PRS for Music submission to IPO consultation on AI & IP: copyright and patents

About PRS for Music

PRS for Music represents the rights of over 160,000 songwriters, composers, and music publishers in the UK and around the world. On behalf of its members, it works to grow and protect the value of their rights and ensure that creators are paid transparently and efficiently whenever their musical compositions and songs are streamed, downloaded, broadcast, performed and played in public. In 2020, we processed [redacted] performances of music uses, with [redacted] paid out in royalties to rightsholders, making us a world leading music collective management organisation.

Summary

We entirely support the IPO's aspiration to establish greater market certainty in the relationship between copyright protected works and Artificial Intelligence. With respect to autonomously AI-generated works, it is our firm view that as much of the AI market is still in its infancy, the possible commercial applications and consumer benefits remain entirely unclear. As such, it is premature at this time to establish new rules or amend existing frameworks, as to do so risks have a chilling effect both on the activities of existing rightsholders and on those wishing to explore the possibilities of AI.

Equally we see little evidence of licensing not being a viable mechanism for the development of AI technologies. Nor is it clear on what basis exceptions to copyright in these instances might be appropriately applied, justified or compatible with the UK's international obligations.

We would urge the IPO to continue its works with rightsholders, users and AI technology providers to better understand the opportunities and challenges as they become more apparent, and only consider the possibility of changes to the legal framework if there is quantifiable evidence of the impacts on the market.

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?*

We are not aware of significant uses of the computer-generated works (CGW) provision in respect of the rights of the members we represent.

Of course, it is not uncommon for music creators to utilise some degree of AI to aid them in the composition process, the use of which is covered by existing software contracts and licensing provisions. Although clearly, in such instances where the final work meets the originality threshold, these works are eligible for copyright protection under general provisions, as the purpose of the AI is to facilitate the expression of the author under their direction. This is an important distinction and one which determines the differentiation with works generated fully autonomously by AI.

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

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

With respect to fully autonomously AI-generated works, it is our view the practice is not widespread enough in the creative sectors to properly and appropriately evaluate the options proposed in this consultation. We observe that whilst the technology, at least in its basic form, exists and can create works autonomously, a meaningful commercial application of this functionality has yet to be established. While we entirely recognise the IPO's desire to build a framework for the future and one which could encourage market innovation, we believe changes to copyright at this time carry the risk of significant unintended consequences and creating market uncertainty - both of which would undermine the IPO's own stated aim of promoting and safeguarding human creation and its value.

For this reason, Option 0 is not only our preferred option but what we believe to be the only reasonable option at this time.

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.*

Given the embryonic stage of the market, we believe it would be premature to make assertions about a related or sui generis right, and its scope and duration.

Any new related right affording protection to autonomously AI-generated works will undoubtedly need to follow a different framework as opposed to the protection of works generated by human authors, which is dependent on characteristics which cannot practically be applied to AI-generated works. There are also profound questions about the justification for the extent and duration of rights afforded to AI-generated works, which at this point would be made in the hypothetical rather than practical.

As a general point, we urge the IPO to take into consideration the application and consistency of rules internationally. While there have always been national variances, the fundamental IP principles and core rights are applied equally globally, through the various international Conventions and

Agreements. In a digital environment where creative content is available online simultaneously around the world, managing different copyright regimes and applications of rights is not in the best interests of users or rightsholders.

In this context we note, for example, that section 313.2 of the Compendium of the US Copyright Office explicitly states that: "the office will not register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author." And the European Union also excludes fully machine-generated works from the scope of copyright protection.

4. *What are your views of the implications of 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?*

There is undoubtedly a risk that AI-generated works could be falsely attributed to a person or perhaps falsely claimed by an individual. Of course, these issues exist today, and in the interest of expediency and clarity, laws protecting creators against false attribution should be consistently applicable regardless of creator type. There are however methods of best practice to foster ethical and responsible innovation which, while not directly copyright related, the IPO could in future consider the case for mandating, including (i) that AI-generated works be identified as such, and (ii) the retention of auditable records tracking material used to develop an AI-generated work.

