



IMPROVING UPTAKE OF TEXT AND DATA MINING IN THE EU

Facts

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Legal Barriers and Recommendations

The EU is modernising copyright rules so that they better fit the digital age. In September 2016, the European Commission presented legislative proposals to this end. These are now being discussed by the European Parliament and the Council to ensure that both users and creators can make the most of the digital world. One of the proposal objectives is to review and reform rules applicable to education, research and culture. As an essential component to achieve those purposes, a copyright exception for text and data mining (TDM) is included.

In this context, having gathered evidence from the TDM community, FutureTDM has identified the following barriers that may be of interest to policy makers and stakeholders during the EU copyright reform process:

Uncertainty as to how, why and if TDM can be carried out in combination with lack of awareness about different TDM aspects. Uncertainty is the product of not knowing the scope of legislation and/or exceptions as regards copyright, database and data protection laws.

Fragmentation derives from different (national) rules, standards, requirements or languages, among others; TDM being carried out across e.g. national borders, scientific domains, companies or fields of expertise is thus not exploited to its full potential.

Restrictiveness from direct limitations imposed to TDM processes, e.g. by restrictive laws.

BARRIERS	PRINCIPLES
Uncertainty	Awareness and Clarity
Fragmentation	TDM without Boundaries
Restrictiveness	Equitable Access

Types of barriers and corresponding overall principles

To help overcome these barriers, based on our engagement with the TDM community and our expert analysis, three principles have been identified by the project:

- 1 - Awareness and Clarity (to counterbalance uncertainty and lack of awareness)
- 2 - TDM Without Boundaries (for the fragmented TDM landscape)
- 3 - Equitable Access (for restrictions - either legal, practical, economic or technical - to TDM).

Our full report available on our website www.futuretdm.eu lays out how we apply these principles to make overarching recommendations, covering a variety of stakeholder groupings.

In this awareness sheet we focus on EU level recommendations tailored for policy makers with the following suggestions:



Awareness and Clarity

The first step is to make clear rules on copyright and the sui generis database regime. We suggest that lawmakers minimise cases where it is unclear whether copyright or related laws apply, by clearly defining terms and concepts in law-making. As the group of borderline cases increases, regulation will be less effective.

Further, policy makers are well placed to provide for explanatory documentation to accompany relevant laws that TDM practitioners can refer to for guidance. Sometimes, the law needs to work with open norms or vague concepts to allow some flexibility in the course of time and with the advance of technology. In those cases, policy makers can provide for more guidance and certainty on what is lawful, and what is not, through explanatory documentation. The production of practitioner guidelines on how the law works and what the rules are, has been flagged up by stakeholders as key to helping them improve TDM uptake.

TDM Without Boundaries

Harmonised and mandatory rules on copyright and sui generis database law are a remedy against a fragmented legal landscape in Europe. This entails the introduction of a harmonised, mandatory exception to copyright for TDM activities, as well as a minimisation of the leeway for deviating interpretations by national legislators and courts to ensure in practice what has been suggested.

European lawmakers should ensure that this TDM exception allows for the same exempted activities under both copyright and database law and does not discriminate between commercial and non-commercial organisations or activities, as this distinction may not always be possible or clearcut in practice. The TDM exception should apply only in cases where practitioners have lawful access to content, to respect the interests of content owners, and finally ensure that TDM results are disseminated while protecting the rights of other stakeholders.

Equitable Access

In response to the TDM exception proposed by the Commission, we have recommended to design such



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an exception in the following way to ensure that it reflects a fair balance between the interests of TDM practitioners and rightholders and to reaffirm that a free flow of ideas and facts - which as such are not protected - is not hindered. We recommend the introduction of a mandatory copyright exception for TDM activities that:

- permits uses that do not trade on the underlying creative and artistic expression of the content analysed
- requires lawful access by the user
- is not overridable by contract, and
- only permits technical measures that are necessary, reasonable and proportionate to guarantee the security and integrity of content providers' infrastructure.

We also recommend making sure that circumvention of technical protection measures (TPMs) and digital rights management (DRM) is permitted for the sole purpose benefiting from the TDM exception, without harming the said security and integrity.

In highlighting the EU level aspects of the FutureTDM policy framework report, we hope to provide a very timely and focussed overview of recommendations relevant to the Brussels copyright reform debate.

Our next report on stakeholder guidelines will look in more detail at how different sectors of the TDM community can implement policy to improve uptake. Keep an eye on our FutureTDM Library for updates.

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