

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?*

The use of computer-generated works can still be governed by contracts and this is the route often recommended by solicitors advising on these matters, as it enables the allocation of such ownership rights as may (or may not) exist. It is also often the case that computer-generated works will have sufficient human involvement to qualify for copyright protection.

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

The current situation is unsatisfactory, because it is unclear what protection computer generated works have. There is a potential conflict between CJEU jurisprudence and s 9(3) of the Copyright, Designs and Patents Act 1988. Legal certainty in this area would be welcomed and Option 0 is therefore not attractive. The Law Society considers that there are a range of options which might be used to resolve the uncertainty (not limited to options 1 and 2) and that the policy issues involve the balancing of the interests between AI innovators, creators and users. That policy decision is not one where the Law Society has a view (as our members represent clients on all sides of such balance) but we would emphasise the need for a clear and certain position.

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?*

False attribution of copyright ownership is not a widespread issue currently and we see no reason why this situation should be any different in the case of AI generated works. Indeed in the digital world generally, evidence of creation and innovation is typically more accessible than it was in terms of analogue creation (where creators were encouraged to post a copy of their work to themselves in order to date-stamp the creation of the work).

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.*

Options 3 and 1 are preferable.

Currently, the UK is at a disadvantage relative to the EU because businesses operating in the EU can rely on Article 4 of the DSM Directive 2019/790. Equivalent provisions should be adopted in UK law, and Articles 3 and 4 should be seen as the minimum the UK needs to enact.

Because this TDM exception allows an opt-out, improving the licensing environment would be beneficial.

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.*

Patents

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

Most of the AI technology that we see involves AI as a tool and not as a sole inventor, so we do not believe that there is an urgent need for change.

However, if, in the future, an AI has truly contributed to an invention it would be appropriate for it to be able to be named as inventor.

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?*

Yes. If AIs become capable of invention themselves, rather than being simply a tool to be used by people, this will raise significant questions about patentability; is the standard of inventiveness affected, and is the identity of the skilled man affected?

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?*

We do not believe that adopting a new form of protection for AI-devised inventions should be pursued currently.

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?*

General

18. *What role does the IP system play in the decision of firms to invest in AI?*

Failing to implement an equivalent of the Article 4 of the DSM Directive will discourage data mining firms from operating in the UK; they will run a risk of being sued that could be easily avoided if they operated from the EU or elsewhere.

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?*

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 – The Law Society*

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

The Law Society is the independent professional body for solicitors in England and Wales. We are run by our members, and our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law, and we welcome the opportunity to respond to IPO's consultation.

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

Membership Body

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

- 1) Legal activities
- 2) Administrative and support service activities

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?

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