Dear Mr Voss,
CC: Members of the JURI Committee,

We, representatives of *universities, large and small technology companies, telecommunications and Internet service providers, startups and scaleups, libraries, open access publishers, investigative and data journalists and non-profits*, would like to express our **deepest concerns** about the second version of the draft compromise amendments on **Text and Data Mining - TDM (Article 3)** which has been circulated this week.

We fail to understand your decision to pull your first draft, which was a **very balanced, progressive, and reasonable attempt** at striking a compromise between the Commission's original approach, the legitimate protection of rightsholders, and a broader exception that allows anyone to engage in TDM for any purpose in order to encourage research and innovation in Europe.

It is specifically problematic that you decided to align with the Council's common position approved by COREPER on 25 May, which **does not resolve crucial issues** for both the public and private research communities, thereby preventing a workable, effective exception for TDM.

While a definite improvement over the original Commission proposal, the optional exception as proposed by the Council (Article 3a) **still includes major flaws**:

- Providing for an *'optional'* rather than *'mandatory'* exception, will lead to regulatory fragmentation in Europe. It will make it more difficult for the **clear majority of the European research and innovation ecosystem** (i.e. businesses, particularly SMEs and startups, but also journalists or individual researchers) to carry out TDM activities. It will also penalise research organisations that engage in public-private partnerships. The optional exception will particularly discriminate those engaging in **cross-border** research and data analytics activities, **defeating the purpose of building a Digital Single Market**.

- The Council's text only allows for **'temporary'** reproductions and extractions, which would significantly limit the techniques used by most TDM users today. This would simply nullify the benefits of this optional exception and does not reflect how TDM works.

We also want to point out that, contrary to claims made by certain publishers, a mandatory exception for commercial parties that have lawful access to the underlying work **will not** have an impact on the copyright protection of rightsholders in the works involved. The process of TDM **does not** compete with the market for the use of expressive works protected by copyright law, but instead draws out facts and information that go beyond the work itself.

Keeping in mind the foundational role that TDM plays in Artificial Intelligence (AI), this new compromise will have the **opposite effect of what the EU wishes to achieve** with its AI Strategy. Needless to say the lack of a workable copyright framework will lead Europe to **fall behind** other regions of the world in the competitive race to develop AI-powered solutions. In many countries, such as the US, Canada, Japan or Australia, lawmakers have already facilitated the use of TDM, or are currently looking at ways to align their own copyright rules with their AI ambitions.

We urge you to **go back to your initial compromise proposal**, which was in line with your objective of **reaching the right balance** between the protection of effective business models and the need to provide a framework fit for innovation. We call on the European Parliament to propose a **futureproof, broad mandatory exception for TDM for all parties** that have lawful access to the underlying work, and ensure Europe lives up to its ambition of becoming a global leader in AI, machine learning and data analytics.

Signatories

- Allied for Startups;
- Bitkom;
- BSA | The Software Alliance;
- Center for Democracy & Technology (CDT)
- Computer and Communications Industry Association (CCIA);
- Communia Association;
- Confederation of Open Access Repositories (COAR);
- Copyright 4 Creativity (C4C);
- DIGITALEUROPE;
- EDiMA;
- ESOMAR;
- European Alliance for Research Excellence (EARE);
- European Committee for Interoperable Systems (ECIS);
- European DIGITAL SME Alliance;
- European University Association (EUA);
- Frontiers;
- League of European Research Universities (LERU);
- Ligue des Bibliothèques Européennes de Recherche –Association of European Research Libraries (LIBER);
- Open State Foundation;
- OpenAIRE;
- Research Libraries UK (RLUK);
- Society of College, National and University Libraries (SCONUL);
- SPARC Europe;
- UCL (University College London)