

REPLY TO UK GOVERNMENT OPEN CONSULTATION ON ARTIFICIAL INTELLIGENCE AND IP: COPY- RIGHT AND PATENTS

The Alliance of Independent Authors (ALLi)’s response to this consultation on AI and IP (which covers copyright in works made by AI; text and data mining using copyright material; and patents for inventions devised by AI) centres on the experience and concerns of independent authors, authors who publish their own work, a fast-growing segment of the publishing sector and knowledge and creator economies.

Our reply addresses the key question of whether the current IP regime strikes the appropriate balance between the needs of creators of published content (writers), other rights holders (publishers), consumers of published content (readers) and the “authors” of AI generated work, as defined by the [Copyright, Designs and Patents Act 1988](#), (the “person” by whom the arrangements necessary for the creation of the work are undertaken (creators of, and investors in AI systems, tools and technology)).

ALLi welcomes the understanding that IP is one of the levers available to the government to incentivise investment in AI publishing tools and AI-powered publishing enterprises. We believe that this is best achieved by ensuring that the copyright framework continues to balance the needs of all interested parties. Such a framework facilitates the highest possible return on investment for authors, other creators and publishers using AI tools, while also considering the needs of and AI operators, and of readers, researchers and other consumers of generated content.

Our interest is in achieving a copyright and IP framework that fosters the development of AI and its use in publishing by author-publishers and third-party publishers, while ensuring the existing rights of authors as creators and copyright holders are not diluted.

Current law states that: Authorship of the work means “the person who creates it” and that such a person is:

- In the case of human generated work: the writer
- In the case of the typographical arrangement of a particular published edition, a sound recording etc: the publisher, producer or other copyright holder in an “entrepreneurial work”
- In the case of AI-generated work: the “person who made the necessary arrangements for the work to be created, for example the AI operator.”

Any copyright allowed to an AI operator must be subject to the same regulation, and the same balancing of rights, that has traditionally existed, and that applies to other interested parties.

The AI landscape has evolved considerably since the current legislation was devised and existing law is not fit for purpose for authors and publishers using artificial Intelligence and tools like Open AI’s GPT3. With the increasing use of AI writing tools by authors and publishers, there is a grey area as to when a work can be defined as “created by AI”.

AI does not have agency and behind every AI is a human (or lots of humans), feeding datasets and directing the use of the AI tools. As well as copyright licensing AI-generated work, we need to ensure that creators are rewarded for their original work when it is used to train future machine-learning systems.

ALLi advocates for easy access to data, but within a clear licensing framework and with clear guidance on the definition of non-commercial research.

Just as in human-powered publishing business, a favorable and accountable IP system is critical to providing the incentive of return on investment in AI-powered publishing.

We support licensing to manage the use of copyright works by AI systems and believe the licensing mechanisms in place need to be improved.

The current TDM exception, which allows the use of automated computational techniques to analyse large amounts of information to identify patterns, trends, and other useful information for noncommercial scientific research, should be retained and, if necessary, TDM exceptions should be expanded to account for AI. We do not support the extension of the existing TDM exception to cover commercial research and databases, without a clear licensing framework.

An overhaul of copyright for the digital age might include blockchain smart contracts and intellectual property tagging attached to each work that tracks it through the various systems, providing micropayments to authors for use of their copyrighted work in AI datasets, training, or word production over time.

We urge the UK government to expand on its record as a world leader by extending the collective licensing framework and providing a code of practice, legislative backstops, and other regulatory mechanisms, as necessary.

Only such a framework can address concerns about balancing the needs of all interested parties, and also about costs, access and curatorial bias—thereby allowing AI operators to work in a way that is fair to existing copyright holders and vice versa.

REFERENCES:

ALLIANCE OF INDEPENDENT AUTHORS. (2021) [AI for Authors: Practical and Ethical Guidelines.](#)

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Korn, Naomi and Professor & Oppenheim, Charles. (2011). Licensing Open
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Penn, Joanna. (2021) Artificial Intelligence, Blockchain, and Virtual Worlds: The
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UK GOVERNMENT. [Copyright, Designs and Patents Act 1988](#)

[ALLIANCE OF INDEPENDENT AUTHORS](#)

Annex - Response form

After you have read the consultation document, please consider the questions below. There is no expectation or requirement that all questions are completed. You are welcome to only answer the questions that are relevant to you, your business or organisation.

A copy of this response form is available to download from GOV.uk.

There are two sections on this form:

A. Questions arising from this consultation

B. Information about you, your business or organisation

When you are ready to submit your response, please email this form and any other supporting documentation to Alcallforviews@ipo.gov.uk.

The closing date for responses is at 23:45 on 7 January 2022.

The options for computer generated works, text and data mining and patent inventorship are summarised in the following tables.

| Computer generated works: OPTION 2: REDUCE SCOPE & DURATION | |
|--|---|
| Option 0 | Make no legal change |
| Option 1 | Remove protection for computer-generated works |
| Option 2 | Replace the current protection with a new right of reduced scope/duration |

| Text and Data Mining (TDM): OPTION 1: IMPROVE LICENCING ENVIRONMENT FOR PURPOSES OF TDM | |
|--|--|
| Option 0 | Make no legal change |
| Option 1 | Improve licensing environment for the purposes of TDM |
| Option 2 | Extend the existing TDM exception to cover commercial research and databases |
| Option 3 | Adopt a TDM exception for any use, with a rights holder opt-out |
| Option 4 | Adopt a TDM exception for any use, which does not allow rights holders to opt-out |

| Patent Inventorship: N/A | |
|--------------------------|---|
| Option 0 | Make no legal change |
| Option 1 | “Inventor” expanded to include humans responsible for an AI system which devises inventions |
| Option 2 | Allow patent applications to identify AI as inventor |
| Option 3 | Protect AI-devised inventions through a new type of protection |

