed to **apply measures to ensure the security and integrity of the networks and databases where the works or other subject matter are hosted**. Such measures shall not go beyond what is necessary to achieve that objective.[...]

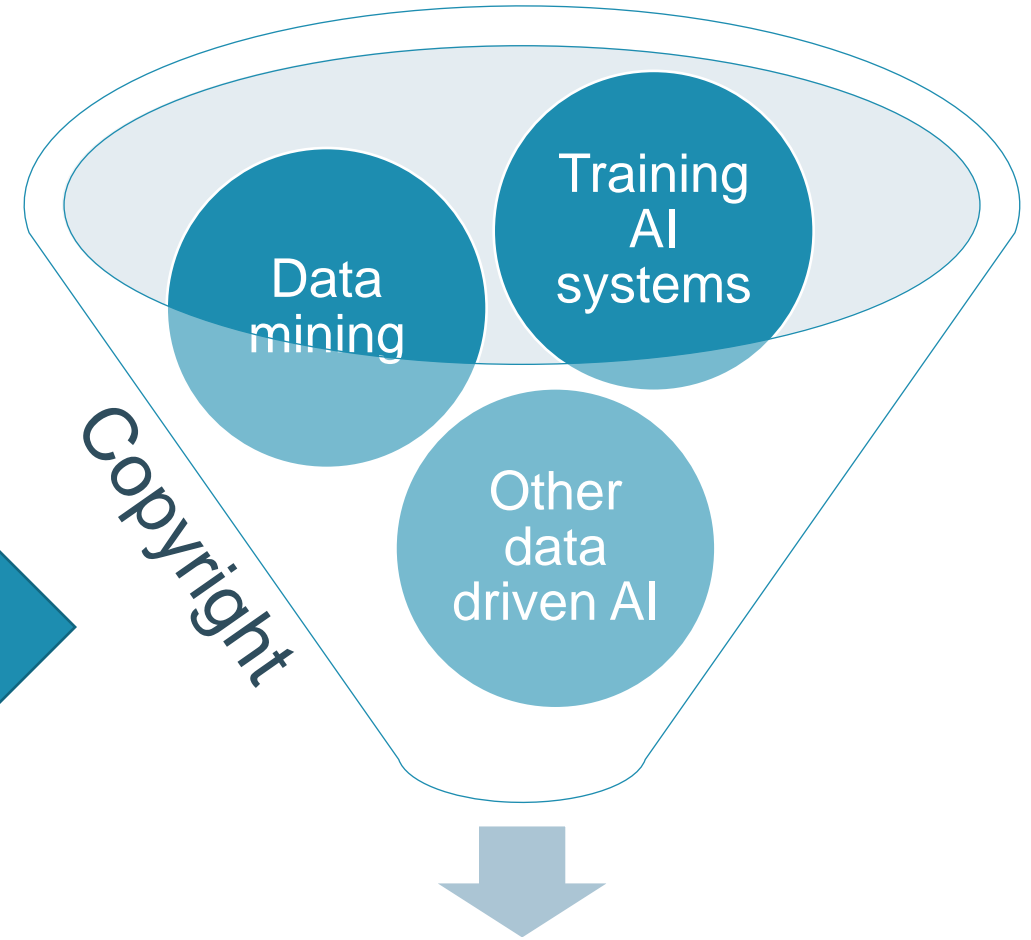
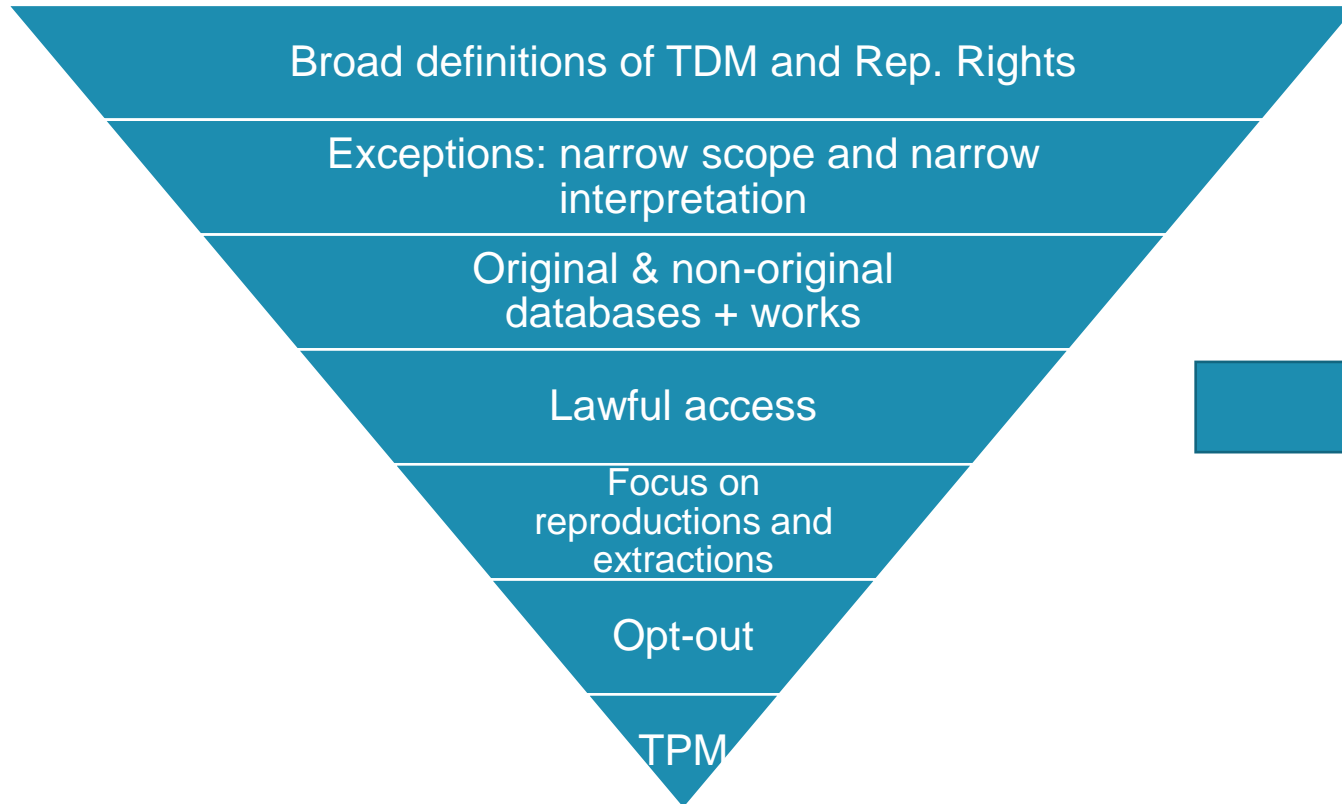
# Directive 2019/790 - CDSM

