



Geneva, February 14, 2020

Ref: Submission by the International Publishers Association (IPA) on the DRAFT ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE published by WIPO

Dear Sirs,

The International Publishers Association (IPA) is the world's largest federation of national, regional and specialist book publishers' associations. Established in 1896, our membership comprises 83 organisations from 69 countries around the world. The IPA is based in Geneva and is an accredited observer at the World Intellectual Property Organization as well as an accredited non-governmental organisation (NGO) enjoying consultative relations with the United Nations.

We thank you for the opportunity to file a submission expressing the views of the international publishing industry represented by the International Publishers Association on the copyright related issues raised in the above captioned draft issues paper.

Introduction

While WIPO's interest in facilitating a conversation on the impact of AI on intellectual property policy is to be expected, the process of identifying relevant issues should not be seen as a pre-cursor to any process for international rule making.

The issues paper refers to artificial intelligence as a broad concept: "artificial intelligence (AI) has emerged as a general-purpose technology with widespread applications throughout the economy and society. It is already having, and is likely to have increasingly in the future, a significant impact on the creation, production and distribution of economic and cultural goods and services." While there is no commonly accepted definition, the term "artificial intelligence" currently covers a broad range of technologies with multiple purposes.

The publishing industry has been an active contributor to deployment and development of AI based products, services and platforms and of machine learning technologies. Technologies that might be included under a concept of AI cover multiple areas in the publishing industry, such as machine generated content (e.g. books, snippets), support to scouting and manuscript selection, editing services (e.g. data checking), automated peer-review services to facilitate human peer-reviewing, optimized search and delivery services (e.g. recommend content to readers, enhanced search features, cross-references for research reliability), market analysis and marketing strategies.

In the publishing industry, AI has been a topical issue, not only in the value chain (e.g. multi-layer integration of AI in production and distribution of published works), but also as the subject of industry-based research. Research contributes to assessing the impacts of AI in industry development with a forward-looking view and identifying the main questions that require consideration and subsequently additional research. It should be noted that there

are pressing questions currently not related to copyright policy, but that instead arise from high-level issues and principles that can be impacted by the integration of AI technologies in producing and delivering published content to consumers. Some of the main topical questions are related to ethics of AI development and use, security, data privacy and transparency, in addition to industry-driven concerns related with fostering development of new business models that either respond to the needs of AI technologies or allow publishers to reap the benefits of their investments in deploying and integrating said technologies.

For example, in 2018, Elsevier published a report [Artificial Intelligence: How knowledge is created, transferred, and used](#), providing insight into *“research output, collaboration and mobility for China, Europe and the United States”*. The conclusions of the report seem to indicate that pressing questions are related with ethics: *“The seeming underrepresentation of ethics in AI research, despite the urgent imperative for ethical AI, remains one of the most pressing questions posed by the report.”* With regard to questions for future research, the report outlines as priorities ethical, technical and operational issues, notably: *“• Is there a relationship between research performance in AI and research performance in more traditional fields that support AI (such as computer science, linguistics, mathematics, etc.)? • How does AI research translate into real-life applications, societal impact, and economic growth? • Where do internationally mobile AI researchers come from and go to? • How sustainable is the recent growth in publications? • How will the main players in the field continue to cooperate and collaborate? • How can we achieve and implement ethical AI?”*

In October 2019, Gould Finch and Frankfurter Buchmesse published a report *“The future impact of artificial intelligence on the publishing industry”*, the outcome of 6 months of research based on more than 300 interviews with industry professionals. The paper focuses on assessing operational impacts of AI: *“Given the varying stages of development of different AI technologies, it is too early to definitively state how they will change the publishing industry—but without question the impact will be immense. This paper outlines the challenges companies are currently facing as they consider how best to implement AI and presents suggestions for where to concentrate efforts and attention to realize the most benefits.”*

The UK Publishers Association will be presenting preliminary conclusions of a new report, *“The role of Artificial Intelligence and Machine Learning in Publishing”* at London Book Fair 2020. This study will highlight the role of AI and Machine Learning in the publishing industry (with a particular focus on the UK) and will provide evidence and recommendations on the potential of AI to generate benefits for the industry and identify potential key policy issues.

AI has also been the subject of policy instruments, public consultations and public research in many jurisdictions across the world. In the United States, the USPTO held a consultation during January 2020 on IP regulatory issues arising from AI, while in 2019 the White House published an executive order on *“Maintaining American Leadership in Artificial Intelligence,”* which enunciates principles to guide U.S. investment in AI R&D and deployment in the context of the administration’s American AI initiative. The United Kingdom’s consultation on the Online Harms White Paper last year, although not focused on AI specifically, mentions *“The government takes both the protection of personal data and the right to privacy extremely seriously. The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA), alongside the increased powers for the ICO to gather evidence, inspect artificial intelligence (AI) and levy significant fines on those who break the law, update our data protection laws fit for the digital age.”* In addition, the UK has also been looking into AI on various *fora* through white papers, reports and consultations, from industrial sector strategies to public sector and procurement.

