

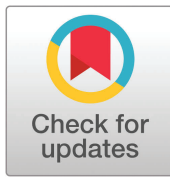
ORIGINAL ARTICLE

Balancing AI Innovation and Copyright Protection: A Comparative Analysis of The United Kingdom's Proposed Text and Data Mining Framework and The European Union's TDM Exception

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Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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ABSTRACT

The swift emergence of artificial intelligence (AI) has revolutionized the global innovation landscape but also presents unprecedented challenges for copyright law. AI systems depend on text and data mining (TDM) techniques to train algorithms using large amounts of copyrighted content. This has raised concerns about authors' rights, licensing obligations, and fair compensation. The European Union (EU) and the United Kingdom (UK) have taken different approaches to the regulation of TDM activities. The EU has implemented a structured TDM exception in the Digital Single Market Directive, and the UK has considered alternative policy models in its copyright and AI consultations. This article adopts a doctrinal and comparative legal methodology to examine such competing frameworks and assess their effectiveness in balancing technological innovation and copyright protection. The study concludes that a hybrid regulatory model that combines transparency, licensing mechanisms, and effective opt-out rights provides the most sustainable path for future copyright governance in the AI era.

Keywords: Artificial Intelligence, Copyright Law, Text and Data Mining, European Union, United Kingdom, Intellectual Property, AI Regulation.

INTRODUCTION

Artificial intelligence (AI) is one of the most disruptive technological innovations of the 21st century, affecting multiple fields such as healthcare, education, finance, transportation, entertainment, and legal services. The digital landscape has been transformed by the rapid evolution of AI, particularly generative AI technologies like large language models, image generators, and automated content creation systems, which allow machines to undertake tasks that traditionally relied on human intelligence. The performance of these AI systems relies on their ability to learn from and process vast quantities of data. To do so, developers apply advanced computational techniques, often

called Text and Data Mining (TDM), to large amounts of data to discover patterns, relationships, and insights that enhance the efficiency of AI models.

Much of the data used to train AI consists of copyrighted material such as books, academic journals, newspaper articles, photographs, music, films, software code, and other creative works. The use of such materials has generated significant legal and policy discussion about the compatibility of AI development with existing copyright laws. Supporters of broad data access say that innovation in AI requires the ability to analyse huge amounts of information and that tight copyright rules could hinder technological advances, research, and economic competitiveness. On the other hand, authors, publishers, artists, and other rights holders argue that the unauthorized use of their copyrighted works to train AI infringes their exclusive rights and undermines the economic incentives copyright law is intended to protect.

These competing interests have led governments and international organizations to rethink traditional copyright paradigms and develop regulatory approaches that have been more receptive to emerging AI technologies.

Some of the most impactful responses include the European Unions text and data mining exceptions under the Digital Single Market (DSM) Directive and the United Kingdoms ongoing copyright and AI reform efforts. The two jurisdictions seek to promote innovation and competitiveness in the global AI market, but they differ in their approach to creators rights, licensing mechanisms, and opt-out protections. This paper provides a critical analysis and comparison of these approaches, assessing their strengths and weaknesses, and investigating whether they achieve an appropriate balance between encouraging innovation in AI and protecting copyright in the digital age.

RESEARCH METHODOLOGY

The research methodology used in this study is doctrinal and comparative legal research. This study examines the relationship between artificial intelligence (AI), copyright law, and text and data mining (TDM) regulations. The doctrinal approach is a systematic analysis of legal principles, statutory provisions, policy documents, judicial decisions, and regulatory frameworks governing the use of copyrighted works in AI training. Particular attention is paid to the European Unions Directive (EU) 2019/790 on Copyright in the Digital Single Market (DSM Directive), particularly Articles 3 and 4 on TDM exceptions, and the Copyright, Designs and Patents Act 1988 (UK).

The review also considers consultation papers and policy proposals on AI and copyright reform issued by the United Kingdom Intellectual Property Office (UKIPO). The similarities and differences between the regulatory frameworks adopted by the European Union and the United Kingdom are identified with the use of a comparative legal approach. This comparison provides an assessment of how each jurisdiction attempts to balance technological innovation with the protection of authors rights and intellectual property interests.

