

Response to IPO's Consultation on "Artificial Intelligence and Intellectual Property: Copyright and Patents" on behalf of NLA Media Access Limited

NLA overview

NLA Media Access Limited ("**NLA**") is a publisher-owned rights licensing and publisher services business with a core aim of supporting journalism¹.

Working on behalf of over 300 newspaper and magazine publishers and their 14,000 brands, we license over 200,000 organisations, ranging from large government bodies, PLCs, and limited companies to partnerships and public relations agencies, who make paper and digital copies of newspaper, magazine, and news website content.

NLA is mandated by its publishers to issue licences that grant organisations the right to copy and share print and web content whilst still respecting the copyright of the rightsholders. Our licences give access permission without the need to seek approval from individual publishers and enable great value access to news content.

NLA is a licensing body operating under the Copyright Designs and Patent Act 1988², as well as a collective management organisation ("**CMO**") operating under The Collective Management of Copyright (EU Directive) Regulations 2016.

We have been providing collective licensing and publisher services for over 25 years. A minimum of 80% of the revenue we collect goes back to publishers; that is equivalent to employing over 1000 journalists. The protection of these revenues is of substantial importance to both national and local news publishers (as well as many others) and hence to access to reliable, well-curated and fact-checked reporting, which forms the basis of democratic debate.

Section A

Copyright – computer generated works (CGW)

As NLA has no direct experience with regards to computer generated works, NLA is not providing detailed comments on this section of the consultation. However, as we represent the works of our publishers, we feel it is important to state that whether a work is generated by a computer or journalist or a mixture of both, such work is still created, branded and published by a publisher, and should therefore be protected under copyright law.

¹ <https://www.nlamediaaccess.com/>

² <https://www.gov.uk/newspaper-licensing-agency-business-licence>

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.*

NLA does not currently offer standalone TDM licences but, in order to protect current and potential revenue streams, it intends to do so in the near future. To understand the costs and benefits of TDM to NLA and its publishers, it is important to briefly explain the MMO market and how NLA licences work.

Media Monitoring Organisations and their clients

Many of our licensees receive their content from a Media Monitoring Organisation (“**MMO**”). There are currently more than fifty MMOs in the UK market, and these companies provide services to communications and PR teams that find and deliver articles containing coverage of their brands, clients, products, and competitors. Traditionally, MMOs search for keywords, then deliver any matches as a full replica of the article in (usually) PDF format, or as a link to the article on the publisher site.

NLA licenses both the MMOs to deliver the content, and the organisations who receive the content.

Licence fees are calculated based on the volume of content that is copied, and the number of employees receiving and sharing this content. As such, the [REDACTED] in royalties that NLA distributes to publishers each year are intrinsically linked to article delivery.

However, the MMO market is changing. Increasingly, MMOs are using TDM to enhance monitoring services that have become commoditised in a busy market space, and in some instances, replace them entirely. Slowly but surely, they are moving away from the delivery of articles (the current NLA licensing model) to the delivery of summaries and data insights.

This puts publisher royalties for use of their content and NLA revenues, under the current model, at risk. At some point in the future, services relating to the delivery of insight will surpass the delivery of articles. We have outlined a few examples below, which demonstrate that MMOs and other companies are increasingly focusing on AI and TDM. In order to protect current and potential revenue streams for NLA’s publishers, the creation of commercially appropriate TDM licences is important.

Case Study 1

Meltwater’s proprietary technology captures content from more than 270,000 global news sources, social media platforms, forums, blogs, print publications, broadcasts and podcasts. This helps clients track a variety of AI-driven insights including Share of Voice and Sentiment analysis. In 2017, Meltwater acquired Cosmify whose advanced machine

learning technology for in-depth analysis of corporate data sets has helped manage the vast amounts of data from multiple sources that Meltwater ingest³.

Case Study 2

Signal AI, an MMO founded in 2013, bills itself as a media monitoring, reputation management, regulatory compliance and market intelligence platform powered by artificial intelligence.

Signal's fundamental and proprietary AI system is what the company calls 'AIQ'. From its website⁴:

"AIQ is the brainchild of Signal AI's internationally recognized Research team and includes collaborations with many of the best universities and research labs in the world. At Signal AI around 30% of our colleagues are data scientists, engineers and product people, working hard to build and train our artificial intelligence platform to learn our customer's pain points and, in turn, to spot, interpret and recommend relevant data to augment crucial decision-making. We're at the cutting edge of this technology and are proud to have AI at the root of our business.

