

Intellectual Property Office Open Consultation

Artificial Intelligence and Intellectual Property: copyright and patents

Publishers' Licensing Services (PLS) is a not-for-profit organisation that provides rights management services to over 4,000 book, magazine and journal publishers. Established over 40 years ago, PLS facilitates access to a wide range of copyrighted material via a range of licensing options, which are administered by their licensing agents, Copyright Licensing Agency and NLA media access, and distributes the revenue generated to publishers, which last year totalled £36.4m.

PLS's core remit is to oversee collective licensing on behalf of publishers for book, journal, magazine and website copying, facilitating licensing solutions that both meet the needs of licensees and recognise the interests of rights holders. PLS also provides other rights management services including permissions clearance.

PLS is owned by the Association of Learned and Professional Society Publishers (ALPSP), the Independent Publishers Guild (IPG), the Professional Publishers Association (PPA) and the Publishers Association (PA). Together with the Authors' Licensing and Collecting Society, The Design and Artists Copyright Society (DACs) and PICSEL, PLS own and direct Copyright Licensing Agency.

PLS wishes to take part and be a pragmatic and constructive voice in the discussion about AI, TDM and copyright and has provided the consultation response below in that spirit. PLS's response concentrates on the TDM aspect of the consultation, being the most relevant to its business, and is based around three broad points. Firstly, that a flexible and adaptive licensing market already exists. Secondly, the removal of rights would fundamentally undermine copyright, be in potential breach of the Berne 3 step test and significantly impact the sector financially, with potential unforeseen future consequences. Moreover, the consultation document and impact assessment published by the IPO relies largely on assumptions about the TDM market and its potential, and that the case for the introduction of further exceptions has therefore not been made.

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.

Publishers' Licensing Services (PLS) facilitates licensing solutions and ensures licensing income is distributed fairly, transparently and efficiently to publishers. PLS takes part in a diverse and flexible licensing market that ensures certainty to both the user and the right holder about how copyright material can be used. Experience has shown that licensing enables copyright to adapt to meet new markets and changes in technology.

PLS is best known for managing collective licensing on behalf of book, magazine and journal publishers. Amongst the wide range of collective licences in place, PLS' licensing agent, Copyright Licensing Agency, licenses media monitoring organisations to undertake TDM, providing a simple licensing solution for MMOs in return for modest licence fees which are distributed to the relevant publishers (via PLS), authors and visual artists. This licensing model has worked effectively for the MMOs and the right holders since 2013.

In response to the needs of researchers and other users requiring permission to use copyright content PLS has developed a centralised system for clearing rights, a process which can otherwise be administratively burdensome and time-consuming for publishers and users alike. PLS launched its award-winning service, PLSclear, in 2017.

PLSclear, a free service for those requiring permission, facilitates direct contact between users and the relevant publishers. Users can benefit from PLS' extensive database to make multiple permission requests at one time. The service ensures that the details of the request are sent directly to the relevant contact at each relevant publisher and are sufficient for them to respond with a price for use. The service encompasses a specific TDM service, PLSclear TDM, that allows researchers to request permission to reuse copyright material easily from a wide range of publishers.

The pricing of permissions is a matter for each publisher and therefore we are unable to comment on this aspect.

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

PLS believe that the government should take a balanced approach to licensing and TDM by giving due recognition to the creators and publishers of the works used by researchers and allowing licensing to continue to innovate and adapt to meet the needs of those wishing to use and build on existing copyright material, whether for AI or for other commercial purposes within the scope of the existing exception for TDM. Collective licensing and PLSclear are examples of successful and flexible licensing.

PLS believe that the government has yet to provide evidence and establish satisfactorily that copyright content cannot be adequately accessed for TDM and AI by means of licensing or that there is a problem that requires intervention and a public interest in adding further exceptions. Furthermore, there has been little investigation as to whether any barriers, should they exist, could not be more easily removed by using existing mechanisms or, in terms of investment, whether alternative incentives would be more suitable, such as tax breaks, that would help stimulate investment without damaging copyright interests.

