



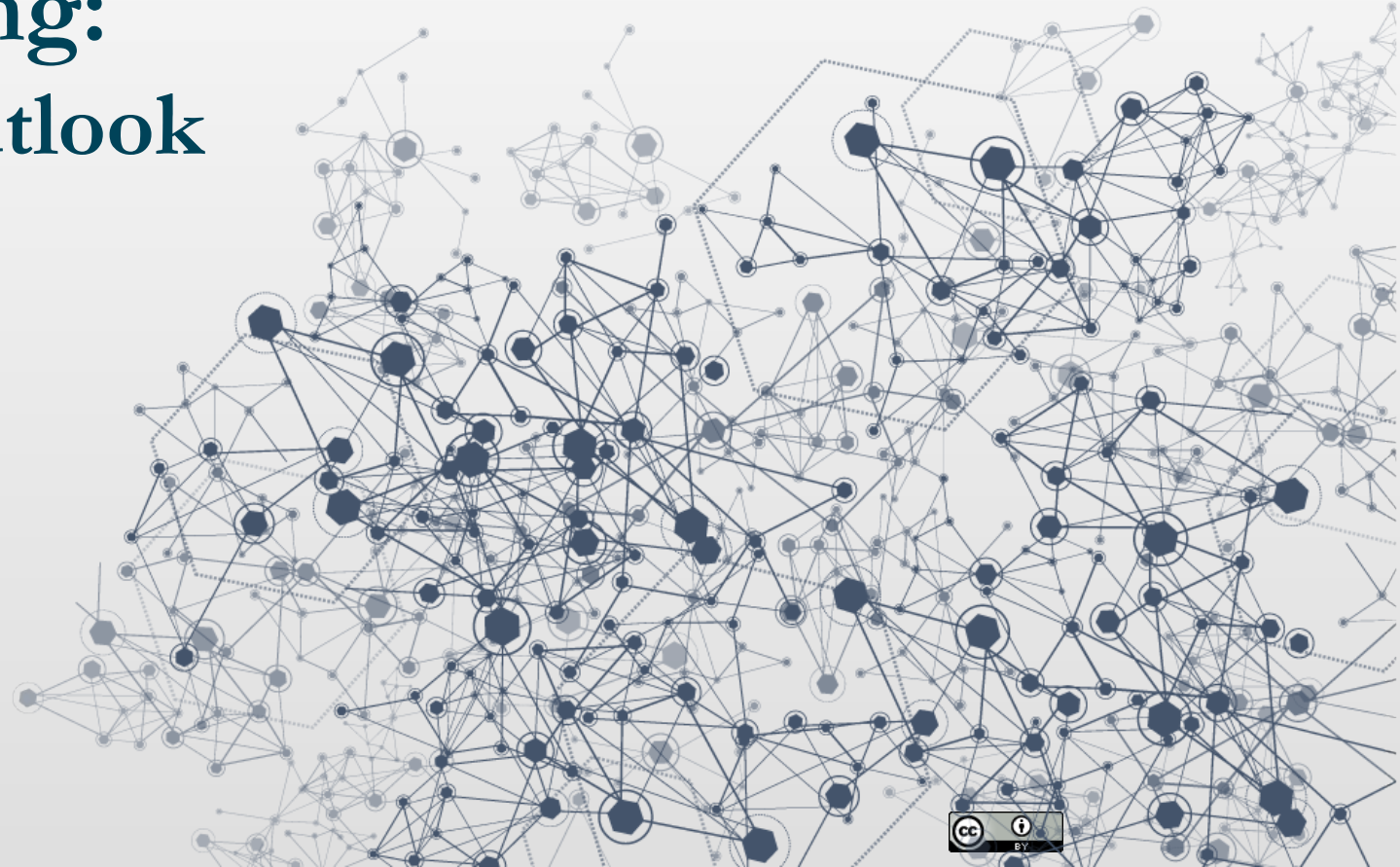
Ligue des Bibliothèques Européennes de Recherche
Association of European Research Libraries

Legal aspects of Text and Data Mining: A current European outlook

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Jonas Holm, LL.M.

