

February 14, 2020

Francis Gurry
Director General
World Intellectual Property Organization
34, chemin des Colombettes
CH-1211 Geneva 20
Switzerland

**Re: Request for Comments on the Impact of Artificial
Intelligence on Intellectual Property Policy**

Dear Director General Gurry:

The News Media Alliance (the “Alliance”) respectfully submits this comment in response to the call for comments on the WIPO Draft Issue Paper on Intellectual Property Policy and Artificial Intelligence, prepared by the WIPO Secretariat and published on December 13, 2019.¹

The Alliance is a nonprofit organization that represents the interests of more than 2,000 news media organizations in the United States and internationally. The Alliance diligently advocates for news publishers on issues that affect today’s media organizations, including protecting newspapers’ intellectual property.

Around the world, news publishers are struggling to sustain investments in high-quality journalism despite their vital role in the society and the public’s reliance on accurate and current information. News publishers struggle in large part because the online marketplace is dominated by a few online platforms that benefit financially from high-quality journalism while also controlling the digital advertising ecosystem and determining the reach and audience for news content online, thereby reducing the ability of news publishers to benefit from digital advertising and to develop their relationships with their readers.

The members of the Alliance are deeply concerned about the unlicensed use of their news reporting for machine learning purposes by technology companies that do not share the cost of reporting the news but commercially benefit from the work product of the news media. While

¹ https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ai_ge_20/wipo_ip_ai_2_ge_20_1.pdf

current copyright doctrine in many countries should compel the conclusion that this constitutes infringement of copyright, a variety of obstacles to enforcement of the media's IP rights has diminished the value of those rights. The modes of distribution and consumption of news content are rapidly changing in the digital age, and the failure to properly compensate the media for the use of their content has already become an existential threat to the business of journalism. Moreover, the continued unlicensed use of reporting by technology companies portends injury, not just to the news industry, but to the public interest that it serves: in a world where everyone is a republisher, there will be no original reporting to republish. Accordingly, the Alliance believes that we must reset the balance between the originators of news and those who consume it for their own commercial advantage.

The Alliance commends WIPO for launching a consultation process on this important topic. We believe that the questions outlined in the draft issue paper, particularly with regards to Issue 7: Infringement and Exceptions, are important and well articulated. However, for the reasons explained below, we believe there should be even more of a focus on massive copying of copyrighted content for Artificial Intelligence ("AI") training purposes and the effect that copying has on copyright owners. We outline some proposed changes at the end of these comments.

Massive Copying of Copyrighted Content Poses an Existential Threat to High-Quality News

The news media rely on robust legal protection of their intellectual property, typically in the form of copyrights, for their very existence. The remuneration made possible in the form of subscriptions and various licensing fees for distribution of their content generates the revenue necessary to finance the cost of reporting the news, such as the global network of news bureaus and journalists that major media enterprises must maintain to carry on their work. The ability of those who do not foot the bill to capitalize on those efforts would quickly extinguish the practice of journalism as we know it. And the stakes are not merely commercial. As one U.S. court decision noted:

[T]he world is indebted to the press for triumphs which have been gained by reason and humanity over error and oppression
Permitting [Meltwater] to take the fruit of [Associated Press'] labor for its own profit, without compensating [AP], injures [AP's] ability to perform [its] essential function of democracy.²

AI is increasingly affecting journalism and the news media industry in various ways, including through tech platforms that scrape news websites and ingest copyright-protected news

² *Associated Press v. Meltwater U.S. Holdings, Inc.*, 931 F. Supp. 2d 537, 553 (S.D.N.Y. 2013).

content. The content appropriated by these platforms, typically in massive quantities, may be used to train AI to perform a variety of functions, including learning from news media reports how to write a story, and drawing on content from multiple sources to create a rendition of the news that is not identical to that of any one contributing source while being completely dependent on all of those sources in combination. Such use of news content by the tech platforms represents an increasing threat to the practice of journalism. The challenges are multiple.

First, current technology makes the replication and manipulation of vast amounts of content inexpensive and easy. Just as the printing press and later the photocopier exponentially increased the capacity of humans to reproduce content that initially had to be manually copied, another giant leap has occurred in the digital age and text can be replicated, processed and disseminated with a few keystrokes.

Second, this use is not readily detected. Whereas unauthorized copying and re-dissemination of all or a substantial portion of intact text to the public is generally detectable and provable as an infringement, programs running in the background at unlicensed tech platforms that make use of ingested news content as the raw material input for machine learning cannot be so easily policed by the content proprietor.

Third, the dominance of the principal tech platforms renders enforcement of IP rights extremely difficult when the publishers are dependent on the same tech platforms to mediate between the publishers and their audience by locating and linking to reports of interest to users.

Fourth, the training of AI is increasingly being used to support news products that cause the audience to remain inside the tech platform's ecosystem, rather than simply as a search tool that links users to the original information provider. For example, the "featured snippets" in Google search responses obviate the need for users to click through to a source for the requested information, while voice assistant products such as Amazon's Alexa and Google Assistant directly answer user queries without providing a ready path for users to consult the source of the information. All of these services rely on AI applications.

To fully account for these and other issues, and to protect the future for high-quality journalism, the Alliance believes that any comprehensive discussion and study of AI and intellectual property issues must consider in great detail the effects AI applications may have on the copyright industries and institutions that the society relies on. Today, having access to trusted content of consistently high quality is integral to power machine learning. The Alliance believes that copyright law, properly understood and consistently enforced, should lead to a system where content originators are compensated for their work – various business and licensing models, with proper legal support, may be employed to achieve this end.

Consequently, with regards to Issue 7, while the questions capture many of the most important issues related to the unauthorized use of copyrighted works for AI training purposes, the section would benefit from questions addressing specifically the role market effect and the effects on vital societal services have in determining the legality of such uses. In addition, acknowledging differences between jurisdictions, questions should be asked on the effectiveness of enforcement of existing rights. Further, while question 13(ii) focuses on how innovation in AI would be affected by stronger copyright protections, the section should also include a question on the effect that incentivizing AI innovation would have on the copyright industries.

The Alliance appreciates WIPO's focus on these topical and important issues. These issues require comprehensive analysis, dialogue among all stakeholders, and careful attention to detail. The Alliance calls for and stands ready to contribute to continued study and deliberation on this important issue that will help move copyright law fully into the 21st century.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daboffy", written in a cursive style.

Danielle Coffey
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News Media Alliance