The Entrepreneurs Network response to the consultation on Artificial Intelligence and Intellectual Property

Computer Generated Works (CGW), in response to questions 2 and 4:

We believe that some form of Option 2 should be adopted, to reduce the duration of AI copyright protection. We anticipate serious complications that will arise in the future over the inability to distinguish AI-created inventions, copyright, designs, and other forms of intellectual property. Given how fast-moving the use of AI is, the lines between these forms are likely to become extremely blurred, potentially causing major confusion and uncertainty of a kind that is difficult to anticipate given the massive 50-year term currently offered to such works. We suggest that the duration of AI copyright should be shortened from the current 50 years, to be brought in line with the 20 years provided to patents. This would provide much greater certainty and clarity to creators, users, and licensees of CGW.

Text and data mining (TDM), in response to questions 7, 8 and 10:

Option 3, on extending the TDM exception for any use, but with a rights-holder opt-out, is strongly preferred. Option 2 and 4 seem identical, and are good second-best choices. However, Option 3 seems to best balance the rights of existing rightsholders with the significant benefits to be derived from extending the TDM exception beyond just non-commercial uses. Having first heard of this option from the December 9th AI Council and IPO roundtable, we think it is an extremely elegant and highly desirable solution and that both organisations are to be highly commended for putting it forward.

Without any kind of extension of the TDM exception, the development of AI in the UK is likely to face some major problems.

Firstly, companies that follow existing copyright law to the letter, by trying to train AI on databases that are either free or easily licensed, face problems of bias. If only certain kinds of data are easily available to them, then this introduces the biases of those datasets into the development of AI. This is an especially large problem for smaller companies and start-ups that wish to develop AI, who can be limited to using cheaper, low-quality, or free data. Not only does this impair the quality of AI development, but it places smaller companies at a competitive disadvantage compared to much larger companies that collect data on their own platforms, as well as placing UK companies in general at a distinct competitive disadvantage compared to other jurisdictions that implement much wider TDM exceptions.

Secondly, the law as it currently stands incentivises many companies to be reticent about sharing any details of how they train their algorithms. They rightly fear that revealing any details of how they have trained the AI may open them to copyright infringement suits — whether justified, accidental, or spurious. This is the case in the UK, certainly, where we can probably assume that much infringement is already taking place behind closed doors, and in the US also, where the law is still unclear. Although AI companies in the US have claimed fair use for TDM, and there are some indications that the law will uphold this, there is still a great amount of uncertainty.

The overall current situation is thus that many UK AI companies keep quiet about their methods and sources. Option 3 would help to resolve these issues, as well as providing a clear advantage to the UK from the perspective of national economic competitiveness — it would provide clarity of a sort that is not yet found in the USA, where such issues are still being litigated, and provide a much broader exception than in the EU.

We believe that Option 3 would help mitigate problems associated with bias, market concentration, transparency, and high transaction costs from requiring licenses; it would improve the quality of the UK's AI research and make the sector significantly more competitive than its rivals; and it would at the same time still allow for database rightsholders to continue to capture the value of their databases. It is a clear win-win policy.

As was suggested to us at the roundtable, we strongly agree with the suggestion that database rightsholders who do not use a paywall to restrict access to their databases should have to include their opt-out within their data in a machine-readable format, the standard of which should be set by the IPO. Otherwise, they should simply continue to use paywalls as they currently already do.

Patent Inventorship, in response to questions 11, 12, 13, and 14:

Options 0 and 1 are similar, if not identical, and are preferable to the other options. Our position here is that AI needs no incentive to invent, and as things currently stand, given AGI does not yet exist, AI is always a tool used by a human individual. As such, the human who uses that tool should be entitled to the patent, and no other. If AGI invents independently, then it should not be entitled to any patents, as it needs no incentive nor monopoly. It is not human.

As AI is always a tool, we strongly believe that the use of AI to aid in the inventive process should in no way impair or invalidate the claim of the patentee to their invention. Otherwise, if there is no clarification given by the IPO or in legislation to this effect, then it would severely disincentivise the use of AI to accelerate the pace of innovation, potentially harming UK economic competitiveness in the long-run. One suggestion heard at the roundtable discussion was that it should be made clear that AI itself simply cannot independently invent, and that AGI is irrelevant. We would welcome such a clarification.

At the roundtable discussion, one suggestion mooted was that the developers of the AI used as a tool to invent something should have some kind of claim over the patent. We strongly disagree. This would be like claiming that the manufacturer of a hammer, used in building a house, should have a claim to your house. Such a move would seriously complicate the intellectual property regime and stifle the use of AI in invention. It should certainly be avoided.

Respondent Information:
A: [redacted] on behalf of The Entrepreneurs Network
B: 2 & 3) Organisation and Individual
C: The Entrepreneurs Network is a think tank for Britain's entrepreneurs. It produces reports on the best policies to support entrepreneurship, hosts regular events to bridge the gap between entrepreneurs and policymakers, and makes the case for entrepreneurs' contributions to society. We are also the Secretariat for the All-Party Parliamentary Group for Entrepreneurship, and maintain a network of over 10,000 entrepreneurs.
[redacted]
E: 5) Other - think tank, but with an extensive industry-crossing network
F: 23) Other - Research
G: 1) Fewer than 10 people

H: Yes.

[redacted]

J: Yes