



UNIVERSITY OF AMSTERDAM
Institute for Information Law



Amsterdam Law School

EU Copyright Rules and Data Access Rights for Research in the Age of AI

Enabling research in the copyright ecosystem – challenges and opportunities

Kacper Szkalej, 9 July 2025, Bibliothèque Polonaise de Paris, Paris

Expansive character of copyright protection

Broad definition of exclusive rights

+

Canon of broad interpretation

- to ensure high level of protection of copyright (recital 9 ISD)

C-637/19 *BY v CX*



Where do you (and can you) get your material from?

What are you allowed to do with it?



Teaching and scientific research
(Art. 5(2)(c) Software Directive

Teaching and scientific research
Art.10(1)(d) RLR Directive

Teaching and scientific research
Art. 6(2)(b) Database Directive

Teaching and scientific research
Art. 9(b) Database Directive

Text and data mining for scientific research
Art. 3 DSM Directive

All-purpose text and data mining
Art. 4 DSM Directive



Copyright exceptions 101

- National law matters
 - Optional vs mandatory to implement**
 - Copyright directives**
 - Mandatory in contractual relations?**

- Principle of territoriality
- Three-step test

*The exceptions and limitations (...) shall only be applied
in certain special cases*

*which do not conflict with a normal exploitation of the [protected
material] and*

*do not unreasonably prejudice the legitimate interests of the
rightholder.*



Scientific research

- Exception to
Right of reproduction
Right of communication to the public
- Covers all copyright-protected content
Except computer programs
Legal silos
- Optional to implement
- “sole purpose of illustration for teaching or scientific research”
- “justified by the non-commercial purpose to be achieved”
- Discretionary or mandatory in contractual relations?
Lawful access a prerequisite?

Teaching and scientific research
Art. 5(3)(a) InfoSoc Directive

Teaching and scientific research
Art.10(1)(d) RLR Directive

Teaching and scientific research
Art. 6(2)(b) Database Directive

Teaching and scientific research
Art. 9(b) Database Directive



Text and data mining – opportunities for science

(2) 'text and data mining' means any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations;

- Permits TDM by research organisations and CHI for the purpose of scientific research
Includes private-public partnerships and using private partners' technological tools (recital 11)
- Permits these organisations to store/retain copies for the purpose of scientific research
Including for verification of research results
- Applies to all copyright-protected content, except computer programs
- Is mandatory to implement and mandatory in contractual relations

Text and data mining – challenges for science

- Requires lawful access to the content prior to TDM
 - Recital 14 – openly licensed, subscriptions**
 - Contractual and technical restrictions, incl. “tools of inconvenience”**
- Measures preserving security and integrity of networks and databases
 - Art. 3(3) DSM Directive**
- Does not cover sharing the results of TDM (relevant if copies/parts thereof contained)
 - What about datasets?**
- Cross-border collaboration?
- Scope of public-private partnerships?
- Interaction between Article 3 and 4 DSMD (innovation and commercialisation)

Copyright as a barrier to innovation

Tension between protection and access (and use)

Legal silos

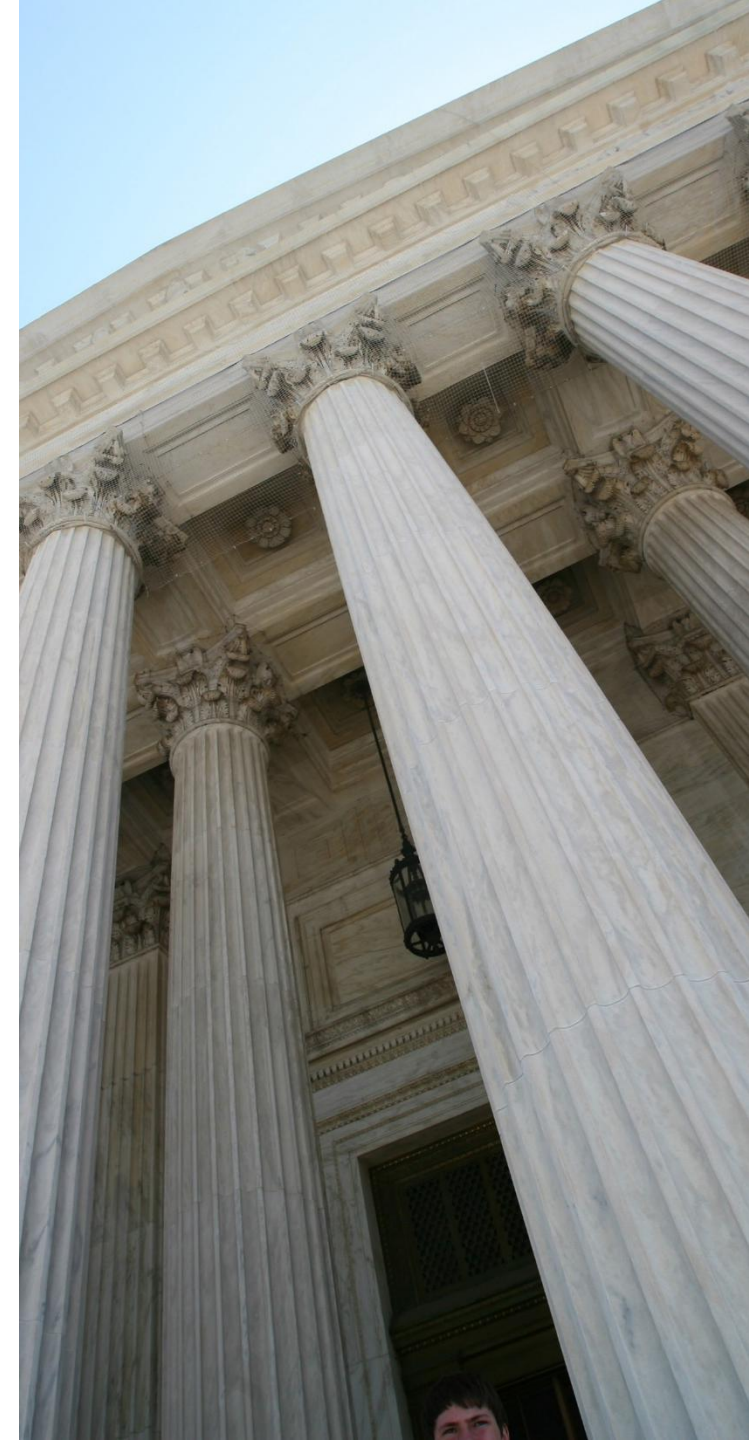
Data silos and potentially prohibitive licencing costs and conditions for access

Legal uncertainty and trade-offs

- risk management: is it copyright infringement? will we be sued?

Copyright as an enabler of innovation

- Exceptions \neq loopholes
 - Mediate between different interests**
 - Realise academic freedom (Art. 11 and 13 EU Charter)**
 - TDM exception creates a baseline + AI Act rec. 104-106 and Art. 53(1)(c)**
- From exception to general rule to user rights!
 - C-516/17 Spiegel Online* (para 54), *C-469/17 Funke Medien* (para 70)**
- From narrow interpretation to purposive interpretation
 - C-403/08* and *C-429/08 FAPL*, *C-145/10 Painer*, *C-201/1 Deckmyn*, *C-117/13 Ulmer*, *C-516/17 Spiegel Online*, *C-469/17 Funke Medien***





Thank you for your attention!

Questions or comments:
k.szkalej@uva.nl