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*Dear Francis,*

The UK would like to thank WIPO for their continued hard work and due diligence in driving this conversation forward. The WIPO AI issues paper is an important step in the exchange of ideas in this fast-paced, dynamic, and challenging area.

It is important that our deliberations continue with haste in order to address the issues surrounding artificial intelligence (AI) and intellectual property (IP) to ensure that IP frameworks support and encourage innovation in this area.

The UK is supportive of many of the questions posed by WIPO and is confident that the answers to these questions should go a long way to ensuring IP frameworks are able to provide an appropriate landscape for encouraging innovation in AI related areas.

The IPO of the UK is committed to increasing its understanding of the future challenges for IP to ensure that the UK's IP framework incentivises the development and adoption of AI technologies. As you are aware, the IPO has been an active participant and facilitator of conversations which have explored many of the issues surrounding AI and IP, including the conference 'AI: Decoding IP' co-hosted with WIPO in London last year, which explored many of the questions currently listed within the issues paper.

### *Impact on Society*

The UK is pleased to see the inclusion of questions which seek to address the risk of new technological advancements increasing the digital divide on both domestic and international levels. It is important that discussions are mindful of the potential impact of AI development on the technological landscape in both developed and developing nations.

We would also be interested in exploring how the IP framework could harness the power of AI in order to positively impact on consumers, the public, and wider society. We believe that it would be of value to consider how the IP environment could best encourage investment in AI to solve some of the key challenges facing society today.

### *Patents*

We are pleased to see that many of the patent related issues raised at the 2019 London AI conference have been included in the WIPO draft paper. In addition to these, it may be worth adding questions regarding the uncertainty around patent infringement liability, as well as consulting on any potential difficulties in enforcing patents.

We also think there are some overarching questions which it may be useful to address, including on AI's capability to generate inventions without human involvement, and the rationale for granting patents for autonomously generated 'inventions'.

Issue 2 on patentable subject matter uses the term "AI assisted inventions". It would be useful for a definition to be provided as it is not entirely clear what this term means.

We are aware that commentators in this area have suggested that the standard of inventive step needs addressing if AI is used as a tool by the person skilled in the art. Therefore, it may be useful if this question were added to those currently included under Issue 3.

### *Copyright and Related Rights*

The section on copyright and related rights captures many of the key policy and legal issues around AI and authorship, ownership, exceptions and infringement. It would also be interesting to hear views on the role of copyright as an economic incentive when it comes to AI-generated works. In particular, is protection for AI-generated works an incentive to create those works or to invest in AI technology, or do AI systems require these incentives.

Currently, our understanding is that many AI systems are not fully autonomous, and some human input is needed. It would be interesting to explore how copyright applies in those instances and what impact it has on the ownership of any resulting copyright works. It may be useful to broaden the scope of the questions to consider AI systems that are not fully autonomous.

There remains a question concerning who should bear liability for copyright infringement. In particular, who should be responsible when AI is trained with copyright works without permission from the copyright owner, and where the AI generates output that infringes copyright works.

### *Deep fakes*

As the issues paper explains, there are a number of interesting questions surrounding the issue of deep fakes and the copyright framework. However, while the creation of deep fakes may involve copyright infringement, this is not specifically an AI issue. Therefore, the WIPO AI conversation is not the appropriate forum for discussion of these issues.

### *Data*

The discussion around data is particularly interesting. There is no doubt that data plays an important role in the development and application of AI. The UK Government would be interested in further exploration of how additional protection for data as a right could incentivise the AI industry.

In addition, it is important that we contextualise our data discussions with existing rights such as any applicable copyright protection, and the EU database right, as well as the broader data protection frameworks. We need to ensure that we fully consider the broader picture with overlapping laws such as competition and privacy, which extend beyond intellectual property. This would help ensure

that we gain a greater understanding of if there are any gaps in existing legislative frameworks which need addressing through the IP framework.

It is our view that these fundamental questions need to be addressed prior to any conversation on what an IP right for data might look like, or how it might be enforced.

### *Designs*

We agree that the questions concerning AI ownership and authorship are the right questions for this area. Further, while there is a detailed section on infringement in the copyright section of your paper, any such section appears to be absent from the designs section. With the potential for an AI to infringe a design, it may also be worth considering the inclusion of a question to address that issue here.

### *Trade Marks*

While we appreciate that many of the questions surrounding AI and trade marks will fall under some of the broader questions, we note the absence of any questions specifically relating to AI and trade marks. It would be helpful to understand whether this is a reflection of the focus of the AI and IP discussion thus far, or if it due to a perceived absence of uniquely trade mark related AI questions compared to other areas.

### *Trade Secrets*

It would also be beneficial for discussions to include the relationship between AI and trade secrets. Trade secrets may be a good way of protecting certain aspects of AI technologies (and their outputs), and it could be useful to include a question which considers the impact of trade secrets on the AI environment and vice versa.

We look forward to contributing to what we are sure will be fruitful discussions in the future.

*Best Regards,*



**Tim Moss**

