



5 April 2019

Copyright Directorate  
Intellectual Property Office  
4 Abbey Orchard Street  
London  
SW1P 2HT

Dear Copyright Directorate:

Internet Association welcomes the opportunity to participate in the post-implementation review of the 2014 copyright changes by responding to the call for evidence. A successful copyright system has a strong and innovation-oriented copyright framework that protects creators' legitimate rights, enables innovation, and allows consumers to benefit – including through safe harbours and limitations and exceptions like those at issue in this review.

Internet Association (IA) represents over 40 of the world's leading internet companies.<sup>1</sup> IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA's mission is to foster innovation, promote economic growth, and empower people through the free and open internet. IA member companies are leading creators, licensees, and distributors of copyrighted works, as well as platforms for user-generated content. IA established an office in London in November 2018 to constructively engage with public policy issues in the UK.

This submission will address three exceptions that are critical to the continued success of internet companies in the UK: text and data mining (TDM); quotations and extracts; and parody, caricature, and pastiche. IA member companies and the users they represent use these exceptions millions of times each day and depend on the flexibility they offer to ensure continued innovation.

### **Text and Data Mining (TDM)**

The TDM exception empowers progress in artificial intelligence (AI) and machine learning (ML). Text and data mining is actually text and data learning, and is critical to UK businesses and the UK's burgeoning tech community.<sup>2</sup> The TDM exception enables significant investment in research and development in AI.<sup>3,4,5,6</sup>

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<sup>1</sup> "Our Members." Internet Association, [uk.internetassociation.org/our-members/](http://uk.internetassociation.org/our-members/).

<sup>2</sup> "£232 Billion AI Market Is UK's Largest Economic Opportunity." Consultancy.uk. 4 July 2017, [www.consultancy.uk/news/13633/232-billion-ai-market-is-uks-largest-economic-opportunity](http://www.consultancy.uk/news/13633/232-billion-ai-market-is-uks-largest-economic-opportunity).

<sup>3</sup> Hadano, Kyoka. "New AI Centre Launched to Tackle Environmental Risk." Varsity, 1 Mar. 2019, [www.varsity.co.uk/news/17199](http://www.varsity.co.uk/news/17199).

<sup>4</sup> "Multi-million Pound Initiative from Microsoft to Support AI Research at Cambridge." University of Cambridge, 31 Oct. 2018, <https://www.cam.ac.uk/research/news/multi-million-pound-initiative-from-microsoft-to-support-ai-research-at-cambridge>.



Advancements in AI depend on the reasonable use of TDM. AI and ML require data sets of significant size. For example, an ML algorithm created to identify different types of flowers needs to view hundreds of thousands of photos before it can learn to distinguish a rose from a carnation. Many of these photos may be copyrighted, and current law is ambiguous as to the extent to which TDM implicates copyright.

The Hargreaves Review of Intellectual Property published in May 2011 recommended “the Government should introduce a UK exception in the interim...to allow use of analytics for non-commercial use...as well as promoting at EU level an exception to support text mining and data analytics for commercial use.”<sup>7</sup> The TDM exception created in 2014 provides clarity for non-commercial uses of TDM and encourages research organisations to develop AI in partnership with IA companies. For example, Microsoft has partnered with Cambridge University to use AI to scan and classify images of traumatic brain injury.<sup>8</sup> This research could not continue if licences had to be acquired for every copyrighted photo processed by an ML algorithm. However, the TDM exception does not currently apply to commercial activity, discouraging investment in AI in the UK.

Without a broader exception for commercial uses, innovative startups will face a barrier to entry into the AI market, as only larger firms may be able to negotiate licences on favorable terms. An expanded TDM exception covering non-expressive commercial uses of copyrighted works would also allow the technical copying, processing, and storage that enables AI to simply learn from data. Learning from data does not interfere with the legitimate interests of copyright owners to exploit their works – no more than reading or learning has for centuries – making licences unwarranted.

Internet companies use ML to learn from copyright works and provide a variety of tools, including search, translation, and visual art remix services used by the artist community. Search engines use ML algorithms that copy non-expressive works and run calculations on their contents. These algorithms, however, “do not comprehend or enjoy copyrighted works in the

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<sup>5</sup> LeCun, Yann. "Facebook AI Research Expands With New Academic Collaborations." Facebook Newsroom, 17 July 2018, <https://newsroom.fb.com/news/2018/07/facebook-ai-research-expands/>.

<sup>6</sup> Lunden, Ingrid. "Google's DeepMind Acqui-Hires Two AI Teams In The UK, Partners With Oxford." TechCrunch, 23 Oct. 2014, [techcrunch.com/2014/10/23/googles-deepmind-acqui-hires-two-ai-teams-in-the-uk-partners-with-oxford/](http://techcrunch.com/2014/10/23/googles-deepmind-acqui-hires-two-ai-teams-in-the-uk-partners-with-oxford/).

<sup>7</sup> Hargreaves, Ian. "Digital Opportunity: A Review of Intellectual Property and Growth." May 2011, [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32563/ipreview-finalreport.pdf](http://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32563/ipreview-finalreport.pdf), p.48.

<sup>8</sup> Kamnitsas, Konstantinos, et al. "Unsupervised Domain Adaptation in Brain Lesion Segmentation with Adversarial Networks." Microsoft Research, June 2017, [www.microsoft.com/en-us/research/publication/unsupervised-domain-adaptation-brain-lesion-segmentation-adversarial-networks/](http://www.microsoft.com/en-us/research/publication/unsupervised-domain-adaptation-brain-lesion-segmentation-adversarial-networks/).



way that humans do—they simply process them as raw materials that feed various algorithms and indices.”<sup>9</sup>

Other countries have created flexibility in copyright law for TDM to attract the world’s best talent. The EU, Japan, and Singapore have all established broad TDM exceptions, potentially leaving the UK a less competitive player in the rapidly growing field of AI. IA supports the continuation and expansion of the TDM exception, particularly for commercial uses.