Additionally, the research is supported by secondary sources like scholarly books, peer-reviewed journal articles, policy reports, and publications from international organizations such as the World Intellectual Property Organization (WIPO), the Organisation for Economic Co-operation and Development (OECD), and the European Commission. Recent legal developments, academic debates, and emerging case law are analyzed to evaluate the adequacy of existing copyright frameworks in addressing the challenges posed by AI-driven innovation and TDM activities.

LITERATURE REVIEW

The intersection of artificial intelligence (AI) and copyright law has become a prominent subject of academic discussion, especially in light of the rapid advancements in machine learning and generative AI technologies. The growing dependence of AI systems on large datasets comprising copyrighted material has sparked an intense academic debate about the adequacy of existing copyright laws and the necessity for legislative changes. Scholars have explored the implications of Text and Data Mining (TDM), the scope of copyright exceptions, the rights of authors, and the broader policy concerns surrounding AI-driven innovation.

Martin Senftleben (2020) is one of the most influential contributors to this debate. He argues that TDM exceptions are necessary to promote scientific research, technological progress, and innovation in the digital economy. Senftleben notes that AI systems need access to large amounts of data to operate effectively and that too restrictive copyright rules could hinder research and development activities. He stresses that copyright law should facilitate innovation by allowing certain types of automated data analysis while providing suitable safeguards for rights holders.

Similarly, Christophe Geiger and Giancarlo Frosio (2021) advocate a balanced approach that reconciles the interests of AI developers and copyright owners. Their analysis of the European Union's Digital Single Market (DSM) Directive highlights the importance of ensuring public access to information while preserving the economic and moral rights of creators. They argue that the introduction of TDM exceptions under the DSM Directive represents a significant step toward modernizing copyright law in response to technological change. However, they also stress that creators must retain adequate control over the use of their works to prevent exploitation and ensure fair compensation.

On the other hand, Daniel J. Gervais (2022) is more cautious about broad TDM exceptions. He argues that unlimited access to copyrighted works for AI training could undermine the basic goals of copyright law by weakening the economic incentives for creativity and innovation. Gervais warns that broad exceptions could disproportionately benefit large technology companies with massive computational resources while weakening the bargaining power of authors, artists, and publishers. He therefore calls for a regulatory framework that includes licensing mechanisms and compensation schemes to protect the interests of creators.

The rise of generative AI systems, such as large language models and AI-powered image generators, has ignited academic debate. Andres Guadamuz (2023) points out that these technologies introduce new legal issues, especially around the use of copyrighted works as training data and the rights to outputs generated by AI. He notes that current copyright laws were drafted with a human-centric creative process in mind and are likely ill-suited to address the challenges posed by autonomous or semi-autonomous AI systems. Guadamuz emphasizes the need for increased legal certainty over the scope of permissible uses of copyrighted content for AI training and the apportioning of rights and liabilities in infringement cases.

In recent years, issues of transparency, accountability, and remuneration in AI ecosystems have attracted increasing attention from scholars. For instance, Derclaye (2024) and Abbott (2024) argue that AI developers should be required to disclose information about the datasets used in training their models. Transparency is deemed necessary for copyright holders to identify potential infringements and exercise their legal rights. Scholars have also advocated the establishment of collective licensing systems, mandatory disclosure requirements, and machine-readable opt-out mechanisms to ensure that creators receive adequate compensation for the use of their works in AI training activities.

Another significant theme in contemporary literature concerns the role of international and regional regulatory frameworks in addressing AI-related copyright challenges. Studies examining the European Union's DSM Directive generally view the TDM exceptions under Articles 3 and 4 as an attempt to strike a balance between innovation and rights protection. However, some scholars criticize the practical implementation of opt-out mechanisms, arguing that rights holders may face difficulties monitoring the use of their content by AI developers. In the United Kingdom, academic commentary has focused on the government's consultation proposals and the potential implications of introducing broader TDM exceptions. While supporters argue that such reforms could strengthen the UK's position as a global AI hub, critics caution that they may adversely affect the creative industries.

