Comments by Finland
February 14, 2020

DRAFT ISSUES PAPERON INTELLECTUAL PROPERTY POLICYAND ARTIFICIAL INTELLIGENCE

Finland would like to thank WIPO for starting to develop a list of issues concerning the impact of artificial intelligence (AI) on intellectual property (IP) policy. AI & IP related issues will need in depth discussions between all WIPO MS in the very near future and entail aspects without which the IP systems will never reach the efficiency and reliability that can be expected in the digital environment of the 21st century.

Please find the Finnish reply to the document titled "DRAFT ISSUES PAPERON INTELLECTUAL PROPERTY POLICYAND ARTIFICIAL INTELLIGENCE" (WIPO/IP/AI/2/GE/20/1. The reply consists of comments from the Ministry of Education and Culture, Ministry of Employment and the Economy and the Patent and Registration Office

We believe these questions are very relevant within the area of copyright. We support the additional questions sent by the EU. More detailed comments are listed below for relevant sections of the document.

PATENTS

We found the questions to be of high relevance. In order to better identify the essential considerations relating to the issues outlined in the draft, the IP Office of Finland proposes some additional questions.

Relating to issue 1:
What level of autonomy would be required from an AI system to not to consider it as a mere tool assisting in the inventing process? Would this distinction (between an AI system that is a mere tool and an AI system that is an actual inventor) depend on the AI system's ability to autonomously defend its rights?

How would it benefit society to reward autonomous AI inventors with patents?

If AI systems were to be named as inventors or owners of patents, how can these AI systems be uniquely identified? Would the entire code and parameters of the AI system need to be recorded? Would identical AI systems operated e.g. by separate corporations then be given different identities?

Relating to issue 6:
How would it benefit society to reward autonomous AI creators with copyrights?

Relating to issue 10:
How would such new IP rights benefit society?

Relating to issue 11:
How would it benefit society to reward autonomous AI designers with design rights?

COPYRIGHT

Please find reasons regarding the new questions relating to copyright and related rights as well as a few more specific questions relating to how the use of AI could be harnessed to benefit the application of the IP systems.

The very basis for the social and legal justification of the copyright system lie on the human creative spirit and respect and reward for, and the encouragement of, the expression of human creativity. The benefit from the system should eventually come to the society as a whole. In our view copyright should not be afforded to creations of "an autonomous AI". We believe that it should be made clear that content produced by an AI do not qualify as "literary and artistic works" in the meaning of the copyright law of the Berne Convention, as no human creativity is involved.

We are in favor of the proposal included in the EU submission that we should replace "AI creations" with "AI output", and that perhaps a glossary of terms would help build the common understanding of terms related to AI and IP.

AI empowered tools are increasingly used in the creation of new works and such tools are widely available.

In particular, AI will be useful in assisting the licensing of works as it can provide information about who are the holders of copyright, how they can be reached as well as terms of use, if such are available. Access to data on holders of rights should be promoted, specifically for the training of AI.

It is necessary to improve the identification of works and creators to ensure that copyright is only afforded to original creations by human beings and not autonomous AI for example (where such protection is possible). Therefore, forming and applying unique identification codes for each author, or producer, and as well as piece of work or other protected are needed, on EU level and eventually globally. Complexity of licensing, in particular due to missing or erroneous data, will make the use of non-copyright protected AI content more attractive for users. This will have a negative impact on the income for human creators.

To ensure a coherent, transparent and verifiable application of the rights that are provided directly on basis of the copyright laws, more emphasis is needed on voluntary registration. The results of the WIPO consultation on registration systems conducted in 2019 in the Member States of WIPO should provide important information in this regard.

The Ministry of Education and Culture would like to propose a few more questions:

- How can works (and their authors) be identified from content produced by and AI algorithm?

- If AI systems were to be named as creators of works, how can these AI systems be uniquely identified? Would the entire code and parameters of the AI system need to be recorded? Would identical AI systems operated e.g. by separate corporations then be given different identities?

- Should each work contain a log of acts of the creation process leading to protectable a work, to transparently identify all acts of each participant, including possibly an AI algorithm?