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 AIcallforviews@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)

i. Question 1.

Copyright protection for computer-generated works without a human author. These are currently protected in the UK for 50 years. But should they be protected at all and if so, how should they be protected?

Options

- **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**

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

As preliminary remarks, while at face value, the application of the provisions concerning computer-generated works (CGW) to creative works generated by AI makes some sense, we do have concerns that there should be no automatic application of those provisions to AI. We urge clarity in terminology as the term CGW should not be used interchangeably with AI as appears to be the case in the the text around Question 5.

First, while section 9(3) CDPA 1988 deals with authorship and ownership, the provisions at section 1 concerning originality also apply to CGW but it raises the question of what the originality requirement for CGW is and whether there is a "work" in the first instance. The UK originality test prior to Infopac focussed on the "skill, labour and judgment" exercised by the person considered to be the author (Bookmakers Afternoon Greyhound Services Ltd and Others v Wilf Gilbert (Staffordshire) Ltd 1994 F.S.R 723). The EU "author's own intellectual creation" concept of originality (under Infopac) also seems at odds with CGW. We believe that this issue would need to be carefully considered in relation to AI works given the lack of human author and intrinsic link between concept of originality and human endeavour. In addition, greater clarity would be required around the distinction between CGW and "computer assisted" works.

AI is developing at a rapid pace, but we are still in the very early stages of true AI generated creative content. Therefore, we have no definitive views of what ultimately could be produced and consequently whether these would be "works" but

we already know that AI output can include performances and moving images and therefore the “works” referred to in section 9(3) may simply not be enough.

In addition, computer generated works still must meet the “fixation” requirement under section 1. It is entirely possible that AI generated works could be unique, transient and not fixed, or created in real time (as AI-assisted works already are). It may be such works will not need to be protected (other than possibly the computer program underlying them).

As a policy goal, it is important that innovation is not stifled but it is also important to understand that the creative output of AI will be based on hundreds of years of human creative endeavour as well as millions of existing copyright protected works which will be competing with AI generated (and assisted) works for licensees and consumers (already an issue in respect of UGC/livestreaming platforms). This could create a manifestly unfair advantage for the use and exploitation of AI generated music and other creative works and it is imperative that the policies adopted must also protect human creative endeavour both past and future.

Consequently, if computer-generated and/or AI produced works without a human author are to be protected under the Copyright, Designs and Patents Act 1988 or other form of intellectual property right, this must be linked to and conditional upon the establishment of an appropriate licensing system to allow for ingestion of copyright works so that the human authors achieve appropriate value for the re-use of their endeavours in the AI produced output.

For the reasons stated above, our view is that only Option 0 at this stage is viable. Too little is known to decide firmly on legislative changes to implement either option 1 or 2, and it is unclear how s 9 (3) resolves the question of originality, although there are certain improvements or clarifications we believe may be necessary immediately namely:

- Establishment of appropriate licensing regime to cover ingestion of copyright works (see below)
- Strengthening moral rights (see below)
- Labelling requirements for CGW and AI generated (whether in whole or part) works, in the interest of the “public good” and to address problems of false attribution (see further below).

2. **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 [cgw]**

No

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 confirmed above, given the lack of experience in the market, it is in our view premature to make final decisions about a related right and its scope and duration, but we do have the following points:

- AI generated works and CGW should not be granted the equivalent protection as works created and authorised by humans, it should be a shorter and perhaps narrower level of protection. There is no justification for the link to the human life span + in the case of AI works and CGW;

- We have no firm view as yet on an appropriate term but our initial thinking is that a 50-year term (as presently for CGW under the CDPA) is potentially excessive given the link between copyright term and human lifespan and earnings.

- We also consider that a registration requirement or other formality may be useful as a condition of protection (notwithstanding general Berne Convention principles) given the likely volume or works as it would incentivise AI owner to identify commercially valuable works and not flood the market.

