

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 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 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	
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.*
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?*

CLA is not providing any comment on this section of the 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.*

CLA licenses thirteen Media Monitoring Organisations (MMOs) operating in the UK and overseas for indexing and TDM of magazine and news website content. [The CLA MMO Licence¹](https://www.cla.co.uk/business/licence-for-media-monitoring-orgs) was introduced in broadly its present form in 2013 following extensive consultation with the major media monitoring organisations, including agreeing detailed terms and conditions with UKMMA, the UK Media Monitoring Association. The licence is available to all MMOs.

The licence permits licensees to carry out various restricted acts protected by copyright on relevant website content, including ‘accessing and copying web pages ... using so-called “web-crawler”, “spider” or “robot” software or other automated and/or manual review methods, processes or means in order to derive and store searchable index entries’ and permitting MMOs to ‘store the indexed material for a period not exceeding 30 days in order to search, retrieve and **evaluate** (by **automated** and/or manual review methods, processes or means) [the material]’. Automated evaluation of website content has become a key feature of MMOs’ services in recent years, as can be seen on the websites of CLA’s MMO licensees [here²](https://www.cision.com/monitoring-analytics/) and [here³](https://get-media.kantar.com/media-monitoring/).

¹ <https://www.cla.co.uk/business/licence-for-media-monitoring-orgs>

² <https://www.cision.com/monitoring-analytics/>

³ <https://get-media.kantar.com/media-monitoring/>

The licence repertoire covers more than 10,500 websites, including many thousands of news and current affairs sources relevant to MMOs and their clients.

MMOs pay a fee per licensed cutting, and/or an annual subscription fee for website monitoring, depending on the volume. The details of the licence and subscription fees are included in the schedule to the [MMO licence](#)⁴.

Since 2013 the MMO licence has generated [REDACTED] for rightsholders. As is standard practice across all its licences, CLA takes an administration fee of [REDACTED].

As well as providing repertoire lists to MMOs on a monthly basis, CLA engages with licensed MMOs regularly to ensure the licence remains relevant to innovations within the MMO industry. The current licensing environment fosters such a relationship with MMOs and provides the opportunity for CLA, on behalf of its rightsholders, to meet the needs of its customers. CLA is also well placed to offer flexible solutions to the market as its needs continue to evolve. Through the International Federation of Reproduction Rights Organisations ([IFRRO](#)) and the Press and Database Licensing Network ([PDLN](#)), CLA works closely with its counterparts in other territories to understand developments in the global MMO market.

CLA also works closely with its counterpart in the USA, Copyright Clearance Center ([CCC](#)). As detailed in its own submission to this consultation, CCC offers a globally available licence for TDM. We understand that during the roundtable event held on 7 December 2021, the UK Government expressed concerns that had been raised by small and medium enterprises about licence availability and cost. CCC and CLA's TDM licenses are available to SMEs in the UK at fair cost; as evidenced above, CLA has an appropriate and proven TDM licence which is used by SMEs and larger businesses in the Media Monitoring sector. However, CLA and CCC recognise that more could be done to facilitate the use of STM content and tools by SMEs and that we can start to do this work *without waiting* for the end of this consultation. This does not require any change in the law. CCC and CLA propose that working with the UK Government, publishers, users and other stakeholders, we consider creating a pilot for licensing SMEs to mine STM content. This pilot could run on the individual SME level or we could arrange a national licence, funded by UK government, for all SMEs meeting an agreed profile. By creating a TDM licence pilot in the UK that combines CLA and CCC's existing capabilities, we could open TDM for a broader range of entities without delay and help make the UK the pre-eminent home for innovative SMEs/start-ups using TDM.

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

CLA believes the government should work with relevant stakeholders to improve the licensing environment for TDM to ensure that rightsholders are fairly remunerated for the use of their works and retain control over commercial TDM uses. Whilst the current licensing environment for TDM offers a flexible and pragmatic solution for users and rightsholders, there are ways this can be improved without legislative change, such as, for example, the proposed pilot by CLA and CCC described above. Similarly, whilst CLA does not currently offer a licence specifically for training AI, we are already exploring the development of such a licence in consultation with rightsholders. CLA is

⁴ <https://www.cla.co.uk/sites/default/files/MMOLicence.pdf>

well placed, due to its experience of licensing media monitoring organisations referred to above, to develop and roll out such a licence on a collective licensing basis.

It is worth noting that the MMOs licensed by CLA generate significant and growing revenue from the analysis and insight provided by mining published content. We believe that it is essential for rightsholders to continue to be remunerated for this copying, mining, and analysis, which can only be enabled by maintaining a robust licensing environment.

