

TDM Exception in Japan

Possible implication for Europe?

Tatsuhiko UENO

Professor of Law
Deputy Director of RCLIP
Waseda University

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WASEDA UNIVERSITY

TDM Exception in Japan

- Japanese TDM exception (introduced in 2009, extended in 2018) is much broader than the DSM Directive (Arts. 3 & 4) and probably the broadest explicit provision in the world.

TDM Exception in Japan



Art. 30-4 of JCA

First introduced in 2009 (Art.47-7), extended in 2018

It is permissible to exploit work, in any way and to the extent considered necessary, in any of the following cases or other cases...

(ii) exploitation for using the work in a **text-and-data mining** (meaning the extraction, comparison, classification, or other analysis of language, sound, or image data, or other elements of which a large number of works or a large volume of data is composed...);

TDM is permissible even for commercial purpose

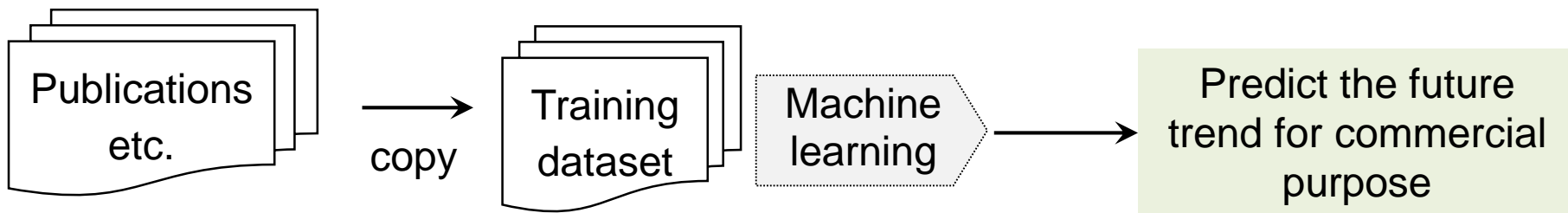
Reservation (opt-out) of rightholders doesn't matter

Sharing of data set for other's TDM is permissible

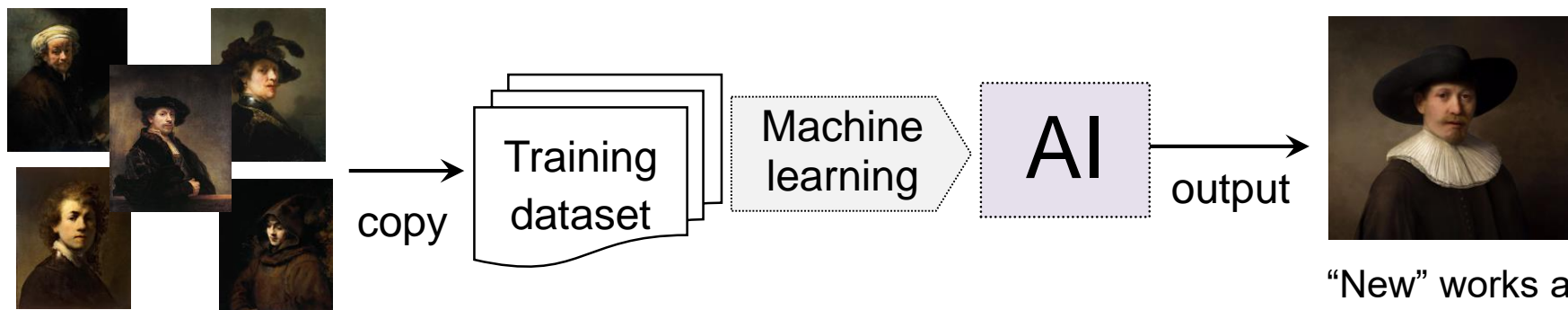
"Japan is a **paradise** for machine learning"

Not-computational TDM is also permissible

TDM Exception in Japan



e.g. Books, newspapers,
Tweets



e.g. Rembrandt, Beatles,
Star wars, Disney...

“New” works after
the author’s style

TDM Exception in Japan



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TDM Exception in Japan



“Japan is a *paradise* for machine learning”

Tatsuhiro UENO: Copyright Issues on Artificial Intelligence and Machine Learning

IJCAI (International Joint Conferences on Artificial Intelligence), 18.8.2017, Melbourne

[Tatsuhiro UENO, Copyright Issues on Artificial Intelligence and Machine Learning, The First International Workshop on Sharing and Reuse of AI Work Products, IJCAI-17 in Melbourne \(August 19, 2017\)](#)

TDM Exception in Japan

- Japanese TDM exception is too broad?
 - Rationale for Japanese TDM exception?
 - The Japanese Government intended to foster the development of AI technology or boost economic development in Japan at the expense of copyright holders?
- Maybe not. So why?

