POLITICO

Shots fired in the AI data wars

by Laurie Clarke • NOV 10 • 9 MINUTES READ

Press play to listen to this article

0:00 / 11:39

Voiced by Amazon Polly

MORNING
TECHNOLOGY UK

By LAURIE CLARKE

with TOM BRISTOW

PRESENTED BY

SNEAK PEEK

— A row over AI and copyright heats up as tech firms call for a more liberal approach to British IP rules.

— Ofcom's first batch of Online Safety Act guidance provides some relief for encryption fans.

— The biggest tech lobbying battle of the year is entering the endgame.

Good morning and happy Friday,

This is Laurie, signing off for a week's holiday. I'll be thinking of you as I sip an aperitivo by the Mediterranean Sea, promise.

You can get in touch with your news, tips and views by emailing Vincent Manancourt, Tom Bristow and Laurie Clarke. You can also follow us on Twitter, @vmanancourt, @TomSBristow and @llaurieclarke.

DRIVING THE DAY

DATA WARS: An open statement backed by tech industry groups warns that unless the U.K. clarifies its copyright regime, it risks becoming "uncompetitive in AI markets."

The warning: "While many other countries have clarified their intellectual property laws to support AI and innovation, the UK has yet to introduce a text and data mining [TDM] exception to explicitly support knowledge transfer and commercial AI," it reads. The ongoing copyright debate "risks entirely halting the development of a new technology."

What's more: In addition to the commercial impact, lack of action will frustrate "knowledge transfer and hinder open source development of AI," reads the statement. It notes that "the US, Israel, South Korea, Singapore and Japan have broad fair use doctrines or [TDM] exceptions of differing levels of flexibility aimed at supporting research and technological advancement."

Flashback: A TDM exception was floated by the Intellectual Property Office in June 2022, but hastily retracted following outrage from the creative industries. The IPO has

convened discussions with stakeholders from the creative and tech sectors with the aim of producing a consensus-based voluntary "code of practice," but talks hit something of an impasse and the code is yet to materialize.

The undersigned: Signatories of the statement include the IP Federation, comprising firms from across a diverse range of sectors (e.g. AstraZeneca, BT and Siemens), BSA (the Software Alliance), comprising the likes of Microsoft and IBM, and open research and tech groups, like Creative Commons, WikimediaUK and OpenUK.

The asks: The statement argues that the IPO's code of practice "provides a particularly important opportunity to provide clarity" to the U.K.'s copyright regime. "Even without an explicit commercial [TDM] exception, other exceptions and legal doctrines will often mean that [TDM] on copyright works is not a copyright infringement," it reads.

Brass tacks: Specifically, the co-signed want to see the code clarify "that access to broad and varied data sets that are publicly available online remain available for analysis, including [TDM], without the need for licensing."

That's a new one: Apparently latching onto PM Rishi Sunak's obsession with "AI safety," the statement argues AI models need as much data as possible "in order to function correctly, safely and without bias." "Safety is critical, as highlighted in the Bletchley Declaration," it says.

The opposition: "It's our contention that copyright laws are being broken on a massive scale," Dan Conway, CEO of the Publishers Association, told a Lords committee earlier this week. The IPO talks had stalled because "tech companies have still not acknowledged that copyright applies, and without the acknowledgement that copyright applies, that voluntary process will run aground," he added.

AGENDA

NEXT WEEK: Your week ahead calendar is here.

DIARY DATES: The DMCC Bill is back in the Commons for report stage on Monday November 20, while the Media Bill returns for its second reading the following day.

AROUND THE WORLD

CYBER WARFARE: There's no evidence to suggest that Iranian hackers pre-planned cyberattacks with Hamas as part of the militant group's Oct. 7 assault on Israel, despite an increase in hacking activities later, according to a Microsoft report released Thursday.

€13B TAX FIGHT: A European Union top court adviser gave some hope to regulators' battles against Big Tech tax deals when he said that judges should reconsider scrapping Apple's massive back-tax order. Edith Hancock has the story.

STOCK SHOCK: Chip designer ARM's share price has taken a tumble after the company's revenue forecast failed to meet analysts' expectation, the FT reports.

****POLITICO's Global Playbook takes you behind the scenes at COP.** As part of the major global events that shape international policy, our newsletter delivers daily reporting on green policy shifts taking place at COP28. Want to get them in your inbox? Sign up here.****

ONLINE SAFETY ACT

ONLINE SAFETY ACT: Ofcom unloaded its first batch of Online Safety Act guidance yesterday detailing how platforms should be policing illegal harms. In a sea of documents, one part stood out. The guidance calls upon larger and higher risk services to implement "hash matching" technology, which can identify illegal CSAM images by matching them to pre-existing images in a database.

