

Brussels, 26 March 2018

## **The European Parliament must improve the Text and Data Mining (TDM) exception to benefit European research and innovation**

Dear members of the JURI Committee,

We, members of **28 organisations** representing universities, large and small technology companies, telecommunications and Internet services providers, startups and scaleups, libraries, scientific and research funding and performing organisations, open access publishers, investigative and data journalists and non-profits, **represent a key constituency of TDM users.**

**The diversity of our group reflects the reality of the European research ecosystem today**, as the growing use of big data and artificial intelligence tools in research and innovation now result from the seamless collaboration between public and private organisations. In our view, this successful ecosystem will be penalised if the European Parliament's work on TDM in the Copyright Directive continues in its current direction. Therefore, we wish to communicate our **common position** with regards to the TDM provisions.

As the European Commission launches its **strategy on Artificial Intelligence (AI)**, everyone must be mindful of the **foundational role that TDM plays in AI**. TDM is a building block for machine learning - without the ability of computers to analyse data and employ cognitive technologies, AI is not possible. **Any comprehensive strategy** to make Europe globally competitive in the race **to develop and implement AI-powered solutions must include robust support for TDM** in both the **public and private research** industries, and not be reserved for very limited non-commercial public interest research projects. Limiting the ability of private companies to carry out TDM in Europe will inevitably lead to the most promising European startups and companies relocating to the US<sup>1</sup> or Japan<sup>2</sup>, where the legal frameworks will allow them to have access to broader datasets, and where they will be able to build algorithms of better quality.

Many signatories of this letter have already provided you with proposed amendments, which we believe would help remove the legal uncertainty that the Commission's proposed exception has left for many users. With this letter, **we wish to reaffirm our collective support for the following essential principles to create the right legal framework for a globally competitive research ecosystem in Europe.**

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<sup>1</sup> [The Exception for Text and Data Mining \(TDM\) in the Proposed Directive on Copyright in the Digital Single Market - Technical Aspects](#), Eleonora Rosati

<sup>2</sup> [The Exception for Text and Data Mining \(TDM\) in the Proposed Directive on Copyright in the Digital Single Market – Legal Aspects](#), Christophe GEIGER, Giancarlo FROSIO and Oleksandr BULAYENKO

We specifically ask the JURI Committee to **revise the exception for TDM** as follows:

- **Broaden the scope of Article 3.1** to include any person (natural or legal) that has lawful access to content, provided that reproduction or extraction is used for the **sole purpose of text and data mining**.
  - ➔ *As described above, the distinction between commercial and non-commercial purposes is not applicable in today's research environment.*
- **Support the European Commission's proposal on article 3.2** to ensure that **contractual terms** restricting the use of the exception are **unenforceable**.
- **Clarify in Article 3.3** that **technical measures** cannot be used to **unreasonably restrict** the exception's beneficiaries to conduct TDM.
  - ➔ *The rightsholders' ability to apply measures to protect the security and integrity of their networks and databases should be proportionate, and not go beyond what is necessary.*
- **Add a paragraph in Article 3** to allow **datasets created for the purpose of TDM** to be stored on **secured servers for future verification**.
  - ➔ *Building adequate datasets can take several weeks, sometimes months. Preserving these datasets once the research is completed is necessary to verify the quality of the findings. By clarifying that copies are permitted only for TDM purposes, there should be no concerns that these copies could be sold to third parties for commercial gain.*

In addition, we also urge the European Parliament to **take into account that TDM creates value and does not cause any commercial harm to copyright owners**. On the contrary, rightsholders get paid to give lawful access to the content for which they hold the rights, and can also charge extra if they wish to provide specific TDM tools or services, but rightsholders should not prevent a user to use their own TDM tools to analyse content they have already paid to access. In fact, **the more TDM activities take place, the more likely it will be that additional users request lawful access to data**, increasing potential revenues for rightsholders.

We strongly believe that the above revisions will best address the concerns of the broader research and innovation community, while safeguarding the legitimate interests of rightsholders. **These positions are widely supported by intellectual property experts** such as [Drs. Reto Hilty and Heiko Richter](#), Intellectual Property and Competition Law experts at the Max Planck Institute for Innovation and Competition, [Dr. Eleonora Rosati](#), Associate Professor in IP Law from the University of Southampton and the team of [Dr. Christophe Geiger](#), Professor of Law, Director General of the Centre for International IP Studies from the University of Strasbourg, with the latter two having provided detailed evidence to the JURI committee on 22 February 2018.

We trust that the **JURI Committee** will take into consideration the concerns of our large research and innovation community, and will seek to **defend rather than harm Europe's ability to generate opportunities from the power of data analysis**.

**Signatories:**

<ul style="list-style-type: none"> <li>• Aalto University;</li> <li>• Allied for Startups;</li> <li>• BSA   The Software Alliance;</li> <li>• Bitkom;</li> <li>• Center for Democracy and Technology (CDT);</li> <li>• Communia Association;</li> <li>• Computer and Communications Industry Association (CCIA);</li> <li>• Confederation of Open Access Repositories (COAR);</li> <li>• Copyright 4 Creativity (C4C);</li> <li>• DIGITALEUROPE;</li> <li>• EDiMA;</li> <li>• Electronic Information for Libraries (EIFL);</li> <li>• ESOMAR;</li> <li>• European Alliance for Research Excellence (EARE);</li> <li>• European DIGITAL SME Alliance;</li> </ul>	<ul style="list-style-type: none"> <li>• European University Association (EUA);</li> <li>• European Bureau of Library, Information and Documentation Associations (EBLIDA);</li> <li>• Free Knowledge Advocacy Group EU;</li> <li>• Frontiers;</li> <li>• League of European Research Universities (LERU);</li> <li>• Ligue des Bibliothèques Européennes de Recherche – Association of European Research Libraries (LIBER);</li> <li>• Open State Foundation;</li> <li>• OpenAIRE;</li> <li>• Research Libraries UK (RLUK);</li> <li>• Science Europe;</li> <li>• Society of College, National and University Libraries (SCONUL);</li> <li>• SPARC Europe;</li> <li>• UCL (University College London).</li> </ul>
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**Aalto University**



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