

Limitations to Text and Data Mining and Consumer Empowerment: Making the Case for a Right to “Machine Legibility”

Abstract

The deployment of Artificial Intelligence (AI) applications, based on text and data mining (TDM), is potentially restricted by the current regime of intellectual property rights and the private ordering imposed by many online actors through contracts and technological protection measures.

The paper aims to critically analyse the barriers to TDM and contribute to the discussion on the specific exceptions included in the draft Copyright in the DSM Directive, as amended during the ongoing legislative process.

To show the current tensions and legal uncertainties concerning TDM, the article presents smart disclosure systems (SDSs) as a case study of AI innovation that requires improved access to data. SDSs refer “to the timely release of complex information and data in standardized, machine readable formats in ways that enable consumers to make informed decisions” (Sunstein, 2012). From a methodological point of view, the theoretical analysis of the IP framework, specifically copyright limitations and the TDM exceptions as discussed in the Copyright reform, will be combined with an empirical research on Terms of Service (ToS) of a representative set of online platforms to understand how private ordering is restricting users’ rights concerning TDM-related activities, including the use of SDSs.

Regarding SDSs, we argue that consumer and data protection legislations can serve as a last line of defence against statutory, contractual and technological limitations to TDM. In fact, both Consumer Protection Laws (namely the Directive on Unfair Terms and the Consumer Rights Directive) and the GDPR framework underline the necessity to give consumers clear, intelligible and legible information. Considering the smart tools now available, the principle of transparency enshrined in consumer and data protection laws has to be interpreted as including a right to “machine legibility”, i.e. the possibility for a SDS to have access to the pre-contractual information (ToS) and the information related to the processing (privacy policy) in a format processable by the smart system.

Essential bibliography

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