



ALLIANCE
FOR INTELLECTUAL PROPERTY

Intellectual Property Office Consultation:

Artificial Intelligence and IP: Copyright and Patents

Response from the Alliance for Intellectual Property

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Response to IPO Artificial Intelligence and Intellectual Property: Copyright and Patents Consultation

About the Alliance

The Alliance for Intellectual Property is a unique association of 19 organisations representing IP rich businesses and creators – sectors that continue to grow and outperform the wider economy. Our members include representatives of the audio visual, music, toy and games, business software, sports rights, branded manufactured goods, publishing, retailing, image, art and design sectors. They share a collective interest in ensuring that Intellectual Property (IP) rights are valued in the UK and around the world and that legislative regimes exist that enable the value and contribution of those rights to be fully realised.

Executive Summary

IP rich industries, and in particular, the creative sectors are actively using Artificial Intelligence (AI) and investigating different ways in which AI can be used to further enhance and support the delivery and production of creative works.

We do not see AI as presenting questions of ownership that cannot be managed through the current IP framework in such a way as is workable for all those involved in the development or production of an AI generated work. It is possible that this situation might change over time and as AI content creation develops. However, at present there is no evidence of the degree of uncertainty or disadvantage for users that would warrant significant intervention. Indeed, use of AI is still emerging and evolving, which means any such intervention is premature and may have unintended consequences.

It is our view that, in relation to AI and a reform of the Text and Data Mining Exception, there is no evidence of any harm or unrealised benefits that justify reform of the current copyright framework. We believe that the licensing framework can be used to help develop and grow AI technologies and businesses. Our members would be keen to help ensure AI developers better understand how they can already license content to achieve that growth.

Use of Artificial Intelligence (AI)

Within the industries that the Alliance represents, there is increasing use of AI technology. This is perhaps unsurprising given that many of these sectors have been transformed into fully functioning digital businesses, making the concept of analogue versus digital a historical relic.

Examples of the use of AI in IP rich sectors include the education sector where businesses are using AI to improve IP protection, content discoverability, market prediction, and for their customers: enabling routine search and summarisation tasks and creating new insights. Within the music industry, music streaming services are using AI to personalise users' experience, artists are beginning to use AI to master or remix a recording automatically, while music production companies are experimenting with AI to generate music and to identify successful artists. Visual artists, including photographers, are also using AI tools and so are artists as part of their practice. While these activities are not taking place at scale, and human creativity and innovation remains at the centre of these industries, the creative sectors are investigating different ways in which AI can be used to further enhance and support the delivery and production of creative works.

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In the audiovisual sector, companies use AI technologies to bring new, state of the art visual effects to the finished audiovisual work whilst also using it to aid other post-production and editing processes. On the distribution side, AI technologies enable the sector to deliver relevant content to consumers through more diverse channels, in an increasingly immersive environment.

Across the publishing industry, companies are investing in AI, collaborating with technology start-ups and academics to create tailored learning materials for students, to support the production of peer-reviewed research outputs and to assist with the marketing of consumer publishing products.

Digital technologies and software, including AI, are therefore of central importance to IP rich industries, helping support the creation of content, products and services to deliver them to a diverse range of customers and consumers.

Summary

The Intellectual Property Office (IPO) has consistently stated that it will only consider reform of the IP framework when it has evidence that justifies such reform, for example, based on evidence of harm or unrealised benefits. It is our view that, in relation to AI and Copyright, the IPO has not provided any evidence of harm or unrealised benefits to justify reform of the copyright framework at this stage. The Alliance believes that calls for reform are being proposed based on theoretical scenarios as opposed to actual, evidence-based, concerns. If the IPO is to advocate a reduction in copyright protection, as it is consulting on in relation to potential widening of the Text and Data Mining (TDM) exception, then it must provide clear evidence to support such a significant change. We have not seen any published evidence, following the IPO's call for views in 2020, that supports the current consultation and options suggested for reform.

Copyright Protection for Computer Generated Works

We do not see AI as presenting questions of ownership that cannot be managed through the current framework in such a way as is workable for all those involved in the development or production of an AI generated work. It is possible that this situation might change over time and as AI content creation develops. However, at present there is no evidence of the degree of uncertainty or disadvantage for users that would warrant a significant intervention that may have unintended consequences, especially as use of AI is still emerging and evolving.

