Artificial intelligence and intellectual property call for views: copyright and related rights

Response from the Archives and Records Association UK and Ireland, submitted by the Legislation and Standards Working Group

Correspondence: legislation@archives.org.uk

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The use of copyright works and data by AI systems

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?

Yes, in general we agree with the description provided.

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

Although the description set out in the call for views of who is likely to be liable appears clear, it is likely that in practice this may be more challenging. This may particularly be so over time, as the use of work for AI and the creation of new AI works increases. Our experience as records managers tells us that there is frequently incomplete or missing data associated with works, which may be needed for the apportionment of liability in the manner set out in the call for views. While works created within defined systems with well-managed controls, such as in large businesses, may normally hold sufficient data, works created in a more informal manner, for example by individuals in their private capacity, may not.

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 welcome a copyright framework that provides strong exceptions to copyright. We agree that licensing frameworks are an important part of the copyright and related rights ecosystem, but these have limitations. In particular, over time, it can become challenging or impossible to effectively license works for re-use, in particular for novel forms of re-use that may not have been envisaged when the works were first created or licensed. Exceptions to copyright, in particular those that are flexible and technology-neutral, are crucial. We would welcome expansions to the exceptions to copyright in the UK or strengthening of the current exceptions in favour of content users. In our experience, exceptions to copyright are vital components of a well-functioning

copyright framework, in particular when considering the use of material over a long period.

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.

We are not aware of a need for additional protection for copyright or database right owners whose works are used by AI systems. The copyright and database right frameworks already provide substantial protections for owners.

Protecting works generated by AI

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

No, copyright should not protect works to the extent that they are generated by AI. Copyright functions to protect the economic and moral interests of creators and to encourage the creation of new works. We do not see that providing such protections to machines will incentivise them to create further works.

Copyright protection is lengthy and can present challenges to current and future information users. A single work created in a few moments will in most cases be protected, automatically, by copyright for decades. In many cases this is logical and correct, for example in protecting the legitimate interests of creators. However, AI systems will create works at a speed and scale that will likely dwarf what humans create. These works will not be human intellectual creations, but the products of machines. It may prove hugely onerous on creators, information users, and information managers for copyright to apply to such works, as these rights will need to be understood (for example, who owns them, how long they last, etc.) and dealt with for decades or longer. At the same time, we cannot see that such rights would deliver benefit, as the AI would not, through these rights, gain any incentive to generate new content.

Copyright protection should be reserved for human creativity.

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

As stated above, we do not think it necessary or beneficial to provide protection for works generated by AI.

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

No response

Copyright protection for AI software

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

Yes. Out best understanding is that the UK’s laws and protections in this area are suitable and function well.

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

We are not aware of any specific examples, one way or the other.

Additional comments

This call for views rightly highlights the potential of AI for the UK, as well as the role that IP rights, including copyright and related rights, do or may play in the growth of this field. As archivists and records managers, we wish to stress the importance of sustainability and clarity in designing IP frameworks that will work for current and future information users and creators. Decisions made today, for example on the form and duration of rights, have long-lasting impacts, even (or, perhaps, especially) when these concern emerging or evolving technologies. For example, the law of copyright in photographs and moving image works evolved through the first half of the 20th century, in particular in relation to the duration of protection. Many in our sectors will be all-too-familiar with the copyright duration charts provided by The National Archives at https://www.nationalarchives.gov.uk/documents/information-management/copyright-related-rights.pdf. These, and related tools, are vital resources in the management of copyright content over decades and generations.

Works generated by AI have the potential to be powerful as well as disruptive. AI will likely create a far wider range of works, far faster, than human creators. These are works that will be used and re-used by contemporary and future generations, if the law enables it. Tighter restrictions and, in particular, restrictions designed with a short-term focus but a long-term impact, risk limiting the benefits of AI and AI-generated works and compounding the copyright challenges faced by future archivists and records managers.

Therefore, we encourage the Government to take exceptional care in its approach to IP for AI. The more flexible, future-proof, and measured that our laws in this area can be, the more likely it will be that we will be able to create in the UK an AI environment that is beneficial and sustainable, and one that our professions can effectively support.