

Professional Publishers Association (PPA) submission

Artificial Intelligence and IP: Consultation on copyright and patents legislation

About the PPA

The Professional Publishers Association (PPA) is the membership network for UK consumer magazine media and business information publishers, representing around 160 of the UK's most renowned publishing houses. With more than 40 million adults in the UK reading magazine media every month, the sector is worth £3.74 billion to the UK economy, and employs around 55,000 people.

The PPA's membership incorporates the UK's largest publishing houses, including Future plc, Bauer Media Group, Condé Nast, The Economist, Haymarket Media Group, Hearst UK, Immediate Media, and William Reed Business Media, and many smaller independent publishers. A full list of members can be found here: <https://www.ppa.co.uk/members>

Introduction

The consultation is seeking evidence and views on the extent to which patents and copyright should protect inventions and works "made by AI".

This, in itself, makes assumptions which must be challenged.

What can be made by AI, which the system for protection of copyright and registration of patents does not already enable, if all the elements available for protection of Intellectual Property alongside physical goods are considered?

Where is the evidence that the creators of algorithms (which form copyright protected computer programs) are being challenged over being the author of the code for the algorithm as first created?

When source code is licensed for use, where is the evidence that the range of licences which have been developed to allow both use and development of the software for identifiable purposes have not proved effective as the basic framework from which AI applications are continuing to develop?

It is submitted that the current system does already enable relevant protections for the creation of works which make up the "source material" for the development of algorithms. In addition, questions of authorship as AI algorithms are applied are being (and should be) decided by the terms of conditions of licences being developed and applied to recognise how algorithms pick up, use and adapt existing copyright works in presenting "outputs" for end users.

Some 40 years ago, there were extensive discussions over whether the copyright system, the patent system, or a sui generis system, should provide protection for computer software.

As a result, there is a generally accepted principle that computer programs should be protected by copyright, whilst apparatus using computer software, or software related inventions should be protected by patent.

The consultation seeks views on “measures to make it easier to use copyright protected material in AI development, supporting innovation and research”.

This also appears to assume that there are currently “difficulties” or “barriers” to the use of copyright protected material in AI development.

Where is the evidence of these difficulties?

It is submitted that the consultation should show (or at least outline) some evidence from the owners of copyright works which are used as a result of computer programs being created, adapted and licensed for application in ways that require the searching or use of third party works, if apparent licensing blocks to use of such third-party works can be identified.

Such evidence would complement the stated aims to:

- 1. Encourage innovation in AI technology and promote its use for the public good,** since transparency in practical application of the existing copyright and wider IP framework would be improved and understood by those who seek to develop and adapt computer programming as the source material for AI applications.
- 2. Preserve the central role of intellectual property in promoting human creativity and innovation;** since the integral role of copyright at the inception of source coding will continue to be recognised and supported and when the coding facilitates and enables the identification, selection and licensed use of the full range of copyright protected works in the digital environment.
- 3. Be based on the best available economic evidence;** since it will show how computer programs linked to copyright and apparatus and software inventions linked to patents can continue to thrive, without risking that the copyright framework is challenged as redundant, or be eroded on grounds of alleged complexity.

There appears to be an assumption that, because the application of an algorithm within an AI application can result in the selection and use of third party materials in ways that the author of the original (or adapted) source code, did not, or could not, anticipate, then the output which is used by a business or a consumer should warrant ownership distinct from the owners of the copyright works which led to the output being delivered.

If a film is created, using a book as source material, specially composed music, many artistic works and a dramatic screenplay, hundreds of performers and some commercial sound recording synchronised with the film soundtrack, the fact that the result makes some “users” laugh and others “cry” does not alter or affect the ownership of the works which have been licensed to support the creation of the film itself.

In the case of the film, the authors and owners of the film are not a single person, but are established as a result of a combination of basic copyright law and contractual (licensing) arrangements put in place to enable the film to be made.

