



RESPONSE TO WIPO CALL FOR COMMENTS ON WIPO'S DRAFT ISSUES PAPER: INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE

February 2020

Introduction

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to drive economic growth and promote the benefits of music to British society. A full list of UK Music members can be found in the annex to this submission. The music industry contributes £5.2 billion Gross Value Added of which £2.6 billion are revenues derived from export (UK Music Music by Numbers 2019 [report](#)).
3. We welcome the opportunity to be part of the "WIPO Conversation" on AI and IP, by providing some initial comments on WIPO's draft issues paper on intellectual property and artificial intelligence. From the UK music industry's perspective (where we are already seeing a range of applications of AI), we are mainly focused on AI in the context of copyright (and therefore **Issues 6-19** / paragraphs 12-16 of the draft issues paper).
4. As distinct from considering this in the context of current copyright laws, the question of how copyright law should address AI issues going forwards – in particular relating to creation, ownership and infringement – is a complex and multi-faceted one. As such, we welcome WIPO's approach of seeking to start simply by producing a list of issues to form the basis of further discussions, and accordingly at this stage we have confined our comments to a series of initial observations which we hope WIPO Secretariat will take into account when developing the draft list of issues further, with particular regard to **Issues 6-9**.
5. In particular we highlight the need for clarification of scope and terminology (to avoid asking the wrong questions and/or pre-judging the answers); and emphasise the fundamental principle that copyright should not be applied in the AI context in a way which devalues the role or rights of human creators.

Scope of issues list

6. The scope of the draft issues list needs to be clarified; the Copyright and Related Rights section of the current draft only refers to literary and artistic works. Musical works should also be specifically considered, as well as the rights of those who perform those works (e.g. on recorded performances of songs).

Clarification of terminology

7. We note that the draft issues paper repeatedly uses the term “AI-generated work” and in Issue 6 states that AI applications are capable of producing literary and artistic works autonomously. We urge caution as regards how these terms are used, and what conclusions are drawn from them. “AI-generated” can cover a broad spectrum of cases involving varying degrees of AI application use and of human contribution respectively, and accordingly the appropriate copyright treatment of that spectrum of cases may similarly vary.

8. For example, in the music industry context, a supposedly “AI-generated” work of music or lyrics still depends on human input. This human input will usually be twofold: firstly, in creating any existing copyright works that are then used as source or reference material by the AI application (i.e. for the AI application to analyse for patterns and “learn” how to compose) and secondly in using or “training” the AI application to do this.

9. These are crucial considerations both as regards the authorship/ownership of any new copyright works created with the use of AI, and the potential infringement of the copyright in existing works. We would therefore urge WIPO Secretariat to avoid over-generalisations such as “AI-generated” and instead be more specific about the different AI use cases and what they each involve, so that each can be given appropriate assessment.

Valuing human creators

10. We note that in Issue 6, the draft issues paper notes the major question of whether copyright should favour human creativity over machine creativity. As noted above, the reality is not necessarily a binary outcome where a work is either fully human-created or fully machine-created, or that a work created using AI technology should therefore be either fully protected by copyright or not protected at all. The different scenarios each need careful consideration. Nevertheless, we consider it a fundamental principle that copyright should not be applied in the AI context in a way which devalues the role or rights of human creators.

11. With this in mind, we are concerned that Issue 7 of the draft issues paper seemingly diminishes the value of human creativity (including that of UK songwriters, composers and performers) by characterising their works and performances as merely “data used for training” AI applications. Where these existing, copyright-protected works are copied as part of the machine learning process, the context of what is being used, how extensively it is used and what will be produced as a result should be given specific careful consideration, rather than automatically treating these works as “data” for the purposes of existing copyright exceptions for e.g. text and data mining, or equivalent new exceptions. As the draft issues paper recognises, treating the unauthorised use of existing works for machine learning as copyright infringement need not impact AI development or innovation given the potential for licensing solutions which could permit use for AI purposes whilst respecting the rights of the creators of the existing works being utilised.

12. Finally, whilst we understand why the draft issues paper might want to ask questions about the appropriate *balance* between enabling AI innovation whilst appropriately preserving the copyright system and (to use WIPO’s phrase) “the dignity of human creation”, we are surprised and concerned that in Issue 9 of the draft issues paper the WIPO Secretariat has gone so far as to seemingly contemplate a hierarchy of social policies where AI innovation might be promoted at the expense of the dignity of human creation. Any policy-driven enablement of AI innovation should, from a copyright perspective, still put the human creator first.

Annex

UK Music's membership comprises of: -

- AIM – The Association of Independent Music – the trade body for the independent music community, representing over 850 small and medium sized independent record labels and associated music businesses.
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition represents and promotes the interests of featured recording artists in the music industry.
- The Ivors Academy - The Ivors Academy exists to support, protect and celebrate music creators in the UK. We are the independent professional association representing songwriters and composers in all genres, whether they create song, symphony or sync. Previously known as BASCA, we can trace our history back over 70 years. As champions of music creators, we have three main activities: campaigning, cultivating and celebrating.
- MMF – Music Managers Forum - representing over 650 UK managers of artists, songwriters and producers across the music industry with global businesses.
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union representing 30,000 musicians.
- PPL is the music licensing company which works on behalf of over 100,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 114,000 composers, songwriters and publishers and an international repertoire of 10 million songs.
- UK Live Music Group, representing of the live music sector with a membership consisting of: Agents' Association (AA), Association for Electronic Music (AFEM), Association of Festival Organisers (AFO), Association of Independent Festivals (AIF), Concert Promoters Association (CPA), International Live Music Conference (ILMC), National Arenas Association (NAA), Production Services Association (PSA), Music Venue Trust (MVT).

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