

Annex - Response form

After you have read the consultation document, please consider the questions below. There is no expectation or requirement that all questions are completed. You are welcome to only answer the questions that are relevant to you, your business or organisation.

A copy of this response form is available to download from GOV.uk.

There are two sections on this form:

- A. Questions arising from this consultation
- B. Information about you, your business or organisation

When you are ready to submit your response, please email this form and any other supporting documentation to Alcallforviews@ipo.gov.uk.

The closing date for responses is at 23:45 on 7 January 2022.

The options for computer generated works, text and data mining and patent inventorship are summarised in the following tables.

| Computer generated works | |
|---------------------------------|---|
| Option 0 | Make no legal change |
| Option 1 | Remove protection for computer-generated works |
| Option 2 | Replace the current protection with a new right of reduced scope/duration |

| Text and Data Mining (TDM) | |
|-----------------------------------|---|
| Option 0 | Make no legal change |
| Option 1 | Improve licensing environment for the purposes of TDM |
| Option 2 | Extend the existing TDM exception to cover commercial research and databases |
| Option 3 | Adopt a TDM exception for any use, with a rights holder opt-out |
| Option 4 | Adopt a TDM exception for any use, which does not allow rights holders to opt out |

| Patent Inventorship | |
|----------------------------|---|
| Option 0 | Make no legal change |
| Option 1 | “Inventor” expanded to include humans responsible for an AI system which devises inventions |
| Option 2 | Allow patent applications to identify AI as inventor |
| Option 3 | Protect AI-devised inventions through a new type of protection |

Section A

Copyright – computer generated works (CGW)

1. *Do you currently rely on the computer-generated works provision? If so, please provide details of the types of works, the value of any rights you license and how the provision benefits your business. What approach do you take in territories that do not offer copyright protection for computer-generated works?*

Not applicable.

2. *Please rank these options in order of preference (most to least preferred) and explain why.*

0, 2, 1

We think that option 0, to do nothing and maintain the status quo, is the best option. We believe that amending the law is not necessary, as the computer-generated works provision provides sufficient protection to incentivise investment in AI technology and the creation of works.

We are not in favour of option 2, replacing the current protection with a new right of reduced scope or duration, as we believe this could have an adverse impact on innovation. It is preferable to option 1 however. Reducing the duration or scope of copyright protection afforded to computer-generated may discourage the development of AI technology and new inventions.

We are not in favour of option 1, removing copyright protection for computer-generated works and limiting copyright protection to human creators. In our opinion, allowing copyright-protection for computer generated works does not devalue human creativity, but instead is necessary to incentive their production and encourage innovation and modern creations.

3. *If we introduce a related right for computer-generated works, as per option 2, what scope and term of protection do you think it should have? Please explain how you think this scope and term is justified in terms of encouraging investment in AI-generated works and technology.*

We do not support option 2. However, a related right for computer-generated works as per option 2 would need to reflect copyright protection in terms of scope. Noting that the current term is 50 years, a reduced term of 25 years may have only a limited impact on innovation—though note our comment at Q5 below on increasing the disparity between protection under the different regimes for wholly human-authored works and computer-generated works.

4. *What are your views of the implications of the policy options and of AI technology for the design system?*

Our view is that no change is required to the designs system.

5. *For each option, what are your views on the risk that AI generated works may be falsely attributed to a person?*

The risk of AI generated works being falsely attributed to a person increases with the disparity of protection between human and machine authorship. For this reason, option 0, to do nothing and maintain the status quo would have the lowest risk of leading to false attributions. Option 1, to limit copyright protection to human creators could potentially lead to solely computer-generated works being falsely attributed to human authors on a routine basis, and this is part of the reason why we believe this is the least preferable option.

Option 2, to introduce a related reduced right could potentially encourage false attribution. The greater the difference between the duration of protection, the greater the risk as creators may seek the longest protection available. However, we have not seen any instances of this in practice to date and do not see it as a substantial issue under the current regime.

Copyright – text and data mining (TDM)

6. *If you license works for TDM, or purchase such licences, can you provide information on the costs and benefits of these? For example, availability, price-point, whether additional services are included or available, number and types of works covered by the licence etc.*

Not applicable.

7. *Is there a specific approach the government should adopt in relation to licensing?*

See response to question 8.

8. *Please rank the options in order of preference (most to least preferred) and explain why.*

4, 3, 2, 1, 0

Whilst we were initially somewhat split between Options 4 and 3 on this issue—there being the question as to whether rights-holders ought to have an opt out—adopting a TDM exception is our preference. We believe that a balanced regime is necessary to support innovation, whilst not stifling investment by rights holders in the creation and publication of materials. We believe a broad exception should be set out in law, potentially subject to an ability for the rights holder to opt works out of the exception. We recommend that this should include human-readable notices or terms, as well as a machine-readable notice in publicly accessible materials.

As to whether an opt-out should be permitted:

- Copyright owners whose works are lawfully acquired by users are not harmed by any approach that clarifies that copyright cannot be used to restrict TDM activities. Nothing would limit the rights holders' use of non-copyright measures to restrict

access—for example, by placing them behind a paywall or using other access-credentials to limit access.

