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Submitted through WIPO's online consultation response webpage

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Re: Response in consultation on impact of AI on IP policy // WIPO/IP/AI/2/GE/20/1

Dear Sir or Madam

We would like to thank WIPO for drawing up the Draft Issues Paper on IP Policy and AI ("Issue Paper"), and the opportunity to comment. Indeed, we are also of the opinion that in view of the fast developments in Digitalization and especially AI, a review of the compatibility of present systems of IP protection is prudent.

We would want to congratulate the WIPO Secretariat for collecting a comprehensive catalogue of issues already, and would like to offer additional issues and comments hereunder for consideration.

Patents

Issue 3 - Inventive Step or Non-Obviousness (Nr. 9)

AI algorithms are becoming so much faster at finding and processing data than humans are, that it can be contemplated for an AI algorithm to generate an improvement almost immediately after an (on-line) publication, and moreover the AI application might even prepare a patent application for filing on the same day as the day of that publication. Under the current definition of state of the art in most patent laws, such disclosure that became available on the day of filing is not included in the state of the art that is being considered for assessing novelty, and inventive-step or non-obviousness. An additional question should therefore be:

- Is an amended definition of the state of the art needed, to include disclosures that occurred on the date of filing date but before the moment of filing of the patent application?

Issue 5 - General policy considerations for the patent system (Nr. 11)

Nr. 11, under (i) asks, in the chapter relating to patents, whether consideration should be given to a sui generis system of IP rights for AI-generated inventions. We believe it would be helpful to explore views on some key aspects of such potential sui generis system at the same time.

- Should such sui generis system be restricted to patents, or should it address other IP rights in creations (including inventions) generated by an AI application as well? (Noting that a potential sui generis system for copyright is being referred to in question 12(iii).)

- For which aspects of IP rights is a tailored solution for AI creations most needed, in a sui generis system or otherwise? For example inventorship and ownership, the exclusivity principle associated with traditional IP rights vs regulating access on fair and reasonable terms, or the term of protection?

Copyright

Issue 6 - Authorship and Ownership (Nr. 12)

With respect to the questions raised under Nr 12, if works autonomously generated by AI were excluded from copyright protection, and a sui generis system of protection was not introduced, how should third parties know or find out that a specific such work is not subject to copyright? For example, by marking?

Issue 7 - Infringement and Exceptions (Nr. 13)

The expression 'data' can refer to a multitude of different matters, and indeed (as Issue 10 recognizes), various aspects of data can be subject to multiple (legal) frameworks. E.g., personal/non-personal data; raw/processed/derived/analyzed data, metadata; unstructured/structured data, data as a collection (such as a representing a copyrightable work, or a database) vs individual data elements. The answer to some of the questions posed under Nr. 13 may depend on which aspect, or type, of data is being considered. It would be helpful to define as good as possible the data (or "data subsisting in copyright works") that is to be considered in the questions under Nr. 13.

Yours sincerely



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