## *Article 4*

### **Exception or limitation for text and data mining**

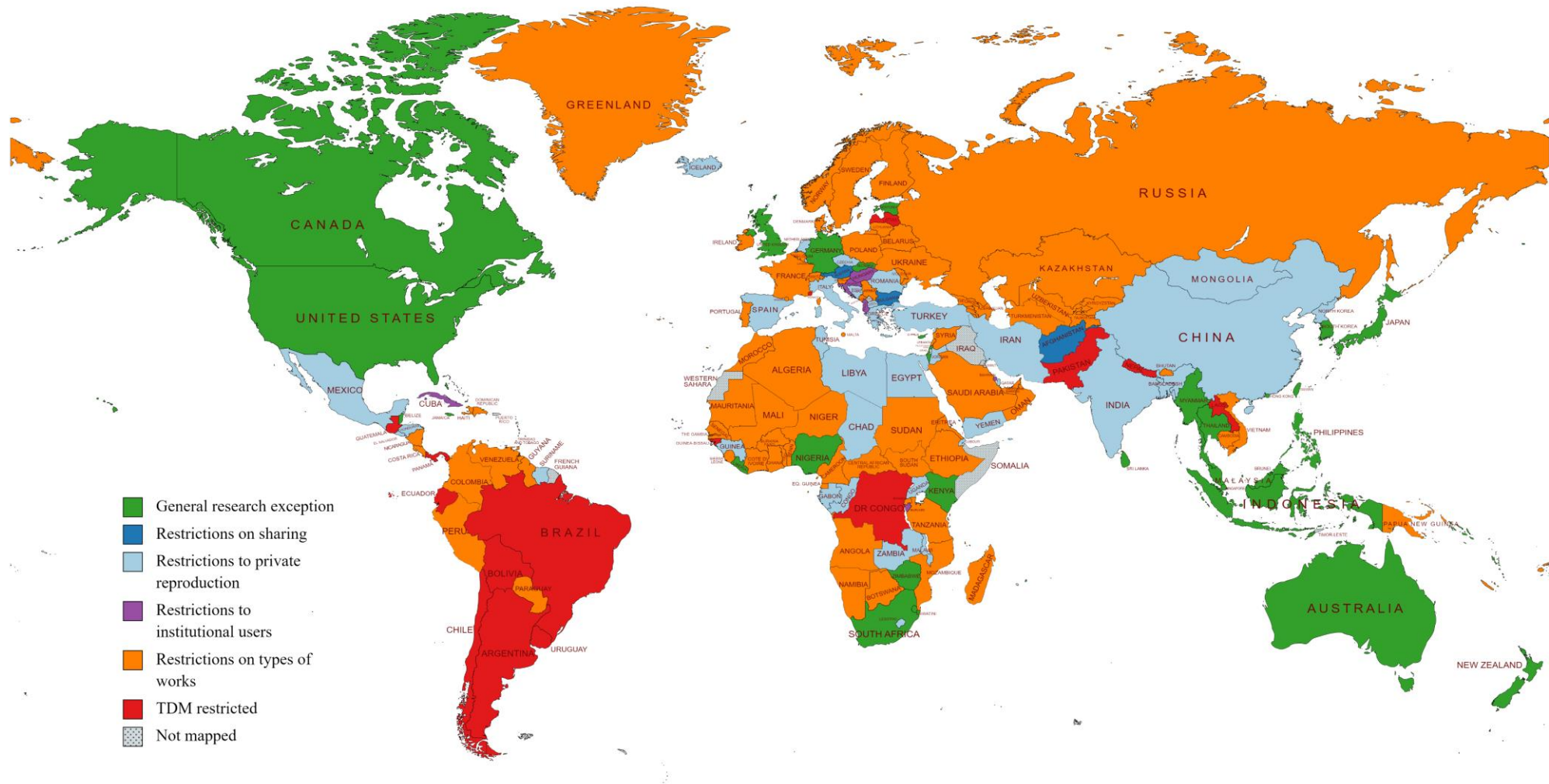
1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for **reproductions** and extractions of **lawfully accessible works** and other subject matter for the purposes of text and data mining.
2. Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining.
3. The exception or limitation provided for in paragraph 1 shall apply on condition that the **use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders** in an appropriate manner, such as machine-readable means in the case of content made publicly available online.
4. This Article shall not affect the application of Article 3 of this Directive.

# Copyright as a “funnel”



Authorized TDM uses

# Research Exceptions in International Copyright



Flynn, Schirru, Palmedo, Izquierdo (2022)

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# Data – non-personal – machine-generated

AI-generated works?