It is a view that such a structure can, and should, work and support the development of AI technologies (with transparent routes back to source materials) which underlies the responses below. This will avoid the risk that a new rights framework for AI outputs will undermine and eventually destroy the “roots” licensing framework which should be nurtured and supported for preservation of the central role of intellectual property in promoting human creativity and innovation.

Copyright as a framework for protection of both “inputs” and “outputs” from the application of software functionality which supports “machine-based learning”.

The questions posed seem to suggest that application of software functionality described as “Artificial Intelligence” is now developing at such a rate that tracing the development of the software back to human originators is somehow irrelevant. Instead it is suggested that “new rights” might be recognised in the application of “AI outputs” which may not have a direct bearing on this copyright works which are used to service the application, as this may be used by an “end user”.

This approach runs the risk of focus on rights of “output” which may either

(a) reduce responsibilities on those responsible for the writing and release of original software because it can be argued that it is impossible to find the author of functionalities which:

either lead directly to the infringement of the rights of others within the functionality application;

or lead to social harms that require to be addressed under wider law and/or

(b) undermine application of the complex licensing structures which are vital to maintain investment in innovation and creativity through recognition of the existence of copyright in original works that form cogs within the wheels of AI applications of the future.

PPA submits that it remains important not to cut the ties between “originality” and “human authorship” as the bedrock for future links between copyright and AI.

These ties will not only protect and promote respect for the development of new intellectual property more widely, but also support the positioning of those responsible for delivering outputs of AI applications within the wider legal framework and recognition of social responsibilities.

Section A

Copyright – computer generated works (CGW)

In answering the questions, it seems important to review why we ended up with a definition of “computer generated” in s 178 of the Copyright, Designs and Patents Act (CDPA).

This seems valid because there has been very little examination of the provision under case law. Something which, in itself, suggests that the wording adopted has not proved a difficulty to accommodate in business practice to date.

The Decision of Mr Justice Kitchen in *Nova Production Limited v Mozooma Games Limited* [2006] EWCH 24 (Ch), [2006] EWCH 189 (Ch)¹ held that where individual frames were shown on a screen when a user played a computer game, the frames were computer generated artistic works.

However, paragraph 105 of the judgment states “In so far as each composite frame is computer generated work, the arrangements necessary for the creation of the work were undertaken by (Mr Jones) the author because he devised the appearance of the various elements of the game and the rules and logic by which each frame is generated and he wrote the relevant computer program. In these circumstances I am satisfied that (Mr Jones) the author is the person by whom the

¹ <https://www.casemine.com/judgement/uk/5a8ff74360d03e7f57eaa95f>

arrangements necessary for the creation of the works were undertaken and therefore is deemed to be the author by virtue of s 9 (3)".

This seems to support the significance of preservation of the copyright framework application as mentioned above.

If the references to "computer output" within Mr Justice Whitford's Committee's report of March 1977, considering possible changes to the law of copyright and designs, are revisited; they appear to support this significance.

Paragraphs 514, 515 and 516 are of interest:

"514. In this matter (ownership) we feel that the correct approach is to look at the computer as a mere tool in much the same way as a slide rule, or even, in a simple sense, a paint brush. A very sophisticated tool it may be, with considerable powers to extend man's capabilities to create new works, but a tool nevertheless.

515. On that basis it is clear that the author of the output can be none other than the person, or persons, who devised the instructions and originated the data used to control and condition the computer to produce the particular result. In many cases it will be a matter of joint authorship. We realise that this in itself can cause problems, but no more than in some other fields, and we are not convinced that there is a need for special treatment.

516. Whether copyright will subsist in any particular item of computer output may depend on whether any of the authors are qualified persons, as defined in the Act".

The Report states that the simplicity of the above approach supported a decision against making any other person or persons the author of the output.

This seems important when considering ss 178 and s 9(3) CDPA in current form.

S 178 states that "computer generated" in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work.

However, in order for there to be a "work" that is copyright protected, it must be "original" and under that test attributed to a human author.

Authorship

On the question of authorship s 9 (3) provides "in the case of a literary, dramatic, musical or artistic work which is computer generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken".

