

## 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](mailto: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.

<b>Computer generated works</b>	
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

<b>Text and Data Mining (TDM)</b>	
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

<b>Patent Inventorship</b>	
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?*

At the moment we do not rely on the computer-generated works provision to protect the majority of works created by us.

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

In order of most to least favoured – Option 0, Option 2, Option 1.

### **Option 0 (most favoured)**

We feel the current provisions providing protection for computer-generated works (including CDPA s9(3), s12(7) and s178) seem, for the most part to be fit for purpose, providing a useful duration of protection to incentivise the creation of computer systems capable of generating content capable of receiving copyright protection, while providing less protection than a person (or anonymous entity) would receive. As a result we favour Option 0, making no legal change at the current time.

### **Option 2**

Option 2 represents a middle ground between Options 0 and 1. While we would be in favour of the protection for computer-generated works aspect this covers, determining a new duration of protection has significant inherent difficulties. These include determining the appropriate level of protection, transitional provisions to deal with existing works, along with the impact on use of existing caselaw.

### **Option 1 (least favoured)**

We feel strongly it is important to ensure the incentivization which copyright protection provides is maintained so that further research and development in the area is continued and that the UK does not fall behind the rest of the world in this area. As such we would not want to see the removal of protection for computer-generated works as outlined in Option 1.

While not part of this question, it bears mention that when technology reaches a point where AI is capable of generating content without external (human) input (such as ‘true AI’) then the law will need to adapt to address this, however we feel we are not close enough to this point to warrant amending the legislation now.

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.*

As mentioned above, we would favour keeping the current legal framework protecting computer-generated works, so this would not be our first choice. Any new scope and term of protection would need to take into account the points mentioned above, namely that they are significant enough to incentivise the creation of software able to generate content, while not overshadowing the protection granted to individuals.

4. *What are your views of the implications of the policy options and of AI technology for the designs system?*

The British Library does not currently make significant use of the designs system, so will not comment on this.

5. *For each option, what are your views on the risk that AI generated works may be falsely attributed to a person?*

While we can see this may be a possibility, at the present time we do not see this as a significant issue.

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

As outlined above we are opposed to the TDM provisions requiring purchase of licenses. The only form of licensing scheme here which would not significantly harm the development of text and data mining in this country is a free, mandatory, open license (something similar in scope to the current Open Government Licence) which rightsholders were obliged to make content available, without cost, under.

Anything more than this would be hugely detrimental to all forms of TDM research in the UK.

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

In order of most to least favoured – Option 4, Option 2, Option 0, Option 3, Option 1

### **Option 4 (most favoured)**

We would strongly favour an extension to the TDM exception which supported any use and did not allow rights holders to opt out.

A significant part of the British Library's users are researchers and so the Library seeks supports research wherever possible. We support research in a number of capacities, as an archive of content on which research can be done, as partners to researchers from

other organisations / institutions and directly as researchers ourselves. We have seen on multiple occasions potential TDM research projects being abandoned because the existing exception (CDPA s29A) did not adequately provide a legal route for the researchers to use content and so require researchers to seek permission to use content from rights holders. The very nature of TDM research requires significant amounts of content to be analysed and so making any clearance of content potentially very expensive both in monetary terms but also in resource required to undertake the clearance.

Anecdotally we have heard from researchers that licensing options for this kind of project are often prohibitively high (often in the tens of thousands) and so

As a result we feel strongly that a wider expansion of the TDM exception which did not allow opt out, would result in a significant increase in the number of research projects being undertaken in the UK and would signal to researchers that the government takes this type of research seriously and supports its development.

We further feel strongly that inclusion of the ability for rights holders to opt out of any text and data mining severely compromise any exception. Essentially providing a ‘back door’ for commercial rights holders to force researchers to seek permission / licenses in order to undertake their research. The current TDM exception (CDPA s29A), while limited to non-commercial research, protects researchers against being restricted by any contract or licensing terms (s29A(5) – *‘To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable’*) so enabling rights holders not only to opt-out of TDM research, and by extension require force researchers to go down a licensing route, under which they may have their use restricted, feels like a significant step backwards for users.

## **Option 2**

While not as beneficial a solution as Option 4, an increase to the scope of the existing TDM exception (CDPA s29A) would be welcome.

