**Abstract**

# Will the U.S. Court Judge TDM for Artificial Intelligence Machine Learning as Fair Use?

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A representative debate is whether TDM (Text and Data Mining) in the machine learning process, which occurs when AI uses other people's copyrighted works by unauthorized means such as copying, is in accordance with the fair use principle or not. The issue is whether one can be exempted from copyright infringement.

In this regard, Korean scholar's attitude starts from the optimistic perspective that U.S. courts will view AI TDM or AI machine learning as fair use based on the fair use principle.

Nevertheless, there is no direct basis for the claim that US courts will exempt AI TDM or AI machine learning from fair use. This is because there has been no case in the United States where a court has recognized fair use by clearly targeting AI TDM or AI machine learning. Meanwhile, The Internet Archive case and the Andy Warhol case are hesitant to expand the fair use principle and are giving rise to pessimistic views on whether the use of other people's copyrighted works in the AI TDM or AI machine learning process will be considered fair use.

Taking that into consideration, American scholars are also developing the argument that the use of copyrighted works for AI machine learning or AI TDM should be considered fair use.

Therefore, the positive stance on the possibility of TDM exemption under Article 35-5 of the Korean Copyright Act needs to be carefully reexamined.

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Keywords

AI, Machine Learning, Deep Learning, TDM, Fair Use, Neural Network