Is the EU's New Text and Data Mining Exception Everything It's Cracked up To Be?

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William, from the class of 2014/2015, is currently based at Bird & Bird in London where he has worked across all areas of IP law, with a particular focus on how copyright operates in the digital world. In 2019, he was part of the team involved in a landmark test case on the communication to the public right, currently en route to the Court of Appeal. Prior to training as a lawyer, William worked at Warner Music Group, experiencing first-hand how digital technology has impacted the traditional media industries. His passion for copyright has seen him co-author the covering chapter for the ICLG's 2020 Guide to Copyright, as well as being a regular contributor to the online media news hub, MediaWrites.

Abstract

The Directive on Copyright in the Digital Single Market ("Copyright Directive") has been one of the most hotly-debated pieces of EU legislation in recent years. While much of the attention, at least in the public mind, has been directed to the controversial Article 15 and Article 17 provisions, the Directive is notable for seeking to "fix" a wide variety of "issues" relating to how copyright functions in the digital environment. One such issue is the legality of text and data mining ("TDM"), a key component in the development of AI technology. The EU Com-mission's own FUTURETDM project recognizes that while "TDM has been adopted with enthusiasm in many parts of the world. Europe, in contrast, has not yet fully seized the opportunities it offers." The Copyright Directive seeks to address this issue, at least in part, with the introduction of two new TDM exceptions, designed to stimulate the use of TDM in Europe.

This presentation will look at some of the issues around Article 3 and Article 4 of the Copyright Directive and examine whether they can successfully fulfil the policy goals of the EU, particularly the development of AI R&D and related involvement of private entities. It will analyze TDM under English law and whether the UK might seek to diverge from the Copyright Directive's framework. It will look at other regimes such as the US "fair use" exemptions, and ask whether they provide a more generous landscape in which to conduct such important research. Ultimately, it will ask the question: are the Copyright Directive's TDM exceptions all they are cracked up to be?