

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

Copyright – text and data mining (TDM)

- 1) *If you license works for TDM, or purchase such licences, can you provide information on the costs and benefits of these? For example, availability, price-point, whether additional services are included or available, number and types of works covered by the licence etc.*

LACA represents its member organisations, and UK users of copyright works, through library, archive and information services. Research Libraries UK is one of its member organisations and, since Text and Data Mining underpins much research activity, evidence was sought on the barriers that research libraries have experienced in undertaking TDM.

The majority of respondents to a call for views stated that they either had not, or were not aware of, any payments being made for TDM when they were not offered as standard under e-resource licences. Members also reflected that they were not aware of researchers paying for TDM directly. Where further details were provided, members cited the excessive costs of TDM as a key reason for payments not being made, as well as no clear funding source being identified. Others objected to paying on principle, with an example given of a £500 per hard drive cost to access material that had been technically restricted. Additionally, it was felt that this is an ineffective and cumbersome means to facilitate research activity.

Other responses showed that, anecdotally, researchers feel unable to challenge suppliers who refuse to lift technical restrictions in order to facilitate legitimate TDM activity, and that librarians would like to better support their researchers in navigating this complex area.

Several pertinent examples were submitted where research projects had to be abandoned, either due to prohibitive costs (such as US \$20,000 for data provision for a single project, or an additional fee of US \$14,500 to text mine newspapers to which the library had purchased access) or technical difficulties presented by lack of data access – one example described the hiring of a research administrator to perform manual searches of a newspaper database, because automated searching was not possible.

Despite these difficulties, there does not appear to be strong anecdotal evidence that libraries are signing up to the dedicated platforms on offer that would result in easier TDM.

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

LACA believes that the right to read means the right to mine. TDM using AI does what humans have done for thousands of years: read texts to extract facts and trends. AI can do this much faster, and process far greater volumes of text and data. In seeking to regulate this activity, we must be careful not to reduce the public domain or hinder new thinking and innovation. We believe that the UK government should look to emulate changes taking place in other countries which has the explicit aim of supporting AI and other digital innovation, and therefore economic growth.

Australia has recently published a Discussion paper: “Copyright Amendment (Access Reform) Bill 2021 & Review of Technological Protection Measures Exceptions” which is open for submissions until February 2022. One consideration is for Australia adopting a

broad 'fair use' copyright exception to replace their narrower 'fair dealing' approach. Proponents of fair use argue that it is a more flexible legal tool, capable of accommodating new and valuable fair uses of copyright material without waiting for legislative change.

The Prime Minister of Japan has made the Internet of Things (IOT), Big Data, robotics and AI central to the country's growth strategy - a strategy called Society 5.0. To support that strategy Japan updated its copyright legislation, effective 1 January 2019, to allow for greater flexibility and legal certainty which is essential to support innovators. The purpose was to support the development and growth of digital and AI services that are emerging now or will emerge in the future. This was achieved by removing the ambiguity around using copyrighted works for data analysis. This means that, in Japan, copyright is not an obstacle to realising the potential of TDM and AI.

Japan's flexible provisions in the Copyright Act 2018 are significantly different from US Fair Use and UK Fair Dealing. Article 30-4 permits exploitation for which the purpose is neither to "enjoy" a work nor cause another to "enjoy" the work. Under Article 30-4 of the Japanese Copyright Act, the following actions are permitted without seeking the copyright owner's permission, including for commercial purposes: reproducing works to prepare databases for machine learning to develop AI; using works in the background of a system without human recognition of the emotions expressed in the works; and reverse engineering.

It is also vitally important that contracts do not undermine the ability to undertake data analysis as was concluded to be of vital importance by the UK government in 2014 and the European Commission more recently. We believe any change to this position would ensure the UK becomes an extremely unattractive place to undertake AI.

The removal of obstacles, reduction of transactional burdens and the introduction of clarity is crucial to support the UK being a world leader in TDM and AI.

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

4, 3, 2, 1, 0.