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

1. **Option 1:** CLA supports the licensing environment for TDM being improved as discussed above. Moreover, in order to foster the development of collective licensing for training AI from book content, for example, CLA may need to reapply for permission to operate an Extended Collective Licensing (ECL) scheme, which we understand requires legislative intervention by government. CLA withdrew its original application for ECL authorisation in 2018 by agreement with the IPO⁵.
Collective licensing means there are no transaction costs associated with locating rightsholders or drawing up individual licensing agreements as suggested in the consultation document.
2. **Option 0:** CLA supports no legal change being made to the current exception. The CLA MMO licence demonstrates that there is no requirement for legal change, as the current legal framework enables licensing to take place that ensures rightsholders are fairly remunerated for the use of their works and users have legal access to all the works that are needed. The current law is not an impediment to accessing material for text and data mining and collective licensing could also be extended to licences for training AI systems.
3. **Option 2:** CLA does not support Option 2. It is not clear in the consultation document whether the exception would cover commercial research, or commercial scientific research as both terms are used. Extending the existing exception to cover commercial research / commercial scientific research and databases would prejudice the interests of the rightsholders and would conflict with the normal exploitation of their works through licensing, resulting in a loss of revenue to them whilst the users would be gaining a commercial advantage. It is also difficult to draw boundaries between what is commercial research and what is commercial scientific research. The extension is not required, as licence solutions are available for commercial TDM. Extending the exception for commercial research would impact on CLA's MMO Licence, as detailed below. Under the Berne Convention Art 9(2), exceptions may be introduced only in 'certain special cases' which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. AI is described in the consultation document as having 'huge potential to rewrite the rules of whole industries [which] can drive substantial economic growth and transform all areas of life' therefore we would argue that commercial TDM is not such a 'special case' and should not be subject to a broad exception.

⁵ <https://www.cla.co.uk/news/application-extended-collective-licensing-update>

4. **Option 3:** CLA does not support Option 3. A TDM exception for any use with a rightsholder opt-out would, similar to option 2, prejudice the interests of rightsholders in denying them the ability to make a positive decision to license their work. As with Option 2, CLA believes this would contravene the requirement in 9(2) of the Berne Convention that exceptions may only be introduced in 'certain special cases'. This option would have a substantial impact on the value of CLA's existing MMO Licence. It would be difficult to have a clear and consistent opt-out mechanism and would also cause confusion in the marketplace as to which rightsholders were opted-out, placing the burden on to the user to check the status of rightsholders. It is important that rightsholders have choice as to how and when they licence their work, and collective licensing already provides this solution.

Collective licensing enables a simple way of dealing with the difficulties set out in the consultation document of agreeing individual licences for works available on the open internet and having to track down and negotiate with thousands of separate copyright owners. Rightsholders are able to opt-out of CLA's MMO Licence and as well as monthly repertoire lists, CLA provides a '[Check Permissions](#)' tool on its website to clearly convey what titles are covered by the licence.

5. **Option 4:** CLA does not support Option 4, a TDM exception for any use, with no rightsholder opt-out. This option would seriously prejudice the interests of rightsholders, as detailed above. (We note that the UK introduced a similar unremunerated exception with no opt-out, for private copying in 2014, which was quashed by Judicial Review.) Not only would rightsholders lose revenue, and the ability to control how their works are used, CLA believes such an exception would remove the incentive for creation of works that copyright provides and damage the MMO industry. Licensing solutions, such as the ones offered by CLA, and other collective management organisations provide flexibility, certainty, and ease of use for rightsholders and users. Such a broad exception would be inflexible, and its interpretation would most likely be subject to costly legal proceedings.

Furthermore, as detailed in the submission by the British Copyright Council (of which CLA is a member), broadening exceptions without recognising existing marketplace solutions for TDM undermines and erodes future creativity and innovation.

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

CLA has no experience of the EU exception.

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

Options 2, 3 and 4 would have a negative effect on CLA, its members and its customers. As detailed above, these options would prejudice the interests of rightsholders, be burdensome for customers, create greater complexity, and risk causing confusion in the marketplace.

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?*

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?*

CLA is not providing any comment on this section of the consultation.

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?*

CLA is not providing any comment on this section of the consultation.

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?

Organisation – The Copyright Licensing Agency (CLA)

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

The Copyright Licensing Agency Ltd (CLA) is a collective management organisation as defined in 2(1) of The Collective Management of Copyright (EU Directive) Regulations 2016.

CLA is the recognised UK collective rights management organisation for collective licensing of extracts from text and images from book, journal and magazine content (including some websites) to the education, business and public sectors. CLA exists to simplify copyright for content users and copyright owners. Our mission is to help customers legally access, copy and share the published content they need, while also making sure that copyright owners are paid for the use of their work. We've been providing licences as well as a growing range of related services, that simplify copyright and make it easier to access content, for over 30 years.

Collective licensing is a cost-effective blanket licensing solution and offers a practical alternative where it is not easy to license on an individual basis for specific uses due to the volume of rightsholders/users and the scale of use. Since it is not possible to take account of the exact rights ownership of each extract which may be copied or used, the licence fees are shared between all the relevant rightsholders.

CLA is a not-for-profit organisation. It has four members: Authors Licensing and Collecting Society Ltd (ALCS), Design and Artists Copyright Society (DACS), PICSEL Ltd (Picture Industry Collecting Society for Effective Licensing) and Publishers' Licensing Services Ltd (PLS) and distributes the revenue it collects to its members, who in turn distribute to authors, publishers and visual artists.

D: If you are an individual, are you?

N/A

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

A licensing body

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

Information and communication – Publishing, audio-visual and broadcasting

Legal activities

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

50–249

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