



FACULTY
OF LAW
Masaryk University

TEXT AND DATA MINING OF GREY LITERATURE FOR THE PURPOSE OF SCIENTIFIC RESEARCH

Matěj Myška

Supported by the Czech Science Foundation - project Legal Framework for Collecting, Processing, Storing and Utilizing of Research Data - registration no. GA15-20763S.



This presentation is licensed under the Creative Commons: CC - BY - SA - 4.0 (<https://creativecommons.org/licenses/by-sa/4.0/>), via <https://invenio.nusl.cz/record/261186>

- The need for TDM
- TDM as possible infringement of intellectual property rights
- The potentially applicable exceptions
- The proposed text and data mining exception
- TDM IRL: status quo and future

The need for TDM

- "Zettabyte era" - (Florida, 2014)
- GL available online without traditional white literature barriers
- Content analysis - fundamentally affects the research cycle

TDM as possible infringement of intellectual property rights

- Copyright protection of GL
- Sui generis database rights protection of GL repositories
- TDM and copy

The potentially applicable exceptions

- Copyright
 - temporary copy (Art. 5(1) ISD) – non-permanent
 - scientific research (Art. 5(3)(a) ISD) – non-commercial purpose
- Sui generis database rights
 - Access and normal use (Art. 6(1) DD)
 - Vědecký výzkum (Art. 6(2) DD)
- Conclusion prima facie OK, but limits + different national transpositions
- + three step test

The proposed text and data mining exception

Article 3 Text and data mining

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.
2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.
3. Rightholders shall be allowed to **apply measures to ensure the security and integrity** of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.
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.

Problem of definition of the research institution

Art. 2 (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;

TDM IRL: status quo and future

- CC 4.0 Licensing (?)
- If proposed TDM adopted:
 - protective measures
 - Increased traffic



FACULTY
OF LAW
Masaryk University

Thank you for your attention!

Matěj Myška

Supported by the Czech Science Foundation - project Legal Framework for Collecting, Processing, Storing and Utilizing of Research Data - registration no. GA15-20763S.