- *AIQ enables companies and individuals to create proprietary frameworks by digitizing their knowledge and help train specific entities and topics to capture insights relevant to their business.*
- *AIQ automatically applies proprietary sentiment analysis, deduplication, clustering, and ranking to transform an overwhelming amount of information into structured data that drive better decision making.*
- *AIQ powers thousands of searchable "Topics" like "sustainability" and "Entities" such as locations, products, organizations that eliminate the need for lengthy exclusion Boolean logic".*

This technology is applied to a plethora of content, including news content, broadcast transcripts and social media. Metrics used in its services include Sentiment, Prominence and Salience.

By December 2021, Signal had received over \$100 million in funding, including a recently completed Round D funding of \$50m to invest further in AI and Machine Learning.

Case Study 3

Alva's 'Reputation Intelligence' mines over 3.5 million global sources across 96 languages every day. Analysis includes all print, online, broadcast, social media, parliamentary records and stakeholder-specific channels. Alva also has a 'Reputation Index' which blends

³ <https://www.meltwater.com/en/about/press-releases/meltwater-acquires-cosmify>

⁴ <https://www.signal-ai.com/signal-aiq-technology>

AI and Natural Language Processing technologies, using them to automatically assess and score the reputations of over 2,000 companies across 100 sectors in real-time⁵.

Case Study 4

SESAMm describes itself as dedicated to investment, risk monitoring and market analysis. It is a leading company in alternative data and artificial intelligence, *“delivering global investment firms and corporates data-driven insight and investment analytics.”* To quote from SESAMm’s website, at least one of its products *“Interpret billions of web articles in 100 languages from forums, blogs and media through customizable charts and analytics.”* And also – *“We help you generate investment signals using alternative data and Machine Learning techniques through custom projects.”*⁶

Its proprietary system is called ‘TextReveal’, split across three products:

- Data Streams: For risk monitoring, using ‘systematic insights’ from alternative data streams, includes tracking global sentiment and emotion analysis or more quantitative analysis and scoring.
- Modular API & Dashboard: Fully customisable ‘deep’ insights on companies, brands, products etc. *“Interpret billions of web articles in 100 languages from forums, blogs and media through customizable charts and analytics.”*
- Signals & Strategies: Tailored for investment and creating investment strategies informed by AI led analysis and visualisations.

The SESAMm website explains that the company holds Knowledge graphs of 70 million entities and use deep Natural Language Processing.

SESAMm has just completed Series B funding of over [REDACTED]. The investment is intended to accelerate SESAMm’s global growth, allowing it to acquire talent and expand operations in Europe, Asia and North America. Plans for the funding also include developing AI-enabled research tools and dashboards for corporate customers, as well as continuing R&D investment in its Machine Learning and Natural Language Processing tools.

As a business that only provides clients with insight dashboards and visualisations, no NLA content is shared with clients – only derived data.

Under the current NLA licensing model, which is premised on content delivery, our publishers do not receive any remuneration for such derived data, even though others are monetising our publishers’ work. A specific TDM licence that includes derived data within its scope will become a necessity in the near future and minimise this value gap.

⁵ <https://www.alva-group.com/reputation-intelligence-solutions/>

⁶ <https://www.sesamm.com/>

The potential future value of TDM

If MMOs ultimately replace the model of content dissemination with a model of insight delivery gained from TDM, and the ability to monetise this activity is restricted, the news media industry would risk losing the [REDACTED] revenue provided by NLA for the use of its content while the MMO industry's profits will substantially increase, even though much of the raw material will still be provided at the expense of publishers. This form of windfall profit is not justifiable.

This is in addition to potential loss of value from other sectors, as outlined below. The potential value in TDM for newsbrands can be seen in many areas:

- An August 2020 working paper from the Bank of England titled *"Making Text Count: Economic Forecasting Using Newspaper Text"* concluded that analysing news text *"significantly improves forecasts of macroeconomic variable, including GDP, inflation and unemployment relative to widely used benchmarks."*⁷
- The level of VC funds invested in companies focused on text analytics signals confidence in the potential value of this industry. Luminance, RipJar and Quantexa – to name just a few, have received over USD300 million combined⁸.
- Data licensing is Twitter's second most important revenue source, generating roughly 14% of its total revenues - USD0.5 billion per year. 14% of the £1.2bn UK newsbrand advertising revenues alone equate to £168 million⁹.

It seems unreasonable that publishers who spend over £1 billion per year producing this content might not receive a fair share of this newly created value. Although some publishers provide content free on-line and permit scraping (via a licence), the content is still valuable, is protected by copyright, and will likely grow in value for MMOs with the introduction of these new services. Publishers should receive appropriate remuneration for the use of such content.

As outlined in paragraph 3 below, if any of the options other than option 0 or option 1 are implemented in the UK, this would have a severely detrimental effect on the news media industry, which is already struggling. Whilst revenue is generated for the companies that create insights from publishers' content, publishers are in no way remunerated for the use of their content in this way – something NLA is tasked with solving. A symbiotic relationship between the news media businesses, and the MMO market as well as other businesses that invest in AI and TDM, would be far more beneficial to the advancement of AI and innovation.

