

**Intellectual Property Office – AI Call For Views**  
**LEONARDO UK LTD RESPONSE – submitted 7 January 2022**

Leonardo Consultation Contact: [REDACTED]

### **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](mailto: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?

Copyright forms a major element of protection in terms of engineering design documents and computer modelling outputs. As industry seeks, and Government initiatives encourage increased collaboration with industry partners, the ability to have a ready established framework that sets out ownership and usage rights rather than having to devise individual contractual terms is of significant benefit. This is particularly apparent where proprietary information (often protected as company confidential or as Trade Secrets) is combined with other parties' data to generate new, computer generated works. Any ambiguity as to ownership and usage rights with regards to these newly generated works will diminish collaborative engagements between organisations that often must work together to fulfil government project requirements, and yet which have overlapping business interests. Without a pre-agreed framework, with copyright ownership providing a predictable framework, there is the potential for parties to obtain a competitive spring-board-like advantage.

As many projects within the defence industry are delivered by national only players, to align with the ambitions of the MOD Integrated Review of Security, Defence, Development and Foreign Policy, national level rights are a primary concern; internationally, development work is less likely to be revealed and is likely to be kept as a trade secret, which cannot be easily obtained merely from the sale of products to trusted international partners.

It should also be noted that whilst there is generally a benefit in terms of international IP law harmonisation:

- a) Copyright laws and their effect already vary across different jurisdictions with limited apparent difficulty
- b) In this instance, the apparent discrepancy between the UK and say Japanese copyright laws, does not reduce the scope of protection in the UK: it actually enhances it, enabling those who have invested in computer based systems to obtain a fair reward for that investment.

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

Preferred option is 0 – Make no legal change, followed by 2 - Replace the current protection with a new right of reduced scope/duration and finally, 1 – Remove protection for computer generated works.

Option 0 provides for ongoing legal certainty, will not generate additional contractual frameworks to be generated and will support ongoing national level collaborations.

If copyright were to be removed, some level of protection would be preferred (option 2). It is probably true that with the rate of technical development, the existing protection period of 50 years from the year of first creation (CDPA 1998 S12.7) is exceptionally generous and a shorter time frame would be sufficient; however, it is complex to allow for R&D and product development cycles that vary so much across industries. The challenge with option 2 is that there is no certainty as to what the proposed sui-generis right would be and no case-law would exist to aid in its interpretation, thereby reducing legal certainty.

Having no legal protection (option 1), would generate a situation where contractual relations between collaborative partners would be more complex, potentially leading to a reduced appetite to engage and/or slow down the ability to engage in such collaborations.

There is currently no legal reason as to why copyright protection, as it stands presently, should slow down the rate of AI-generated works and technology. Nothing prohibits entities engaging contractually to license content. Copyright protects the investments made by the current content creators, as investment will have been made in terms of developing the programs and infrastructure to generate the works, which can be non-trivial; for without them and their economic interests being stable, there is every incentive to restrict content away so that others may not even know that it is available, given suitable licensing terms, to utilise in the use of AI and technological development.

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.

This is a challenging area as the rate of technical development and R&D timelines and product lifecycles varies drastically, not only by industry but even by product line within industries and sectors.

If there is no material difference in the proposed scope and term of protection, then there appears to be no need for a sui-generis right and retaining the current copyright protection would deliver legal certainty.

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

No comment.

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

It is unclear as to what “falsely attributed to a person” means. Without legal protection, e.g. option 1, there is an incentive to either design the work generation process or otherwise work within the framework provided to ensure that work created can be legitimately attributed to a person. The time and effort necessitated to attribute work to a person given any framework produced by new legislation would seem to merely generate time and cost expenditure that will slow down progress and divert resources away from the actual act of technological development.

As we have seen in other areas of IP law, such as patent law where, for example, computer programs and methods of treatment or diagnosis (Patent Act 1977 S.1(2) and S4A) are excluded subject matter, this does not prevent patents being granted in these areas with the use of careful drafting and through the development of precedent, as industry is highly incentivised to maximise their protection; it would seem logical that the same imperatives and behaviours would apply to any changes in copyright legislation.

## 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 comment

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

No comment

8. Please rank the options in order of preference (most to least preferred) and explain why.  
Option 0 Make no legal change– this preserves legal certainty and does not interfere with the existing capabilities of organisations to agree licensing terms for the purposes of TDM. Whilst this may mean that some technology may be developed slightly slower because licensing terms are discussed, it does support the investment in the creation of the initial works that are being sought for the purposes of TDM.