If source materials for software functionality will fall to be treated as "literary works" the person by whom the arrangements are made for the creation of the code will then be in the position to license both and adaption (under s 21 (3) (ab) CDPA) and other use of the code within the restricted acts applied to literary works.

Once such licenses are in place, third parties may then be licensed/authorised to apply the software functionality either openly or in limited ways specified by the software licence. These may be perpetual licences, trial licences linked to developments, project-based licences, floating licences, subscription licences, metered licences, use-time licences, aggregated use-time licences, anchored licences, device licences etc.

For other works (whether literary or not) which are then used as a result of licensed application of the code, existing law provides that licenses will be required to reflect the restricted acts relevant to those works which are relevant to the outputs of software functionality/AI applications.

Negotiation or provision for such licences will then dictate the level to which any joint authorship terms are recognised to support the use of the amalgam to works relevant to support end users of the resulting “AI application”.

This issue is commented upon further in response to the licensing questions below.

Term of protection

The consultation highlights the fact that s 12(7) CDPA 1988 (as amended) now includes the provision which was included in s 12 (3) of the Act as enacted².

This states that if a work is “computer generated” then the other provisions in s 12 dictating the duration of copyright in literary, dramatic, musical or artistic works, do not apply. Instead copyright expires at the end of the period of 50 years from the end of the period in which the work was made.

It would be helpful if the current position could be further clarified in any impact assessment to support change because:

(a) it is unclear whether changes made to s 12 CDPA as a result of the changes applied The Duration of Copyright and Rights in Performances Regulations 1995³ (reflecting EU law) included an assessment of why the wording of the computer-generated works provision remained at 50 years, when other terms (including the term of protection for literary works) was extended from 50 years pma to 70 years pma.

(b) the increased difference in terms between literary works and works which are decided to be “computer generated” clearly moves further away from the original recommendation in the Whitford Committee Report - paragraph 517 of which recognised:

“It is been suggested to us that there should be a fixed term of protection for computer output to start from the date of making. This is because of the difficulty of knowing who the author is and also in recognition of, the often, short commercial life of such output. But we felt it would be unfair to penalise a man who uses a computer in preference to other more conventional techniques. Also the range of works covered by the description of “computer output” is extremely wide, and in some cases at least there could be convention objections if the full terms is not given. There will undoubtedly be difficulties of knowing when the term, which may depend on the life of the author, expires, but we do not accept that the difficulties referred to justify special treatment.”

(c) in reality the “term” of protection point has not yet been tested because not enough time has elapsed since the introduction of the legal provisions. This means that any potential difference between the potential term of protection for a computer program as a literary work and the terms of protection of any works which may be regarded as “computer generated” using the computer program, has not really been tested in practice.

² <https://www.legislation.gov.uk/ukpga/1988/48/enacted>

³ <https://www.legislation.gov.uk/uksi/1995/3297/contents>

It is submitted that the question of authorship is important to address against the wider social and economic position for the application of AI systems under general law.

Recognition of the IP behind the creation of the software upon which AI applications can evolve is only one part of the regulatory jigsaw to be developed as AI impacts on marketplaces evolve.

However, it is a vital piece of the jig saw which provides for recognition of protections under UK law in ways that will provide both strengthen the UK IP framework and provide an example for wider international debate⁴ concerning economic benefits flowing from use of AI applications.

In this context the definition of artificial intelligence system under the proposed EU AI Act gives strong recognition to software, copyright protected, basis for artificial intelligence systems⁵.

1. Do you currently rely on the computer-generated works provision?

PPA members make use of works linked to the existing computer-generated works provisions under the CDPA. However, it is misleading to suggest that direct reliance is put on either the definition under s 178 or the authorship provisions in s 9(3) CDPA. As a result, there is also little focus on the term provision under s 12 (7) CDPA.

Effective recognition of copyright and respect for the ability to license and support rights is of vital importance to the business of publishers of magazines across the consumer and business to business sectors.

In addition, whilst traditional engagement and relationships between a magazine publisher and its audience would have been transactional and unilateral, the moves to multiplatform delivery create more complex bilateral relationships.

