

Interpretation: what is computational data analysis

243. In this Division, “computational data analysis”, in relation to a work or a recording of a protected performance, includes —

- (a) using a computer program to identify, extract and analyse information or data from the work or recording; and
- (b) using the work or recording as an example of a type of information or data to improve the functioning of a computer program in relation to that type of information or data.

Illustration

An example of computational data analysis under paragraph (b) is the use of images to train a computer program to recognise images.

Copying or communicating for computational data analysis

244.—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to make a copy of any of the following material:

- (a) a work;
- (b) a recording of a protected performance.

(2) The conditions are —

- (a) the copy is made for the purpose of —
 - (i) computational data analysis; or
 - (ii) preparing the work or recording for computational data analysis;
- (b) *X* does not use the copy for any other purpose;
- (c) *X* does not supply (whether by communication or otherwise) the copy to any person other than for the purpose of —
 - (i) verifying the results of the computational data analysis carried out by *X*; or
 - (ii) collaborative research or study relating to the purpose of the computational data analysis carried out by *X*;
- (d) *X* has lawful access to the material (called in this section the first copy) from which the copy is made; and

Illustrations

(a) *X* does not have lawful access to the first copy if *X* accessed the first copy by circumventing paywalls.

(b) *X* does not have lawful access to the first copy if *X* accessed the first copy in breach of the terms of use of a database (ignoring any terms that are void by virtue of section 187).

(e) one of the following conditions is met:

(i) the first copy is not an infringing copy;

(ii) the first copy is an infringing copy but —

(A) *X* does not know this; and

(B) if the first copy is obtained from a flagrantly infringing online location (whether or not the location is subject to an access disabling order under section 325) — *X* does not know and could not reasonably have known that;

(iii) the first copy is an infringing copy but —

(A) the use of infringing copies is necessary for a prescribed purpose; and

(B) *X* does not use the copy to carry out computational data analysis for any other purpose.

(3) To avoid doubt, a reference in subsection (1) to making a copy includes a reference to storing or retaining the copy.

(4) It is a permitted use for *X* to communicate a work or a recording of a protected performance to the public if —

(a) the communication is made using a copy made in circumstances to which subsection (1) applies; and

(b) *X* does not supply (whether by communication or otherwise) the copy to any person other than for the purpose of —

(i) verifying the results of the computational data analysis carried out by *X*; or

(ii) collaborative research or study relating to the purpose of the

computational data analysis carried out by *X*.

(5) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —

- (a) is not to be treated as publishing the material (or any work or recording included in the material); and
- (b) must be ignored in determining the duration of any copyright in the material (or the included work).