

Intellectual Property Office consultation on Artificial
Intelligence and IP: copyright and patents

pact.

January 2021

Introduction

- 1) Pact is the trade association representing the commercial interests of UK independent television, film, digital, children's and animation media companies. We currently have over 800 members based across the UK.
- 2) The UK independent television sector is one of the biggest in the world, with revenues of around £3 billion in 2020.¹
- 3) The copyright licensing framework underpins growth in this sector. It enables rights holders to monetise their intellectual property by controlling access to their content which, in turn, they use to generate revenues to invest in future productions.
- 4) The UK copyright framework is considered to be one of the best in the world. It has been effective in enabling competition and growth in the television production sector, and as a result:
 - The UK is now the second-largest exporter of television programmes in the world.
 - Audiences in the UK and across the globe have had access to high-quality, thought-provoking, and entertaining content in a range of different genres, much of which is provided free-of-charge via television broadcasting.
 - The flexibility of the copyright licensing regime has allowed independent producers, including many SMEs, to adapt to changes in market conditions and find new business opportunities in the UK and overseas.
 - There are now many examples of audio-visual content producers working with non-linear digital content providers to create new, innovative content and services for consumers in the UK and elsewhere.
- 5) Any disruption to the ecology of this complex market could have a significant impact on UK original content production.
- 6) For further information on this issue please contact Pact's Head of Policy [REDACTED] or [REDACTED] Pact's Deputy CEO and Director of Business Affairs [REDACTED]

¹ Pact Census Independent Production Sector Financial Census and Survey 2020, by Oliver & Ohlbaum Associates Limited, October 2021.

Overview

- 1.1 The UK Film and television production sector is hugely successful, generating revenues of around £3bn in 2020 with £1bn of this coming from international sales and commissions.² The UK copyright framework is considered one of the best in the world and has been effective in enabling competition and growth in the television and film production sectors. This growth is largely the result of a highly effective legislative framework set out in the Communications Act 2003, Copyright, Designs and Patent Act 1998 and the Terms of Trade associated with the former law that allow independent producers to retain the rights to their IP and exploit their rights in the marketplace.
- 1.2 Overall Pact recognises the Government's wider objective of enabling AI to support innovation and creativity in a number of ways but considers that any technology that makes use of human intellectual input be it via a catalogue needs to consider setting up licensing systems. It is 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. Pact has chosen to answer those questions most relevant to the TV/Film production sector.

Consultation Questions

Copyright – computer generated works (CGW)

Q1. 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?

- 2.1 Pact does not have access to detail related to the types of works that rely on the computer-generated works provision nor the value of any rights that might be licensed via this route. This is primarily because there is a limited number of cases involving computer generated works given the infancy of this technology.

Q2. Please rank these options in order of preference (most to least preferred) and explain why.

- 3.1 Pact considers that the Government should replace the current protection with a new right that supports copyright protection of producer owned content. Therefore we would rank the options under this proposal as follows:

- *Option 2 Replace the current protection with a new right of reduced scope/duration*
- *Option 1 Remove protection for computer-generated works*
- *Option 0 Make no legal change*

Q3. 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

² Pact Census Independent Production Sector Financial Census and Survey 2020, by Oliver & Ohlbaum Associates Limited, October 2020.

you think this scope and term is justified in terms of encouraging investment in AI-generated works and technology.

- 4.1 Pact considers the scope and term for a related right cannot be properly considered whilst the issue of how the creator(s) would be determined where multiple parties are involved in the creation of computer-generated works remains.

Q4. What are your views of the implications of the policy options and of AI technology for the designs system?

- 5.1 The Copyright Designs and Patents Act 1988 refers to an infringement by a person. That suggests it is not possible under the current regime for a copyright owner to commence proceedings against an artificial intelligence system for copyright infringement.
- 5.2 The concept of originality is defined in existing legislation by reference to human authors and human characteristics. Copyright should encourage and reward the production and distribution of human assisted artificial intelligence methods of creation, which may be used by producers in animated audio-visual content for example and post-production technology

Q5. For each option, what are your views on the risk that AI generated works may be falsely attributed to a person?

- 6.1 Pact has no views on this

Copyright – text and data mining (TDM)

Q6. 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.

- 7.1 Pact does not have access to detail related to the license work for TDM nor the value of any rights that might be licensed via this route. This is primarily because there is no examples of case law involving Copyright and TDM given the infancy of this technology.

Q7. Is there a specific approach the government should adopt in relation to licensing?

- 8.1 If data inputted to artificial intelligence systems enabling them to function are copyright works, a method for distinguishing between the different parties involved and computer-generated work output is needed. A licensing regime for protected catalogue works used for input data for example.

Q8. Please rank the options in order of preference (most to least preferred) and explain why.

- 9.1 Pact considers the following order of preference for the options which would enable the protection of rights holders' works.

- *Option 1 Improve licensing environment for the purposes of TDM*
- *Option 0 Make no legal change*
- *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*

Q9. If you have experience of the EU exception with opt out for rights holders, how has this affected you?

10.1 Pact has no views on this.

Q10. How would any of the exception options positively or negatively affect you? Please quantify this if possible.

11.1 An exception option would not benefit producers of content because they would lose any right to protecting their works. As the Government has already identified a licensing system enables copyright owners to benefit through licensing income from data mining by others, using their works.

General

Q18. What role does the IP system play in the decision of firms to invest in AI?

12.1 Pact is not aware of our members investing specifically in AI systems although this is more likely to be prevalent in particular sectors such as animation in order to lower the costs of post-production. It is therefore not specifically linked to any IP system.

Q19. 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?

13.1 Pact has no views on this.

Q20. How does AI adoption by firms affect the economy? Does the use of AI in R&D lead to a higher productivity?

14.1 As above many members will not be aware of the technology that could be used that is described as AI and so have relatively little direct experience of AI adoption. That said animation may use certain AI techniques in order to cut down on post production costs? Which some could say leads to higher productivity if projects can be finished faster via AI systems?

Q21. Do the proposed policy options have an impact on civil society organisations? If so, what types of impacts?

15.1 Pact has no views on this

Section B: Respondent information

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

[REDACTED] Pact

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 – X Pact

3) Individual – please provide your name

C: If you are 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

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 X

- 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