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The Copyright Trap

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Brussels, 21 May 2026 - The EU's push to tighten copyright rules on AI training data risks dismantling the single most important instrument in Europe's AI regulatory toolkit – the Text and Data Mining (TDM) exception.

A new ECIPE Policy Brief, The Copyright Trap, warns that the EU is caught in a profound policy contradiction. While the Union has committed billions of euros to public AI infrastructure, its own regulations are simultaneously making the essential input for AI development, data, artificially scarce and legally uncertain. The result is a schizophrenic policy environment that is driving private AI investment away from Europe. In 2024, the US attracted EUR 101 billion in private AI investment; the EU attracted EUR 18 billion. In generative AI alone, the gap is even starker: EUR 27 billion in the US versus EUR 1.3 billion in the EU.

"The EU is investing public money to build AI capacity while its own regulatory framework systematically reduces the private sector's ability to develop AI. That contradiction cannot be resolved by spending more; it requires removing the regulatory constraints that make data artificially scarce in the first place", said Oscar Guinea, co-author of the study.

AI training relies on statistical inference, not duplication: it extracts unprotected elements such as factual information and linguistic regularities, transforming them into mathematical parameters rather than reproducing protected expression. The real concern for creators is economic displacement: AI outputs that compete in the same markets, a problem that belongs to market and employment policies, not copyright law.

"Copyright law was designed to prevent the reproduction of protected expression, not to rule how statistical patterns are extracted from data", said Vanika Sharma, co-author of the study.

AI data regulations are not a niche copyright issue; they are an industrial policy question of the first order. The Policy Brief presents new data showing that the combined value added of Europe's five most data-intensive sectors is more than nine times the value generated by the creative sector.

"The copyright debate has been captured by one sector, but the consequences of getting it wrong will be felt by the entire European economy. Data-intensive industries that employ millions of Europeans depend on access to training data that could become under threat", said Dyuti Pandya, co-author of the study.

The brief sets out six targeted policy recommendations. At their core is a call to treat the TDM exception as a strategic asset rather than a concession to technology companies. Policymakers should impose a moratorium on further legislative changes to the TDM framework and resist any expansion of opt-out mechanisms or mandatory licensing schemes.

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