- On the other hand, an opt-out may be justified if the Government wishes to allow rights-holders to apply different regimes to the same material depending on whether or not a price has been paid for the material, or indeed to allow tiered pricing. For example, a rights holder may wish to make a free or reduced rate version available without the right to TDM, and to make a premium version available with TDM rights.
- However, in the latter scenario, anti-avoidance measures would be required to prevent rights-holders from simply opting all materials out or making the premiums so high as to prevent TDM entirely on their works.
- Therefore, for simplicity and from a public policy perspective, it may be preferable to adopt a TDM exception without opt out. A rights-holder would still have the right to prevent the use of any output of TDM infringing the original work therefore protecting the rights-holder's market.

9. *If you have experience of the EU exception with opt out for rights holders, how has this affected you?*

Not applicable.

10. *How would any of the exception options positively or negatively affect you? Please quantify this if possible.*

Not applicable.

Patents

11. *Please rank these options in order of preference (most to least preferred) and explain why?*

0, 3, 1, 2

We believe that no change should be made. Changing the definition of inventorship will ultimately change the definition of invention, resulting in poor quality patents that unduly tie-up discoveries. AI comprises algorithms and data, multiple NN (e.g. generative adversarial networks) data sets provided by multiple parties. It therefore creates issues with ownership, and making a change may ultimately incentivise data hoarding and a change in behaviour in relation to sharing algorithms. It is further foreseeable under options 1 or 2 that if AI-inventions are to be patentable to the same degree as traditional patents, there is a heightened risk that power would be concentrated in those that have earliest access to AI technologies. We believe our proposal takes the best of option 1, whilst mitigating this risk.

However, were there to be a change, we think option 3—protecting AI-devised inventions through a new type of protection—is the most preferable. We would suggest that the new type of protection would provide a similar scope of protection to a traditional patent, but would be available only to a legal or natural person responsible for an AI system which devises inventions. The principal difference to traditional patents, would be the term of protection which should expire 2 years post-grant (thus giving protection for the application period plus 2 years).

12. *Would the changes proposed under Options 1, 2 and 3 have any consequential effects on the patent system, for example on other patentability criteria?*

Please see response to question 11

For options 1 and 2:

13. *If UK patents were to protect AI-devised inventions, how should the inventor be identified, and who should be the patent owner? What effects does this have on incentivising and rewarding AI-devised inventions?*

No comment.

14. *In considering the differences between options 1 and 2, how important is it that the use of AI to devise inventions is transparent in the patent system?*

No comment.

15. *Would the UK adopting option 2 affect your global patent filing strategy, if so, how?*

Not applicable.

For option 3:

16. *What term and scope of protection should a new right offer?*

Please see response to question 11

17. *What should the criteria for grant of a new right be and why? Particularly should it:*

- a) Replicate the current requirements for a patent?*
- b) Set a different bar for inventive step?*
- c) Be an automatic or registered right?*

Please see response to question 11

General

18. *What role does the IP system play in the decision of firms to invest in AI?*

No comment.

19. *Does the first mover advantage and winner-take-all effect prevail in industries adopting AI? How would this affect the impact of the policy options proposed on innovation and competition?*

No comment.

20. *How does AI adoption by firms affect the economy? Does the use of AI in R&D lead to a higher productivity?*

No comment.

21. *Do the proposed policy options have an impact on civil society organisations? If so, what types of impacts?*

No comment.

Section B: Respondent information

A: Please give your name (name of individual, business or organisation).

OpenUK

B: Are you responding as an individual, business or on behalf of an organisation?

- 1) Business – please provide the name of your business
- 2) Organisation – please provide the name of the organisation
- 3) Individual – please provide your name

Organisation

C: If you are responding on behalf of an organisation, please give a summary of who you represent.

The organisation for the business of Open Technology in the UK. See www.openuk.uk.

D: If you are an individual, are you?

- 1) General public
- 2) An academic
- 3) A law professional
- 4) A professional in another sector – please specify
- 5) Other – please specify

E: If you are responding on behalf of an organisation, are you?

- 1) An academic institution
- 2) An industry body
- 3) A licensing body
- 4) A rights holder organisation
- 5) Any other type of organisation - please specify

An industry body

F: If you are responding on behalf of a business or organisation, in which sector(s) do you operate? (choose all that apply)

- 1) Agriculture, forestry and fishing
- 2) Mining and quarrying
- 3) Manufacturing – Pharmaceutical products
- 4) Manufacturing – Computer, electronic and optical products
- 5) Manufacturing – Electrical equipment
- 6) Manufacturing – Transport equipment
- 7) Other manufacturing
- 8) Construction
- 9) Wholesale and retail trade; repair of motor vehicles and motorcycles
- 10) Transportation and storage
- 11) Information and communication – Publishing, audio-visual and broadcasting
- 12) Information and communication – Telecommunication
- 13) Information and communication – IT and another Information Services
- 14) Financial and insurance activities
- 15) Real estate activities
- 16) Scientific and technical activities
- 17) Legal activities
- 18) Administrative and support service activities
- 19) Public administration and defence
- 20) Education
- 21) Human health and social work activities
- 22) Arts, entertainment and recreation
- 23) Other activities – please specify

Information and communication – IT and another Information Services

Legal activities

Education

G: How many people work for your business or organisation across the UK as a whole? Please estimate if you are unsure.

- 1) Fewer than 10 people
- 2) 10–49
- 3) 50–249
- 4) 250–999
- 5) 1,000 or more

10-49

H: The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Yes

I: If you are happy to be contacted by the Intellectual Property Office, please provide a contact email address.

[REDACTED]

J: Would you like an acknowledgement of receipt of your response? Yes/No

Yes