Overall, the existing literature shows an increasing consensus that copyright law needs to adapt to the challenges posed by artificial intelligence. However, there is still considerable disagreement about how far copyright exceptions should be extended and how creators should be compensated. The academic discussion reflects an ongoing conflict between fostering technological innovation and safeguarding the rights of authors and creators. This paper contributes to the current literature by comparing the approaches of the European Union and the United Kingdom and assessing their effectiveness in striking a fair balance between AI innovation and copyright protection.

UNDERSTANDING TEXT AND DATA MINING IN AI SYSTEMS

Text and Data Mining (TDM) is the automated computational process of extracting, analyzing, and interpreting information from large volumes of digital data to identify patterns, trends, correlations, and other meaningful insights. As a fundamental component of modern artificial intelligence (AI), TDM enables machines to process vast amounts of information at a speed and scale that is impossible for humans. Through sophisticated algorithms and machine learning techniques, AI systems can learn from existing data, recognize patterns, and continually improve their performance over time.

TDM is a critical part of training machine learning models in the AI development space. AI developers leverage TDM to analyse multiple data sets of text, images, audio, videos, and other digital content. It enables many kinds of applications such as natural language processing, machine translation, image and speech recognition, predictive analytics, recommendation engines, and generative AI models that can generate text, art, music, and software code. The quality and quantity of training data determine the accuracy and performance of AI systems.

However, the operation of TDM often involves copying, storing, and processing copyrighted materials, such as books, journal articles, photographs, music recordings, and online content. Although these reproductions are typically undertaken for analytical rather than expressive purposes, they may fall within the exclusive rights granted to copyright owners under traditional copyright laws. Consequently, the use of copyrighted works for TDM has generated significant legal debate regarding whether such activities constitute copyright infringement or should be permitted under specific exceptions and limitations. These concerns have prompted lawmakers worldwide to reconsider existing copyright frameworks and develop regulatory mechanisms that balance technological innovation with the protection of creators' rights.

THE EUROPEAN UNION'S TEXT AND DATA MINING (TDM) EXCEPTION

The European Union (EU) has become a global leader in developing a legal framework to address the increasing use of copyrighted works in artificial intelligence (AI) training and data analysis. Recognizing the importance of Text and Data Mining (TDM) for innovation, research, and technological progress, the EU has implemented specific TDM exceptions through the Directive (EU) 2019/790 on Copyright and Related Rights in the Digital Single Market (DSM Directive). Articles 3 and 4 of the Directive provide a balanced approach that seeks to promote AI innovation while protecting the rights and interests of copyright holders.

Article 3: Scientific Research Exception

Article 3 provides a mandatory exception to copyright, allowing research organizations and institutions of cultural heritage to carry out TDM activities for the purpose of scientific research. This provision was meant to facilitate academic research, technological progress, and innovation by reducing legal obstacles to data analysis. The exception is to be implemented by all EU member states and cannot be derogated by contractual arrangements. By granting legal certainty to universities, research institutions, libraries, and archives, Article 3 fosters the use of sophisticated computational techniques and AI technologies in scientific research.

Article 4: General TDM Exception

Article 4 extends TDM permissions beyond research institutions to include both commercial and non-commercial users. This broader exception allows AI developers, businesses, and other entities to perform TDM on lawfully accessible content. However, unlike Article 3, rights holders retain the ability to reserve their rights through an opt-out mechanism. This approach attempts to balance innovation with copyright protection by permitting data mining activities while preserving creators' control over the use of their works.

