ALLIANCE

FOR INTELLECTUAL PROPERTY

Response to IPO Artificial Intelligence Call for Views

About the Alliance

The Alliance for Intellectual Property is a unique association of 19 organisations representing IP rich businesses and creators – sectors that continue to grow and outperform the wider economy. Our members include representatives of the audio visual, music, toy and games, business software, sports rights, branded manufactured goods, publishing, retailing, image, art and design sectors. They share a collective interest in ensuring that Intellectual Property (IP) rights are valued in the UK and around the world and that legislative regimes exist that enable the value and contribution of those rights to be fully realised.

Use of Artificial Intelligence (AI)

Within the industries that the Alliance represent, there is increasing use of AI technology. This is perhaps unsurprising given many of these sectors have been transformed into fully functioning digital businesses, making the concept of analogue versus digital a historical relic. In our submission we have focused on copyright issues but will follow-up with further comments in relation to other IP rights.

Examples of the use of AI in IP rich sectors include the education sector where businesses are using AI to improve IP protection, content discoverability, market prediction, and for their customers: enabling routine search and summarisation tasks and creating new insights. Within the music industry, streaming services are using AI to personalise users experience, artists are using AI to master or remix a recording automatically, while music production companies are beginning to use AI to generate music and to identify successful artists.

In the audiovisual sector, companies use AI technologies to bring visual effects to the finished audiovisual work whilst also using it to aid post-production and editing processes. On the distribution side, AI technologies allow consumers to discover and consume more content through more diverse channels.

Across the publishing industry, companies are investing in AI, collaborating with technology start-ups and academics to create tailored learning materials for students, support the production of peer-reviewed research outputs and to assist with the marketing of consumer publishing products.

Digital technologies, including AI, are therefore of central importance to IP rich industries, helping create content, products and services to deliver them to a diverse range of customers and consumers.

Too often in the past, when new technologies have emerged, the public, regulatory and political discourse has been to characterise the IP framework as somehow inhibiting the development of that technology. History has shown that not to be the case, and that the current framework is flexible and responsive enough to adapt to, and embrace, new situations. We believe this remains the case and applies to AI technologies.

ALLIANCE

FOR INTELLECTUAL PROPERTY

1. Do you agree with the above description of how AI may use copyright works and databases, when infringement takes place and which exceptions apply? Are there other technical and legal aspects that need to be considered?

We believe this is a fair summary but note that, while the use of AI is currently spreading rapidly, it is still in its infancy. However, we believe the IP framework is flexible enough to adapt to these uses as long as all those participants in the AI industry recognise that IP laws need to be respected as they develop new uses.

2. Is there a need for greater clarity about who is liable when an AI infringes copyright?

We believe that the existing liability regime is adequate and provides for both primary and secondary liability in the use of AI. We believe that, while AI is not a person, there sits behind the technology a person or company who does control the technology and therefore authorises infringement or secondary liability if others subsequently use that system. Ultimately, the use of AI should not become a de facto escape clause for avoiding liability, but we believe the current law applies in such a way that this will not occur.

3. Is there a need to clarify existing exceptions, to create new ones, or to promote licensing, in order to support the use of copyright works by AI systems? Please provide any evidence to justify this.

We believe it is premature to ask whether a new exception from copyright would be required, before it has been demonstrated that the existing copyright framework and existing or potential market solutions are not sufficient to address this issue. We believe that licensing has proven extremely adaptable to changing technologies and can see no evidence to suggest that won't be the case with AI. We understand that questions have been raised in relation to the Text and Data Mining exception. This exception permits the making of copies for non-commercial research, which should rule out its applicability for a significant proportion of the AI systems for producers and distributors of content. Our view is that the current UK TDM exception is fit for purpose and provides an appropriate balance between allowing important non-commercial research and development and maintaining adequate copyright protection for right holders. Again, expanding exceptions to create a de facto, commercial benefit for AI would be an unnecessary market intervention where licensing is an existing appropriate mechanism to enable access to copyright material.

4. Is there a need to provide additional protection for copyright or database owners whose works are used by AI systems? Please provide any evidence to justify this.

Although AI is still in its infancy, we believe the copyright legal framework, licensing, and exceptions regime provide sufficient flexibility to provide protection for such content. Clearly there will be challenges of enforcement but we believe this should be the focus as opposed to rewriting the copyright framework.

ALLIANCE

FOR INTELLECTUAL PROPERTY

5. Should content generated by AI be eligible for protection by copyright or related rights?

We do not see AI as presenting questions of ownership that cannot currently be managed through the current framework in such a way as is workable for all those involved in the development or production of an AI generated work. It is possible that this situation might change over time and as AI content creation develops, but is not at the moment creating enough uncertainty to warrant an intervention that might have unforeseen consequences, especially as use of AI is still emergent. It is important that AI generated works receive an appropriate level of copyright recognition and protection and, whether created by AI systems or not, that human creativity continues to be recognised at the heart of the copyright framework. AI systems include the inputs of many humans and/or business entities, but so does other content subject to copyright. The CDPA provides, for example, that the employer is the first owner of copyright in works, including films, created in the course of employment. This demonstrates that complexity already exists and is being managed through the supply chain using contracts that provide certainty for works with multiple ownership interests.

6. If so, what form should this protection take, who should benefit from it, and how long should it last?

As described above, we would see AI generated works as being subject to the same rights as afforded other works, and that assigning ownership can be managed as works currently are within the existing frameworks. Complexity in determining ownership in AI is no different to that of existing content and can be assigned, and the benefits accrued, through existing business practices.

7. Do other issues need to be considered in relation to content produced by AI systems?

We believe that providing guidance for AI system developers and users on respect for the use of content that is subject to copyright is vital for ensuring that an AI compliant industry develops, providing certainty for all market participants.

8. Does copyright provide adequate protection for software which implements AI?

We believe that the copyright framework does provide adequate protection.

9. Does copyright or copyright licensing create any unreasonable obstacles to the use of AI software?

We believe the copyright framework has not inhibited the development of technologies in the past, despite claims to the contrary at the time of the emergence of some technologies. Having to license content will not inhibit the emergence of AI technologies, but provide legal certainty for AI developers and users that will support investment by providing clarity.