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IPO call for views
Artificial Intelligence: copyright and related rights

Summary

DACS is grateful for the opportunity to provide views and evidence to the IPO in respect of the relationship between artificial intelligence (AI) and copyright. As AI becomes ever more present in peoples' lives and work, it is a timely moment to consider the impact it will have on IP rights.

DACS is pleased to share the following observations:

- Behind all AI are humans, whether acting as individuals or as a company, who make decisions on how to train and develop AI.
- Copyright licensing offers practical solutions to help AI developers use copyright-protected works in a way that rewards copyright owners.
- Copyright is not an obstacle for AI developers – it is an essential tool for human creators to have a stake in their work.
- No further exceptions to copyright are required to encourage AI developers to work in the UK.
- AI should not be used as a shield for infringers to hide behind in order to avoid liability.

About DACS

DACS is the UK's flagship collective rights management organisation for visual artists, representing over 100,000 artists worldwide. DACS manages copyright and Artist's Resale Right on behalf of visual artists and champions their sustained contribution to the creative economy.

Through research and development partnerships, DACS has become a thought-leader in technology, from blockchain to AI. DACS is already harnessing the potential of AI in day-to-day applications and innovative uses for helping licensing artistic works to customers. We welcome the development of AI applications to increase the availability of visual works in a way that generates equitable remuneration to artists.

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DACS' Statement on AI

Human Intervention

To gain a deeper understanding of how AI works in practice, DACS has collaborated with AI researchers, developers and experts, including Andrew Burgess, an AI adviser. Burgess states[1] that it is a common misconception that AI applications have the capacity to carry out autonomous actions and processes. Instead, AI applications have a narrow intelligence predicated on an input-and-output basis. An AI application must first receive information to then carry out its function, whether that is speech recognition or image analysis. AI applications must be trained by a human to do this task, and AI applications are given information by a human also.

AI cannot replicate the human intelligence needed to create original literary, artistic or musical works in the way that a human can. The works an AI application may 'create' (i.e. the application's output after receiving an input of other information) can only ever be a derivative work.

Use of language

AI developers often describe the information they use to train an AI system or application as 'data', however it is not a specific term – it is a broad concept that could include anything from a short numerical sequence to a substantial part of a copyright-protected work. Whilst the word 'data' is used frequently in journalism and reporting, use in a policy context could put copyright protection at risk.

AI made headlines in the art world in 2018 when an auction house sold the first work that was 'created' by an algorithm. One of the creators of the algorithm explained that the AI system was "fed… with a data set of 15,000 portraits painted between the 14th century to the 20th"[2] Many paintings from the 20th century are still protected by copyright depending on when the author died, yet rather than considering the paintings as 'works', the AI developer refers to them as 'data'. If this language filters down into policy making, it will become established and accepted that original artistic works are, for the purposes of AI, just a set of data, and as a consequence the rights of individuals who created those artistic works will be eroded.

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[1] Burgess, Andrew, *Why We Should Be Narrow Minded About AI*, accessed 14.11.2020: https://aibusiness.com/narrow-ai-andrew-burgess/

[2] Christie's, *Is artificial intelligence set to become art's next medium?* 12.12.2018 accessed 14.11.2020 https://www.christies.com/features/A-collaboration-between-two-artists-one-human-one-a-machine-9332-1.aspx

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Response to the IPO's questions

Question 1: Do you agree with the 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?

The description set out in the IPO's call for views presents a good summary of how AI may use copyright protected works at present. The description also correctly identifies when an infringement would take place and sets out the existing exceptions to copyright that AI developers and operators can use.

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

Behind all AI applications exists a person, whether carrying out their role in a company or acting as an individual, who has control over the information used to train or develop AI. The existing liability regime is adequate to cover a scenario where copyright-protected material has been used in way that infringes copyright to train or develop AI software.

It is important that the government does not create a carve-out of existing liability for copyright infringement by AI.

Question 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 strongly believe that there is no need to clarify existing exceptions or to create new ones to facilitate the use of copyright works by AI. If there is a lack of understanding of copyright in the AI-related industries, this could be dealt with through targeted copyright education and awareness.

Copyright protects the works of creators who rely on remuneration for use of their works. Artists, along with writers and musicians, should be supported by the copyright framework. Creating new exceptions or adapting existing ones would undermine artists ability to make a living from their work.

Licensing opportunities are increasingly more flexible and more efficient as licensors begin to adopt certain technologies themselves. DACS has carried out research and development into

using tools like blockchain to create more transparency in the art market[3], and these tools can also be used for creating efficient, large-scale licensing opportunities.

We would be pleased to work together with government to encourage and support licensing initiatives that can respond to a greater application and use of copyright-protected works in AI-related industries.

Question 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.

DACS is aware that AI operators seek use of copyright-protected works on a large scale to train and develop AI. By way of example, developers working on *The Next Rembrandt Project* used the entire collection of Rembrandt works to train their AI system[4]. It is vital that the UK's enforcement regime is sufficient to allow rightsholders to take action against large-scale infringement where AI developers have used a sizeable tranche of copyright-protected works without authorisation.

Questions 5 & 6. Should content generated by AI be eligible for protection by copyright or related rights?

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

AI-generated content can already achieve copyright protection under the existing copyright regime. Developers, AI operators and others involved in creating AI software will be able to claim ownership of copyright in works that meet the legal criteria for a work to achieve copyright protection.

In industries such as film, copyright ownership is dealt with through contracts that create a chain of title and certainty over works with the creative input of several people or businesses. AI industries do not necessarily provide any new complexities that have not been dealt with previously under the UK's copyright framework.

[3] Duncan MacDonald-Korth, Vili Lehdonvirta and Eric T. Meyer; Alan Turing Institute, Oxford Internet Institute, *The Art Market 2.0 Blockchain and Financialisation in Visual Arts*, 2018: https://www.dacs.org.uk/DACSO/media/DACSDocs/Press%20releases/The-Art-Market-2-0-Blockchain-and-Financialisation-in-Visual-Arts-2018.pdf

[4] https://www.nextrembrandt.com/

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

DACS recommends that the government increase copyright awareness amongst the AI industries and promote market-led solutions to copyright and AI interactions, such as licensing.

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

Yes, we consider that the existing copyright framework provides adequate protection for software that implements AI.

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

Copyright does not create any obstacles to creating or using AI software. DACS considers it is essential that copyright is not viewed as an obstacle but rather as a tool.

Copyright supports the growth of the creative industry – worth £111.7 billion to the UK economy – by giving creators a say in the use of their work, and a right to be remunerated for these uses. Without copyright, many creators would not have the incentive to create their works, nor to afford the costs of being a creator.

Copyright licensing can provide legal certainty for AI developers and will not inhibit the growth of AI technologies. The government should play a role in education and facilitating licensing solutions rather than creating legislative intervention.

For further information please contact:

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