Advantages of the EU's TDM Exception

1. Promotes AI Development
 - Facilitates access to large datasets necessary for training AI systems.
 - Eliminates legal barriers for researchers and technology companies.
 - Encourages the development of new AI applications and services.
 - Enhances the EU's standing in the global AI market.
2. Offers Legal Certainty
 - Clearly defines when TDM activities are permitted.
 - Reduces the risk of copyright infringement lawsuits for AI developers and researchers.
 - Establishes a uniform legal framework across EU Member States.
 - Stimulates investment in AI research and technological innovation.
3. Encourages Innovation
 - Enables researchers and businesses to extract valuable insights from large datasets.
 - Advances scientific research, data analysis, and progress in machine learning.
 - Facilitates the creation of new products, services, and digital technologies.
 - Promotes the generation of knowledge and technological progress.
4. Preserves Authors' Autonomy
 - Allows copyright holders to reserve their rights through an opt-out mechanism.
 - Ensures that creators retain a degree of control over the use of their works.
 - Balances public interest in innovation with the protection of intellectual property rights.
 - Protects the economic and moral interests of authors and publishers.

Challenges of the EU's TDM Exception

1. Difficulties in Enforcing Opt-Out Rights
 - Rights holders may struggle to effectively communicate their opt-out preferences.
 - Unauthorized use of copyrighted works may go undetected.
 - Enforcement mechanisms remain complex and technology intensive.
 - Lack of standardized opt-out systems can reduce effectiveness.
2. Monitoring Challenges for Creators
 - AI training processes are often opaque and non-transparent.
 - Creators may not know whether their works were included in training data sets.
 - Large-scale AI systems require considerable technical expertise and resources to monitor.
 - Identifying and proving copyright violations can be costly and time-consuming.
3. Cross-border implementation issues
 - Differences in national implementation may lead to legal inconsistencies.
 - AI developers working across different jurisdictions face compliance challenges.
 - Enforcement of copyright rights is more complex in international settings.
 - Differences in interpretation between member states may lead to legal uncertainty.

THE UNITED KINGDOM'S PROPOSED AI AND COPYRIGHT FRAMEWORK

- The UK has greater freedom to design its own copyright and innovation policies now that it is no longer part of the European Union. As artificial intelligence (AI) becomes a major economic and technological force, the UK government has sought to create a copyright regime that promotes AI innovation but also respects the rights of creators and rights holders. Recognizing the significance of Text and Data Mining (TDM) for AI development, the government-initiated consultations through the UK Intellectual Property Office (UKIPO) on potential amendments to existing copyright laws.
- A key issue in these consultations was the role of copyright law in enabling AI training without damaging the interests of authors, artists, publishers, and other rights holders. Policymakers explored a range of regulatory options during the consultation process.
- Status Quo supported the retention of the existing copyright regime, which mandates that AI creators secure licenses to utilize copyrighted material in training. This model emphasizes safeguarding the rights of creators and providing remuneration via negotiated licensing agreements.
- **Option 2:** A wide TDM exception is sought to allow text and data mining activities for the purpose of AI training without the need to seek prior permission from copyright owners. Supporters argued that this would stimulate innovation, reduce legal barriers, and increase the UK's competitiveness in the international AI industry. Opponents argued that this would undermine copyright protections and deny creators fair remuneration.
- **Option 3:** Licensing Framework focusing on market-based solutions by promoting voluntary licensing agreements between AI developers and rights holders. This option aims to strike a balance between encouraging innovation and providing fair compensation to creators, leaving it to the market to establish the terms for using copyrighted material.
- **Option 4:** The Hybrid Opt-Out Model suggested a compromise reminiscent of the European Union's approach. In this model, AI developers could conduct TDM activities unless copyright owners explicitly reserved their rights via an opt-out mechanism. This model seeks to facilitate innovation while maintaining some level of control for creators.
- The proposal for a broad TDM exception met fierce resistance from authors, publishers, musicians, journalists, and representatives of the creative industry. Opponents argued that allowing uncontrolled access to copyrighted works would undermine intellectual property protection, threaten creative livelihoods, and disproportionately benefit large technology companies. In light of these concerns, the UK government revisited its original proposals and focused on developing a more balanced framework, prioritizing transparency, licensing, and the protection of the creator. The ongoing debate highlights the challenges of reconciling the competing objectives of promoting AI innovation and protecting copyright holders' interests in the digital age.