There are now more places and opportunities to engage an audience, including the technology of software functionality behind AI applications to gather and process data on that audience. However, fundamental to the success of the sector is the deep levels of trust and engagement which magazine audiences have in both the business to business and consumer magazine markets.

Within the magazine sector AI impacts are all about improving and building on the services and publications provided to audiences. Concerns arise if that positive approach is challenged by undermining the copyright framework. A framework which is fundamental to enable and maintain investment in the professional content which is developed and presented to audiences in increasingly complex ways.

In all this, publishers have to be able to retain a direct relationship with consumers which is not broken by the intermediary platform services over which end users secure access.

⁴ https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_1&format=PDF

⁵ For the purpose of this Regulation, the following definitions apply: (1) ‘artificial intelligence system’ (AI system) means software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with; (1) ‘provider’ means a natural or legal person, public authority, agency or other body that develops an AI system or that has an AI system developed with a view to placing it on the market or putting it into service under its own name or trademark, whether for payment or free of charge;

Artificial intelligence systems are applied and used by publishers in a wide range of ways to assist and support the development and dissemination of digital publications, audience and customer reach and the use and dissemination of advertising alongside publications.

[If so, please provide details of the types of works, the value of any rights you license and how the provision benefits your business].

In that sense, publishers do make use of works that are “computer generated”. However, the focus is on the licensing and use of software which will fall to be protected as literary works under the CDPA. In applying the software within licences made available or specifically secured, publishers will make use of a wide range of other copyright protected works in making use of AI systems linked to day to day business.

In particular, literary, artistic and film and sound recording works will form part of the digital presentation of many digital publications published by PPA members.

What approach do you take in territories that do not offer copyright protection for computer-generated works?

Reliance will be made upon national copyright rules and important rules of National Treatment recognised under relevant international treaties, including TRIPS and the Berne Convention.

The terms of software licences are also of relevance, since the creator of the software functionality within an AI application used by a publisher may not be created in-house, or originate from within the United Kingdom.

PPA membership is made up of multi-platform media businesses. The platform on which audiences engage may still be a printed magazine. In its PPA Sector Insight Report 2021⁶ it was noted that 93% of members still publish a printed magazine. However, 75% of members operate across five or more platforms, including events, mobile and video.

As such, the points about the copyright framework recognising how AI applications pick up, use or present copyright works which themselves make up the publications created by PPA members, are all the more important. Such use must not be substitutional in terms of rights, but instead an area of copyright licensing which should be made increasingly transparent in the digital environment.

This is of particular importance within the creative industries. Complex levels of copyright works (and potentially joint authorships) are involved in the presentation of magazine content in cases where an AI application may lie behind delivery to an end user. Policy decisions linked to AI must not lead to reduction or removal of the value of the magazine content simply because an AI application is relevant to the overall delivery process.

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

Computer generated works

PPA’s most preferred option is Option 0 - Make no legal change in the near future.

The reason for this is the lack of case law and evidence that the current provisions are in any way inhibiting the development of software functionality behind AI applications, or testing the possible conflict between the originality requirements for the recognition of copyright in a work and the use

⁶ <https://ppa.co.uk/resource/ppa-sector-insight-report>

of the words “in circumstances such that there is no human author of the work” within the definition of “computer-generated” in s 178 CDPA.

The Whitford Report on the computer being a tool for the development of original works (not a substitution for the originality requirements) remain valid.

PPA’s next preferred option would be Option 1- Remove protection for computer-generated works.

This must not mean removing protection for original copyright works which are made or adapted through the application of computer programs, which are themselves “original literary works”.

Nor can it mean the removal or reduction of protection for copyright works which are used or disseminated in digital form making use of online or other telecommunications technologies.

It could mean

(a) reviewing and updating the definition of “computer-generated” in s 178 CDPA and

(b) revisiting the history of the reasons for the current 50-year provision in s 12(7) CDPA, and the apparent way that the original thinking behind what was s 12(3) CDPA on enactment, appears to have meant that the term of protection under s 12 (3) has moved away from parallels with the term of protection for computer programs which comprise literary works.