## Data Act **Proposal**

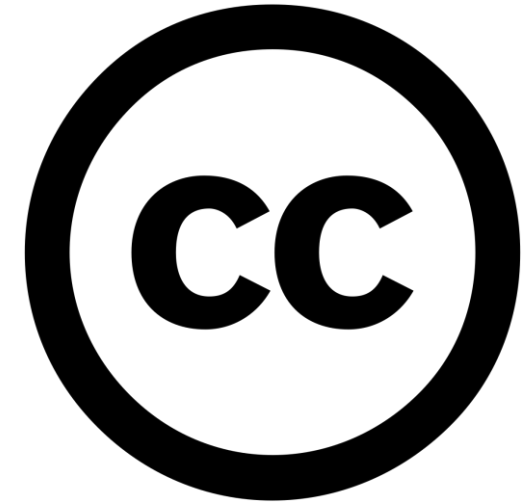
Art. 35 - In order not to hinder the exercise of the right of users to access and use such data in accordance with Article 4 of this Regulation or of the right to share such data with third parties in accordance with Article 5 of this Regulation, **the sui generis right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service.** (Is it enough to deal with all machine-generated data?)

# Enabling Open Science

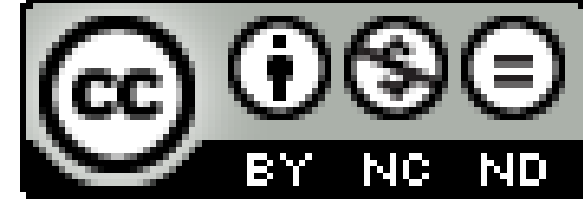
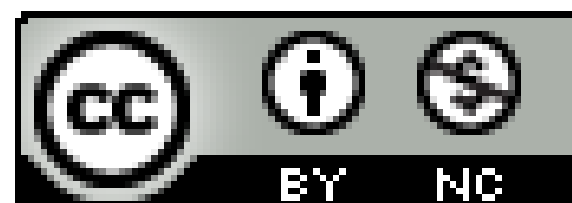
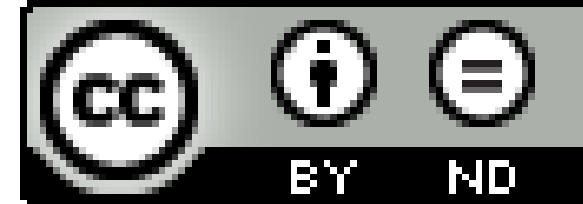
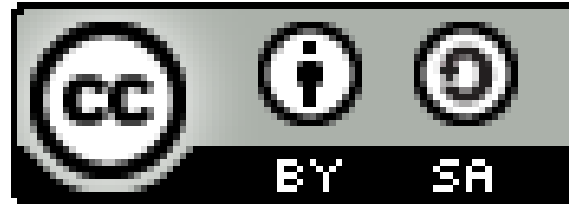
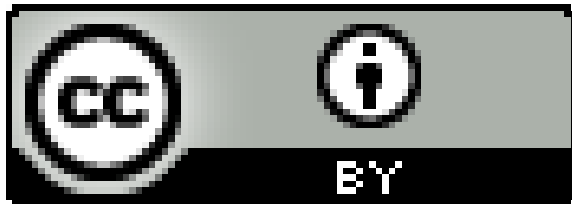


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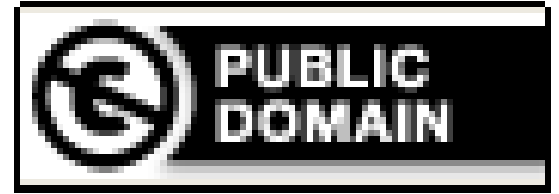


From “all rights reserved” to “some rights reserved”





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**Creative Commons x Personality Rights**

**Creative Commons x Industrial Property**

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**Free software = Free beer?**

**Free software = Absence of Copyrights?**

**Free software = Open Source?**



The GNU Operating System and the Free Software Movement

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### Code for the left border