⁷ <https://www.bankofengland.co.uk/working-paper/2020/making-text-count-economic-forecasting-using-newspaper-text>

⁸ <https://www.crunchbase.com/organization/quantexa>

⁹ <https://www.investopedia.com/ask/answers/120114/how-does-twitter-twtr-make-money.asp#citation-22>

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

NLA believes the government should maintain its current approach, that is, make no legal change, in order to ensure that rightsholders are fairly remunerated for the use of their works and retain control over commercial TDM uses. The current licensing environment for TDM offers the most flexible and pragmatic solution for users and rightsholders and can be expanded to all types of uses. While NLA does not currently offer a TDM licence, we are actively exploring this for the reasons outlined above. NLA is well placed, due to its experience in licensing, to develop and roll out such a licence on a collective licensing basis.

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

1. Option 0: NLA supports no legal change being made to the current exception. The current law is not an impediment to accessing material for TDM, and collective licensing could also be extended to licences for training AI systems. NLA would welcome updated guidance on the definition of non-commercial research and what might constitute fair dealing, as this would give both researchers and rightsholders greater clarity about what can and cannot be done under the exception.
2. Option 1: NLA would generally support the licensing environment for TDM being improved. However, this would be dependent on what the educational materials, model licences and/or codes of practice look like. Collective licensing means there are no transaction costs associated with locating rightsholders or drawing up individual licensing agreements, as suggested in the consultation document.
3. Option 2: NLA does not support Option 2. It is not clear in the consultation document whether the exception would cover commercial research, or commercial scientific research, as both terms are used. Extending the existing exception to cover commercial research / commercial scientific research and databases would severely prejudice the interests of the rightsholders and would conflict with the normal exploitation of their works through licensing, resulting in a loss of revenue to them whilst the users would be gaining a significant commercial advantage. It is also difficult to draw boundaries between what is commercial research and what is commercial scientific research. The extension is not required, as licence solutions are available for commercial TDM in the market. Further, NLA offers various licences and services based on the database of our publishers' work, which generates valuable royalties for our publishers. Expanding the exception to allow TDM of databases would be severely detrimental to the rights of our publishers. Under the Berne Convention Art 9(2), exceptions may be introduced only in 'certain special cases', which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. AI is described in the consultation document as having '*huge potential to rewrite the rules of whole industries [which] can drive substantial*

economic growth and transform all areas of life', therefore we would argue that commercial TDM and database TDM are not 'special cases' and should not be subject to a broad exception.

4. Option 3: NLA does not support Option 3. A TDM exception for any use with a rightsholder opt-out would, similar to option 2, prejudice the interests of rightsholders in denying them the ability to make a positive decision to license their work. This option would have a substantial impact on the value of existing TDM licences that are already available in the market. It would be difficult to have a clear and consistent opt-out mechanism, and it would also cause confusion in the marketplace as to which rightsholders had opted-out, placing the burden on the user to check the status of rightsholders. It is important that rightsholders have choice as to how and when they license their work, and collective licensing already provides this solution. The consultation document claims that it would be difficult to agree individual licences for works available on the open internet and having to track down and negotiate with thousands of separate copyright owners; however, collective licensing can be used to resolve these difficulties, as it has done so for many other forms of content over many years.
5. Option 4: NLA does not support Option 4. A TDM exception for any use, with no rightsholder opt-out would seriously prejudice the interests of rightsholders, as detailed above. We note that the UK introduced a similar unremunerated exception with no opt-out, for private copying in 2014, which was quashed by Judicial Review. Not only would rightsholders lose revenue and the ability to control how their works are used, NLA believes such an exception would remove the incentive for the creation of works that copyright provides and damage the MMO industry. Licensing solutions provide flexibility, certainty and ease of use for rightsholders and users. Such a broad exception would be inflexible, and its interpretation would most likely be subject to costly legal proceedings.
6. *If you have experience of the EU exception with opt out for rights holders, how has this affected you?*

NLA has no direct experience of the EU exception.

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

Options 2, 3 and 4 would have a negative effect on NLA, its publishers and its licensees. As detailed above, these options would severely prejudice the interests of rightsholders, be burdensome for licensees, create greater complexity, and risk causing confusion in the marketplace.

Patents

NLA is not providing any comment on this section of the consultation.

Section B: Respondent information

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

██████████ *NLA Media Access Limited*

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

2) on behalf of NLA Media Access Limited

C: If you are 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?

- 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

3) A licensing body

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

23) *Other activities – news media*

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

3) *circa 70 people*

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/No

Yes