PPA’s least preferred option would be Option 2 - Replace the current protection with a new right of reduced scope/duration.

As stated above, the current protection is important in showing that the copyright framework remains relevant and important for the protection of works which are developed and presented using the capabilities of computer technology.

However, the challenge must be to improve transparency about the licensing of elements of computer programming and the use of other copyright works in the development and presentation of complex copyright work structures linked to AI functionality for end user benefits in the future.

An approach of “replacing current protection” with a new right which focuses on digital end user “outputs” runs the risk of

(a) reducing responsibilities on those responsible for the writing and release of original software because it can be argued that it is impossible to find the author of functionalities which

either lead directly to the infringement of the rights of others within the functionality application;

or lead to social harms that require to be addressed under wider law; and/or

(b) undermining application of the complex licensing structures which are vital to maintain investment in innovation and creativity through recognition of the existence of copyright in original works that form cogs within the wheels of AI applications of the future.

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.

PPA does not believe that Option 2 is the option to pursue at this stage.

In wider debates about the term of protection for copyright works and related rights in performances, the focus has been on longer lifetimes for many authors and the principle that originators of new works should be entitled to license and receive benefit from the use of their works by others throughout the term.

This does not mean that all works will remain in the public consciousness for the full term of copyright. Adaptations can develop and prolong the relevance or popularity of a work. Technology will move on and make the use of “archive” works more varied and accessible in the future.

To argue that computer programs which secure protection as literary works should have a reduced term of protection if applications become “computer-generated” would seem to move towards less transparency in world when greater transparency of licensing terms for applications works with the assistance of software related inventions (the latter protectable by patent) is required.

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

It is noted that the author of a computer-generated design is “the person by whom the arrangements necessary for the creation of the design are made”.

This complements comments on authorship above. It is noted that no amendments to this aspect of design law are proposed at this stage.

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

Publishers would have great concerns if AI applications are able to select and represent the copyright works created by publishers in ways that suggest the work as presented to an end user is generated by the delivery platform, rather than the original publisher.

For this reason, it is important that the licensing structures for the use of all the copyright elements linked to the future presentation and accessibility of works online are transparent and that attribution for the copyright works used is properly provided.

IP protection for these elements will also support wider regulation being applied to those who make the arrangements for the creation and release of software functionalities which may need regulation to protect users under wider social and economic laws beyond IP.

Chains of title operating for the use of copyright works will also support contractual arrangements being put in place when joint authorship also justifies joint obligations for observance of these wider legal issues.

Text and Data Mining (TDM)

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.

As a trade association, PPA does not itself provide for the licensing of text and data mining relating to catalogues of works. However, the licensing of works for TDM is relevant to the businesses of many PPA member companies.

PPA members are themselves both developers of AI applications and users of AI applications to assist in the development of their publishing, digital distribution and marketing functions.

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

Yes. The government should champion the role and application of licensing systems within the current copyright framework.

This can be done by promoting greater transparency in the relationships between the development of computer programs and source codes (themselves protected by copyright) and their application when this involves the identification and use of other copyright works in the context of the creation and development of “AI applications”.

The right for owners of copyright works to license the use of their works should not be undermined or confused with wider societal debate over the ethical use of AI applications for the wider benefit of society. Here, regulatory issues outside the area of intellectual property may be relevant. However, this should not be seen as justification for undermining the importance of licensing structures within the copyright framework itself.

The UK has long been a world leader in the development of the copyright framework at international level. By playing a role in helping to promote wider understanding of the licensing structures which are available to support the development and use of AI applications, this will encourage other countries around the world to recognise copyright as a vital building block to protect both creativity and innovation of new AI applications in the future.

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

Of the options presented in the consultation paper, PPA would rank these in the following order:

- Option 1 Improve licensing environment for the purposes of TDM.
- Option 0 Make no legal change.
- Option 3 Adopt a TDM exception for any use, with a rights holder opt-out.
- Option 2 Extend the existing TDM exception to cover commercial research and databases.