TDM Exception in Japan



Tatsuhiro UENO: The "flexible" copyright exceptions introduced in Japan:
A future model for European civil law countries?

Second IP Researchers Europe Conference (IPRE) (28-29, June 2019, Geneva)

TDM Exception in Japan

- Japanese TDM exception is now one of the “flexible” provisions on copyright exception introduced in 2018 (enacted in 2019) for exploitation “not for enjoying” (Art.30-4).

Exploitation not for “Enjoying”



Art. 30-4 of JCA

Introduced in 2018, enacted in 2019

It is permissible to exploit work, in any way and to the extent considered necessary, in any of the following cases or other cases where such exploitation is **not for enjoying (享受)** or causing another person to enjoy the ideas or emotions expressed in such work; provided, however that this does not apply if the exploitation would unreasonably prejudice the interests of the copyright owner in light of the natures and purposes of such work, as well as the circumstances of such exploitation:

- (i) .. → 1 For experiment
- (ii) .. → 2 **For text-and-data mining**
- (iii) .. → 3 Without perceiving

Enjoy
(享受)

Exploitation not for “Enjoying”

Japan Copyright Office (JCO), Outline of the Amendments to the Copyright Act in 2018, Patents & Licensing, April 2019, p.12

“It is considered that the economic value of a work is, normally, realized when a person who views or listens to the work pays compensation for such work in order to enjoy the ideas or emotions expressed in a work and satisfies the person's intellectual or emotional desires. Therefore, **acts not for enjoying** the ideas or emotions expressed in a work **do not prejudice the opportunities of the copyright owner to receive compensations** from those who intend to enjoy the ideas or emotions expressed in the work and the interests of such copyright owner intended to be protected by the Copyright Act will, normally, not be prejudiced.”

TDM Exception in Japan

- According to the Japanese Government, copyright is a right protecting only an interest in the inherent exploitations aimed at “enjoying” or causing another person to “enjoy” a work.
- Japanese TDM exception seems to be the “internal limit” to copyright based on the justification for copyright protection, rather than “external limit” to copyright as a result of striking the balance with other fundamental rights.

I'll be back!



Kraków IP Colloquium Jagiellonian University

13 December 2019

Prof. Tatsuhiro UENO

The "flexible" copyright exception in civil law countries

- 2018 Amendment in Japan and the future model for Europe? -

AD

Discussions in Europe

- Similar attempts to exclude TDM from the scope of copyright
 - “Use as a work” (Alain Strowel)
 - “Reasonable exploitation” (Ole-Andreas Rognstad & Joost Poort)
 - “Redefined scope of exploitation” (Séverine Dusollier)
 - “Exploitative uses” (Bernt Hugenholtz)

Bernt Hugenholtz (ed.), *Copyright Reconstructed: Rethinking Copyright's Economic Rights in a Time of Highly Dynamic Technological and Economic Change*, (2018, Kluwer)



Discussions in Europe

- Some scholars seem to be still in favor of a broader TDM exception
 - Rossana Ducato / Alain Strowel, Limitations to Text and Data Mining and Consumer Empowerment: Making the Case for a Right to “Machine Legibility”, IIC 2019,649
 - Bernt Hugenholtz, The New Copyright Directive: Text and Data Mining (Articles 3 and 4), (July 24, 2019)
<http://copyrightblog.kluweriplaw.com/2019/07/24/the-new-copyright-directive-text-and-data-mining-articles-3-and-4/>
 - Christophe Geiger / Giancarlo Frosio / Oleksandr Bulayenko, Text and Data Mining Articles 3 and 4 of the Directive 2019/790/EU (October 17, 2019)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3470653

Conclusion

- Japanese TDM exception is quite broad as the “flexible” exception for exploitations “not for enjoying” and can be regarded the “internal limit” to copyright. → Possible implication for Europe?
- My question: Latitude of Member States?
 - Fundamental rights are not capable of justifying a derogation from copyright beyond the exhaustive list of E&L in Info-Soc Directive (Funke/Spiegel/Pelham).
 - The normative interpretation of the “substantive” scope of copyright is possible?



Thank you
Dziękuję

Prof. Tatsuhiro UENO
uenot@waseda.jp



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- (i) ...
- (ii) exploitation for using the work in a **text-and-data mining** (meaning the extraction, comparison, classification, or other analysis of language, sound, or image data, or other elements of which a large number of works or a large volume of data is composed...);
- (iii) ...