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Sent:
To: AI Call For Views
Cc: [redacted]
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Follow Up Flag: Follow up
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In response to the consultation, on behalf of Withers & Rogers LLP I respond as follows:

1. Do you agree with the analysis above which concludes that it is not possible for AI to be the author or owner of a UK or Community design?

Yes, it seems that only legal and natural persons can be the owner of a UK or Community design. As an AI does not have legal personality, an AI cannot be an author and so cannot be the owner.

2. Are there, or could there be, any tensions with the current legislation when seeking to register a design or be recognised as the owner of an AI-created design? Who would be the legal entity applying for the rights?

The RDA and CDPA set out that the person who made preparations for the creation of a computer-generated design is the author or creator (s2(4) RDA and s214 CDPA). If read broadly this provision could give the creator of the AI system rights to be identified as the author of a design, even if they have not inputted data required for it to operate.

Design IP rights, as industrial property, exist to stimulate innovation and design. Socially, these IP rights exist to provide protection for the investment in the creation of these new industrial designs.

An AI still necessarily imports boundaries to the design task at hand from a human. So awarding authorship to that natural person involved still seems appropriate, in most cases. However, the authorship or ownership of an AI generated design may depend on the circumstances under which the design came to be.

If a design has been created by an AI system that has been trained for a specific purpose, and fed with the appropriate data, then the creator of that specific AI system should be awarded authorship of designs created by that specific system.

In contrast, if a generic AI system is used to autonomously create a design in response to user input, then the authorship may need to be assessed

individually. The creator of that generic AI system should not automatically be awarded authorship of all designs created by that general system. An infinite set of outputs from such a system would need human involvement in selection, or would require specific input data to arrive at a finite set outputs. So awarding authorship to that natural person involved seems to be more appropriate in that case.

3. Who should be recognised as the author of a design created by AI where the system has been bought from a supplier, and the buyer has provided input or data to the system? Does the wording of legislation need to be changed?

As above, authorship in such situations may need to be assessed on a case by case basis, depending on the purpose of the AI system, and whether that system was fed with data for the specific purpose of generating the design. The wording 'necessary arrangements for the creation of the design' could be clarified further to explicitly exclude the creator of the generic AI system mentioned above from being automatically awarded authorship.

4. Do you consider that legislation should be changed to allow AI systems to be recognised as the author of a registered design or designer of an unregistered design?

No, it seems appropriate that the natural persons associated with the creation or implementation of the AI system should be recognised as the author of a registered design or designer of an unregistered design.

5. If so, how should we assess when AI stops being a tool programmed by a human and becomes an intelligent entity capable of producing its own IP? What proof or evidence would be required?

Upon creation of a generic AI system that can do every step, from conceiving and establishing a design task, creating designs, and selecting a design from those created, there ceases to be any human ongoing investment in the design process. Such designs would then be excluded from IP protection as the AI has no legal personality. There is no detriment to society in not awarding IP protection as the problem of stimulating innovation would cease to exist.

As aspects of the future UK designs framework will be based on concepts currently found in the Community Design Regulation, we would like your views on the following:

6. Unlike UK domestic legislation, the CDR has no provisions relating specifically to computer-generated designs. Does this result in legal uncertainty in relation to authorship and ownership of computer-generated designs? Would the same apply to AI-generated designs?

Yes, that lack of provision in the CDR does create uncertainty, for computer generated and AI generated designs.

7. Are there any other issues in relation to the CDR which we should consider in relation to AI?

8. Can the actions of AI infringe a registered or unregistered design? Can AI do the acts set out in law(s7(2) RDA?

If the "person" set out in s7A(1) RDA has to be a natural or legal persons, then the actions of an AI may only infringe a registered or unregistered design if the infringing design itself would otherwise qualify for IP protection (i.e. not created by a generic AI system), and the AI system is then caused to carry out the acts set out in law by the owner of the resulting designs.

An AI system may be programmed to offer or put on the market a product incorporating or applying a design that it has generated, but would still be as a result of the actions of the owner or creator of the AI system.

9. When considering infringement are there, or could there be, any difficulties applying existing legal concepts in the registered designs framework to AI technology? Does AI affect the use of the "informed user" in measuring overall impression?

There may be difficulties in the definition of a "product" applied for the purposes of infringement. The CDR sets out that the owner has the exclusive right to reproduce the design for commercial purposes (s226(1) CDPA), clarifying that this "means copying the design so as to produce articles exactly or substantially to that design" (s226(2)) CDPA). However, this does not account for commercial activities in the virtual world, which are more likely to be carried out by AI systems, where products are being sold without ever being made into a real-world article. Therefore, the definition of "product" being "an industrial or handicraft item" (s1(3) RDA) may need to be expanded to encompass virtual products.

The use of AI does not appear to affect the use of the "informed user", since this still concerns the natural person who is assessing the individual character of the design. Likewise, the "degree of freedom" available to the author would seem to be equally applicable to AI systems.

10. If AI can infringe a registered design, who should be liable for the

infringement? Should it be the owner, the programmer, the coder, the trainer, the operator, the provider of training data, or some other party?

The person liable for infringement should be the person who is responsible for any commercial activities using the infringing design, or benefits from the infringing acts carried out by the AI system, which in most cases will be the owner.

Kind regards

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