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 AIcallforviews@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 **X**	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 **X**	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 **X**	“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?*

In part, I own several non-fungible tokens that were created using generative algorithms, without s9(3) these images are in the public domain, and therefore can be easily infringed.

For now I assume that the works can be enforced in the UK and other countries that have computer-generated works provisions.

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

0, 2, 1.

I have written an extensive defence of the current treatment of computer generated works here: [redacted] 'Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in Artificial Intelligence Generated Works' (2017) 2017 Intellectual Property Quarterly 169, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2981304. With an updated version of the paper in this book: Artificial Intelligence and Intellectual Property (Oxford University Press 2021), https://oxford.universitypressscholarship.com/10.1093/oso/9780198870944.001.0001/oso-9780198870944-chapter-8.

I copy and paste the relevant part of the paper to support the argument:

"It is the contention of the present work that the best system available at the moment is the computer-generated work clause contained in s 9(3) CDPA. This has several advantages: it would bring certainty to an uncertain legal area; it has already been implemented internationally in various countries; it is ambiguous enough to deflect the user/programmer dichotomy question and make it analysed on a case-by-case basis; and it has been in existence for a relatively long time without much incident.

Moreover, a standard that allocates authorship to the person who made the necessary arrangements for a work to be made is consistent with existing law and case law, as evidenced by the *Tencent* case in China. There is no need to change originality standards as such, we would only be creating an addendum that applies to works made by a computer.

This approach has several advantages: it would bring certainty to an uncertain legal area; it has already been implemented internationally in various countries; it allows for each work to be analysed on a case-by-case basis; and it has been in existence for a relatively long time without much incident.

Moreover, a standard that allocates authorship to the person who made the necessary arrangements for a work to be made is consistent with existing law and case law. There is no need to change originality standards as such, we would only be creating an addendum that applies to works made by a computer.

This is better than the prevalent proposal to consider these works as not worthy of protection. While persuasive from a strictly doctrinal standpoint, there are various ways in which we can maintain the existing originality requirements, and still have some sort of protection for AI generated works.

Firstly, it is important to point out that the task of generating a work using AI is often not just a matter of pressing a button and letting the machine do all the work, someone has to program and teach the computer to compose music, write, or paint, and this is a process that is both lengthy and full of intellectual creativity. The makers of works of art such as The Next Rembrandt engaged in lengthy process, which could have enough "intellectual creation". On the other hand, you can go to a website[1] that is implementing OpenAI's GPT-2 predictive text model,[2] prompt the program with an opening sentence, and obtain some text with the press of a button. This involves hardly any action that we would recognise as original, unless we think that copying and pasting a few words Is enough to meet any originality standard, and therefore any resulting work would not have protection. But more sophisticated AI need more training and more human input, and this could potentially be considered as carrying enough intellectual creation from the user.

Secondly, the current system relies on the concept of originality that is very human centric, be it the requirement of intellectual creation. The idea behind this is that the human creative spark itself is what imbues a work with protection. But we are perfectly happy allowing legal persons to be authors and copyright owners, granted, with the understanding that the works are created by humans, but why not continue having another legal fiction only for AI works?

Thirdly, originality used to subsist if the author had exercised enough skill, labour and judgement to warrant copyright protection.[3] Why not go back to a similar system that rewards a "sweat of the brow" approach? While we have been moving away from these approaches, it might be worth reviewing the merits of recognising the amount of effort and investment that goes into the creation of some of these works.

Finally, there are a number of practical problems with allowing increasing numbers of AI works to co-exist with human works. It is possible that public domain AI works will result in some creators to go out of business, as they cannot compete with free works. Stock photography, jingles, music for games, journalistic pieces, all of these could be affected by increasingly sophisticated AI.

Moreover, there are even some worrying practical implications. Copyright has no registration, so a work is assumed to be protected if it meets the existing requirements. This assumption is often recognised by everyone, and it is not usually tested in court unless there is a conflict. The increasing sophistication of AI works will mean that there will be growing doubt as to the legitimate origin of works. Is this music created by a human or by an AI? How could you tell?

[…]

We are not at that stage yet, but we are certainly approaching a situation in which it will be difficult to discern if a song, a piece of poetry, or a painting, are made by a human or a machine. The monumental advances in computing, and the sheer amount of computational power available is making the distinction moot.

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[1] https://talktotransformer.com/.

[2] A. Radford et al, 'Language models are unsupervised multitask learners' (2019) 1:8 *OpenAI Blog* 9, https://cdn.openai.com/better-language-models/language_models_are_unsupervised_multitask_learners.pdf.

[3] Rahmatian A, 'Originality in UK Copyright Law: The Old "Skill and Labour" Doctrine Under Pressure' (2013) 44 IIC 4.

So we will have to make a decision as to what type of protection, if any, we should give to emergent works that have been created by intelligent algorithms with little or no human intervention. While the law in some jurisdictions does not grant such works with copyright status, countries like New Zealand, Ireland, South Africa and the UK have decided to give copyright to the person who made possible the creation of procedural automated works.

This chapter proposes that it is precisely the model of protection based on the UK's own computer generated work clause contained in s 9(3) CDPA that should be adopted more widely. The alternative is not to give protection to works that may merit it. Although we have been moving away from originality standards that reward skill, labour and effort, perhaps we can establish an exception to that trend when it comes to the fruits of sophisticated artificial intelligence. The alternative seems contrary to the justifications of why we protect creative works in the first place."

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.*

While I do not think that this is the most viable option, any sui-generis or related right should have protection no shorter than 25 years, and no longer than 50 years in line with other similar types of related rights.

The main reason to have some sort of protection is to encourage investment in the AI generative works, and at the very

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

The protection existing in s214 CDPA should be maintained as it stands.

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

I don't think that there is a problem as long as copyright protection subsists in computer-generated works where the person who made the arrangements necessary for the work to be made has met the standard of originality.

Section B: Respondent information

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

[redacted]

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 – please provide the name of the organisation
3) Individual – please provide your name **X**

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 **X**
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