



Response to the open consultation “Artificial Intelligence and Intellectual Property:
copyright and patents”

ABOUT PICSEL

- PICSEL launched in December 2015, as an independent not-for-profit collective management organisation (CMO) in the UK, under the auspices of the Collective Management of Copyright (EU Directive) Regulations 2016, providing much needed healthy competition in the marketplace to benefit rightsholders within the Image Sector.
- PICSEL exclusively represents a significant number of image-based rightsholders, including individuals, by contract. PICSEL members collectively represent over 300m content items available to license.
- PICSEL is responsible for collecting monies made from reprographic and digital copying as well as recording of, and rebroadcast of, television programmes. Rights revenue collected during each financial year is fairly, equitably and timely distributed to rights holders of image works, including individual creators and picture libraries and agencies, based on a distribution policy formed and agreed by our members.
- PICSEL is governed by legislative requirement in the UK to publish an Annual Transparency Report (ATR). In addition, we are audited annually to provide further assurances that our obligations are carried out fairly and equitably. Our objectives are to ensure fair and equitable remuneration reaches our rightsholders, as well as be open and transparent about the management of rights, collection of data and distribution of rights revenue, and for members to be central to the governance and decision-making process of PICSEL.
- PICSEL is a member of CLA, ERA, IFFRO, BAPLA, CEPIC, and the British Copyright Council.

RESPONSE TO QUESTIONS

PICSEL welcomes the opportunity to respond to the open consultation on Artificial Intelligence and Intellectual Property: Copyright and Patents. PICSEL’s members are image rightsholders of artistic works which in digital form contain commercially sensitive metadata. We support responses submitted by the British Association of Picture Libraries and Agencies (BAPLA) as a member of the organisation, as well as the British Copyright Council (BCC) and Copyright Licensing Agency (CLA). However, whilst we would not want to duplicate these submissions, we take the opportunity here to make additional observations.

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GENERAL OBSERVATIONS

AI and TDM are inextricably linked to the creative process today. For visual creators AI Applications are objects of desire as valuable tools, but also objects of dread as a threat to their livelihoods.

We would caution against using the term “AI generation” interchangeably with Machine (or computer) -generation. The term Artificial Intelligence implies autonomy of the machine working in isolation, but in reality it would be more appropriately renamed “Machine-learning” as that accurately describes the process involved. The machine is learning by making copies. However, the term AI is sexy and the dream of the marketing department. This is problematic for legislators as AI does not exist as marketed, making the term misleading.

Until we have complete understanding of the human mind, AI as promoted will never be able to emulate human creativity to the full extent. Yet, in a sense Machine-learning does emulate the creative process but without the human traits of morals, ethics, fallibility, and accountability. Every artist learns from their experiences, knowledge, skills, interpretations and tastes from what has gone before. Metaphysical questions arise as to whether anything really new exists, or is everything a different arrangement of what already exists? What is the creative spark? In the machine-learning sense AI emulates the human mind without creativity. But is it enough to really call it generating Artificial Intelligence? Maybe Assimilated Intelligence is a better term, if not as sexy or popular with the marketing department.

Without computer-assistance photographs in the digital age would not exist. Photoshop, and other programmes, are the processors of all photographs today. Algorithms have replaced chemicals. Photographers rely on these tools for the creation, and enhancement, of their works. Luminar 4 advertises itself as the first AI-powered photo editing suite. In reality it uses machine learning to remove the mundane repetitive tasks from the creator so that they can spend time creating. This is particularly welcome as the mundanity of digital photographic production is mind numbing.

Today the AI (machine learning) tools in software are used by humans to produce images that have copyright protection as computer-assisted works. The differentiation between AI generated and AI assisted is incomplete, it would be inappropriate to legislate based on factually inadequate terminology.

However, just as nobody in the early 20th century knew what Picasso and Braque were up to in their Parisian garrets realising Cubism, we have little idea what the world's creative minds are up to with these tools. For this reason, we would suggest the caveat of “for now” to your Option 0 of no legal change to CGW. We need to understand what we are talking about before deciding on legislation. We don't think we do yet.

