

Call for evidence to review 2014 copyright changes

Introduction

The IP Federation represents IP intensive companies in the UK - a list of members is attached. Our members are extensively involved with IP in Europe and internationally. Not only do our members own considerable numbers of IP rights, both in Europe and elsewhere, but they are affected by the activities and IP rights of competitors. They may be either plaintiffs or defendants in IP related court actions, here and elsewhere, including in relation to Unregistered Community Designs (UCDs), Registered Community Designs (RCDs) and

The consultation

A [call for evidence](#) was published on 30 January 2019 in connection with a UK IPO post-implementation review (PIR) of the copyright act amendments of 2014, which included a text and data mining exception to research and non-commercial purposes. It will last for ten weeks and close on **10 April 2019**.

IP Federation response

The IP Federation welcomes the opportunity to respond to the call for evidence on 2014 copyright changes. This review comes at a critical moment when individuals, industries, governments and researchers, at a global level, are increasingly implementing digital innovations, such as artificial intelligence (AI), as part of a surge of digital transformation.

The PIR aims to assess the impact of several different statutory instruments that were passed in 2014 to amend copyright law in the UK. The response provided by the IP Federation considers the impact of "Group 2: Other Copyright exceptions," and specifically, the copyright exception for text and data mining (TDM), an essential AI technique.

The 2014 revision to the Copyright, Design and Patents Act (CDPA) enabled an exception for TDM for "non-commercial research" only.

This response highlights the vital need to extend the current exception for TDM to enable commercial use by commercial entities.

Current UK copyright law relating to the right to read, understand, and analyse information has impacted and will continue to impact the development of AI and the UK's modern digital economy.

It is critical that the UK Government encourage and foster an environment where TDM is not unnecessarily burdened and remains accessible to all entities, that already have lawful access to data they wish to mine, for all purposes.

Take-up of digital transformation in the UK and Europe is already slower than in other global regions, and so we strongly advocate that the UK Government join the many countries that have unequivocally established/are establishing sufficient legislation to ensure that AI related activities, such as TDM, are widely adopted and used to their full potential.

Promoting knowledge innovation

How we harness knowledge is changing dramatically. We are awash with information today, and digital transformation requires new ways to read, analyse and understand the vast array and amount of information. AI is critical to that effort.

The ability to unlock benefits from AI, for example in innovative projects benefitting the public, should exist for all entities - large, medium or small, public or private, commercial or non-commercial - and for all purposes.

Machine learning forms the backbone for AI and relies on aggregating both raw and structured data and content into a machine accessible form and analysing this information - at hyper scale - to identify insights, patterns and relationships, which can be used for a myriad of valuable purposes e.g. augmenting how we make critical decisions.

Start-ups, SMEs, research groups, academics, not-for-profits, government and businesses are increasingly using machine learning, aided by processes such as TDM, to develop algorithms to learn from data and to understand business trends, research new markets and develop new technologies and applications.¹

The societal benefits of broad machine learning and TDM are readily apparent. Examples include:

- predicting disease outbreaks by analysing online news media and other data;²
- developing individualised cancer treatments by analysing the latest information about effective treatments;³
- identifying foodborne disease risks by harvesting information buried in publications, government reports, datasets and social media;⁴
- identifying accessible pedestrian routes for impaired mobility travellers by crawling online maps and online posts;⁵ and
- identifying and addressing the proliferation of fake news.⁶

¹ <https://www.crunchbase.com/search/organizations/field/organizations/categories/5ea0cdb7-c9a6-47fc-50f8-c9b0fac04863> (listing over 1000 businesses, start-ups, and projects using machine learning).

² <https://www.technologyreview.com/s/510191/software-predicts-tomorrows-news-by-analyzing-todays-and-yesterdays/>

³ <https://news.microsoft.com/stories/computingcancer/>

⁴ <http://www.who.int/mediacentre/news/releases/2015/food-safety/en/>

⁵ <http://escience.washington.edu/research-project/sidewalk-maps-for-low-mobility-citizens/>

⁶ https://www.theparliamentmagazine.eu/articles/partner_article/apco-worldwide/unleashing-bigdata%E2%80%99s-potential-journalism-economy-and

We point to the independent report “Growing the Artificial Intelligence Industry in the UK”⁷ which included the recommendation that, in order to support TDM as a standard and essential tool, the UK should move towards establishing that the right to read (i.e. where an entity *already has* lawful access) is also the right to mine data. The report also recommends that the Government should assess the value that could be added to the UK economy by making data available for AI through TDM, including by commercial businesses.

Further, the Government’s Industrial Strategy and AI Sector Deal recognised the critical role of AI to the UK and the necessary partnerships between government, academia and business that need to occur if the UK is to be able to compete in the fast moving field of AI.