The UK is considered globally to have a 'gold standard' copyright framework and is a world leader in IP protection which in turn supports the UK's flourishing creative sector which is a net exporter. Weakening copyright and the ability for the rights holder to control the use of their work may lead to

unintended consequences and, over the longer term, damage the UK's creative economy and reputation.

A wider exception to copyright than already exists would lead to the outputs of commercial research and the developers of AI benefiting from the IP protections that the government had removed from the right holders of the very works that such research and AI was built upon. This would create an unfairness and a strong disincentive to creators and publishers to invest in creativity and innovation. Any creator of work used by a commercial organisation to support and develop new businesses should be entitled to license and be fairly remunerated for the use of their works.

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

1st preference – Option 1 (Improve licensing environment for the purposes of TDM)

As stated above, the PLS believe that the government should look in more detail and promote more widely the licensing options already available. We believe that a more cooperative approach and the resulting discussion would provide all stakeholders with an opportunity to collaborate to help facilitate the improvement in the knowledge of licensing and to build upon and improve the framework that already exists.

PLS are happy to be a constructive voice in the above discussion and would like to invite the IPO to meet us to discuss in greater detail the licensing options already available.

2nd preference – Option 0 (No legislative change)

This option would maintain copyright protection and the current licensing framework, ensuring that creators of copyrighted work are remunerated fairly and the integrity of copyright remains.

3rd preference – Option 3 (Adopt a TDM exception for any use, with a rights holder opt-out)

4th preference – Option 2 (Extend the existing TDM exception to cover commercial research and databases)

5th preference – Option 4 (Adopt a TDM exception for any use, which does not allow rights holders to opt out)

PLS strongly oppose the introduction of any further exceptions that would weaken, if not completely remove, the rights of right holders.

The erosion of these rights would remove the incentive for publishers to invest in creativity and innovation or produce work that could be used for commercial TDM and AI purposes. Small publishers would have no incentive to publish data and text in machine-readable formats or to invest in the large-scale conversion of backfile content into similar formats. Furthermore, if opt outs were also introduced, as per Option 3, many small publishers may not have the time and resources to manage their right to opt out and may, as a result, lose out further financially.

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

N/A

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

Should the exception options be selected, this would undermine copyright, contrary to the Berne 3 step test, and have a significant negative impact on the publishing industry.

The change would also fundamentally weaken copyright protections in the UK and would severely jeopardise the licensing framework currently in place, which may have unintended consequences in future. Exceptions would also potentially create legal uncertainty and a consequential rise in legal action between researchers and publishers over whether a specific use of a copyright work falls within an exception.

Such a change would impact not just the large publishing companies but cut off a significant source of vital revenue to many small publishing companies and individual creators. This would have a severe negative impact on the publishing industry and on the services that PLS provide to licensees and licensors.

AI technology is still in an early, albeit fast-evolving, phase and the data on the sector, as the consultation impact assessment document makes clear, is very limited. The document also states that the UK is already a relatively large market for TDM and that its use is increasing, which does not suggest any significant barriers exist.

The consultation document explains that the government's ambition is to encourage innovation in AI and promote its use for public good whilst preserving the crucial role of IP in promoting human creativity and innovation. PLS notes, however, that the consultation document appears heavily in favour of reducing unproven barriers and increasing investment and innovation, the basis of which is made mainly on assumptions and without serious consideration as to whether the solutions to the problems highlighted can be found without the need for any legislative change.

On that basis, PLS believe that the government should balance the needs of both sides fairly and not make legislative changes prematurely that would be to the detriment of one of the UK's most successful and world-leading industries for the assumed benefit of a small group of stakeholders in the technology sector who stand to benefit commercially from using the creative output of others for free.

PLS also expressly supports and endorses the contents of the submissions made to the IPO's consultation by the Publishers Association, the Professional Publishers Association, the Association of Learned and Professional Society Publishers.

Section B: Respondent information

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

[REDACTED]

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

Organisation – Publishers' Licensing Services

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

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

5) Any other type of organisation – Collective Management Organisation

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

11) Information and communication – Publishing, audio-visual and broadcasting

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

2) 10–49

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.