THE UK'S PROPOSED AI AND COPYRIGHT FRAMEWORK

The UK's exit from the European Union has given it greater autonomy over its copyright and innovation policies. With AI now a key driver of economic growth and innovation, the UK Government has sought to develop a copyright framework that encourages AI development, while protecting creators and rights holders. The government has opened consultations through the UK Intellectual Property Office (UKIPO) to consider potential amendments to current copyright laws, recognizing the increasing importance of Text and Data Mining (TDM) in AI development.

One of the principal objectives of these consultations was to determine how copyright law could facilitate AI training while ensuring that authors, artists, publishers, and other rights holders were not unfairly disadvantaged. During the consultation process, policymakers considered several regulatory options.

Option 1: Status Quo proposed that the current copyright regime should remain unchanged, with AI developers needing to obtain licenses before using copyrighted material for training purposes. This approach prioritizes the protection of content creators' rights and the securing of remuneration through licensing agreements negotiated with rights holders.

Option 2: Broad TDM Exception advocated for the allowance of text and data mining activities for the purpose of training AI without the need for prior authorization from copyright owners. Proponents argued that such a model would foster innovation, eliminate legal barriers, and enhance the UK's position in the global AI industry. However, opponents argued that it would undermine copyright protection and deny creators fair compensation.

Option 3: The licensing framework supported market-based solutions and voluntary licensing agreements between AI developers and rights holders. The goal of this model is to promote innovation and compensate creators by letting the market decide the terms for using copyrighted materials.

Option 4: The Hybrid Opt-Out Model suggested a compromise similar to the European Unions approach. In this framework, AI developers could engage in TDM activities unless rights owners specifically opted out. This model aims to foster innovation while maintaining some control for creators.

The proposal for a broad TDM exception met fierce resistance from authors, publishers, musicians, journalists, and representatives of the creative industry. Opponents argued that allowing uncontrolled access to copyrighted works would undermine intellectual property protection, threaten creative livelihoods, and disproportionately benefit large technology companies. In light of these concerns, the UK government revisited its original proposals and focused on developing a more balanced framework, prioritizing transparency, licensing, and the protection of the creator. The ongoing debate highlights the challenges of reconciling the competing objectives of promoting AI innovation and protecting copyright holders' interests in the digital age.

EMERGING CASE LAW AND JUDICIAL DEVELOPMENTS

Getty Images v Stability AI

This landmark litigation involves allegations of unauthorized use of copyrighted images to train AI systems. The case raises important questions regarding the following:

- Unauthorized reproduction;
- Fair use and fair dealing;
- Transparency of training datasets;
- Liability for AI-generated outputs.

Authors and Publishers' Litigation Against AI Companies

Several authors and publishers have filed lawsuits alleging unauthorized use of books and literary works in training large language models. These disputes underscore concerns over:

- Mass digitization;
- Licensing requirements;
- Compensation mechanisms.
- Market substitution effects.

Implications for Future Regulation

These cases are likely to shape future legislative reforms and judicial interpretations of AI and copyright law worldwide.

COMPARATIVE ANALYSIS OF UK AND EU APPROACHES

Criteria	European Union	United Kingdom
Legal Basis	DSM Directive	Consultation-Based Reform
Research Exception	Article 3	Existing Copyright Rules
Commercial TDM	Article 4 Exception	Under Policy Debate
Opt-Out Rights	Explicitly Recognized	Proposed in Hybrid Model
Legal Certainty	Relatively High	Developing Framework
Protection for Creators	Strong	Moderate to Strong
Innovation Support	High	Potentially Very High

The EU framework currently provides greater legal certainty, while the UK approach offers greater flexibility but remains less predictable.

