

Evaluation of the DSM Directive

Position from the Digital Economy for the
European Commission's Stakeholder Consultation
on Text and Data Mining

At a glance

DSM Directive Evaluation

Initial position

Bitkom welcomes the evaluation of the DSM Directive. The Directive's objective of creating an EU-wide copyright framework for the digital environment remains important. However, its practical impact is weakened by legal uncertainty, fragmented national implementation and disproportionate compliance burdens for digital services, start-ups and SMEs.

Bitkom rating

A step in the right direction: The DSM Directive adds value where it provides clear, harmonised rules, particularly for text and data mining. Further clarification is needed to ensure that copyright protection, platform governance, AI, datadriven innovation, user rights and the open internet enable growth and competitiveness across the EU economy.

The most important takeaway

Bitkom represents digital companies across the value chain, including platforms, software providers, AI developers, media services, start-ups and established technology companies. Our position therefore focuses on practical, innovation-friendly and balanced solutions:

■ Ensure legal certainty for TDM and AI innovation

Article 4 is essential for data-driven innovation occurring across all sectors of industry, including: AI development, analytics, search, energy, cybersecurity and healthcare. It must be interpreted broadly, harmonised across Member States and supported by effective, machine-readable and legally reliable opt-out mechanisms. In addition to implementation of TDM exceptions, legal certainty can also be supported through mechanisms that reduce legal risk for parties to enter into voluntary licensing or commercial agreements, including voluntary collective licensing arrangements, based on mutually beneficial exchange of value.

■ Avoid overblocking and disproportionate platform obligations

Article 17 creates significant legal, technical and operational burdens. Automated tools cannot reliably assess context-dependent exceptions such as quotation, parody, criticism, public domain or licensed uses. Safeguards, proportionality and user rights must be strengthened.

■ Improve coherence with EU digital regulation

The DSM Directive must be better aligned with the Digital Services Act, GDPR and AI Act. Copyright compliance should not create conflicting obligations, excessive monitoring requirements or barriers to innovation in the European digital economy.

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Users of TDM

Section 2.1: Text and data mining (TDM), teaching exception, preservation exception

Q4. Have you relied on the general TDM exception (Article 4) for your activities?

1. Yes

2. No

3. I don't know.

Q5. To what extent does the general TDM exception meet your needs?

1. To a great extent

2. To some extent

3. To a little extent

4. Not at all

5. I don't know

Q5_1. Can you please elaborate on your response?

The general TDM exception is essential for enabling growth and competitiveness across the entire economy. All sectors of the economy are increasingly using data analytics and it provides a workable legal basis for text and data mining at scale and is particularly important for AI development, data analytics, natural language processing, search, security, product improvement and other data-driven services such as education, cybersecurity and healthcare/life sciences.

From the perspective of commercial users of TDM the exception provides a scalable, globally adopted and industry standard way for rightsholders to control the use of their works including in the context of AI training. This is crucial for innovation, especially for start-ups and SMEs that cannot rely on extensive bilateral licensing networks since they have limited weight and funds in the market and may meet unreasonable price expectations.

At the same time, the exception can only create these effects if it is interpreted in a clear, harmonised and innovation-friendly manner and includes effective mechanisms for implementation and enforcement. Legal uncertainty around opt-outs, including a lack of clarity on what constitutes «machine-readable» reservations of rights, lawful access, technical limitations due to the lack of widely deployed standards for granular rights reservations in the context of AI and the applicability of TDM to AI training, and can undermine its practical value.

Q6. Have you relied on the TDM exceptions in activities related to the development of large language models / AI models?

1. Yes

2. No

3. I don't know.

Q6_1. If yes, can you please indicate concrete cases and elaborate on the benefits / limitations of the TDM exceptions?

TDM exceptions are relevant for a broad range of AI-related activities, including the development and improvement of general-purpose AI and foundation models, natural language processing, machine translation, summarisation, search, code analysis, data analytics, bias detection, model evaluation and safety testing.

The main benefit is that the exception provides a legal basis for computational analysis of lawfully accessible data at scale. Without such a legal basis, individual licensing for each work or data point would be practically impossible and would create a major competitive disadvantage for European AI developers. From a competitiveness standpoint, friction in the data analysis layer acts as a drag on growth across the entire economy.