We think that the government should, at the very least, act with celerity to update the Copyright, Designs and Patents Act to allow for the reproduction of lawfully accessed works to facilitate TDM activity for commercial and non-commercial purposes, and to provide a mechanism for redress where technical protection measures inhibit such activity. Given that we represent a user base for library, archive and information services, we do not think that rights holder opt outs would be practical or desirable for our constituents, and that such a regime would stifle research activity and innovation.

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

In LACA's view, opt outs are not a desirable approach. Although DSM article 4(1) appears to permit reproduction and extraction for data mining, including if there is a commercial purpose, it allows right holders to opt out of the exemption. This puts for profit TDM at the

mercy of right holders, and introduces additional complexity and uncertainty. The transactional burden of getting rights clearance is heavy to the point of suppressing TDM activity. This burden is disproportionately heavy on start-ups, SMEs, and researchers – particularly those not affiliated to an organisation.

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

LACA represents particular organisations, and this question asks about the impact on responders. LACA believes the effect of the cumulative impact on the UK economy and the common good is the fundamental issue. We argue that the widest possible exception for TDM is critical to facilitate world-changing and life-saving research.

The inter-related and overlapping concepts and activities known as Big Data, TDM and AI deliver powerful benefits (e.g., in terms of innovation, therefore new products and solutions bringing economic growth, better education, better health) by processing vast amounts of data across multiple information containers.

A key aspect of Big Data, TDM and AI is that they avoid the time-consuming necessity of gathering all the information into one container before it is processed (and storage capacity would be a key issue in doing so). Big Data, TDM and AI are doing what humans have done with eyes, brains, paper or velum, pens and pencils for thousands of years but on a very much greater scale and very much faster.

These capabilities are dangerously obstructed by traditional approaches to IP rights.

Covid is an issue facing every person on the planet. In the early stages of the virus, as it approached and then crossed the threshold of a global pandemic, there was intense pressure to find solutions to the number of people infected, the number who needed hospitalisation, and the number who died. This resulted in intensive efforts to gather and process data, analyse it, and learn from it, to produce new knowledge and solutions – often across public-private partnerships.

Big Data, TDM and AI were central to that. The quality of outputs depended on the amount of data available to process. Not allowing Big Data, TDM and AI to process particular data sets brought a serious risk of poorer quality data, therefore poorer knowledge and sub-optimal solutions. The end result is much lower quality research, which in turn reduces the UK's competitiveness.

It is of course essential to enable right holders to benefit from the right they hold. This, and the right holders' actions to protect their interests, must not however be at the expense of the UK's competitiveness and the common good.

Significant progress has been made with the 2014 changes to copyright law. There are still issues however and attitudinal change is needed in terms of how we look at IP rights in order for the UK to achieve and maintain a leading role in Big Data, TDM and AI. This is especially important for the UK as a major, and post-industrial, economy.

The cumulative impacts on our constituent organisations of not aligning UK IP law with key competitors such as Japan, Singapore, the USA and China will have a significant and detrimental effect on the UK economy and the common good.

Section B: Respondent information

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

Libraries and Archives Copyright Alliance (LACA)

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

Libraries and Archives Copyright Alliance

- 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

LACA represents libraries, archives, and museums which are part of educational institutions, local and national government, commercial companies, research bodies, charities and the voluntary sector. Our members come from the following organisations:

- Archives and Records Association
- Art Libraries Society UK and Ireland (ARLIS UK & IRL)
- Bodleian Libraries
- British Film Institute
- British and Irish Association of Law Libraries (BIALL)
- British Library
- Chartered Institute of Library and Information Professionals (CILIP)
- Health Education England
- International Association of Music Libraries, Archives and Documentation Centres UK and Ireland branch (IAML UK & IRL)
- The National Archives
- National Library of Scotland
- National Library of Wales
- National Records of Scotland
- NHS Scotland
- Research Libraries UK (RLUK)
- Share the Vision

- Society of College, National and University Libraries (SCONUL)
- Scottish Council on Archives
- Wellcome Collection

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.

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

Yes