POLICY RECOMMENDATIONS

The rapid development of artificial intelligence (AI) offers tremendous opportunities for innovation but also poses considerable challenges for copyright protection. As AI systems become more and more dependent on copyrighted works for training and development, policymakers need to adopt regulatory frameworks that promote technological progress while protecting the legitimate interests of authors, artists, publishers, and other rights holders. Based on a comparative analysis of the European Union and United Kingdom approaches, the following policy recommendations are proposed to achieve a more balanced and sustainable copyright regime in the age of AI.

Mandatory Transparency Requirements for AI Training Datasets

One of the biggest problems with AI development is the lack of transparency around the sources of training data. Many AI developers do not disclose the copyrighted materials that were used to train their models, making it difficult for rights holders to identify potential infringement. Policymakers should therefore require AI companies to keep and disclose appropriate records of training datasets. More transparency would improve accountability, ease copyright enforcement, and create trust between creators, regulators, and the public.

Development of Machine-Readable Opt-Out Mechanisms

In practice, copyright protection needs tools enabling rights holders to control the use of their works. Governments and regulatory authorities should promote the development of standardized, machine-readable opt-out systems allowing creators to communicate whether their content can be used for text and data mining. Such mechanisms would provide legal certainty for AI developers while preserving the autonomy of copyright owners.

Establishment of Collective Licensing Frameworks

The vast quantities of copyrighted material employed to train AI systems might make it unfeasible to procure individual licenses from every rights holder. Collective licensing arrangements, overseen by copyright management organizations, could offer a practical solution, enabling AI developers to access extensive data archives via a single licensing pact. These arrangements would cut down on transaction expenses, offer legal access to content, and guarantee that creators are fairly compensated for the use of their creations.

Ensuring Fair Remuneration for Creators

One of the central goals of copyright is to provide economic incentives for creativity and innovation. As AI systems draw more heavily on copyrighted works, creators deserve fair compensation when their works are used to train and

develop commercial AI models. Policymakers should explore compensation mechanisms, including statutory licensing schemes, revenue-sharing models, and collective remuneration systems, to ensure that creators are not left out of the economic value generated by AI technologies.

Promoting International Harmonization of TDM Regulations

AI development is inherently global. AI systems are often trained on data from multiple jurisdictions. Differences between national copyright laws can create legal uncertainty and compliance challenges for both AI developers and rights holders. International organizations and governments should therefore strive for greater harmonization of Text and Data Mining (TDM) rules, including converging on legal standards and helping to facilitate cross-border innovation and the development of AI, while maintaining sufficient copyright protections.

Strengthening Accountability and Regulatory Oversight

As AI technologies become more sophisticated, there is a need for stronger accountability mechanisms to ensure responsible development and deployment. Policymakers should establish clear legal duties for AI developers to demonstrate compliance with copyright and data governance standards. Independent regulatory oversight, audit requirements, and strong enforcement can help prevent the misuse of copyrighted materials while promoting ethical AI innovation.

Balancing Innovation and Rights Protection

Ultimately, neither open access to copyrighted works nor overly stringent copyright protections will sufficiently address the issues AI generates. Policymakers should aim for a balanced framework that fosters technological progress, safeguards creative industries, promotes transparency, and guarantees fair compensation. A blend of transparency measures, licensing systems, opt-out protections, and international collaboration provides the most effective route to establishing a sustainable and equitable copyright system in the era of AI.

CONCLUSION

Artificial intelligence has profoundly shifted the dynamics between innovation and intellectual property protection. The European Union and the United Kingdom are both aware of the need to adapt copyright law to the reality of AI-based technological development. The EU's TDM framework under the DSM Directive provides a structured and balanced approach that encourages innovation while preserving creators' rights through opt-out protections. The UK's ongoing consultations reflect an attempt to create a more flexible regulatory model but still struggle with the challenge of balancing technological competitiveness with copyright protection.

The comparative analysis shows that neither unrestricted access nor full control is the best solution; a hybrid model with transparency, licensing opportunities, accountability, and effective opt-out procedures seems to be the best way to balance the interests of AI developers, creators, and society. Future copyright governance must therefore ensure that technological innovation and creative expression are mutually reinforcing pillars of the digital economy.

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