Legal counsel, Stockholm University
Chair, LIBER Working Group on Copyright
jonas.holm@su.se



LIBER members: 400 research libraries in 40 countries

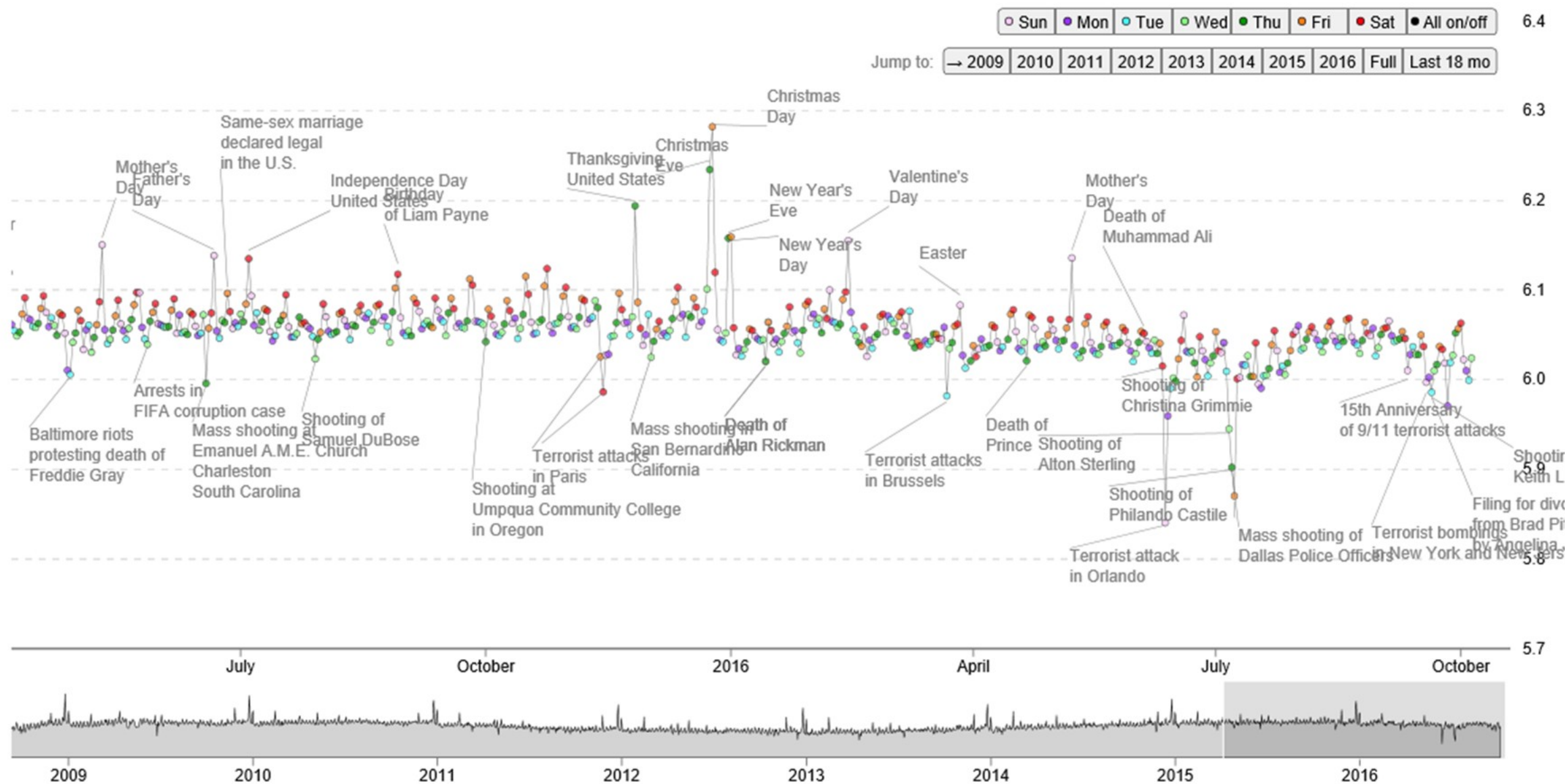
- ❑ We advocate mandatory exception for TDM, for public entities and private entities as well as individuals, non overridable by contract or technical measures. We support this with the League of European Research Universities, Science Europe, European University Association and Conference of European Schools for Advanced Engineering Education and Research.
- ❑ Combined, we are the voice of thousands of researchers, educators, innovators, libraries and scholarly institutions. We have full appreciation of the need to safeguard those who create copyright protected works as well as those who further their work — indeed we represent both.

<http://libereurope.eu/blog/2017/01/10/eu-copyright-reform-liber-joins-leading-research-groups-call-change/>

The Right to Read is the Right to Mine...
...what we could do given the right legal tools?



Average Happiness for Twitter



TDM and Big Data - Legal unclarity & legal fragmentation

How big is the dig data? **1,08 billion websites** and **3,46 billion internet** users as of September 2016.

Scientific use for big data analytics:

- ✓ Long-term medical studies
- ✓ Disease outbreak monitoring
- ✓ Drug reactions
- ✓ Agriculture
- ✓ Social media analysis



Data Science Institute, Imperial College London

Copyright: Greater London Authority 2016

Data is the new coal – data, growth and jobs

Data is to the digital age what coal was for the industrial revolution.

Deep learning is creating new businesses.

