

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 – computer generated works (CGW)

1. *Do you currently rely on the computer-generated works provision? If so, please provide details of the types of works, the value of any rights you license and how the provision benefits your business. What approach do you take in territories that do not offer copyright protection for computer-generated works?*

No response

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

Our preference is for option 1 (Remove protection for computer-generated works). Our second-ranked preference is option 2 (Replace the current protection with a new right of reduced scope/duration). Our third-ranked preference is option 0 (Make no legal change).

The Library's preference is for option 1 because this option presents (1) the clearest alignment to the *raison d'être* of copyright and (2) the greatest opportunity for innovation. As set out in the consultation, the primary objective of copyright economic rights (as opposed to copyright moral rights) is to incentivise creativity and the creation of new works by safeguarding the economic interest of content creators by placing qualified and time-limited restrictions on the use of recorded creations of the mind. We support this long-standing role of copyright. However, as stated in the consultation and by respondents to the 2020 consultation, computers do not require the same incentives and protections that humans may require or benefit from. The current right is not one which affords protections to the computer that creates the work, rather it is a right that affords protections to "the person by whom the arrangements necessary for the creation of the work are undertaken". We are not aware of specific examples where this right has been relied on, but, for example, we expect that such persons could in certain cases include software and system designers, developers, or programmers.

Our view is that providing protection to each work created by a computer is excessive. We foresee that there may be a time in the not-too-distant future when a substantial number of works are created, or created in-part, by computers or AI. These works would likely be held in our collections. We are less able to provide access to, or allow the public to re-use and innovate with, in-copyright materials held in our collections. While this is reasonable in relation to works created by persons, there is a clear opportunity to lower barriers to access and innovation in respect of works created by machines, without causing undue harm to the interests of human content creators.

While our preference is to remove this protection under option 1, it could be proportionate to pursue option 2. For this to be so, our view is that clear evidence should be submitted to the Government that demonstrates that this form of protection is essential to the persons who receive benefit. We are not aware of such evidence, although other respondents may be able to provide this.

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.*

Should this route be pursued, the scope and term of protection should be as limited as possible to achieve the objective of providing protection to stimulate the development of machines that can create computer generated works. It's not possible to state how long or extensive this protection should be, as we do not have evidence that this protection is necessary or beneficial. To frame a suitable scope and term of protection, the Government must obtain evidence that demonstrates why protection is required.

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

No response

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

No response

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.*

The Library licences and purchases electronic resources for the benefit of our users and staff. The Library has not paid additional costs to include TDM facilities in the licences for any of the digital content we subscribe to or purchase. TDM facilities have been included in several licences automatically and at no further cost; for one resource we asked for TDM facilities to be included, which were added without additional cost.

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

No response

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

Our preference is for option 4 (Adopt a TDM exception for any use, which does not allow rights holders to opt out). The Government has bold ambitions to make the UK an "AI superpower". In our view, option 4 is the course required to achieve this ambition.

Option 0 will not enable the UK's AI sector to grow competitively. While welcome, the UK's current TDM exception is not sufficient in scope, scale, or ambition. For example, the current exception does not clearly enable collaboration between parties. We would like to see a TDM copyright framework that allows those with the means and tools to work with those who have the data, and this is not sufficiently clearly enabled under the current exception. The National Library holds a potentially highly significant data corpus for TDM purposes, which could benefit the development of AI. The Library does not, however, have the breadth of technical and research expertise, nor the technical capacities, needed for large-scale TDM work toward AI development. However, there are organisations and actors that do possess such skills and technologies, but who likely lack access to data of scale. A framework that enables those with data to work with those who have the skills and the tools will be essential for the UK to grow as an AI superpower.

Option 1 is not a welcome pathway to success. Licensing frameworks can be barriers to innovation and development. There is a high cost to licensing activities. The scale demanded by TDM and AI development (ie the sheer amount of content that needs to be processed) would make a licensing-based approach impractical and would, we expect, cause otherwise-viable projects to remain unrealised.

Option 2 would be welcome, but would fall short of what is required. In particular, extension of the exception to cover databases would be welcome.

Option 3 would be welcome, but would present unwelcome barriers to innovation and development. This option is broadly aligned to the approach set out in Article 4 of the EU's Copyright in the Digital Single Market Directive (DSM Directive). Although transposition of the Directive into the laws of EU Member States has been slow, we understand that the opt-out provision is already proving challenging in some EU countries. This can be, for example, because opt-outs are difficult to identify and track. Such barriers can slow or prevent text and data mining.

Therefore, our view is that option 4 is the most viable and beneficial option for the UK. Although it appears potentially expansive, we note that (1) such a provision is not unprecedented (as noted in the consultation document) and (2) would, we expect, remain subject to the fundamental "three step test" to ensure that there is a reasonable balance between the interests of copyright owners and copyright content users.

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

No response

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

Options 3 and 4 would benefit us, and by extensive our (potential) users, by enabling the National Library potentially to make more in-copyright content available for text and data mining, especially by third parties.

Patents

No responses

11. *Please rank these options in order of preference (most to least preferred) and explain why?*
12. *Would the changes proposed under Options 1, 2 and 3 have any consequential effects on the patent system, for example on other patentability criteria?*

For options 1 and 2:

13. *If UK patents were to protect AI-devised inventions, how should the inventor be identified, and who should be the patent owner? What effects does this have on incentivising and rewarding AI-devised inventions?*
14. *In considering the differences between options 1 and 2, how important is it that the use of AI to devise inventions is transparent in the patent system?*
15. *Would the UK adopting option 2 affect your global patent filing strategy, if so, how?*

For option 3:

16. *What term and scope of protection should a new right offer?*
17. *What should the criteria for grant of a new right be and why? Particularly should it:*
 - a) *Replicate the current requirements for a patent?*
 - b) *Set a different bar for inventive step?*
 - c) *Be an automatic or registered right?*

General

No responses

18. *What role does the IP system play in the decision of firms to invest in AI?*
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?*
20. *How does AI adoption by firms affect the economy? Does the use of AI in R&D lead to a higher productivity?*
21. *Do the proposed policy options have an impact on civil society organisations? If so, what types of impacts?*

Section B: Respondent information

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

National Library of Scotland

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

The National Library of Scotland is a charitable (Scottish Charity Number SC011086) non-departmental public body primarily funded by the Scottish Government and established under the National Library of Scotland Act 2012.

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

D: If you are an individual, are you? N/A

- 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 – non-departmental public 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) Information and communication – Publishing, audio-visual and broadcasting
- 2) Information and communication – IT and another Information Services
- 3) Education
- 4) 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.

- 1) 250–999

H: The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Yes

I: If you are happy to be contacted by the Intellectual Property Office, please provide a contact email address.



J: Would you like an acknowledgement of receipt of your response? Yes/No

Yes