The European Union and its Members States have also been debating AI in various *fora*. The European Commission has been working on AI through various communications and reports and announced a forthcoming AI White Paper to be published on February 19, 2020. The European Internet Forum (EIF), a cross-party group of

members of the European Parliament created to stimulate political debate about digital topics issued a political statement about *The Top 10 Digital Trends that will shape Europe's future and demand Political Leadership*, which raises “concerns over AI ethics and inbuilt biases grow”, echoing the priorities announced in the President of the European Commission Ursula von der Leyen’s *Agenda for Europe* about the “human and ethical implications of Artificial Intelligence”.

Other jurisdictions have launched (or are in the process of doing so) national strategies on AI: this is the case in India, Singapore or New Zealand, for example. Across the world, topics that are being prioritized in terms of public policy are security, ethics, privacy and human rights, in addition to aspects related with protecting and fostering business investments.

AI & copyright in the publishing industry

At this stage, it seems it might be premature to anticipate a debate on international policy to regulate copyright in the context of AI. Although WIPO’s issues paper outlines very pertinent questions, answering questions in the context of international policy requires (i) allowing AI technologies to continue to emerge and be implemented in copyright-based industries, which is currently happening rapidly both on production and delivery of published content (ii) allowing business models to be developed and matured by industry, based on or with the aim of integrating AI technologies (iv) analyzing market developments and acquiring enhanced understanding of the impacts of AI in the value chain of producing and delivering published content, which continues to evolve at a fast pace due to significant additional and incremental industry developments requiring additional investigation and research (iv) observing and understanding national policies with regard to copyright in AI, that are yet to be established, notably in countries and regions that currently lead AI development (e.g. US and EU).

That said, some high-level principles can be endorsed by the publishing industry in the context of this consultation:

- The **existing copyright international treaties remain fit for purpose**, notably enabling member states to set out appropriate legal frameworks with regard to ownership of exclusive rights, exceptions & limitations and enforcement that best respond to the needs of each market.
- If gaps need to be filled, it is key to **allow member states to take the lead on the policy debate**. Member States will be able to set out national policies based on objective impact assessments and dialogue with its copyright-based industries, a crucial first step towards ensuring that any new policy is necessary, proportionate and adequate, and will not generate unintended consequences.
- Licensing remains the most flexible mechanism through which the use of data subsisting in copyright works may be facilitated – to the advantage of both the copyright work’s owner and the entity wishing to use such data. As such, **national copyright laws**, consistent with the existing international legal framework, **should continue to foster licensing mechanisms to promote AI development**. Publishers have been developing sophisticated licensing mechanisms to respond to the needs of AI research and machine learning development, which are critical to ensure that consumers, and in fact AI development, continue to benefit from quality published content delivered through innovative technical solutions.
- In order to maintain high-level investments required for content production and delivery in the digital age, publishers must be able to recoup their investments through reaping the income generated by licensing. **Any policy that would replace licensing with exceptions & limitations as a means to develop AI and machine learning would undermine the development of new markets and prevent future investments, in addition to distorting market competition**, in particular if the growth of AI were therefore achieved at the expense of degrading the protection and value of copyrighted content.
- Existing provisions on exceptions & limitations in the Berne Convention and WIPO Copyright Treaty can already enable AI related provisions to be set out in national laws, if and when they are required, based

on objective impact assessments and anchored on the 3-step test. As noted above, **there exists no current need for new exceptions & limitations to facilitate AI development.** A premature venture into this matter could undermine creative industries' integration of AI, in particular in developing countries but also in developed countries, damaging the interests of publishers and creators and preventing them from exploiting their economic rights.

- **Deep fakes** might be an issue requiring urgent attention, but it must be noted that the **predominant impacts** in this area are on **human rights, compliance with data privacy regulations and security.** Prior to discussing ownership of rights in those cases, it is necessary to assess whether potential new content generated on that basis in fact originates from violations of human rights or data privacy regulations. If that is the case, it **might be inappropriate to discuss copyright protection in such context.**
- **If AI development and production processes copyrighted content without the necessary rights clearance or in violation of licensing terms & conditions, infringement of copyright may already be ascribed to the actor initiating the infringing activity under the existing national laws.** Such an analysis will be fact dependent. Existing national laws, compliant with international treaties should enable national authorities to determine copyright infringement and establish **liability of beneficiaries of AI systems used to infringe rights.** It is also important to take into account that benefits of infringement in this context could assume various natures, including monetary (traditional or crypto currencies), financial (e.g. increasing the value of stock market valued technologies and companies), commercial (directly or indirectly, whether there is a sale or a benefit via mechanisms such as advertisement in infringing websites) or of another kind (e.g. reputational value).
- **AI technologies** already play a **role in detecting and preventing fraud** within the publishing industry (e.g. detection of plagiarism; external fraud detection services). They can and should play a role **in national copyright policy and law** as well.
- **One of the crucial elements of a resilient copyright framework that enables sustainable development of local creative industries is effective enforcement of intellectual property rights in the online environment. AI technologies can be deployed to benefit effectiveness of online enforcement mechanisms,** notably by facilitating notice and take down and site blocking procedures, enabling and easing notice and stay down mechanisms, and encouraging tech companies to increase efforts to actively prevent access to and distribution of infringing content by activating voluntary filtering mechanisms to identify infringing content and exclude bad actors abusing platforms' terms & conditions of use.

We thank you for your time and consideration and remain available for any additional information that you may require.

Yours sincerely,



José Borghino

Secretary General