UK Intellectual Property Office proposes new exception for commercial text and data mining in the UK

By Toby Bond - Bird & Bird, UK

The UKIPO has published its response to its consultation on AI, copyright and patents. The consultation ran from 31 October 2021 to 7 January 2022. The key proposal is a new UK Text and Data Mining (TDM) exception, more permissive than that under Article 4 of the EU Digital Copyright Directive.

Key proposal: New UK Text and Data Mining (TDM) exception

The UKIPO's key proposal is to introduce a new exception to copyright and database rights for commercial text and data mining. The UKIPO proposes adopting the most permissive TDM exception suggested in the consultation, which would allow commercial TDM with no option for the rights holder to opt out (Option 4).

This is more permissive than the TDM exception under Article 4 of the EU Digital Copyright Directive, which permits commercial TDM provided the rights holder has not opted out through appropriate measures. As with the EU exception, the UK proposal would still require a beneficiary of the exception to have "lawful access" to the data. The response notes that this would still allow rights holders to charge a licence fee by putting in place technical measures to restrict access. Overall, the UKIPO's intention appears to be to make the UK as competitive as possible for AI research and development.

No change for AI-devised inventions and computer generated works

In relation to AI-devised inventions and computer generated works, the UKIPO does not propose any changes to the existing UK law. For AI-devised inventions the UKIPO concluded that any future change to the law on inventorship should be on an international scale as many respondents were concerned that a unilateral change to UK law risked confusion.

For the current UK position regarding AI-devised inventions see this analysis of the Court of Appeal's decision in Thaler v Comptroller-General (the UK arm of the DABUS proceedings), which has been featured in a previous edition of the AIPPI newsletter. The UK's Supreme Court has since given permission for the decision in the Thaler case to be heard in the Supreme Court. Such permission is rarely granted and is an indication of the importance of some of the legal principles in play; the Supreme Court's stated purpose is to concentrate "on cases of the greatest public and constitutional importance". It seems likely that the Judges of the Supreme Court see the Thaler case as having relevance outside of the administrative processes of the UK IPO.

For computer generated works (CGW), no further rights will be granted and the existing protection under section 9(3) CDPA 1988 will be retained. The UKIPO was not convinced that existing CGW protection was harmful and was concerned that any changes could have unintended consequences. It is interesting that one of the reasons given by the UKIPO is to avoid uncertainty which may be caused by changes to the law, as one of the UKIPO's original reasons for the consultation was to address current uncertainty regarding the scope of section 9(3). It appears that uncertainty regarding the application of section 9(3) will remain for now. The UKIPO does however suggest that it will keep the law under review and could amend, replace or remove protection in future if the evidence supports it.

For analysis of the consultation questions and options proposed by the UKIPO see here and for analysis of the UKIPO's earlier "Call for Views on AI and IP" see here.

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