The UK is not alone in its ambition to be a powerhouse in AI. A “new tech arms race” has emerged among many of the world’s leading economies, including US, Canada, the UK, China and Japan.

As the competition amongst these countries for human talent, financial capital and commercialisation opportunities intensifies, access to data, and the ability to mine data, is a critical competitive variable.

It follows that a migration of the best and brightest minds and of revenue opportunities is occurring and will continue to occur to countries with AI-friendly laws.

Europe is embracing a broad TDM exception in the Directive of the European Parliament and of the Council on Copyright in the Digital Single Market

The European Union (EU) has strong ambitions in supporting AI across all sectors, and the EU Parliament recently voted in favour of giving Member States a mandatory TDM exception for both commercial and non-commercial uses. The European Commission, which initially supported a more limited exception that received significant criticism from both the academic and research sectors as well as start-up, SME and business sectors, has recently expressed support for making the EU Parliament’s broader commercial use exception mandatory across the EU. The Commission’s embrace of a broader mandatory exception helps it align its copyright policies with its AI policies, and avoid fragmentation that would occur if only certain Member States were to implement an optional commercial use exception proposed by EU Parliament.

Global competition

Several of the UK’s key trading partners, who have similar AI ambitions, are taking and have already taken steps to eliminate uncertainty around the copyright implications of AI development. Japan’s copyright law has been amended to allow for the exploitation of any copyrighted work for the purpose of performing “information analysis,” including the “extraction, comparison, classification, or other statistical analysis of language, sound, image, or other

⁷ <https://www.gov.uk/government/publications/growing-the-artificial-intelligence-industry-in-the-uk>

elements of which a large number of works or a large volume of information is composed.”⁸ Similarly, Singapore will adopt a broad TDM exception which it hopes “will promote applications of data analytics and big data across a gamut of industries, unlocking new business opportunities, speeding up processes, and reducing costs for all”. In the United States courts have confirmed that, under the “fair use” doctrine, incidental copies of a work made in the course of informational analysis are non-infringing, even where the analysis is performed for commercial purposes. Australia and Canada are also evaluating revisions to their copyright laws that would include express exceptions and support for TDM.

UK can implement a balanced TDM exception

If the UK is to keep pace with the rest of the world, the IP Federation’s members believe it is absolutely necessary that the CDPA be amended to expressly allow for the reproduction of lawfully accessed works to facilitate TDM, for commercial or non-commercial purposes, by commercial and non-commercial entities. This can be implemented with sufficient protections for content owners to ensure that that copies made for AI purposes do not disrupt their existing commercial markets and are treated securely to protect their legitimate copyright expectations.

Failure to implement a TDM regime for commercial and non-commercial purposes, by commercial and non-commercial entities, is having and will continue to have a hampering effect on AI development and commercialisation in the UK. For example, access to and the ability to mine data will be curtailed, and the best AI talent and investment capital will migrate to jurisdictions with more favourable laws.

In summary, the IP Federation strongly urges the UK Government to encourage and foster an environment where AI is not burdened by unnecessary copyright regulation.

We would be very willing to take part in additional dialogue on this issue and much appreciate the opportunity to make this response.

IP Federation
10 April 2019

⁸ See http://www.cric.or.jp/english/clj/cl2.html#cl2_1+SS5 for the new Article 30-4 (allowing broad text and data mining), Article 47-4 (enabling incidental reproductions) and Article 47-5 (allowing creation and storage of searchable datasets of copyrighted works).



IP Federation members 2019

The IP Federation membership comprises the companies listed below. The UK Confederation of British Industry (CBI), although not a member, is represented on the IP Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. The IP Federation is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd
Airbus
Arm Ltd
AstraZeneca plc
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Canon Europe Ltd.
Caterpillar U.K. Ltd
Dyson Technology Ltd
Eisai Europe Limited
Eli Lilly & Co Ltd
Ericsson Limited
Ford of Europe
GE Healthcare
GKN Automotive Limited
GlaxoSmithKline plc
Hitachi Europe Ltd
HP Inc UK Limited
IBM UK Ltd
Infineum UK Ltd
Johnson Matthey PLC
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia Technologies (UK) Limited
NEC Europe
Ocado Group plc
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
RB
Renishaw plc
Rolls-Royce plc
Shell International Ltd
Siemens plc
Smith & Nephew
Syngenta Ltd
UCB Pharma plc
Unilever plc
Vectura Limited
Vodafone Group

Registered Office 60 Gray's Inn Road, London WC1X 8AQ

Email: admin@ipfederation.com | Tel: 020 7242 3923 | Web: www.ipfederation.com

Limited by guarantee Registered company No: 166772