TDM underpins all stages of AI development. It is used to train foundational models on large and diverse datasets (including publicly available and third-party content), and to fine tune those models on domain specific materials such as scientific literature, technical documentation, and regulatory data much of which is protected by copyright.

In practice, this supports a wide range of concrete use cases:

- AI development: training and fine tuning LLMs on a vast corpus of data, including online data and specialised data sets (e.g. scientific literature and technical documentation), to improve performance and adapt models to specific domains.
- Healthcare: AI systems mine biomedical literature and clinical data to accelerate drug discovery and improve diagnostics.
- Energy: LLMs synthesise climate research and technical documentation to support forecasting, grid optimisation, and infrastructure planning.
- Manufacturing and automotive: AI tools analyse engineering documentation and operational data to improve design, quality assurance, and predictive maintenance.
- Financial services: Models analyse legal texts, regulatory filings, and news data for risk modelling, compliance, and fraud detection.

Across these examples, TDM is not a single activity but underpins the full AI lifecycle, including dataset creation and curation, model training and pre-training, fine-tuning and domain adaptation, ongoing evaluation and improvement, and deployment through real-world data analysis. In each of these stages, the ability to analyse large volumes of diverse, lawfully accessed data, without needing to negotiate permissions for every individual work, is essential to building robust, accurate, and competitive AI systems.

Benefits of TDM exceptions:

- Provides legal basis for large-scale data analysis across the AI lifecycle
- Enables access to diverse datasets, improving model quality and reducing bias
- Supports innovation across sectors and lowers barriers to entry, particularly for SMEs and research organisations
- Facilitates cross jurisdiction competitiveness for all sectors, aligning with jurisdictions that permit TDM

The limitations concern uncertainty around rights reservations, for instance on what constitutes «machine-readable» reservations of rights, the identification of opt-outs, lawful access, technical limitations due to the lack of widely deployed standards for granular rights reservations in the context of AI, contractual restrictions and divergent interpretations across Member States. These uncertainties can deter investment, slow down product development and make it harder for European companies to compete globally.

Q7. Have you faced any barriers in making use of the TDM exceptions?

1. I have not faced any barriers

2. Legal uncertainty about my use case

3. Difficulties to obtain lawful access to the works

4. Technical restrictions and Technological Protection Measures (TPMs) preventing TDM on content to which I have lawful access

5. TDM not allowed under licence or contract

6. Difficulties to identify rights reservations expressed by rightholders

7. High volume of content for which rights were reserved ('opted out')

8. Other, please specify

Q 7.1 Can you quantify the amount of content where the rightholder has implemented (technical) measures to prevent mining of content?

We cannot answer on behalf of our members

Q8. How has Article 4 impacted your TDM practices and / or business model?

1. Negatively

2. Somewhat negatively

3. Positively

4. Somewhat positively

5. It hasn't impacted them at all

6. I don't know

Q9. Please elaborate on your assessment and explain for which type of activities you have relied on the TDM exception (e.g. data analytics, AI training, etc) and in which sector?

Article 4 has had a positive impact because it enables a wide range of data-driven activities across the entire economy. These include AI training and development, natural language processing, search, data analytics, cybersecurity and threat intelligence, product and brand monitoring, customer service, knowledge management, fraud detection and industrial analytics.

Relevant sectors include but are not limited to software, IT services, cloud services, cybersecurity, mobility, health, finance, energy, insurance, media, governmental, national security, e-commerce and industrial applications as well as creative industries, manufacturing and legal services. The importance of the exception goes beyond use cases where large volumes of heterogeneous data must be analysed and where individual licensing is not feasible, but is equally relevant where businesses, retail operations, law firms, SMEs and start-ups are incorporating AI into their everyday practices.

However, the positive effect is reduced where companies face unclear opt-outs, contractual restrictions or uncertainty about whether specific AI-related activities fall within the exception. The EU should therefore ensure a broad, harmonised and practical interpretation of Article 4 such as approaches, which assume the applicability of TDM exceptions for AI training while simultaneously treating the outcome of this legally permitted training (e.g. the model layer itself) as copyright relevant.

Q16. What unexpected benefits or challenges have you experienced in relation to the introduction of the TDM exceptions?

