



# CREATE

*RCUK Centre for Copyright and  
New Business Models in the  
Creative Economy*

## **Text and Data Mining Exception**

**EPP Group Hearing on  
Copyright (8 June 2017)**

***European Parliament***



Arts & Humanities  
Research Council

**EPSRC**

Pioneering research  
and skills



**Dr. Thomas Margoni**

*Senior Lecturer in Intellectual Property and Internet Law  
Director of the LLM in Intellectual Property and the Digital Economy  
School of Law - CREATE Centre - University of Glasgow  
Legal Coordinator OpenMinTeD  
Faculty Associate - Berkman Klein Center - Harvard University*

[thomas.margoni@glasgow.ac.uk](mailto:thomas.margoni@glasgow.ac.uk)

# TDM should not be a copyright relevant activity

There is no justification in copyright law theory for protecting the extraction of factual information from protected works

# but there is legal uncertainty

However, due to an unbalanced legal framework (wide definition of right of reproduction, fragmented and narrow exceptions and limitations) in many circumstances where TDM requires the making of a copy (even temporary) it is likely that TDM is a copyright/SGDR infringement.

# and innovation is slowed down

Due to this legal uncertainty in the field of TDM, data show that EU innovation and R&D (not only research centres but SMEs, start-ups, professionals, individuals, the Internet, etc) are slowed down in many areas.

# Result: the EU is left behind

This is particularly bad for the EU economic, social and technological environment because other jurisdictions that are "competitors" such as USA (as well as most fair use jurisdictions) and Japan allow TDM (for any purpose including commercial).

# EU needs TDM exception now

Therefore, EU urgently needs a mandatory, fully harmonised (or even better: uniform) and broad TDM exception.



CREATE

RCUK Centre for Copyright and  
New Business Models in the  
Creative Economy

# Which one? Option 4

This exception should not be limited to scientific purposes or to research organisations (current EC proposal). The TDM exception should be available to anyone for any purpose. This means to choose "option 4" instead of current EC proposal of "option 3" (because TDM is not a copyright relevant activity).

# Option 4 improved

While it is fundamental that option 4 be enacted, it is very important to clarify that not only contracts cannot override it (as it is right now) but also that Technological Protection Measures (TPM) cannot override the TDM exception (while now this is not clearly stated).



# And for the future

- 1) redefine relationship between authors rights and users rights; and
- 2) include a general, flexible and "future-proof" exception to address future technological developments;

because while we are still discussing about the TDM exception introduction, US and Japan economic, scientific and technological sectors are leaving the EU behind.