



# Position statement EU Copyright reform

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01.

## About EFAMRO and ESOMAR

This position statement is submitted on behalf of EFAMRO, the European Research Federation, and ESOMAR, the World Association for Data, Research and Insights. In Europe, we represent the market, opinion and social research and data analytics sectors, accounting for an annual turnover of €15.51 billion<sup>1</sup>.

<sup>1</sup>

ESOMAR Global Market Research 2016

In particular, our sector produces research outcomes that guide decisions of public authorities (e.g. the Eurobarometer), the non-profit sector including charities (e.g. political opinion polling), and business (e.g. satisfaction surveys, product improvement research). In a society increasingly driven by data, our profession ensures the application of appropriate methodologies, rigour and provenance controls thus safeguarding access to quality, relevant, reliable, and aggregated data sets. These data sets lead to better decision making, inform targeted and cost-effective public policy, and support economic development - leading to growth and jobs.

02.

## Recommendations

We support the efforts of the European Union to renew and refresh copyright legislation to make it fit for purpose in a Digital Single Market. Our sector supports all efforts to harmonise requirements and enable actors to provide societal and business benefits derived from the fair use of digital content. The market, opinion and social research and data analytics sector calls for a broad exemption for Text and Data Mining for scientific and statistical research purposes. This exemption should apply regardless of the purpose or type of the research project and the organisation commissioning or executing the research project.

- ▶ We welcome the proposal to create a research exemption for Text and Data Mining (Article 3) is compulsory for all Member States, so it creates a level playing field in the Union.
- ▶ We recommend amending Article 3 so that it appropriately covers the diversity of research actors and purposes regardless whether it is publicly or privately funded or the type of organisation conducting it.
- ▶ We underline that research has societal benefits regardless of the type of organisation executing the research, therefore, we propose clarifying that research should be interpreted in a broad manner including fundamental research, applied research and privately funded research to align concepts across various Digital Single Market regulatory proposals.

03.

## Introduction

Our sector supports efforts to reform the EU copyright legislation in order to enable Europe to reach its full potential in the use of Text and Data Mining (TDM), particularly for statistical and scientific research purposes. We therefore welcome the proposal to introduce an exemption for text and data mining for research in the Commission's legislative proposal.

As a sector, market, social and opinion research and data analytics is increasingly using text and data mining to strengthen the relevance and quality of research project results that in turn support decision makers in businesses, governments, and charities across the world.

The use of social media data as a new data source supporting analysis means many organisations may be inadvertently using copyrighted material without any intention to abuse the rights of the copyright holder including appropriating the protected expression as their own, or to gain any financial benefit. Indeed, the results of text and data mining activities often form part of aggregated reports that seek to bring to life quantitative data results. These analyses help our sector to meet the insights needs of those who commission research, including public authorities, businesses and NGOs.

For Europe to benefit from the data revolution, at the same pace as its economic rivals including China and the United States, it is crucial to facilitate access to data for all scientific and statistical research actors by removing legal uncertainties, creating a level playing field, and enabling innovation through an adoption of fair-use treatment of materials benefiting potentially from copyright protection.

04.

## Creating a level playing field for all research actors

The definition of research organisation in Article 2 and further clarified in Recital 11 restricts its application to a very limited number of beneficiaries failing to encompass legitimate research purposes and the broad diversity of actors both private and public that use text and data mining to further research.

For the EU to be able to benefit fully from TDM, the right to mine should not be limited to only a narrowly defined group of users or purposes,

but should instead apply to the full research community in the broadest sense of the term to enable TDM to be used responsibly by researchers. As part of research, the interest of the researcher is not to re-publish the copyrighted materials but rather to integrate the sentiment expressed by potentially copyrighted statements as part of research reports. Therefore, our intended use will not have an impact on the revenue of the copyright holder.

Accordingly, statistical and scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. Only this way can the Union provide the legal certainty that is needed for all research organisations, not just our academic peers, without harming the right of copyright holders in all other circumstances.

We therefore propose aligning the conceptual framework of research as incorporated by the General Data Protection Regulation to the Copyright reform. Indeed, Recital 159 of the GDPR states that “scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research.”

05.

## Preventing the formation of data monopolies

An increasing amount of projects done by our members is focussing around sentiment analysis. These projects analyse how brands are perceived by the public, or whether a public campaign gains traction with the targeted audience. It is a key performance indicator for organisations of all types and range from enabling a public sector body to evaluate the impact of a public awareness campaign, or a business understanding how their corporate social responsibility project has impacted the sentiment of individuals about their brands, or a charity to understand whether their fundraising campaign has achieved its objectives. To be able to execute any of these research projects, researchers need to analyse vast amounts of data from a myriad of sources, e.g. new publications, social media generated data, blog posts. It is therefore crucial to have access to these data and be able to analyse it without fear of violating authors' rights.

However, it is important to note that an increasing number of social media platform are placing restrictions through their Terms of Use that prohibit automated evaluation of the data, even though the content may be made publicly available and there is lawful access to it. This leads to a situation where only a small number of research organisations capable of striking financial agreements with these providers have the possibility to mine the content, effectively monopolising data created by their users.

To benefit fully from the potential that text and data mining offers for innovation and as a communication and feedback mechanism from the public, published data should be available for everyone who has lawful access to that data. For a thriving innovative data economy, it will be crucial to have a level playing field to facilitate innovation by having a fair right to access data, “the right to read is the right to mine” as this is often called.

06.

## Harmonised exemption

We welcome the fact that in the Commission's proposal to implement a harmonised exemption for text and data mining for all Member States. This will help create the Digital Single Market, as it will reduce the current fragmentation among Member States in the implementation of the copyright framework.

07.

## Suggested amendments

We suggest the following amendments to the text:

### 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.

## 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 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.

### ***Amendment***

deleted

## Recital 10

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

### ***Amendment***

Research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research and privately funded research. In addition, it should take into account the Union's objective under Article 179(1) TFEU of achieving a European Research Area.

## Article 2

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

(1) 'research organisation' means a university, a research institute or any other organisation the primary goal of which is to conduct scientific research or to conduct scientific research and provide educational services:

(a) on a non-for-profit basis or by reinvesting all the profits in its scientific research; or

(b) pursuant to a public interest mission recognised by a Member State;

in such a way that the access to the results generated by the scientific research cannot be enjoyed on a preferential basis by an undertaking exercising a decisive influence upon such organisation;

### ***Amendment***

deleted

## Article 2 (new)

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

### ***Amendment***

(2a) 'beneficiary' means any individual or entity, public or private, with lawful access to mine content;

## 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 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 research.**

## 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 **beneficiaries** to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.



Founded in 1948, ESOMAR gathers nearly 5000 professionals and over 300 companies worldwide providing or commissioning research, including public and academic bodies. For further information on ESOMAR and its activities, contact Kim Smouter, Head of Public Affairs and Professional Standards.

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Founded in 1992, EFAMRO represents the interests of market, social and opinion research in Europe. Its members are national trade associations for research businesses. For further information on EFAMRO and its activities, contact Michelle Goddard, Director of Policy and Communication.

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