

## 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?*
2. *Please rank these options in order of preference (most to least preferred) and explain why.*
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. I would say 5 years to cover direct copying (and to exclude independently generated works from the same or similar starting points) is reasonable. The investment goes into the development of the AI tool itself (which I would argue should consequently be much more open to protection by patent – an improved tool for generating an artwork will get short shrift at the UKIPO) not the “pressing the button” to make an individual design.*
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? Obviously options 2 and 3 would carry that risk as there would be an incentive to do so but it would in practice largely resolve itself as someone seeking to enforce rights would have to establish genuine authorship. A court case on an obviously computer-generated article falling flat and leaving a large costs bill would be a deterrent. If the article were not obviously computer-generated and it was plausible that AI had merely been used as a tool, that would seem to be worthy of human-length protection. There is a separate question as to whether the copyright term is now in itself too long (and I would argue that it is) but that is outside the scope of this consultation.*

## **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?*
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. Opening published data in general to mining will encourage freer research. I would encourage that. Leading by example, the USPTO has made all its data freely available whereas the UKIPO and EPO are more restrictive and charge. As a result in the US there are more tools available and this I think helps the IP system. I work with clients doing various types of ML and I am working on some myself.*

## **Patents**

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? A question arises whether the standard for inventive step and the notional skilled person would need to change, but it is not clearcut how this could be done sensibly and equitably.*

*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? The patent owner question is easy, the law does not invite enquiry and legal ownership is assumed to be the applicant asserting appropriate chain of title asserting rights (employment) of the inventor be it human or AI. I see no serious problem in having inventors Joe B and System Z, both employed by Corporation Q as applicant. Frankly too much fuss has been given to this issue rather than the invention itself.*
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? That question presupposes that it is transparent or that it is an issue. If a human asserts that they have devised something, it is important to consider how and where and when this is actually challenged in the current system, and whether they were assisted by a fountain pen or a typewriter or a wordprocessor or a spell-checker or a CAD package or a CFD package or a database of data or an AI based design tool is just a background question of degree.*
15. *Would the UK adopting option 2 affect your global patent filing strategy, if so, how? No. Much more important for the UK economy and global competitiveness would be to reduce the hurdle to getting protection for software and AI inventions and the somewhat artificial and restrictive consideration of what is “technical” – if a machine or human/machine combination works more efficiently or safely or enables in practice something new to be achieved as a result of an innovation, that is an advance that should potentially be open to protection (assuming it is not obvious) whether the advance is in a change in the configuration of hardware or software or both.*

For option 3:

16. *What term and scope of protection should a new right offer? This is interesting, there could be a utility/petty patent for innovations produced by computer which have a different (lower) inventive step requirement which last a shorter term of 5 to max 10 years. If such a right were introduced it might also reasonably be extended to software which the UKIPO deems excluded for producing such innovations but more logically to software generally which produces a novel effect which is deemed excluded.*
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? Yes*
  - c) *Be an automatic or registered right? I have my own suggestion of a compromise with a search done by the office and a response required by the applicant as to what they deem novel so third parties are not in the dark as to what is supposed to be new/clever and the right is not just a guessing game for the public but it is not examined and only evaluated in the event the right is enforced.*

## **General**

18. *What role does the IP system play in the decision of firms to invest in AI? I seriously believe the UK industry is hampered by the negative approach to software in the UK – anecdotally from clients and friends in the industry and by looking at the comparison with the US (and AU when they had a lower bar for software patentability) as to how much innovation happens. The prospect of protection drives investment.*
19. *Does the first mover advantage and winner-take-all effect prevail in industries adopting AI? No, it's much more complex. How would this affect the impact of the policy options proposed on innovation and competition? Opening up the door to proportionate protection for innovation would I believe help smaller innovative companies gain traction.*
20. *How does AI adoption by firms affect the economy? Does the use of AI in R&D lead to a higher productivity? Well I am certainly using it to improve efficiency. There is a lot of fluff about AI frankly but automation clearly improves efficiency of a number of things and AI enables higher level automation.*
21. *Do the proposed policy options have an impact on civil society organisations? If so, what types of impacts? Not that I can think of.*

## **Section B: Respondent information**

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

████████████████████

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

- 1) Business – please provide the name of your business IK-IP Ltd

- 2) Organisation – please provide the name of the organisation
- 3) Individual – please provide your name [REDACTED]

Responding on behalf [REDACTED]  
of my company as an IP firm and software development firm, and I believe reflecting the views of many (but not necessarily all) of my clients who are hi-tech.

**C:** If you are a 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 - please specify

**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