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.*

PRS for Music does not provide text and data mining licences for the musical works rights which we represent. This is at least in part due to the fact we already provide a wide range of progressive licensing options covering a broad scope of uses and services.

Similarly, PRS for Music has not received any requests for the licensing from AI application providers seeking to use the rights we represent in the creation of new works. Therefore, we are concerned by the narrative which has developed that licensing, or certain forms of licensing, are acting as a barrier to developments or that licensing is prohibitive. It is also concerning that some of the unsubstantiated issues raised about licensing for AI applications seem to be underpinned by an assumption that users have the right to use works in whatever way they want. We have a long history of providing licensing solutions and adapting our practices to meet changing user demands. As evidenced in our annual reporting, we do not refuse licensing requests and always seek to find solutions within the rights we control. It is, however, a fundamental principle of copyright that

rightsholders have the ability to grant or withhold authorisation and this can only be overridden in very exceptional circumstances.

It is clear that the process of ingestion by AI, in whatever way and for whatever purpose, is an act of reproduction. Legislation provides for a comprehensive reproduction right, covering the work as a whole or part of it, either directly or indirectly, whether transient or incidental. This existing framework provides for a licensable act, and the nature of that right is that authorisation must be sought prior to the act.

Key in the introduction of the Text and Data Mining exception in 2014 was that it specifically excluded use of the exception for commercial purposes. This was essential in both satisfying the three-step test but also in balancing the quantifiable public value of the exception with the inevitable economic harm to rightsholders. It is unclear to us how the ingestion of musical works, or indeed any creative content, by an AI system for the purposes of machine learning would satisfy a basic test of non-commerciality; further, if such non-commercial instances did occur, it is unclear how they would not already be addressed by the existing exception regime.

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

Licensing is always the most direct route to legal certainty, rendering both licensor and licensee aware of their rights and obligations. Legal certainty will be a vital factor in fostering innovation in the AI sector while at the same time protecting the other industries upon which it depends. Upfront licensing helps mitigate the complications of identification of works used and helps to free users from the risk of infringement.

As stated above, we believe more evidence is necessary to properly quantify to what extent, if at all, there are barriers to licensing and the basis for any such issues. There are significant differences between potential users being unclear about where and how to obtain rights, and rightsholders legitimately deciding that they do not want their works to be used in certain ways. Until there is far greater visibility and understanding of any problems, it is premature to determine what role, if any, government can or should play in relation to licensing. If this consultation process does provide the necessary evidence, PRS for Music will of course work with the IPO on the development of any new initiatives.

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

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

In our view Option 0 is the only reasonable option, insofar as it limits the TDM exception to research for non-commercial purposes, and non-commercial purposes are defined narrowly, excluding for-profit companies.

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

The 2019 EU Copyright Directive has yet to be fully implemented in many Member States and even where it is in place, too little time has passed for any impacts to become visible. As such, PRS for Music is not aware of any use of the opt-out provisions within the category of rights we represent.

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

For all the reasons explained above, we believe it is impossible at this stage to accurately quantify the possible impacts, positive or negative, of any change to the existing regime. Generally, we would stress that exceptions are by their very nature a limitation on rights and that any such limit must be fully justified and quantified and, where appropriate, rightsholders compensated for that harm. Our experience shows that exceptions more often create additional legal uncertainty, including in the ability of rightsholders to enforce their rights and tackle infringement.

Section B: Respondent information

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

PRS for Music

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

1) Organisation – please provide the name of the organisation

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

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D: If you are an individual, are you?

N/A

E: If you are responding on behalf of an organisation, are you?

A licensing body, CMO.

F: If you are responding on behalf of a business or organisation, in which sector(s) do you operate? (choose all that apply)

1) Information and communication – Publishing, audio-visual and broadcasting
2) Information and communication – Telecommunication
3) Arts, entertainment and recreation
4) 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) 250–999

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.