The origins of the proposal

Within the 8th copyright framework, challenges to the use of TDM techniques have been encountered in user copies, publications, and institutional copies/abstracts. The legal uncertainty regarding whether and how TDM can be applied to TDM, and second, the problems with existing licensing mechanisms. Realization of TDM requires the ability to access content for TDM purposes, and as to more adequately than assisted algorithms, such as filtering in relying on existing exceptions.

Learning often causes barriers to successful mining, as researchers and research institutions face unmanageable terms and additional costs. These include limitations on the number of articles or publications agreed upon in the first place. Learning also fails to solve the problem of legal uncertainty, and it requires dealing with a wider variety of complex contractual terms and conditions.

Beyond learning, TDM could benefit from either the temporary reproduction exception in Article 15(1) of the Audiovisual Directive, or the scientific research exception in Article 5(1) of the Information Society Directive. However, these exceptions do not sufficiently address the copyright-related restrictions faced by scientists using TDM techniques in some of their activities that fall within the scope of these provisions. Because some research activities, such as the identification of new biologically active compounds and the analysis of medical data, would not fall within the scope of the research exception in Article 5(1) of the Information Society Directive.

In contrast, to what extent the 'fair use' or 'fair dealing' exception can be applied without unreasonably interfering with the owner’s rights, or whether it can be applied to the use of TDM techniques for TDM purposes is difficult to determine. This is because the exceptions in the Information Society Directive are not applicable to TDM.

The legal framework does not support commercial application of research findings and collaborative activities. The industry, research, and energy committee (ITRE) has criticized the proposed right to request compensation for the right holders in the draft report of the Committee on Legal Affairs (JURI) of the European Parliament.

The proposal for a directive on copyright in the Digital Single Market, published on 13 September 2017, addressed legal uncertainty regarding TDM provisions within the European Union by introducing a mandatory exception to Article 5(1) of the proposed directive, allowing only non-commercial research organizations that mine content to which they have lawful access for scientific research purposes. Article 12(3) of the Proposal further stipulates that the exception shall not be overridden by contracts.

This blog post briefly outlines the proposed exception until its legislative status, including the amendments proposed by several committees of the European Parliament.

The proposed directive and proposed legislative amendments

The proposal for a directive on copyright in the Digital Single Market was the result of a long-term agenda for modernisation of EU copyright rules. The Commission floated an idea to introduce a right to request compensation for the right holders in Article 3 of the draft directive. The proposal further stipulates that the exception shall not be overridden by contracts. The proposed exception applies only to non-commercial research organisations and their employees.

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The proposed directive and proposed legislative amendments

It is possible to identify three main problems with the proposed provisions on TDM. First, the beneficiaries of the exception are limited to non-commercial research organizations. Second, TDM is allowed only for scientific research purposes. Third, TDM techniques can be used only in relation to scientific research purposes, in which there is legal access.

Over the course of the legislative process, different Committees of the European Parliament have taken varying approaches to these problems.

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