Section A

Copyright – computer generated works (CGW)

1. *Do you currently rely on the computer-generated works provision? If so, please provide details of the types of works, the value of any rights you license and how the provision benefits your business. What approach do you take in territories that do not offer copyright protection for computer-generated works?*

Self-publishing authors are uniquely positioned in the publishing sector. They do not license all rights on an exclusive basis to a third-party publisher, but selectively to a variety of rights buyers. e.g. In considering the value of AI to our micro-publishing businesses, we must consider our copyright as authors (owners until death + 70 years), as publishers with a possible copyright ownership in a published edition (“entrepreneurial works”), and as rights holders, selectively licensing our rights to overseas publishers, TV and film publishers and producers, and other parties interested in acquiring / licensing rights, now including “AI operators”.

Independent authors are increasingly using AI writing and publishing tools. In general, their work is published globally, on digital platforms, distributed within countries that both do, and do not, protect CGWs.

Current copyright legislation needs to be adapted to account for such usage and for the use of author’s copyrighted work in AI language processing systems

2. *Please rank these options in order of preference (most to least preferred) and explain why.*

Option 2 (Replace the current protection with a new right of reduced scope/duration): Establishing a framework within which AI work

is properly understood and attributed will encourage meaningful engagement with the issues around use and ethics, and regularise the framework.

Option 1 (Make no legal change) is preferable to Option 0 (Remove protection for CGWs) which creates a free-for-all that is not conducive to investment. Protection should be maintained for AI generated as well as human generated work. The UK is ahead of the field here and should maintain its lead.

3. *If we introduce a related right for computer-generated works, as per option 2, what scope and term of protection do you think it should have? Please explain how you think this scope and term is justified in terms of encouraging investment in AI-generated works and technology.*

A seven-year license would be enough time to encourage creativity and generate revenue from that IP, while still allowing for modifications to legislation and policy, in this fast-changing environment.

4. *What are your views of the implications of the policy options and of AI technology for the designs system?*
5. *For each option, what are your views on the risk that AI generated works may be falsely attributed to a person?*

Option 2 (Replace the current protection with a new right of reduced scope/duration) and an associated licensing framework for CGW and TDM is the best defence against misattribution.

ALLi encourages independent authors to include a statement of AI usage in their books.

Copyright – text and data mining (TDM)

6. *If you license works for TDM, or purchase such licences, can you provide information on the costs and benefits of these? For example, availability, price-point, whether additional services are included or available, number and types of works covered by the licence etc.*

Authors are using a variety of composition tools based on AI tools like Open AI's GPT3.

Data licensing for works in copyright could provide growth for a new level of industry involved in licensing and collection and add new revenue streams for creators.

Licensing is a way for the AI industry to grow and benefit from the data, as well as mitigating bias, by including data from diverse voices. For example, this might include 10,000 books within copyright for a specific license fee for a specific period for the purpose of training a model.

This would encourage more creation of copyright works, as it would bring another stream of income for creators.

This might fit within the purview of the ALCS in the UK, which collects on behalf of authors; or publishers could license their works in batches; or organizations like the Alliance of Independent Authors, or the Society of Authors could create datasets of their members and disperse collected license fees.

Such licensing may also encourage a secondary market of companies specializing in data licensing within the publishing industry. Data licensing is a common practice in other industries, where companies exist to gather, analyse and license data eg [IQVIA](#) in the pharmaceutical industry.

7. *Is there a specific approach the government should adopt in relation to licensing?*

Examine dataset licensing in other industries and apply the same principles.

8. *Please rank the options in order of preference (most to least preferred) and explain why.*
9. *If you have experience of the EU exception with opt out for rights holders, how has this affected you?*
10. *How would any of the exception options positively or negatively affect you? Please quantify this if possible.*

Patents: N/A

General

18. *What role does the IP system play in the decision of firms to invest in AI?*

1) An industry body

F: If you are responding on behalf of a business or organisation, in which sector(s) do you operate? (choose all that apply)

- 1) Agriculture, forestry and fishing
- 2) Mining and quarrying
- 3) Manufacturing – Pharmaceutical products
- 4) Manufacturing – Computer, electronic and optical products
- 5) Manufacturing – Electrical equipment
- 6) Manufacturing – Transport equipment
- 7) Other manufacturing
- 8) Construction
- 9) Wholesale and retail trade; repair of motor vehicles and motorcycles
- 10) Transportation and storage

11) Information and communication – Publishing, audio-visual and broadcasting

- 12) Information and communication – Telecommunication
- 13) Information and communication – IT and another Information Services
- 14) Financial and insurance activities
- 15) Real estate activities
- 16) Scientific and technical activities
- 17) Legal activities
- 18) Administrative and support service activities
- 19) Public administration and defence
- 20) Education
- 21) Human health and social work activities

22) Arts, entertainment and recreation

23) Other activities – please specify

G: How many people work for your business or organisation across the UK as a whole? Please estimate if you are unsure.

1. Fewer than 10 people

- 1) 10–49
- 2) 50–249
- 3) 250–999
- 4) 1,000 or more

H: The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Yes

I: If you are happy to be contacted by the Intellectual Property Office, please provide a contact email address.

[Redacted]

J: Would you like an acknowledgement of receipt of your response? Yes/No

Yes