



2.3.2017

# **DRAFT OPINION**

of the Committee on Industry, Research and Energy

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council  
on copyright in the Digital Single Market  
(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))

Rapporteur: Zdzisław Krasnodębski



## AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a directive

#### Recital 8

##### *Text proposed by the Commission*

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow *researchers* to process large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, *research organisations such as universities and research institutes* are confronted with legal uncertainty as to the extent to which they can perform text and data mining *of content*. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.

##### *Amendment*

(8) New technologies enable the automated computational analysis of information in digital form, such as text, sounds, images or data, generally known as text and data mining. Those technologies allow to process large amounts of information to gain new knowledge and discover new trends. Whilst text and data mining technologies are prevalent across the digital economy, there is widespread acknowledgment that text and data mining can in particular benefit the research community and in so doing encourage innovation. However, in the Union, *public and private entities as well as individuals* are confronted with legal uncertainty as to the extent to which they can perform text and data mining. In certain instances, text and data mining may involve acts protected by copyright and/or by the sui generis database right, notably the reproduction of works or other subject-matter and/or the extraction of contents from a database. Where there is no exception or limitation which applies, an authorisation to undertake such acts would be required from rightholders. Text and data mining may also be carried out in relation to mere facts or data which are not protected by copyright and in such instances no authorisation would be required.

Or. en

## Amendment 2

### Proposal for a directive

#### Recital 9

*Text proposed by the Commission*

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area will suffer unless steps are taken to address the legal uncertainty for text and data mining.

*Amendment*

(9) Union law already provides certain exceptions and limitations covering uses for scientific research purposes which may apply to acts of text and data mining. However, those exceptions and limitations are optional and not fully adapted to the use of technologies in scientific research. Moreover, where researchers have lawful access to content, for example through subscriptions to publications or open access licences, the terms of the licences may exclude text and data mining. As research is increasingly carried out with the assistance of digital technology, there is a risk that the Union's competitive position as a research area ***and action lines envisaged in the European Open Science Agenda*** will suffer unless steps are taken to address the legal uncertainty for text and data mining.

Or. en

## Amendment 3

### Proposal for a directive

#### Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9 a) Union law does not sufficiently take into consideration that TDM is increasingly used beyond formal research organisations and/or for purposes other than scientific research which nevertheless contributes to innovation, technology transfer and public interest.***

**Amendment 4****Proposal for a directive****Recital 10***Text proposed by the Commission*

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception. ***Research organisations should also benefit from the exception when they engage into public-private partnerships.***

*Amendment*

(10) This legal uncertainty should be addressed by providing for a mandatory exception to the right of reproduction and also to the right to prevent extraction from a database. The new exception should be without prejudice to the existing mandatory exception on temporary acts of reproduction laid down in Article 5(1) of Directive 2001/29, which should continue to apply to text and data mining techniques which do not involve the making of copies going beyond the scope of that exception.

Or. en

**Amendment 5****Proposal for a directive****Recital 11***Text proposed by the Commission*

***(11) Research organisations across the Union encompass a wide variety of entities the primary goal of which is to conduct scientific research or to do so together with the provision of educational services. Due to the diversity of such entities, it is important to have a common understanding of the beneficiaries of the exception. Despite different legal forms and structures, research organisations across Member States generally have in common that they act either on a not for***

*Amendment****deleted***

*profit basis or in the context of a public-interest mission recognised by the State. Such a public-interest mission may, for example, be reflected through public funding or through provisions in national laws or public contracts. At the same time, organisations upon which commercial undertakings have a decisive influence allowing them to exercise control because of structural situations such as their quality of shareholders or members, which may result in preferential access to the results of the research, should not be considered research organisations for the purposes of this Directive.*

Or. en

## Amendment 6

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security **and integrity** of the system or databases where the works or other subject-matter are hosted **would** be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security **and integrity** of the system and should not undermine the effective application of the exception.

#### *Amendment*

(12) In view of a potentially high number of access requests to and downloads of their works or other subject-matter, rightholders should be allowed to apply measures where there is risk that the security of the system or databases where the works or other subject-matter are hosted **could** be jeopardised. Those measures should not exceed what is necessary to pursue the objective of ensuring the security of the system and should not undermine the effective application of the exception. ***These measures should not prevent or exclude the ability to develop text and data mining tools different from those offered by the rightholder as long as the security of the networks and databases is protected.***

Or. en

## Amendment 7

### Proposal for a directive Recital 13

*Text proposed by the Commission*

(13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception ***the harm should be minimal.***

*Amendment*

(13) There is no need to provide for compensation for rightholders as regards uses under the text and data mining exception introduced by this Directive given that in view of the nature and scope of the exception ***there would be no unreasonable prejudice to the interests of rightholders. Use under the text and data mining exception would also not conflict with the normal exploitation of the works in a way that calls for separate compensation.***

Or. en

## Amendment 8

### Proposal for a directive Article 3 – paragraph 1

*Text proposed by the Commission*

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by ***research organisations*** in order to carry out text and data mining of works or other subject-matter to which they have lawful access ***for the purposes of scientific research.***

*Amendment*

1. Member States shall provide for an exception to the rights provided for in Article 2 of Directive 2001/29/EC, Articles 5(a) and 7(1) of Directive 96/9/EC and Article 11(1) of this Directive for reproductions and extractions made by ***public entities, private entities and individuals*** in order to carry out text and data mining of works or other subject-matter to which they have lawful access.

Or. en

## Amendment 9

### Proposal for a directive Article 3 – paragraph 4

*Text proposed by the Commission*

4. Member States shall encourage rightholders and **research organisations** to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

*Amendment*

4. Member States shall encourage rightholders **and other interested parties** to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

Or. en

## Amendment 10

### Proposal for a directive Article 14 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.

*Amendment*

1. Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works, **including scientific works**, and performances from those to whom they have licensed or transferred their rights, **or their successors in title**, notably as regards modes of exploitation, revenues generated and remuneration due.

Or. en

## Amendment 11

### Proposal for a directive Article 14 – paragraph 2

*Text proposed by the Commission*

2. The obligation in paragraph 1 shall be proportionate and effective and shall

*Amendment*

2. The obligation in paragraph 1 shall be proportionate and effective and shall



ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.

ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective, ***enforceable*** and ensures an appropriate level of transparency.

Or. en