The wider image licensing industry has embraced AI at the top level as it did with digitisation of photography. It cannot be ignored, and what are termed AI works are being created to meet real and expected demand. Ironically this “expected demand” is generated by machine-learning as exemplified by Netflix, Google and Amazon with

systems being used to point users towards products their online experience says is of interest to them. An algorithm producing a further algorithm.

AI (machine-learning) is similarly being deployed in photo agency systems to enhance delivery of customer needs which include computer-generated images to fit the clients' brief. Images are being generated to pitch for client accounts using machine-learning by identifying such criteria as their preferred colour schemes, motifs, ethnicities, gender, relationships, landscapes etc. These are called AI systems but yet again are more accurately described as "machine learning" systems.

Computer-generated works require use of copyright content as the basis of the new work to be generated. It does not arise from a vacuum. The creators of these new works will seek protection of a new copyright, similar to existing copyright protection for the source works. Copyright has always been an incentive to investment, and it is the same here. Options 1 and 2 would remove this protection and ultimately stunt investment in creativity and technology.

A robust copyright regime would stimulate investment in the UK economy, as it has been doing successfully in the image licensing industry. It has never restricted it.

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?

With reference to our earlier comments, this could be open to interpretation of what CGW is. We do not rely on the CGW provisions to protect our works but we rely on AI tools to assist the creative process. The output is sufficiently protected by the existing copyright framework.

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

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

For reasons given above, PICSEL's preference is for Option 0 with the addition off "for now". We consider that the other options would prejudice our members and create market confusion.

Those investing in AI, which includes our members, want certainty and protection for their own output, and it is therefore only reasonable that the same

protection is given to both input and output. It allows for greater commercial certainty and encourages continued investment.

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?

It is vital that liability, as well as credit, is attributable in the creative process. The risks are significant, for example, with Deep Fake. False attribution, deliberate or not, could ruin careers and reputations and, ominously, are recognised today as a threat to businesses.

The Adobe US Research Survey 2020 records that consumers believe that 63% of the images they see online are fake, whilst professionals say 72%. Such perceptions lead to lack of trust and commercial harm.

Adobe are working on Digital Provenance, a tamper-evident open source embed, recording how an asset was made. This is the product of the Coalition for Content Provenance and Authority (C2PA) chaired by Adobe. The steering committee group includes Microsoft, Intel, the BBC, ARM, Twitter and Truepic.

Content Credentials is currently beta testing on Adobe Photoshop, and is available for other editing suites. Technology is addressing the issue collectively and, through open source, for the benefit of all.

However legal protection against false attribution would give greater strength to this global initiative.

Copyright – text and data mining (TDM)

1. 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.

As a member of CLA we would refer you to their submission on this point.

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

As a member of CLA we would refer you to their submission on this point.

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

Text and Data Mining (TDM)	
Option 1	Improve licensing environment for the purposes of TDM
Option 0	Make no legal change

PICSEL members invest heavily in their data, attached to digital images as metadata and placed on their websites. This data gives them a commercial advantage in a very competitive marketplace. The data is a mix of computer-generated and learned research by highly trained and educated individuals, who command commensurate remuneration. Mining of our members data for commercial reasons would be damaging and would disincentivise investment in the data, which is the very foundation of their businesses.

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

PICSEL has no experience of EU exceptions for TDM.

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

Any of the proposed exceptions would be detrimental to our members interests for the commercial reasons outlined above. In more general terms they also create greater complexity with a greater risk of confusion, which works against the purpose of this consultation. We are not able to quantify the negative impact.

Patents

PICSEL will make no submission regarding Patents.

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) Organisation – PICSEL

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

PICSEL is a not-for-profit VACMO, Visual Arts Collective Management Organisation. Our members range from individual photographers and illustrators to international media organisations involved in the licensing of visual works globally. As of May 2021, our members' collections represent over 311 million content items under copyright available for licensing.

D: If you are an individual, are you?

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

1) A rights holder organisation

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

- 1) Information and communication – Publishing, audio-visual and broadcasting
- 2) Legal activities
- 3) Education
- 4) Arts, entertainment and recreation

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

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.



J: Would you like an acknowledgement of receipt of your response?

Yes