

WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI)

DRAFT ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE

Comments from Ben Clossick Thomson (personal capacity), barrister, UK

Questions of definition:

Is there a need to develop a working definition of artificial intelligence? If so, what should that definition be?

- a. Draft Issue (1) states “AI does not differ radically from other computer-assisted inventions”.
 - i. Is it possible to identify the distinction between AI and other computer-assisted inventions?
 - ii. Are there potential problems with (e.g. a patent examiner) applying such a distinction in practice?
 - iii. If such a distinction (or relevant matter of degree) can be identified, what is the reason that the distinction justifies being addressed by specific IP policies?
 - iv. Should AI be identified by reference to the underlying implementing technology (e.g. simple algorithm vs. machine learning algorithm), or by the effect (e.g. replicating a mental process)?
 - v. Is the distinction between supervised and deep/unsupervised learning systems a relevant distinction for the purposes of IP policy?
- b. Draft Issues (1), (2), (3), (5), (6) and (11) refer to “autonomous” generation (of inventions, works or designs, respectively) by AI.
 - i. What is meant by autonomous? Is it a matter of degree?
 - ii. Does autonomy relate to the supervised/unsupervised learning distinction?
 - iii. Is autonomy a/the relevant factor that justifies AI being addressed by specific IP policies?
- c. Draft Issues (2), (3), (4), (5), (6) and (11) refer to “AI-generated”. Draft issues (1), (2), (4) and (11) refer to AI “assisted”.
 - i. What is the distinction between “AI-generated” and “AI-assisted”?
 - ii. Is the distinction to do with autonomy, or can one contemplate an invention that has been made with the assistance of an autonomous system?
 - iii. Should the policy response depend upon whether an invention has been made wholly or only partially by AI?
- d. Draft Issues (3) and (4) refer to “algorithms”.
 - i. Should an IP policy response be directed to algorithms *per se*, or does it need to engage with AI at a more detailed level – for example neural networks or deep learning?
- e. To the extent that legal systems may implement policy responses to AI, how can AI be defined in order to (a) exclude technologies that are not identified as AI (with reference to the answers to the questions identified above), but (b) anticipate future technological developments in the field of AI?

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