While not explicitly asked here, it bears mention that there are a number of shortcomings of the existing TDM exception which represent a barrier to research. One of the most impactful from our perspective is the lack of provisions to enable partnerships in TDM research, such as where one organisation provides content and another provides the expertise to conduct the research. Necessarily any material included in this type of research must be digital, and while there are mechanisms for institutions like us to digitise content without permission, providing a partner with the lawful access to that content to enable research under the s29A exception can be extremely challenging.

## **Option 0**

While this does not put researchers in a worse position, making no legal change feels like a missed opportunity.

Around the world countries are signalling their researchers that they are actively supporting TDM, with Australia currently in a similar consultation process, Japan having included it within their 'Society 5.0' strategy, and the expansion to TDM provisions included in the EU DSM legislation. And so while making no legal changes does not make the situation in the UK worse, staying static when the rest of the world is moving forwards does feel akin to a step backward for research.

### **Option 3**

As mentioned above, allowing rights holders to opt out of any TDM exception would severely compromise any exception and be significantly detrimental TDM research in the UK.

### **Option 1 (least favoured)**

As mentioned above, requiring licensing of content for TDM research provides a significant barrier to research and would undermine researchers ability to undertake TDM analysis.

*9. If you have experience of the EU exception with opt out for rights holders, how has this affected you?*

As mentioned above, the British Library is not in favour of enabling opt-outs for rights holders as in Article 4(1) of the DSM. We have not had any direct experience of this, but from conversations with colleagues at EU institutions, it is already having a negative impact on TDM research.

*10. How would any of the exception options positively or negatively affect you? Please quantify this if possible.*

The British Library is one of the largest libraries in the world and as such is a major resource for researchers. We are seeing a significant increase in requests for content in our archive to be used by researchers seeking to undertake TDM.

We believe that the widest possible exception for TDM is critical both to the UK economy and the vital research it enables. Existing approaches to IP are proving to be significant barriers to research of this nature. A prime example of this is the current COVID situation, where analysis of data at scale has proven to be vital in efforts to gather and process data, analyse it, and produce new research and solutions. The quality of the research is highly dependant on the quality and quantity of the data included in the analysis and so any barriers to TDM or 'Big Data' analysis have a significant impact.

For UK research to remain relevant it is vital that IP legislation enables researchers to use TDM and AI in such a competitive world stage.

## **Patents**

The British Library does not generate a significant number of patent applications so are not in a position to comment on this section of the consultation.

11. *Please rank these options in order of preference (most to least preferred) and explain why?*
12. *Would the changes proposed under Options 1, 2 and 3 have any consequential effects on the patent system, for example on other patentability criteria?*

*For options 1 and 2:*

13. *If UK patents were to protect AI-devised inventions, how should the inventor be identified, and who should be the patent owner? What effects does this have on incentivising and rewarding AI-devised inventions?*
14. *In considering the differences between options 1 and 2, how important is it that the use of AI to devise inventions is transparent in the patent system?*
15. *Would the UK adopting option 2 affect your global patent filing strategy, if so, how?*

*For option 3:*

16. *What term and scope of protection should a new right offer?*
17. *What should the criteria for grant of a new right be and why? Particularly should it:*
  - a) *Replicate the current requirements for a patent?*
  - b) *Set a different bar for inventive step?*
  - c) *Be an automatic or registered right?*

## **General**

18. *What role does the IP system play in the decision of firms to invest in AI?*
19. *Does the first mover advantage and winner-take-all effect prevail in industries adopting AI? How would this affect the impact of the policy options proposed on innovation and competition?*
20. *How does AI adoption by firms affect the economy? Does the use of AI in R&D lead to a higher productivity?*
21. *Do the proposed policy options have an impact on civil society organisations? If so, what types of impacts?*

## **Section B: Respondent information**

**A:** Please give your name (name of individual, business or organisation). – **The British Library**

**B:** Are you responding as an individual, business or on behalf of an organisation?

- 1) Business – please provide the name of your business
- 2) Organisation – **The British Library**
- 3) Individual – please provide your name

**C:** If you are responding on behalf of an organisation, please give a summary of who you represent.

**D:** If you are an individual, are you?

- 1) General public
- 2) An academic
- 3) A law professional
- 4) A professional in another sector – please specify
- 5) Other – please specify

**E:** If you are responding on behalf of an organisation, are you?

- 1) An academic institution
- 2) An industry body
- 3) A licensing body
- 4) A rights holder organisation
- 5) Any other type of organisation – **Library / Archive**

**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
- 2) 10–49
- 3) 50–249
- 4) 250–999
- 5) 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**