Option 4 should be ruled out completely. Any steps to accommodate Option 4 (Adopt a TDM exception for any use, which does not allow rights holders to opt out) would be extremely

damaging and conflict with the fundamental principles established within the TRIPS Agreement⁷.

Article 10 of TRIPS seems particularly relevant:

“1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

PPA’s preferred option is to make no legal change but to look at steps which can be taken (in conjunction with industry) to improve the transparency and understanding of the existing licensing framework (Option 1). Published guidance and educational materials drawn up in consultation with copyright licensing stakeholders may be helpful.

This work should be undertaken to promote the benefits and ease of application of the licensing structures, rather than couching debate on terms of “how much can the boundaries of the existing exceptions be pushed”.

It is also important that these educational initiatives address the range of commercial impacts that may result

(a) from different types of data mining from large datasets and

(b) “text mining” as a process for extracting essential data from standard text.

The extent to which the processes identify and use existing copyright works may vary, alongside the commercial impact for right owners who should be enabled to license access (openly or freely if appropriate) against a reasonable assessment of these impacts.

Generally, the use of existing copyright works for the commercial benefit of a third party indicate that the use is of actual or potential value to the third party. Licensing structures within the copyright framework are adept and accommodating speculative or developmental uses. The terms and conditions of licences enable not only agreement over the scope of access, but also guard against unauthorised new use by the licensee/developer which infringe the rights of the licensor.

It is fair to say that establishment of licence terms to cover agreed text and data mining may involve commercial elements (including fees). However, in the absence of any significant evidence that licences are not currently available or being used, it is neither proportionate nor fair for the government to look to change the law on the grounds that a few SME’s argue that the cost is a disincentive for them to trade on the basis of extending copyright exceptions linked to text or data mining.

It is therefore the licensing framework which must be preserved against the backdrop of the growth of AI applications.

PPA’s preferred option also supports the case for Option 0 (making no legal change to UK law at the current time).

It is however recognised that some PPA members carry out business within the European Union, where the national laws of Member States have been, or are currently being, update to reflect the

⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994)

express provisions of Articles 3 and 4 of EU Directive 2019/790⁸. **This links to Option 3 in the Consultation, which would be PPA's third preferred option.**

In practice, transposition of Article 4 into national laws is proving to be slow. In the interim previously existing text and data mining licensing offers are being applied. In practice this is in reliance on the important recognition in Article 4 (3) that any exception or limitation recognised under the scope of Article 4 applies on the condition that the use of works has not been expressly reserved by their right holders in an appropriate manner, such as machine-readable means in the case of content made publicly available on line.

Publishers and bodies providing supporting services such as Publishers Licensing Services Limited⁹ have worked with researchers to enable access for agreed purposes. Licences have been developed to provide fair and reasonable contractual protections for publishers. For example, a recognition by licensees that TDM output will not breach the law or any regulatory requirement in territories of use, including data protection laws, infringement of copyright and/or other intellectual property rights.

There is a concern that any option that allows for wider exceptions than currently supported by s 29A Copyright, Designs and Patents Act, albeit accommodating right holder opt outs, would add burdens for smaller right holders. Such right holders are likely to face disproportionately high costs in terms of provision and oversight of opt outs.

There is also a risk that this burden in effect means smaller rights holders face a world in which, in practice for them, an exception applies without opt out options.

As with Option 4, Option 2 runs a real risk of non-compliance with the three-step test for copyright exceptions and limitations (confining limitation or exceptions to exclusive rights to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder).

The creation of database and reference resources involves significant investment whether by government or commercial businesses, including publishers. Copyright exists to protect and encourage such investment. Commercial entities that wish to use the databases and works of others for research with a commercial purpose, must recognise that licensing relevant text and data mining access is part of their doing business.

If the UK government does not support such protections for UK based publisher investors, their investments and the wider UK economy could be destructively undermined by large overseas based technology firms who avoid the reasonable TDM licensing costs of business for their exclusive commercial advantage.