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Nonfree licenses



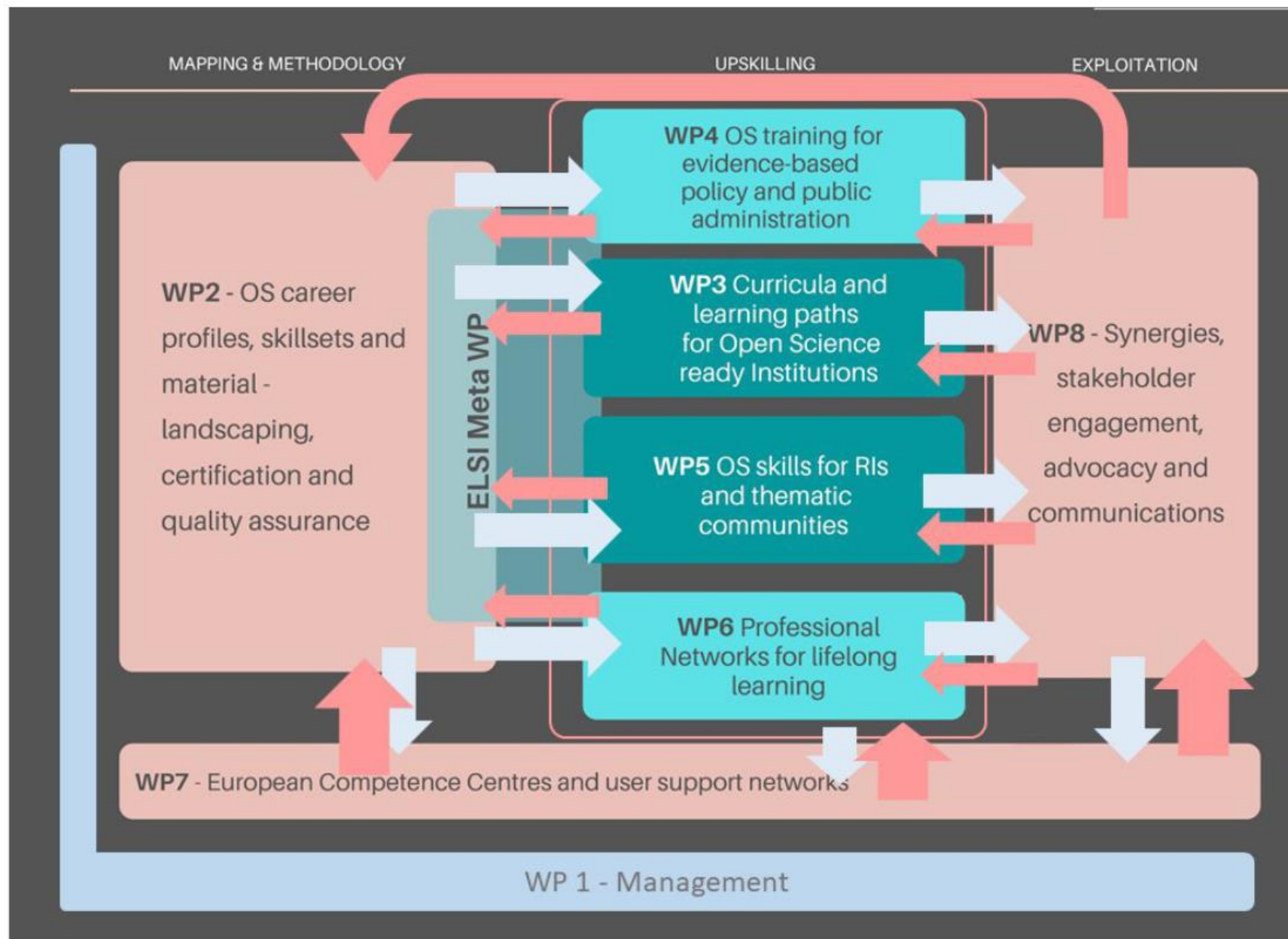
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# Skiis 4 eosC

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# Thank you! Questions?

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