The main unexpected challenge is the degree of legal and practical uncertainty that remains. In particular, uncertainty of what constitutes a machine-readable rights reservation creates significant compliance burdens. Technical limitations, for instance due to the lack of widely deployed standards for granular rights reservations in the context of AI, and fragmented licensing practices can undermine the intended effect of the exception. There is also growing uncertainty in the context of generative AI, where divergent interpretations risk weakening the EU's competitiveness.

Section 2.5: Other impacts

Q126. Based on your experience, please indicate one key benefit or value added by the DSM Directive, if any?

The key benefit is the introduction of a general EU-level TDM exception. It provides an essential legal basis for organisations across the economy to analyse large volumes of data, which is now a foundational capability for innovation, productivity, and competitiveness. TDM is not limited to AI developers or technology companies; it underpins a broad spectrum of activities, including fraud detection in finance, drug discovery in healthcare, predictive maintenance in manufacturing, and supply chain

optimisation in retail, and permits all businesses to adopt AI. By clarifying that such analytical uses can take place without the need for individual licensing in many cases, the Directive has reduced friction, enabled investment, and supported the scaling of data driven processes.

Importantly, the TDM exception has also helped to position the EU as a viable environment for the development and deployment of advanced technologies, including AI systems. In highly competitive global markets, access to data and the ability to analyse it efficiently are key determinants of where innovation occurs. The DSM Directive has taken an important step towards ensuring that European based organisations, across all sectors, can compete on a more equal footing internationally.

More broadly, the Directive demonstrates the value of a copyright framework that protects rightsholders and enables downstream innovation and economic activity. By recognising that data analysis does not substitute for the consumption of protected works, the TDM exception supports both creative sectors and the many industries that depend on data-driven insights.

In our members' experience, this has been a critical enabler of growth and cross sector innovation. Maintaining and building on this framework will be essential to ensure that Europe remains globally competitive and that the benefits of data-driven technologies are realised across the entire economy..

Q127. To what extent has your organisation incurred compliance costs because of the Directive?

- 1. To a great extent
- 2. To some extent
- 3. To a little extent
- 4. Not at all
- 5. I don't know.

Q128. What is the nature and level of those compliance costs and in relation to which of the Directive's provisions are they incurred?

Compliance costs mainly relate to Article 4 TDM. They include legal assessment of permitted uses, assessment of lawful access, identification and management of rights reservations, technical processes to detect and respect opt-outs, documentation, internal governance, review of licence terms and, where necessary, adaptation of data pipelines.

Q129. How well do the DSM Directive's provisions align with other relevant EU legislation (e.g., GDPR, AI Act, Digital Services Act, Orphan Works Directive)?

Instructions: with 1 being not at all aligned and 5 being fully aligned.

Slider: 1 2 3 4 5.

Q129_1. Please specify any particular laws where you have noticed alignment or conflict.

There is a need for better alignment between the TDM provisions of the DSM Directive and the AI Act. The EU aims to foster trustworthy AI development, but uncertainty around the scope of TDM, lawful access and opt-outs can undermine this objective. There may also be tensions with the GDPR where data processing and copyright compliance processes overlap, and with sector-specific data access rules where access to data for analysis is relevant.

The DSM framework should be interpreted in a way that supports innovation, legal certainty and proportionate safeguards without creating duplicative or conflicting obligations. Tensions exist with the Digital Services Act where Article 17 implementation encourages proactive filtering or quasi-judicial complaint handling; with GDPR and trade secret law where Article 19 transparency can require disclosure of sensitive or confidential information; and with the AI Act where uncertainty around TDM, opt-outs and training data may undermine legal certainty for AI developers.

Q130. Have you experienced any legal or practical tensions or conflicts between the DSM Directive as implemented and other national laws in your country?

1. Yes

2. No

3. I don't know.

Q130_1. Please describe the tension or conflict and its impact.

In Germany, the implementation of Article 4 in Section 44b UrhG provides an important legal basis for TDM. However, practical tensions remain because the effectiveness of the exception depends on lawful access, the treatment of contractual restrictions, the legal validity and detectability of rights reservations and whether generative AI training falls within that concept.

Where opt-outs are unclear or expressed in inconsistent formats, companies face legal uncertainty and additional compliance costs. This can deter investment, delay innovation and create a competitive disadvantage for European AI and data companies.

Bitkom represents more than 2,300 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 700 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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