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

Several EU Member States have yet to fully transpose the provisions of Directive (EU) 2019/790 into national laws. This process may extend well into 2023.

However, whilst in practice licensing structures operated by larger publishers have continued to operate without any significant commercial disruption, the full effect of costs and implications for

⁸ Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single market.

⁹ <https://www.pls.org.uk/services/text-and-data-mining/>

smaller publishers in applying the recognised opt out provisions under Article 4 (3) have yet to be seen.

Concerns remain within the industry over the scope of reservations which will be deemed reservations “in an appropriate manner”, considering both the online and off-line procedures which may involve text or data mining.

Licensing terms should be permitted to evolve to address this. Those who argue that the UK should follow other countries by introducing broad mandatory exceptions to “remove barriers” to text and data mining and enable machine learning runs the risk of killing the licensing which may actually deliver real benefits to the UK economy. Such benefits include protecting the rights of UK creators and investors for dealings with large overseas based platforms and conglomerates.

PPA therefore argues that a watching brief on developments is preferable to undermining developing licensing structures. This is particularly true in the absence of evidence that licensing requirements are actually restricting data mining (and the subset of text mining) to support commercial activities which make use of the copyright works of others.

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

Please see our responses to question 8 above.

Patents

Rather than responding to the individual questions relating to patents, PPA would urge that in considering the responses in this area, policy decisions on changes are not made in a way that drive a reduction in protection for copyright owners in favour of owners of patents which make use of copyright works.

A patent must not be permitted to “trump” copyright.

This issue is raised because:

AI is seen by government and a future flag waver for British Industry.

Companies investing in AI are good for the economy and need investments fairly protected.

Patents support this and could provide key economic advantages.

Patent registrations are paid for.

It would be a concern if these points combine to lead policy makers to think that, in terms of IP, it is the world of patents alone (with relatively short terms of protection) which can help shape and lead the development of AI. This concern would be further exacerbated if the future owner of patented inventions linked to AI were also beneficiaries of widened copyright exceptions (such as text and data mining).

11 to 17 – see above.

General

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

Protection of computer programs as copyright protected literary works is key.

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?

It will be important the AI innovation is supported by recognition and application of all the frameworks which apply to different types of intellectual property.

If a patent is secured to cover an invention which involves the use of works protected by copyright or design rights, then such uses cannot be subsumed or overridden by recognition of the patent.

Supporting parallel applications of all the frameworks applicable to intellectual property rights will remain important to avoid negative impacts 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?

Time saving benefits from AI applications are strong drivers to support higher productivity. However, the relationship between the creation and development of an AI application and the intellectual property rights involved in the creation and use of the application must be respected to deliver optimal economic benefits.

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

The recognition of intellectual property rights linked to the creation, application and use of AI applications is important but must not be confused with the relevance of wider law to the uses which may result from the creation of the coding that lies behind the application.

If the coding allows users to do or experience things which infringe other laws relevant to civil society, these must be addressed outside the recognition of intellectual property rights.

In the same way that data protection, defamation, obscene publications and many other laws apply to the day to day work of publishers, so they should apply in the context of the use of AI applications in the future.

Section B: Respondent information

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

Professional Publishers Association Limited (PPA) <https://www.ppa.co.uk/>

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

Organisation – PPA is the trade association and membership network for UK consumer magazine media and business information publishers, representing around 160 of the UK's most renowned publishing houses.

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

The PPA's membership incorporates the UK's largest publishing houses, including Future plc, Bauer Media Group, Condé Nast, The Economist, Haymarket Media Group, Hearst UK, Immediate Media, and William Reed Business Media, and many smaller independent publishers. A full list of members can be found here: <https://www.ppa.co.uk/members>

D: Not applicable

E: As an organisation PPA is responding as an industry body/trade association.

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

Publishing

Advertising

Events

Business to Business data services

Arts, entertainment and recreation.

G: How many people work for your business or organisation across the UK as a whole? Please estimate if you are unsure.

10-49 within the trade organisation as a whole.

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]

[REDACTED]

J: Would you like an acknowledgement of receipt of your response?

Yes.