The IPO makes clear in the consultation that it lacks significant understanding of the extent to which AI users, developers and businesses rely on copyright in computer-generated works now, or of what outputs, which flow from the use of AI applications, are currently generated by computers without human creativity. That lack of knowledge is not exclusive to the IPO. AI is an emerging area of technology that cannot yet be clearly defined as one technology. Its utilisation varies significantly across sectors and within individual industries. Therefore, to define an 'AI' work, distinct from its component parts already protected by copyright, is virtually impossible at this stage. Whilst we support the Government's ambition to support the development of AI and its uses, making changes to the IP framework based on such unknowns would be an attempt to legislate based on pure theoretical prediction.

It is, however, important that AI generated works receive an appropriate level of copyright recognition and protection and that human creativity continues to be recognised at the heart of the copyright framework.

AI systems include the inputs of many humans and/or business entities, but so does other content subject to copyright. The CDPA provides, for example, that the employer is the first owner of copyright in works, including films, created in the course of employment. This demonstrates that complexity already exists and that it has been, and continues to be, easily managed through the supply chain using contracts that provide certainty for works with multiple ownership interests.

We would therefore urge the IPO to choose option 0 – Make no legal change.

Text and Data Mining

The Government has a clear ambition to promote the development of AI, an ambition shared by the Alliance and its members. As highlighted above, IP rich businesses, particularly in the creative industries, are investing heavily in AI technologies.

AI systems rely on computer programs and data as their raw material. It is therefore understandable that the IPO is keen to ensure that AI developers have access to such data. To incentivise production in other industries and sectors, the Government has utilised a range of policy options to support production. For example, it provides subsidies to the agricultural sector, provides tax incentives for investment in research and development, creates incentives to invest in workforce development and provides development grants for construction in certain regions.

Whilst copyright works, particularly digital ones, can be endlessly replicated and more easily retain their value than physical goods, to the extent that market failures may arise the Government has already put in place competition and regulatory regimes to address them.

Within the creative industries, businesses have been licensing their content for a range of uses and have become adept at developing new licenses where there is demand and seeking new markets for their content. This licensing has become more advanced and flexible in the digital environment as new usages have been developed. Creative industries have been licensing their content to AI developers for many years, both externally but also within their own businesses. There is a clear value on the data in the marketplace, which is a valuable stream of income for those creating this data and content.

In addition, the quality of AI outputs relies on the quality of the data feed. Just as poor-quality car parts make the final car unreliable, so too can inaccurate data lead to inaccurate or suboptimal AI generated outputs. When such outputs are being used to inform healthcare decisions, or predict flood risks or climate-related issues, the importance of the veracity and accuracy of those decisions becomes even more important. It is therefore of benefit to all those involved in AI technology that high-quality data exists and continues to be invested in. To achieve that aim, we need to offer the right incentives for that investment in data and content. That requires those investing in data creation to see a commercial return, which we believe the current copyright framework and licensing system provides.

Moreover, those creating content and data are eager to see it being used in as broad a range of uses as they can. This provides greater financial returns and greater incentives for its creation. Helping potential customers understand how to license their content is therefore in their interests and is something many industries and businesses are keen to work with the Government and the IPO to facilitate. It is important, however, that content creators understand how the data they create is being used to ensure they can properly license its use. This requires protection measures and clear contract licences.

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The Alliance therefore recommends that the IPO selects option 0 as its policy option in the consultation. We are, as ever, open to discussing ways in which we can better explain how current licensing practices operate and thus improve access to them and understanding of how they work. Our members believe that the current UK TDM exception is fit for purpose and provides an appropriate balance between allowing important non-commercial research and development and maintaining adequate copyright protection for rightsholders. Furthermore, the Alliance has found no examples of copyright owners refusing to license content for AI developers and has not seen any evidence to the contrary from those advocating a widening of the TDM exception.

If the Government and IPO believes that there needs to be increased access to data at lower cost, we believe it should look at other policy levers to stimulate such uptake, such as providing tax incentives for AI developers to license content, rather than reducing copyright protection. We also believe that forcing rightsholders to opt in to protection, as suggested in option 3, would be unjustifiably burdensome, complicated and costly for many businesses and industries - who own literally millions of copyrighted works. Such an approach also raises questions around compatibility with international treaty obligations, in particular it could constitute a formality for protection, which conflicts with the Berne Convention's Article 5(2). Licensing is a far simpler and clearer option.

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