



# Artificial intelligence and intellectual property: call for views

## Copyright and related rights

30 November 2020

LACA, the UK Libraries and Archives Copyright Alliance, lobbies in the UK and Europe about copyright and related rights on behalf of its member organisations and UK users of copyright works through library, archive and information services.

### **Mission statement and key objectives**

LACA advocates for a fair and balanced copyright framework which respects the rights of copyright holders whilst placing equal value on the importance of users' liberties. In particular, LACA's aims are:

- To be active and effective in promoting, advocating and lobbying on behalf of our members.
- To raise and maintain awareness about copyright and licensing in the library, archive and information sectors.
- To work with colleagues internationally to bring about a harmonised legislative framework, effective for the digital age, that facilitates cross-border working.
- To collaborate with the UK's education and cultural heritage sector to encourage a joined-up approach.

# The use of copyright works and data by AI systems

## Use and liability

The description of how AI may use copyright works and databases appears generally correct.

The call for views notes that there are some who argue that ‘licensing models evolve with technology’ and therefore copyright is not an obstacle for AI. This is an insufficient logic. The evolution of licensing models is not a proxy for the evolution of a fair, balanced, and progressive copyright framework. It is crucial that the UK does not seek to rely solely or primarily on licensing models to drive evolution in our copyright frameworks. Licensing is the tool of the copyright owner. A copyright framework that is over-reliant on licensing models for its advancement will rapidly become unbalanced, which will damage innovation and society more broadly. Those with the greatest means will be able to derive the most benefit from licensing models - without effective balances and checks, such a licensing model-driven approach would detrimentally favour a decreasing number of well-resourced rights owners. The copyright framework must evolve in full. Specifically, exceptions to copyright must evolve at pace, while other factors, such as the duration of protection, must remain under scrutiny.

## Exceptions and licences

The call for views discusses the effectiveness and applicability of s.29A CDPA, noting ‘It is also unclear whether all activities of AI systems can be described as “data mining”. For these reasons, some copies made by AI systems may be covered by the TDM exception, but many will not be’. It is important to bear in mind the nature of the current exception, which permits ‘computational analysis’ of ‘anything recorded in the work for the sole purpose of research for a non-commercial purpose’. We feel ‘computational analysis’ could be more expansive than the phrase ‘text and data mining’.

However, we are also minded to highlight the limitations of s.29A CDPA, welcome as that exception is in general. This exception permits only the analysis of ‘anything recorded in the work’, so long as copying and use is for the purposes of non-commercial research. Articles 3 and 4 of Directive (EU) 2019/790 (the ‘DSM Copyright Directive’) set out what are in some ways more permissive exceptions in favour of using existing content for text and data mining purposes. Although aspects of these Articles are worrying, for example Article 4(3), the generally wide application of these DSM Copyright Directive exceptions are likely to be of significant benefit to the AI sector in the EU. We urge the UK to consider carefully the need for exceptions to copyright in the UK that offer the best possible opportunities for fair and sustainable re-use of content, while respecting the rights of copyright owners. In doing so, the UK may wish to look at examples, such as from the EU, in designing copyright exceptions that are robust and favourable to innovation.

To this end, our view is that the UK needs to think big and, in particular, consider scale and speed. The following section of the call for views highlights the AI activities taking place in other countries, singling out the United States. It is notable that copyright frameworks differ across the world. For example, in the United States there is an open-ended exception to copyright ('fair use') that we do not have in the UK. The scale and speed of developments in AI, as in other fields, will be exceptional and we are concerned that limited, case-by-case exceptions to copyright will remain unable to keep pace. With copyright frameworks that lag behind technical advances, the UK risks being placed at a disadvantage in the field of AI. As the ways in which content may be re-used evolves, copyright law needs to evolve. It is unlikely that limited, fixed evolutions made today will be suitable in just a short period of time. For example, it is worth considering that the CDPA has been in place for just over 30 years, yet it has been subject to a vast number of modifications and adaptations. As the scale and pace of technological development greatly accelerates in the coming years, as compared to the period 1989 to 2020, it should be questioned whether exceptions in their current form can keep pace. We therefore urge the Government to give serious consideration to a more flexible, technology-neutral copyright exception framework, perhaps founded on the concept of an open-ended norm.

In summary, the UK copyright framework can and should do more to enable AI to effectively re-use content. We would welcome stronger, more effective exceptions to copyright, as set out above.

## Additional protections

Our view is that there should not be, and there is no evidence of any need for, imitations on existing exceptions or introduction of new rights in input data. Any argument in favour of such should offer clear demonstrations of the need and evidence that such mechanisms would alleviate the need, and would do so without undue detriment to information users and creators more widely.

## Protecting works generated by AI

Copyright should work to protect and encourage human creativity and should not be used to protect the creations of machines. As we raised in the section above, consideration should in particular be given to scale, as well as to the logic of copyright. Over the coming years there will be a vast and rapidly expanding range of works created by AI. Copyright protection in every such individual work will present an insurmountable challenge to content users. How, for example, will such rights be administered?

More fundamentally, however, we cannot identify an argument in favour of providing copyright protection to AI-generated works. Copyright functions, in the UK, as 'an economic tool that incentivises and rewards creativity', as stated in the call for views. There must be separation between the creativity of humans and the work of machines. We can see no way in which

awarding economic protection to machines for the material they create will incentivise those machines to create more works.

It could possibly be more relevant to consider awarding a form of protection to these works more comparable to the protections afforded to 'entrepreneurial works'. However, we are sceptical that this would be necessary, beneficial, or manageable. Once again, we cite the matters of scale and the logic of copyright itself. Such rights would need to be administered and should work to offer protections, otherwise they will simply serve to (1) inhibit use of content and (2) further undermine the logic of copyright to information users, which would harm the protections provided to human-created works. Again, we note that it does not seem logical to use economic protections to incentivise machines to create more works.

UK copyright law has evolved substantially since its first inception. In particular, the range of protections and the periods for which works are protected has grown. Works are now protected for decades, if not longer. It is of vital importance that any new rights are only introduced on the basis of substantial evidence that the new, or evolved, right will incentivise and reward creativity.

If there is to be no new protection for AI-generated works, as we advocate, the Government should take steps to make this clear, because legal ambiguity can inhibit innovation. The Government should take steps to clarify that only works created by humans may be protected by copyright and related rights, save possibly for the provisions of s.178 CDPA. However, as noted in the call for views, this provision is out of step with the global norm, and AI innovation has been substantial in countries without such provisions (the US is cited as an example). Accordingly, we would be in favour of this provision being reviewed.

## Copyright protection for AI software

We believe that the UK's current copyright laws are adequate in this area.