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# TDM- Law vs Licence

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# The Law

We know that the TDM exception:

- Grants the right to do computation analysis
  - ‘for the sole purpose of research for a non-commercial purpose’
  - s.29A(1) CDPA
  
- But any other ‘dealing’ is restricted i.e.
  - (a) the copy is transferred to any other person’
  - (b) ‘the copy is used for any purpose other than that mentioned in subsection- s.29A (2) CDPA



# The Licences

JISC Collections model licences now include a clause at 3.1.6.8:

‘use the Licensed Material to perform and engage in text mining/ data mining activities for academic research and other Educational Purposes and allow Authorised Users to mount, load and use the results in accordance with this Licence.’

And

4.1.4:

‘... For the avoidance of doubt textmining and datamining output as referred to in Clause 3.1.6.8 can be displayed and distributed on any electronic network, including the internet, provided that such output does not contain copies of copyright works owned or licensed to the Publisher;’

<https://www.jisc-collections.ac.uk/Help-and-information/How-Model-Licences-work/Journals-Model-Licence-/>



# The Issues

**JISC Licences offer more than the law permits- super.**

- **But not all JISC licences include the clause.**
- **Not all licences are JISC Licences.**

Some other licences have very extensive TDM clauses.

Some (most) are silent.

Some have separate addendums and API licences which users are required to sign.

(Some [commentators](#) feel that such licences restricts activity.)

- Publisher are permitted to protect their platforms and the integrity of their systems.
- Would we want to de-stabalise a platform harming the experience for all students?



# ‘Snippet’ + X = ?

Some API licences/ addendums introduce a new concept called ‘a snippet’, i.e. a search term.

- Is that a word? a paragraph? A page?

Some licences allow the use of ‘a snippet’ plus 150-200 characters *per work*

*‘Use snippets of text from individual full text articles or book chapters of more than 200 characters (excluding text entity matches or bibliographic metadata)’*

*Publisher X*

*‘...Where snippets (which may include a few lines of query-dependent text of individual full text articles or book chapters up to a maximum length of 200 characters surrounding and excluding the text entity matched)....’*

*Publisher Y*



# TDM vs FD

- How does this compare to fair dealing?
  - 5%?
  - 10%?
  - 400 words, or 800 words of multiple quotes provided one single quote does not exceed 300 words.
- Multiple layers of FD?
  - TDM to do computational analysis?
  - Other permitted acts cover publication:
    - Crit & review?
    - Quotation?
  - Rely on Platform licences- 3.1.6.5 of Jisc model
    - Assignments, portfolios, theses and dissertations only



# What can Researchers Use?

- ❑ Snippet + X is unrealistic and worse than existing exceptions.
  - Ignore the term?
- ❑ There is no real certainty still.
- ❑ S.29A helps but its not the whole picture.
- ❑ APIs are barriers to access- licence, and technical.
- ❑ But publisher need to protect the integrity of their systems.
  - TDM being flagged as authentication issues/ licence breaches.
- ❑ Developing area.
- ❑ Projects now producing outputs- more issues expected.