But but but: Interestingly for privacy advocates and tech companies, the summary document shared with us read: "Consistent with the restrictions in the Act, this proposal does not apply to private communications or end-to-end encrypted communications. We are not making any proposals that would involve breaking encryption."

The rationale: Although only larger, high risk services are in scope right now, this is primarily because in order to implement hash matching, companies "will need access to third party databases with records of known CSAM images." A limited number of these means reduced capacity to serve an infinite number of clients. This issue will be revisited should the capacity of database providers expand over time, the guidance says.

Start celebrating: Nevertheless, "compared to where the Online Safety Bill started, this is a positive step," said Andy Yen, Founder and CEO of Proton. "Ofcom has shown it's not inherently against end-to-end encryption…While we still need clarity on the exact requirements for where hash matching will be required, this is a victory for privacy."

Not entirely in the clear: "That said, it's important to remember that in general, hash matching is not the privacy-protecting silver bullet that some might claim it is…," continued Yen. "While Ofcom are stating that scanning is not compatible with end-to-end encryption, it still poses a danger to privacy, potentially opening the door to abuses of power if proper safeguards are not put in place."

The other side: The view looks different from the vantage point of the firms selling online safety tech. "It feels unambitious with respect to smaller platforms (e.g. not even requiring foundation approaches like hash matching), although the logic provided for this seems reasonable," says Ian Stevenson, chair of the Online Safety Tech Industry Association. "I will be interested to see how quickly database providers can react, and how quickly Ofcom can raise the bar as they do."

Seeking evidence: These proposals aren't set in stone, and as part of the consultation, Ofcom is seeking additional input on the "accuracy of perceptual hash matching and the costs of applying CSAM hash matching to smaller services", as well as how hash matching and/or URL detection might be applied to terrorism content, "including how such measures could address concerns around 'context' and freedom of expression."

COMPETITION BILL

DECISION DAY: No. 10 is due to announce its decision imminently on whether it is sticking with the appeal mechanism in the Digital Markets, Competition and Consumers Bill (DMCC). The bill is coming back to the Commons on Monday November 20 for report stage and currently still has "judicial review" listed as the appeal standard, but it is not too late for changes.

Big Tech's big ask: The biggest tech companies have been lobbying for the appeal standard to change to merits, so they can appeal the rationale of decisions made by the Competition and Markets Authority (CMA), rather than only if the right processes were followed.

View from the lobby: Matthew Sinclair, a senior director at Big Tech lobby group CCIA, said: "If incorrect decisions cannot be appealed on the merits, the whole process will be less transparent and it will often take longer to get to an actual settled outcome."

The other side: Challenger firms, the CMA and government ministers have all argued in favor of judicial review, believing it fits with the bill's aims of having a faster competition regime. They hope it will stop Big Tech firms holding up regulator decisions for years in the courts.

Timeline: Any changes would happen through government amendments being laid at the start of next week, with the bill then back in the Commons the following week.

The fallout: We've been reporting since the summer that the government is under pressure from Big Tech to change the appeal mechanism. Potential changes are being examined by No.10's policy unit, but any U-turn would provoke an outcry from challenger firms, some industry groups, the opposition and the Lords committee which examined the bill.

BEFORE YOU GO

READ IT IN FULL: The Home Office has published the Investigatory Powers (Amendment) Bill and corresponding explanatory notes. Read the bill here and the rationale behind the amendments here.

CLEGG IN THE COLD: Facebook CEO Mark Zuckerberg repeatedly dismissed warnings from senior officials, including president of global affairs Nick Clegg, to do more to tackle child safety, documents from a U.S. lawsuit have revealed. The request was apparently "ignored for months.

LONG FORM: Air Street Capital's Nathan Benaich and Alex Chalmers have written an essay about why "government technology investment often fails to accomplish its goals." Read it here.

HYPERBOLE ALERT: Michelle Donelan strode into the Commons at 11 a.m. yesterday telling the House she had a statement about "a turning point in our history."

Oh that: It was in fact a rundown of the achievements of the Bletchley Park Summit, which while significant, are not perhaps the moment for humankind she imagines. They include getting eight labs to voluntarily agree to give governments pre-release access to their models over the next six months. Donelan stressed this shouldn't be a party political issue, but Labour missed the memo.

Rodda's turn: Stepping in for Peter Kyle, Shadow AI Minister Matt Rodda questioned what would happen if a firm decided it no longer wanted to take part in the voluntary agreement, or if a new player came along developing more powerful models.

Attack lines: He repeated Labour's attack line that Sunak's dire warnings about potential misuse of AI don't match with the government's reticence to legislate. Donelan conceded there would eventually be legislation but repeated the line that now was too soon.

Morning Technology wouldn't happen without Oscar Williams, Joseph Bambridge and the production team.

Correction: *This newsletter has been updated to remove a suggestion that the following line did not appear in documents Ofcom published on its website: "We are not making any proposals that would involve breaking encryption."*