

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

IOP Publishing Limited (IOPP) is a society-owned scientific publisher, providing impact, recognition and value for the scientific community - <https://ioppublishing.org/>

IOPP works closely with researchers, librarians and partners worldwide to produce academic journals, books and conference series. Our aim is to cover the latest and best research in the physical sciences and beyond.

IOPP believes conducting science more openly can accelerate scientific discovery. IOPP is committed to supporting the wider adoption of open practices across the physical sciences and calls this approach open physics.

IOPP's contribution to open physics combines an evolving programme of publications, activities and policies that we believe will not only encourage and support increased access, transparency and inclusivity but do so in ways and timeframes that will serve the needs of the global physical science community.

This response will focus on the potential effects of a change to the laws on CGWs and TDM on IOPP and the publishing industry generally. We have responded to the questions included in the Consultation Response Form which we consider are likely to affect IOPP and the publishing industry directly. If it would be helpful, we would be happy to discuss our responses in more detail.

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?*

Computer generated works are a new area for the academic and scientific publishing community. Although, to date, the industry has not had a lot of experience, there is increasing interest in using AI in creating works and in areas like indexing and translation. As it is such a new area, we believe that it would better to leave it to develop rather than make any legislative intervention at this time.

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

Option Preference: 0

We believe that the current protection should remain and that there is no reason to remove or reduce this at this time. We feel that there will be a better understanding of what legislative intervention may or may not be appropriate as AI develops, particularly as it is not clear at the moment which types of work may be created in the future which fall under it. Legislative intervention now may cause unintended consequences, possibly restricting the development of the market altogether.

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 stated above, we believe that the current protection should be maintained for now.

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

Not applicable.

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

If the current definition of CGW authorship remains “as is” (‘the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken’) then AI works should not be falsely attributed. Given the developing nature of AI, we recommend that we wait to see how it develops before any conclusions are made about the relationship between human and AI authors and how this might impact on CGWs.

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.*

IOPP, and the publishing industry generally, have developed a working licensing market for TDM. We feel that this should be supported and promoted without a new copyright exception being introduced. Where our licensed users wish to use our content for non-commercial TDM purposes, we have wording which we insert into our licence terms. We have also negotiated terms for commercial TDM when requested. Our licence terms are under regular review in order to ensure that we meet the diverse requirements of our customers.

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

Licensing is flexible and can be adapted and modified easily to suit different sectors and situations. A licensing regime recognises the value of content to the copyright owners and also sets out clear and relevant terms which all parties know that they need to follow. In our experience, the licensing regime is working well and our customers are happy with our standard TDM terms. Any negotiated changes are minimal.

In terms of licensing, we do agree with others in the publishing industry that there are some areas the government could review to improve the current licensing framework:

- Collective licensing: this could particularly help smaller publishers who are looking at licensing their content for TDM purposes and do not have their own terms readily available;
- Model licence terms: these could help ensure that the publishing community as a whole understand what TDM covers and which terms apply; and
- Pilot licences: we understand that some business sectors feel that licensing opportunities are not currently available to them. Working to create a voluntary pilot scheme could help in creating a clear and transparent TDM market. We know that the publishing industry is always keen to engage with stakeholders in developing workable licensing solutions for the reuse of copyright protected content.

Following on from the above, IOPP supports collaboration between publishers, customers and users in order to grow and extend a licensing market which is working well already, whilst allowing the flexibility for all parties to negotiate terms which reflect the basis on which the TDM will be carried out in the specific scenario and, where relevant, on what scale. That way, IOPP can gain an understanding of how the requestor wishes to use the content and a price can be negotiated to fit that.

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

IOPP's preferred option is #1 (improve licensing environment for the purposes of TDM). We believe that the other options, in particular #2 and #4, would harm IOPP and the publishing industry generally and limit significantly the normal exploitation of published works under the current licensing regime which, as we state above, is working well.

Option #1 would allow all stakeholders to work with the IPO to develop licensing best practice and address any perceived gaps in the market as it stands.

Our second preference would be Option #0 (make no legal change). At present, and as explained above, IOPP and other publishers fully support TDM for academic and non-commercial research purposes via licensing models that are working well in practice.

Our third preference is Option #3 (adopt a TDM exception for any use, with a rightsholder opt-out). We understand that this would be similar to Article 4 of the EU Copyright Directive which provides TDM users with a framework for identifying content available for TDM and clear visibility as to where licences are required. We do have some concerns about how this would work in practice which are set out below.

In our view, Options #2 and #4 would cause significant harm to the publishing industry and the current AI/TDM licensing market.

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

At this time, IOPP is considering how to manage the Article 4 opt-out going forward, including via our licence agreements. We understand that a machine readable protocol is also being considered by the industry but that this is at a comparatively early stage of development.

From our understanding, the 'opt-out' wording in the EU Copyright Directive is unclear and, as Article 4 has yet to be implemented in a number of EU countries, how it will work in practice is not yet known. Therefore, if the IPO does consider Option #3, we would recommend stakeholder dialogues to clarify how this might actually work in practice and we would be very happy to volunteer to be part of those.

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

As stated above, as things stand, IOPP considers that there is a working licensing regime in the UK already and that further legislative intervention is not needed. Using licences is a flexible method of ensuring that content is available for specific AI and TDM scenarios as they can be adapted easily to fit particular scenarios. In many cases, licences are renegotiated on an annual basis which provides a good opportunity to revisit TDM clauses and make sure that they are still fit for purpose.

We are concerned that TDM exceptions (particularly Options #2 or #4) would impact on innovation as this industry develops, preventing the evolution of business models and services to support content discovery, licensing and delivery. An exception introduced now could mean that, in the long-term, others miss opportunities to evolve commercially sustainable business models and services.

Specifically, IOPP shares concerns expressed within the industry around:

- the impact on platform security and stability if users crawl our platforms without restriction to access content. IOPP's and other publishers' platforms are designed for human users. Technology to support large-scale TDM is likely to be expensive to implement;
- if no licence is in place, and no terms set out what can and cannot be done with content, the potential negative impact of unauthorised redistribution of content; and
- whether any exception could be sufficiently flexible to adapt to fast-moving developments in this area;

IOPP would welcome the opportunity to work with the IPO and other stakeholders on any agreed modifications to the UK licensing environment, as an alternative to making legislative changes at this time.

Patents

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

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?*
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?*
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?*

We have not responded to the section on patents as it is not as relevant to our business.

Section B: Respondent information

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

[REDACTED]
[REDACTED]

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B: Are you responding as an individual, business or on behalf of an organisation?

- 1) Business – please provide the name of your business

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- 2) Organisation – please provide the name of the organisation
- 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**

- 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**

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