- Any related right for works without a human author must be linked to and conditional upon the establishment of an appropriate licensing system for the inevitable use of copyright works at the point of ingestion.

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

N/A

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

We consider this to be a high risk in some areas and, in particular, as regards performances. To mitigate this and as an important "public good" policy area to help rebuild public trust (e.g fake news and deep fakes) we consider it imperative that there be legal requirements for CGW and AI generated works to be clearly identified as such to the consumer.
We are also of the view that careful thought needs to be given to performers' rights both in their performances and to their identities and brands given what can be created by AI. Further consideration as to whether current UK moral rights provisions, in particular s.84 false attribution, should be strengthened to protect the public good.

ii. Question 2.

Licensing or exceptions to copyright for text and data mining, which is often significant in AI use and development.

Options

- **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**

Any TDM regime is ill-suited for the music industry or indeed, we would argue, to any creative works. TDM was introduced in the UK to enable works to be used for research, such as using the text of magazine articles to identify a cure for malaria. Music is not data and should not be treated as such.

Furthermore, the music business is built on licensing where there is a market demand and that business model should not be undermined.

Consequently, in relation to the options referring to TDM above we would prefer Option 0 but please see our comments under question 7.

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, pricing, whether additional services are included or available, number and types of works covered by the licence. Please also consider the benefits that TDM provide to you and your colleagues.**

As said above, the music business is a business built on licensing depending on market demand that evolves to respond to market development . We are not aware of any licensing requests from AI application providers at this stage. If there were, there are considerable commercial implications for that “data”.

Our view is that any form of ingestion or use of copyright musical and associated works should be allowed only with an appropriate licence.

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

It is difficult to be precise as the AI use of music and the exploitation of AI created music is not yet very developed and licensing solutions need to be adaptable to market demand. Any legislative initiative must be evidence based, and we need more time to get practical evidence of what is needed.

However, there are some principles which we believe should be taken into account:

- The exclusive right to authorise the use of any existing copyright musical or associated work should continue to exercisable fully and without restriction in circumstances where the resultant AI work or CGW work substantially reproduces all or a substantial part of the original work;

- In the case of ingestion of existing musical works which are used to aid the creation of an AI or CGW work but which are themselves not reproduced, we consider there should nevertheless be the ability for copyright owners to derive value from that use. As mentioned earlier, it would create a devastatingly unfair playing field if those exploiting AI works were able to do so without any reward to those who provided the human creativity on which it is based. We appreciate that a licensing system in these circumstances may be difficult to administer and enforce given the fact that the works ingested will be easily accessible and then not necessarily be identifiable in the outputs. Consequently, in those circumstances (and only those circumstances), we could accept that a more blanket or collective style of licensing may be required. For example:
    - Extended copyright licensing schemes, with copyright owners having the ability to opt-out; or
    - If the evidence clearly demonstrates that either regulation or an exception is absolutely necessary to prevent the development of AI being stifled, then an alternative option may be to implement a certified scheme model, such as that currently provided for under Section 35 CDPA in respect of educational recordings.
    -

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

- 0 or 1 preferred at this stage

The rest are not desirable but if we were forced to rank them:

- 1
- 2
- 3
- 4 - strongly objected to

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

Not directly but we understand that more generally right holders do use opt out from licensing schemes.

Any UK licence scheme for AI data mining must include the ability to opt out.

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

Exceptions always limit the rights and therefore have a negative impact on creators' and rightsholders' ability to earn income from their creations. So, any exception needs to be justified by clear public policy requirements and comply with the international binding 3 step test (eg TRIPS).

In particular, exceptions in the context of TDM and AI would make it very difficult to distinguish uses from piracy.

Section B: Respondent information

A: Ivors Academy

B: 10 – 49 employees

C: The Ivors Academy - The Ivors Academy is an independent association representing professional songwriters and composers. As champions of music creators for over 70 years, the organisation works to support, protect and celebrate music creators including its internationally respected Ivors Awards.

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