Option 1 Improve licensing environment for the purposes of TDM – it is unclear as to what “improve licensing environment” would mean in practice compared to other options. If this is about providing support, guidance, templates, etc. to business to facilitate licensing, then this would likely be welcomed by smaller businesses where legal resources may be limited. It seems less likely to materially change larger businesses that have legal resources and/or have business models predicated on the creation of content that need to monetise their efforts.

Option 2 Extend the existing TDM exception to cover commercial research and databases – this option would create significant ambiguity as to what “commercial research” is compared to mere “commercial use” that isn’t “research”. This would open the door for much legal uncertainty and potentially create option 4 via a backdoor.

Option 3 Adopt a TDM exception for any use, with a right holder opt-out – whilst seemingly initially attractive, there are a number of challenges that need to be addressed in determining whether this is a practical option:

- a) Why would any right holder not opt-out in the commercial, rather than non-commercial setting? – if everyone by default opts-out, how has this changed from option 0?
- b) How would the opt-out operate and would this lead to additional and potentially unnecessary additional administration, which would slow down and increase the cost of being a right holder? If the purpose of a change is to increase technological development, then the expenditure of resources into administration rather than research appears to be counterproductive.
- c) What is the ability of the right holder to make and change their decision as to opting out and how would a change in opt-out status impact existing users of the work? Requiring right users to extract works at a later date may prove problematic, and effectively placing a burden on right users to track when every work under an TDM exception was first utilised, again seems to reduce the resources available for the primary goal of technological development.

Option 4 Adopt a TDM exception for any use which does not allow rights holders to opt out – this appears to disincentivise those organisations that create content, much of which may require

significant investment in the generation of the content. Without the ability to control the use of content and the ability to realise a return on that investment, as anyone could simply extract the value from the content without paying for it, it may likely incentivise organisations to keep content as confidential and to restrict access to that content with the unintended consequence that technological development is actually slowed down.

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

No comment

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

No comment

## Patents

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

Option 0 is singularly the most appealing option. Patent laws internationally are generally well harmonised and the current statutes and case law around the world, with few exceptions, have established that AI cannot be identified as an inventor.

Identifying / enabling AI to be recognised as an inventor creates a number of legal challenges, including:

- a) If AI is to be recognised as an inventor in the UK and the patent application is to go internationally, this leads to the challenge that other jurisdictions may not accept the application as they do not accept AI as inventors
- b) If AI is not recognised internationally as an inventor, it is in the interest of those organisations who operate internationally to ensure that AI is not listed as an inventor, which brings us round to:
  - a. Questions around false attribution in the UK
  - b. Questions around inequitable conduct in the US

Both scenarios potentially lead to patents being invalidated not for the claimed invention itself but merely from the procedural processes.

Option 3, would generate a sui-generis right, which would have no standing internationally and therefore patent applications in other jurisdictions would still have to be sought to gain protection. This would result in different levels of protection at home and abroad as well as increasing the procedural activities to gain rights that can already be obtained under the current patent system.

Options 1, 2 and 3 all create significant areas of legal uncertainty, problems around creating and enforcing an international portfolio in an area of law that does not appear to be under significant strain at the present point in time.

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?

See response to 11 as all options 1, 2 and 3 have impacts in the patent system, both nationally and internationally.

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?

The person directing / training the AI should be identified as the inventor and the normal laws governing first ownership should be followed. AI, in its current level of sophistication, is still a tool rather than a truly independent innovation generator.

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?

We would not recommend option 1 or 2

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

Allowing AI to be identified as an inventor would create significant legal difficulties. The present international trend is for AI to not be permitted as an inventor. On this basis, you would create legal difficulties where inventors would need to be added / removed based upon the jurisdiction, which could raise into question the equitable conduct of the application and potentially lead to a loss of rights as described in the answer to 11.

For option 3:

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

No comment as option 3 is undesirable.

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?

No comment as option 3 is undesirable.

General

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

The use of and research into AI can require significant investment. As such, the ability to recoup that investment is essential and IP and the protections that it affords, in its many guises, is one of a number of important tools to ensuring confidence that the investment will be worthwhile.

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?

No comment

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 is becoming more essential and indeed commonplace as a tool in terms of analysing ever larger and more complex data sets: as such, AI does lead to higher productivity. It should however be noted that AI in these contexts is not at the point of operating independently and human guidance at some stage(s) of the R&D process is required.

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

No comment

## Section B: Respondent information

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

Leonardo UK Ltd. (Company brand – Leonardo)

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

Leonardo UK Ltd

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

N/A

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~~

N/A

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~~

N/A

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~~

Leonardo UK Ltd is an Aerospace, Defence and Security company

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

Leonardo UK Ltd has 7,500 employees across the UK.

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~~