### Quotation and Extracts

The exception for quotation and extracts is necessary for news, critique, commentary, and review. IA companies and users of their services – not to mention news outlets and countless other organisations – depend on the quotation exception millions of times each day.<sup>10</sup> This exception is necessary for robust online speech and should continue to be available.

Many user posts on social media contain reviews, commentaries, and critiques of literature, journalism, film, and research.<sup>11</sup> The freedom to include brief extracts or quotations greatly enhances the quality of the commentary on these works, as commenters may confidently include meaningful context for their review. The exception increases transparency into the critiqued work and better informs the reader. Informed commentary also drives more insightful discussions, both online and offline.

The quotation exception not only promotes speech online but also drives people to the underlying works. When this exception has been revoked or weakened, entire industries have suffered as a result. Spanish publishers, for example, found that traffic to their sites decreased by 6 percent (by 12 percent for smaller publishers) when a new snippet tax drove Google News to shut down its services in Spain.<sup>12</sup> The ability to include quotations and extracts of a work draws attention to the content of the work and increases user clickthrough to news articles, book retailers, and journals. The quotation exception benefits both the rights holder and the commenter and should remain available.

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<sup>9</sup> Sag, Matthew, Copyright and Copy-Reliant Technology (April 9, 2009). Northwestern University Law Review, Vol. 103, 2009; The DePaul University College of Law, Technology, Law & Culture Research Series Paper No. 09-001.

<sup>10</sup> Fischer, Sara. “Google ‘Doubling down’ on News, Publisher Traffic Explodes.” Axios, 15 Feb. 2018, [www.axios.com/google-traffic-explodes-doubling-down-on-mobile-news-ad69c8ec-b44e-4d63-8995-a3e6869e8002.html](http://www.axios.com/google-traffic-explodes-doubling-down-on-mobile-news-ad69c8ec-b44e-4d63-8995-a3e6869e8002.html).

<sup>11</sup> Tsagkias, Manos, et al. “Linking Online News and Social Media.” ISLA University of Amsterdam, Jan. 2011, [staff.fnwi.uva.nl/m.derijke/wp-content/papercite-data/pdf/tsagkias-linking-2011.pdf](http://staff.fnwi.uva.nl/m.derijke/wp-content/papercite-data/pdf/tsagkias-linking-2011.pdf), p.565.

<sup>12</sup> Solana, Anna. “The Google News Effect: Spain Reveals the Winners and Losers from a ‘link Tax’.” ZDNet, 14 Aug. 2015, [www.zdnet.com/article/the-google-news-effect-spain-reveals-the-winners-and-losers-from-a-link-tax/](http://www.zdnet.com/article/the-google-news-effect-spain-reveals-the-winners-and-losers-from-a-link-tax/).



## Parody, Caricature, and Pastiche

The exception for parody, caricature, and pastiche is critical for online creativity. The internet is a vibrant space for users to create new works and to reimagine, exaggerate, and play off of existing works. Such parodies have been used since antiquity as critical literary tools<sup>13</sup> and instruments of political speech,<sup>14</sup> and the parody exception continues to empower public engagement in this creative process with wit, sarcasm, and trenchant political analysis. IA greatly values the parody exception and encourages its continued availability.

The parody exception provides means for the public to engage in both serious political discussion and light-hearted social communication. Memes, gifs, parody songs and videos, and political cartoons are important to British internet culture and may incorporate portions of copyrighted works. This exception empowers people to freely employ humorous takes on copyrighted works that enhance social, political, and commercial interactions. In addition, the parody exception in no way interferes with copyright owners' legitimate markets for commercial use of their works.<sup>15</sup>

Users of IA companies' services depend on the parody exception millions of times each day, as creative minds across the internet employ humour to enhance public dialogue. Without this exception, UK citizens would be at constant risk of copyright infringement for commonplace communication and wry political commentary. IA members, as creators and hosts of a variety of content, value the parody exception and believe it should remain available.

## Conclusion

The exceptions for TDM, quotation, and parody are critical to the future of technology, the internet community, and UK culture. IA companies and their users depend on these exceptions millions of times each day, saving significant costs on licenses and litigation and empowering innovation and creativity. IA respectfully requests that these exceptions remain available to its member companies and to the millions of users in the UK.

IA appreciates the opportunity to engage in the review process and welcomes any further questions the Intellectual Property Office may have on this topic.

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<sup>13</sup> Daniel Sangsue (2002) Parody's Protean Guises: the Evolution of a Concept from Antiquity to Modern French Literature, *Journal of the Australasian Universities Language and Literature Association*, 97:1, 1-21, DOI: 10.1179/aulla.2002.97.1.002

<sup>14</sup> Identification of Parodies in Aristophanes, Alfred Cary Schlesinger, *The American Journal of Philology*, Vol. 58, No. 3 (1937), pp. 294-305

<sup>15</sup> Erickson, Kris. "Evaluating the Impact of Parody on the Exploitation of Copyright Works: An Empirical Study of Music Video Content on YouTube." UK Intellectual Property Office, Jan. 2013, [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/309900/iprese-arch-parody-report1-150313.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/309900/iprese-arch-parody-report1-150313.pdf), p.57.