An international outlook...

WIPO Copyright treaties

Bern convention 3 step test

It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases,

provided that such reproduction does not conflict with a normal exploitation of the work

and does not unreasonably prejudice the legitimate interests of the author.

Fair use – an open norm in practice

“the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright” – U.S Copyright Act

Would an open norm, like fair use in the United States be a more optimal approach than specific statutory exceptions?

EU Digital Single Market Copyright reform

Facilitate Research, Article 179 of TFEU (The Lisbon Treaty)



- ❑ LIBER position objectives are in Article 179 of the Treaty of the Functioning of the EU, DSM Directive page 4, DSM objective is to facilitate research:
- ❑ Union shall have the objective to strengthen its scientific and technological bases by achieving a European Research Area (ERA), in which researchers, scientific knowledge and technology circulate freely, encouraging it to become more competitive and promoting research activities. For this purpose, the Union shall encourage research and technological development activities of high quality, enabling exploiting the internal market potential to the full, through removal of legal obstacles.

European Union copyright law

- ✓ Satellite and cable directive *1993*
- ✓ ***Database directive 1996 Open consultation 2017!***
- ✓ Infosoc directive *2001*
- ✓ Directive on the resale right *2001*
- ✓ Directive on the enforcement of intellectual property rights *2004*
- ✓ Directive on rental and lending rights *2006 (modified)*
- ✓ Directive on the legal protection of computer programs *2009*
- ✓ Directive on term of protection *2011*
- ✓ MoU on Out-of-commerce works *2011*
- ✓ Orphan works directive *2012*
- ✓ Directive on collective management of copyright *2014*
- ✓ ***Digital Single Market Copyright Directive 2018?***



Digital Single Market – directive proposals September 2016

Copyright exception for Text and Data Mining

Copyright exception for illustration for teaching

Copyright exception for preservation

Licensing mechanism for Out-of-commerce works

Publishers right – 20 years

Commission DSM Proposal on TDM

Article 3 - Text and data mining

1. Member States shall provide for an exception to the rights provided for in [...directives..] for reproductions and extractions **made by research organisations** in order to carry out text and data mining of works or other subject-matter to which they have lawful access **for the purposes of scientific research.**
2. Any contractual provision contrary to the exception provided for in paragraph 1 shall be unenforceable.
3. Rightholders shall be allowed to apply measures to ensure the security and integrity of the networks and databases where the works or other subject-matter are hosted. Such measures shall not go beyond what is necessary to achieve that objective.
4. Member States shall encourage rightholders and research organisations to define commonly-agreed best practices concerning the application of the measures referred to in paragraph 3.

JURI Amendment 31, Article 3- paragraph 1

- ❑ Text and data mining for scientific research and innovation are carried out by public and private entities, with computers and software of these legal entities and by employees of these legal entities (legal persons). When these employees do text and data mining, it is these legal entities that text and data mine. Therefore, the JURI amendment should be further clarified to achieve legal clarity: **a legal or natural person**. Limiting TDM right to **a person** can be understood to limit TDM right to computers and software that are personal property and for only other than work related duties. The draft amendment is not clear enough to allow text and data mining for research and innovation.

JURI Amendment 32, Article 3- paragraph 1 a (new)

- ❑ Legislating a new legal concept of **”normalisation of data”** increases legal uncertainty. Mandatory exception for reproductions and extractions in order to carry out text and data mining of works has legal clarity.
- ❑ Intellectual property legislation does not protect ownership of knowledge, legislation protects original works, patentable inventions or new design. This freedom of knowledge is the basis for scientific research and innovation. Creating a new protected right of **”normalisation of data”** protects legal ownership of knowledge, a new right created for publishers.

CULT (Cultural affairs) Committee version of copyright exception

- Compromise version
- Narrow scope of beneficiaries
- Only TDM on material to which users has "**acquired** legal access"
- Copies should be deleted after research is done
- Compensation to rightholders

IMCO (Internal market) Committee and Council of Ministers versions

- ❑ Widens scope of beneficiaries to research organisations and Cultural Heritage Institutions (such as libraries and museums)
- ❑ Only TDM on material to which users has "**acquired** legal access"

Article 2

Definitions

(1) '**research organisation**' means a university, a research institute or any other organisation the primary goal of which is to conduct **or support** scientific research or to conduct scientific research and provide educational services:

The Way Ahead

- Council of ministers proposal – Proposal adopted autumn 2017?
- JURI (Legal) Committee – Vote October 2017
- CULT Committee – Vote June 21 2017
- IMCO Committee – Compromise version already adopted
- ITRE Committee – Vote June 21 2017

- Final directive – **fall 2018?**



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THANK YOU

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MATUR NUWUN
MATONDO
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