



The text and data mining exception & the opt-out mechanism in European copyright law

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TDM definition in Article 2(2):

"any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations"

Text and Data Mining Exceptions in the DSM

Article 3:

Text and data mining for scientific research purposes

Article 4:

Exception or limitation for text and data mining

Article 3 & 4 and Recitals 8 - 18

- Introduces **exceptions** 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 the **DSM** for reproductions and extractions
- Not covered by the exception: InfoSoc Article 3(1), 3(2)
- State of implementation of the TDM exceptions, conformity assessment undertaken by the Commission

Key elements

- Beneficiaries of Article 3 (research organisations, cultural heritage institutions) and Article 4 (not specified) **differ**.
- TDM definition as per Art. 2 (recitals 8, 9)
- Recital on compensation: recital 17
- Retention of the copies: Article 3(2) and Article 4(2)
- Lawful access requirement →
- The lawful access requirement: TDM is permitted on works or other subject matter to which there is lawful access (**Recital 14**)
- Contractual arrangement, licensing agreement, subscriptions, open access and freely available online

Text and Data Mining Exception and AI training

- ❖ Relation between TDM exception and data gathering for the purposes of AI development
- ❖ TDM does cover use of © content for AI development
- ❖ Recital 18: text and data mining techniques are widely used (...) for the development of new applications or technologies.’

Article 4 & the opt-out

- ❖ TDM for any purposes
- ❖ Minor differences with Article 3 (scientific purpose TDM): text and data retention, scope (software?), network security, contractual override
- ❖ The main difference lies in Article 4(3) → the right reservation/opt-out
- ❖ Recital 18: the perimeters of opt-out
 - ❖ *‘In an appropriate manner’*
 - ❖ *‘by the use of machine-readable means, including metadata and terms and conditions of a website or a service’* for content made publicly available online
 - ❖ In other cases it can be appropriate to reserve the rights *“by other means, such as contractual agreements or a unilateral declaration”*

Implementation of Article 4(3)

- ❖ Practical questions on the opting-out:
 - ❖ Where? By Whom? When? How?
- ❖ Market-led initiatives by rightholder groups and by other third parties
- ❖ Initiatives led by AI providers

Thank you



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