GRUR

German Association for
the Protection of
Intellectual Property (GRUR)

Secretary General

German Association for the Protection of Intellectual Property (GRUR)
Konrad-Adenauer-Ufer 11 · RheinAtrium · 50668 Koeln

Konrad-Adenauer-Ufer 11
RheinAtrium
50668 Koeln
GERMANY

Phone +49 (221) 650 65-151
Facsimile +49 (221) 650 65-205
E-Mail office@grur.de
www.grur.org

World Intellectual Property Organization
- WIPO Secretariat -
34, chemin des Colombettes
CH-1211 Geneva 20
Switzerland

04 February 2020

Re: WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI)
GRUR comments on the DRAFT ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE

Dear Sir or Madam,

We thank you for the invitation of 13 December 2019 to provide our comments of the above mentioned draft issues paper.

The German Association for the Protection of Intellectual Property ("Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht e.V.", in the following "GRUR") is a non-profit association with an academic focus. Its statutory purpose is the academic advancement and development of industrial property, copyright and competition law at the German, European and international level. For fulfilling these tasks, GRUR provides assistance to the legislative bodies and to authorities competent for issues of intellectual property law, organises conferences, workshops and continued education courses, provides financial aid to selected university chairs and research projects and also publishes four leading German professional IP law journals (GRUR, GRUR International, GRUR-RR and GRUR-Prax.) With over 5,000 members coming from 60 countries, GRUR offers an umbrella for a wide range of IP professionals: lawyers, patent attorneys, judges, academics, representatives of the specific public authorities and of the international organisations as well as enterprises dealing with issues of intellectual property.

GRUR welcomes the initiative of WIPO that takes the discussions on the impact of artificial intelligence on intellectual property rights to an international expert forum. The impact of the data economy on the global economic system cannot be overestimated. GRUR has installed a Standing Committee on Data Rights in 2014 and devoted its entire Annual Meeting in 2018 to the subject "Digital Future". The members of GRUR participate in national and international discussions of the impact of the da-

ta economy and AI on various levels, including participation in the study questions of AIPPI.

GRUR is of the opinion that the questions presented in the draft issues paper open room for discussion of relevant factors of the influence of artificial intelligence on IP protection. The GRUR Standing Committees on Data Rights and Copyright and Publishing Law have provided a detailed joint comment on "Issue 10: Further Rights in Relation to Data" which will follow. Members of GRUR's Standing Committee on Patent and Utility Model Law have participated in discussions in the German patent community and embrace an aspect of these discussions for the present comments.

I.
Issues 1 - 5 on patents and inventorship

Earlier discussions have shown that AI tools assisting human inventors (so-called weak or narrow AI) may be considered quite differently than strong AI that autonomously creates all aspects of an invention without human intervention. The Resolution[1] of AIPPI on the study question "Copyright in artificially generated works" states:

> *"AI generated works should only be eligible for protection by Copyright if there is human intervention in the creation of the work and provided that the other conditions for protection are met. AI generated works should not be protected by Copyright without human intervention."*

It may be expected that a comparable distinction is necessary in the field of patents.

GRUR therefore proposes to clearly distinguish between questions directed to AI-assisted inventions and questions directed to autonomous AI inventions.

II.
Issue 10: Further Rights in Relation to Data

The GRUR Standing Committees Data Rights and Copyright and Publishing Law propose structural and material changes to Issue 10.

GRUR thinks that the considerations should first examine existing IP rights or similar rights protecting data. The considerations should also include protection of databases, i.e. structured data collection. It would be helpful to add key words to the question on the subject of protection. If new rights are introduced, exceptions and limitations of these rights should be considered.

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[1] https://aippi.org/wp-content/uploads/2019/10/Resolution_Copyright_in_artificially_generated_works_English1.pdf

In addition to the question of introducing new protection for data, the question of granting access rights to data has proven to be quite important in the context of the AI economy. A further aspect that may be of interest is the question of considering specific protection for trained AI systems.

Initial draft	Proposed amendments
Issue 10: Further Rights in Relation to Data	**Issue 10: Further Rights in Relation to Data** **I. Existing Rights** (i) Are there existing IP rights in data and / or databases or rights with similar effect? **II. New IP Rights**
(i) Should IP policy consider the creation of new rights in relation to data or are current IP rights, unfair competition laws and similar protection regimes, contractual arrangements and technological measures sufficient to protect data?	(ii) Should IP policy consider the creation of new IP rights in relation to data and / or databases?
(ii) If new IP rights were to be considered for data, what types of data would be the subject of protection?	(iii) If new IP rights were to be considered for data, what types of data (e.g. personal, non-personal, machine generated, specific sectors, mode of definition - content / file / data carriers -, input for AI / output of AI) would be the subject of protection?
(iii) If new IP rights were to be considered for data, what would be the policy reasons for considering the creation of any such rights?	(iv) If new IP rights were to be considered for data, what would be the policy reasons for considering the creation of any such rights?
(iv) If new IP rights were to be considered for data, what IP rights would be appropriate, exclusive rights or rights of remuneration or both?	(v) If new IP rights were to be considered for data, what IP rights would be appropriate, exclusive rights or rights of remuneration or both?
(v) Would any new rights be based on the inherent qualities of data (such as its commercial value) or on protection against certain forms of competition or activity in relation to certain classes of data that are deemed to be inappropriate or unfair, or on both?	~~Would any new rights be based on the inherent qualities of data (such as its commercial value) or on protection against certain forms of competition or activity in relation to certain classes of data that are~~

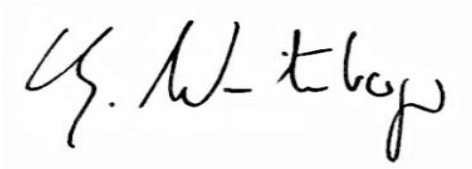
	~~deemed to be inappropriate or unfair, or on both?~~ *Comment: this question may be already covered by Questions iii,v and ix.*
(vi) How would any such rights affect the free flow of data that may be necessary for the improvement of AI, science, technology or business applications of AI?	(vi) If new IP rights were to be considered for data, how would any such rights affect the innovation in the AI area and the free flow of data?
(vii) How would any new IP rights affect or interact with other policy frameworks in relation to data, such as privacy or security? (viii) How would any new IP rights be effectively enforced?	(vii) How would any new IP rights affect or interact with other policy frameworks in relation to data, such as privacy or security? (viii) How would any new IP rights be effectively enforced? (ix) If there are no plans for new IP rights, should the framework of current IP rights, unfair competition law and similar protection regimes, contractual arrangements and technological measures be amended in favor of a stronger economic protection of data? (x) If new IP rights were to be considered for data, which exceptions and limitations should be introduced? **III. Existing Access Rights** (xi) What access rights to third-party data exist in your legal system? **IV. New Access Rights** (xii) Should further access rights (instead of a new IP right) to third party data be introduced? (xiii) If new access rights were to be considered, what are the details of these rights (see above – types of data, item iii.)

	V. AI Protection (xiv) Apart from the protection of data, should there be a new IP right for trained AI?

We hope that these comments will help identifying the relevant issues arising for IP policy out of artificial intelligence technology.

Best regards,

Stephan Freischem
Secretary General



Dr Gert Würtenberger
President