

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

Comment on the Draft Issues Paper on Intellectual Property Policy and Artificial Intelligence prepared by the WIPO Secretariat

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In the framework of the WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI), we hereby provide our comments and additional questions on the Draft Issues Paper on Intellectual Property Policy and Artificial Intelligence prepared by the WIPO Secretariat.

A. COPYRIGHT AND RELATED RIGHTS

1. Issue 6: Authorship and Ownership

1.1 In addition to the question (i)¹, we would like to add the following sub questions:

- Do the traditional notions of “literary and artistic”, as defined by the Berne Convention for the Protection of Literary and Artistic Works adopted in 1886, fit in the description of works autonomously generated by AI?
- What level of autonomy is expected to consider a work as “autonomously generated by AI” and how can the required level of autonomy be defined in a technologically-neutral way?
- Should we keep the same definition of originality for works autonomously generated by AI?
- What *copyrights* shall be granted to original literary and artistic works that are autonomously generated by AI? Shall the scope of protection be limited so that it shall cover only the identical use of the works autonomously generated by AI or shall the protection extend to derivative works? Shall the protection cover only economic rights or shall the protection also include moral rights (including right of “AI-integrity” and right of “AI-paternity”)?

1.2 Regarding question (ii)², please find our following questions:

- Who are the different parties involved in the creation of an AI-generated work?
- Should AI-generated work be considered as derivative works?
- Where should we draw the line between computer-aided work and AI-generated work?

¹ Should copyright be attributed to original literary and artistic works that are autonomously generated by AI or should a human creator be required?

² In the event copyright can be attributed to AI-generated works, in whom should the copyright vest? Should consideration be given to according a legal personality to an AI application where it creates original works autonomously, so that the copyright would vest in the personality and the personality could be governed and sold in a manner similar to a corporation?

- Should AI-generated works be generally considered as works for hire (“works for AI-hire”) so that the entity exploiting (“employing”) the AI shall be considered as the copyright owner?
- Should AI-generated works be generally considered and presumed to be collective works created under the supervision of a “AI master” (who would be the copyright owner) [as done under certain national laws, see e.g. art. 393 of the Swiss Code of Obligations³]?

1.3 Finally, please find below our comments regarding question (iii)⁴

- In the context of the creation of a *sui generis* system of protection, can such protection be based or derived on the legal protection of data, of databases and/or on the protection against unfair competition?
- Should AI-generated works fall within the public domain?
- Should we have international standards for the protection of AI-generated works?
- In case the protection would be to protect AI-generated works as performances, what rights should be granted, i.e. only economic rights or also moral rights (as existing for performers)?
- Shall the existence and scope of protection granted to an AI-generated work depend on the compliance with an obligation of transparency of the entity wishing to enforce its right (i.e. obligation to disclose the use of AI in the creation of the work and the way how it was used) ?
- How and to what extent the AI ethical principles that are being developed shall contribute to the definition of standards on the existence and scope of protection of AI-generated works (such as the principle of transparency, accountability, etc.)?

2. Issue 9: General Policy Issues

- How to address the questions of overlaps between legal regimes (e.g. in case of “mixed databases“ with copyrighted elements and other elements protected by other IP rights or privacy) and overlaps between jurisdictions (e.g. in case of multiple applicable laws).
- How to ensure coordinated answers at the interventional level, in particular among national regulators and policy-makers, for instance for ethical and technical standards and certifications.
- Should one or more international organizations or other multi-stakeholders initiatives be given the mandate (i) to ensure this coordination, (ii) to ensure the resolution of data-related or copyright-related disputes, and/or (iii) to implement a certification scheme.

³ <https://www.admin.ch/opc/en/classified-compilation/19110009/index.html#a393>.

⁴ Should a separate *sui generis* system of protection (for example, one offering a reduced term of protection and other limitations, or one treating AI-generated works as performances) be envisaged for original literary and artistic works autonomously generated by AI?