

The UK needs to adopt a broader text and data mining (TDM) exception to copyright infringement

Introduction

Founded in 1920 in the UK, the IP Federation represents IP intensive companies who are extensively involved in business activity in the UK and internationally across a range of industries. Our membership includes companies that invest billions in developing and using AI technologies to build the solutions of tomorrow. In developing and using these technologies our members appreciate the importance of creating the right incentives to build, use and share AI technology. In particular, our members recognise the critical role artificial intelligence (AI) will play in innovation, driving breakthroughs across the diverse industry sectors of our membership including healthcare, manufacturing, cybersecurity and the automotive industry. Details of the IP Federation membership are given at the end of this paper.

The current text and data mining (TDM) exception in the UK remains limited

In January, the UK Government announced that, in light of its withdrawal from the European Union (EU), it would not be implementing Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance (EU Copyright Directive) that was adopted in June 2019. The EU Copyright Directive overhauled EU copyright rules and provides for a broadened exception to copyright infringement for text and data mining (TDM) activities, whereby commercial and non-commercial entities can mine copyright content they have lawful access to, unless rightsholders explicitly reserve their rights in an appropriate, machine-readable manner. The EU introduced the broadened exception upon recognising that the exception is essential for EU researchers and entities of all kinds to compete effectively in the rapidly growing digital economy. TDM enables the development and training of artificial intelligence (AI) applications that offer vast potential for society benefit, economic growth and increased competitiveness globally.

By not implementing the EU Copyright Directive, the UK is left with the current UK copyright rules¹ which provide for a limited TDM exception “for the sole purpose of research for a **non-commercial** purpose” (emphasis added), leaving out a wide array of TDM (including machine learning) techniques to develop breakthrough innovations. This could leave the UK at a significant disadvantage to the rest of the EU and threaten the UK’s ambition to become a powerhouse in AI. A “new tech arms race” has emerged among many of the world’s leading economies, including US, Canada, China and Japan, where

¹ Section 29A, CDPA 1988 (as amended)

many of these economies have implemented broader TDM copyright exceptions than Europe and are able, under certain circumstances, to make use of fair dealing / fair use provisions.

It is critical that the UK Government encourage and foster an environment where a UK TDM copyright exception is provided which is not unnecessarily burdened and remains accessible to all entities that already have lawful access to text and data they wish to mine, for all purposes.

A broad UK TDM exception is required to bolster innovation and reflect the realities of 21st century research

Digital transformation requires new ways to read, analyse and understand a vast array and amount of information: AI is critical to that effort. TDM and machine learning form the backbone of AI and rely on aggregating both raw and structured data and content into a machine accessible form and analysing this information - often at hyper scale - to identify insights, patterns and relationships.

Copyright laws need to reflect the realities of 21st century research, where the growing use of big data and AI tools in research and innovation are necessary to achieve breakthroughs and now result from the seamless collaboration between start-ups, SMEs, research groups, academics, not-for-profits, government and businesses. **The ability to unlock benefits from AI, for example in innovative projects benefitting the public, should exist for all entities and for all purposes.** Most recent examples of these public-private collaborations include the unprecedented efforts² made in order to create and mine datasets to find vaccines and cures for COVID-19.

Remaining a global champion in AI innovation

The UK Government recognised in its [Industrial Strategy](#)³ and [AI Sector Deal](#)⁴ the necessity for public and private entities to collaborate for the country to be able to compete globally in the fast moving field of AI. Failure to implement a UK TDM regime for **commercial and non-commercial** purposes is having, and will continue to have, a hampering effect on AI development and commercialisation in the UK.

By not updating its copyright rules, access to and the ability to mine data will be curtailed, and the UK is running the risk that its best AI talent and investment capital will migrate to the EU or other jurisdictions with more TDM- and AI-friendly laws. For instance, Japan, the US, Canada, China and Singapore, several of the UK's key trading partners, have adopted broad mandatory exceptions to their copyright laws to remove barriers to text and data mining and enable machine learning.

² <https://www.whitehouse.gov/briefings-statements/call-action-tech-community-new-machine-readable-covid-19-dataset/>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/664563/industrial-strategy-white-paper-web-ready-version.pdf

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702810/180425_BEIS_AI_Sector_Deal_4_.pdf

The UK can implement a balanced TDM exception

If the UK is to keep pace with the rest of the world, the IP Federation's members believe it is absolutely necessary that the Copyright, Design and Patents Act (CDPA) be amended to **expressly allow for the reproduction of lawfully accessed works to facilitate TDM, for commercial or non-commercial purposes**. For the avoidance of doubt, works that are lawfully accessed would include, but not be limited to, publicly available works.

A balanced, future-proof TDM exception can be found, one that would simultaneously foster innovation while safeguarding copyright owners' legitimate interests. The rightsholder should be entitled to opt its works out of the copyright exception for TDM for commercial purposes, provided that it is required to do so in an appropriate manner, including requiring the use of machine readable steps in the case of data publicly accessible online. The ability to control usage of copyright works contractually where the work is confidential information or know-how etc (unpublished work) should continue to exist. This is the effect of the approach taken under Article 3 and Article 4 of the EU Copyright Directive.

In any exception, it is important that all entities be allowed to store copies of work made in the course of authorized data mining activities for as long as is necessary for TDM purposes. This ensures that AI outcomes can be reviewed, validated, and revisited as necessary to verify results, and is consistent with laws under Articles 3 and 4.

In summary, the IP Federation strongly urges the **UK Government to adopt a broad TDM exception that will promote a fair and balanced research and innovation ecosystem in the UK.**

This position is stated in our response to the IPO's call for views on AI and IP and we would be very willing to take part in additional dialogue on this issue.

IP Federation
4 December 2020



IP Federation members 2020

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. The CBI, although not a member, is represented on the Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

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BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Canon Europe Ltd.
Caterpillar U.K. Ltd
Cummins Ltd.
Dyson Technology Ltd
Eisai Europe Limited
Eli Lilly & Co Ltd
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GE Healthcare
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HP Inc UK Limited
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