

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?**

Intel does not specifically rely on the computer-generated works provision but considers it as an integral part of the copyright landscape in the UK. As a multinational company, Intel's preference is to take a streamlined approach to dealing with computer generated works that assumes some level of rights in them and uses contract to clear those rights where necessary or to control a licensee's use of a licensed work.

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

Option 0

Option 2

Option 1

Intel is generally not in favour of removing rights which have been enjoyed and relied upon for significant periods of time, and which may be important for business models, unless and until all the consequences of the removal of such rights have been fully explored. We have not seen specific problems arising from the computer-generated works provision. Since there is currently no need for authors to distinguish between the use of a computer as a tool, and the use of a computer to author a work, it may be that its removal would cause unintended consequences for the operation of copyright law.

Therefore, at this stage Intel supports the maintenance of the status quo, with a reduced right as the second option (subject to our comments below), and the removal of protection as the final choice.

- 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.**

As noted above, Intel does not think such a new right is necessary. The consequences of different terms of protection for computer-generated works and computer-assisted works would have to be thoroughly investigated and the line between the two clarified, to avoid legal complexity and confusion.

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

No answer.

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

We see some potential for this to happen if copyright protection for computer-generated works is removed or dramatically decreased, and it therefore becomes necessary or more desirable to show that AI was used as a tool in order to obtain protection, or meaningful protection. We believe that the existing law is sufficient to deal with deliberate attempts to falsely attribute authorship. However, in considering any changes to the current law, due regard must be paid to the potential for confusion and disruption if there is a significant difference in the scope and duration of protection as between AI-assisted and AI-generated works (and we note that a term of 5 years for AI-generated works was proposed in the consultation document).

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.

No answer.

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

It is essential that licensors retain the ability to choose whether to license their copyright works, and the terms on which they are willing to do so. Intel would support government efforts to foster voluntary measures (such as voluntary data pools, educational materials and sample licences), but any measures that would override freedom to contract for access to and use of copyright works would disincentivize rights-holders from making them available in the first place.

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

Option 3

Option 1 and Option 0

Option 2 and Option 4

Option 3 seems to strike the best balance between, on the one hand, the rights of licensors to receive a fair return for their investment in the creation of works, and on the other, the desire to increase the amount of data that is available in order to

advance the development and use of AI in the UK. It is essential, however, that the opt out is capable of being implemented simply and in a manner which is consistent with normal commercial practice.

We have grouped Options 0 and 1 together as our second choice, since we don't see them as necessarily mutually exclusive, and indeed they could be complementary. Depending on the types of measures undertaken as part of Option 1 (and we assume that these would all be of a voluntary nature), the implementation of Option 1 with Option 0 could in fact help in improving the availability of data, while still preserving the ability of rights-holders to maintain control of their works. Intel is supportive of measures that incentivize, rather than mandate, greater provision of data.

Option 2 (extending the existing exception to allow commercial TDM with no opt-out) and Option 4 (creating a new exception for TDM for any use, with no opt-out) are equally unworkable and would significantly chill the willingness of licensors to make copyright works and databases available to licensees in the UK. It is essential that any TDM exception be subject to an opt-out which can be easily implemented by a licensor.

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

No answer.

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

As we noted above, we would not support any exception which interfered in the freedom to contract. Such an exception could disrupt nascent business models.

Patents

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

Intel strongly believes that Option 0 (making no change to the current law) is by far the most appropriate option. We are unable to rank the other options in order of preference, as we see no merits, and significant issues, with any one of those other options. Intel does not believe that it is necessary to change the patent system so that AI is capable of recognition as anything other than a tool used by a human inventor. Intel also believes that any such change is highly likely to create significant complexity and greatly reduce legal certainty, as well as putting the UK system at odds with the other jurisdictions in which patent protection is most likely to be sought.

Each of Options 1, 2 and 3 are predicated on the assumption that it is possible for a machine to be an actual deviser of an invention, as opposed to a tool in the hands of

a human inventor. Machines are unlikely to be able to independently devise in the foreseeable future, and for this reason and others enumerated below, we do not think the proposed changes are necessary to incentivize the use of AI in the inventive process.

Accordingly, we have significant concerns with each of Options 1 through 3:

Option 1 would expand the definition of “inventor” to *include* humans who made the arrangements necessary for the AI to devise the invention. The consultation document explains that this approach would remove the concerns about the validity of a patent if it were difficult to directly credit an inventive contribution to a human. However, we believe that if a human cannot be credited (which seems unlikely in the context of most, if not all, current applications of AI), no patent should be granted. Furthermore, expanding inventorship to include “people who made the arrangements necessary” could lead to a situation where there is a human who can be credited, with additional parties being added as joint inventors on a basis that is quite different from the well-understood concept of “devising” an invention. The effects of applying this test (which comes from the law of copyright and entrepreneurial rights) to patents, could have unexpected consequences and the increased potential for joint invention could in fact chill innovation. We have similar concerns about Option 2.

Option 3 leaves open too many questions about how such a new type of protection for AI-devised inventions (similar to a patent but with more limited exclusive rights) would operate. The proposal is that such a new right might have a stricter test of inventive step, or no test of obviousness, and in either case that it could have a shorter term. It is not clear who would own such a new right. In any event, the potential for conflict and confusion with the existing patent system is clear, but far greater detail is necessary before we could assess the full effects of running both systems in parallel. From a more fundamental point of view, we believe that elucidation and proof of the problem that this option is meant to address would be required before further considering it.

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?*

Please see our answers to question 11.

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?*

See our response to question 11. If no human can be credited with the invention, the award of a patent would not incentivize use of AI technologies. This is incompatible with the purpose and intent of the patent system. In Intel's opinion, there is no need to incentivize use of AI through changes to intellectual property rights.

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?

See our response to questions 11 and 13. We do not believe that options 1 and 2 are compatible with purpose and intent of the patent system.

15. Would the UK adopting option 2 affect your global patent filing strategy, if so, how?

While Option 2 requires further elucidation before we could fully understand its impacts, at this stage we don't envisage that it would have an impact on our global filing strategy.

For option 3:

16. What term and scope of protection should a new right offer?

See our response to question 11. Term and scope of protection would fundamentally depend on the purpose of the new type of protection. We currently see no need for or benefit from such a new right.

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?

See our response to question 11. The granting criteria would fundamentally depend on the purpose of the new type of protection. We currently see no need or benefit to such a new right.

General

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

It is clear that around the world, companies are already investing heavily in AI. We do not see any material withholding of investment due to perceived flaws in the IP system. Clearly, the operation of the IP system is key to those developing AI solutions, and seeking protection for their products and services. However, there are many good commercial reasons to invest in the use of AI. Investment in AI

solutions for the performance of tasks is more likely to be driven by the gains in efficiency, accuracy etc. that the AI solution can offer, rather than in the potential for using the IP system to exploit the results of the use of the AI system.

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?

The use of AI in R&D certainly has great potential to increase productivity. Obviously, there are many types of AI, many applications of it and many industries in which it is applied. So, it is difficult to answer the question with specificity. We do not believe that there is any necessary link between the efficiencies that AI can create, and changing the IP system to protect AI-devised inventions.

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

No answer.

Section B: Respondent information

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

Intel Corporation (UK) Limited

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

Business - see above.

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
- 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/No

Yes