

SUBMISSIONS ON THE WIPO CONVERSATION

In response to the WIPO call for comments as regards the *'WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI)*, I have prepared this note as my submission. Here will be discussing my views as regards 2 issues, out of the 13 defined by WIPO. They are as follows:

Patents

Issue 1: Inventorship and Ownership

Issue 4: Disclosure

PATENTS

Issue 1: Inventorship and Ownership

Inventing requires awareness of a state of things which may be remedied by creating a new tool or process, which is usually protected by patent. AI, even when it autonomously generates an invention, cannot be said to be aware of the necessity or the importance of its invention. Ascribing ownership to a technology that is not aware of its own creation would be absurd. Until the time when AI achieves general intelligence and consciousness like humans, ascribing ownership to it for its works is an approach beset with difficulties. Before this can even be considered, the law would have to ascribe some sort of unique legal personality to it.

Furthermore, an invention is meant to be applied in the real world. In the event that it causes injury or damage in the course of application, an AI owner would be incapable of defending its claim as the inventor, representing itself, or providing compensation in the form of damages. The absurdity of this situation would also repeat itself where the invention was found to be

copied from a prior invention. The lack of consciousness and legal personality in AI make it difficult to ascribe ownership to AI without running into difficulty.

This is why I propose that instead, a human being should be recognised as inventor, even though the invention was autonomously generated by the AI, with little or no involvement by the human. To determine the human being to be recognised as inventor, the law should provide that the person who would be held liable in the event of the damage caused by the invention should be considered the inventor and recorded as the owner of the patent involving an AI application. No matter how autonomous an AI inventor is, it is incapable of providing compensation in the event that its invention causes injury. The test for determining who should be recognised as the owner of the invention can be phrased in this simple question?

In the event that this invention causes injury to someone, or was found to be infringing on an existing patent, who would the court hold responsible for damage or infringement?

The human being that fits this description is the person that should be recognised as the owner of the invention, not the AI itself. If a human being will bear the brunt for any harm caused by the invention, and not the AI, then a human being should enjoy the benefits of being recognised as the inventor, not the AI. In summary, I call this approach, *The Liability Principle*.

Human being in this context is used loosely, as it can refer to a natural human being or corporation registered under the law. The inventor could be the person who developed the AI inventor itself, the corporation that employs the inventor, subject to contractual agreements, or the person who purchases an AI inventor.

Issue 4: Disclosure

One of the potential issues that may arise in patenting AI-generated inventions will revolve around the disclosure of the underlying data used in developing and training algorithms. This data in some cases, may be personally identifying and involve weak forms of consent for data

collection. Because the development of AI tools has been shrouded in a black box, the transparency demands of patent applications may pose a stumbling for the protection of AI works.

Algorithms are not static in their development. As new streams of data become available, they improve and become better at their functions, the way a recommendation engine gets better at predicting what movies you should watch, based on how frequently you use it and it collects data about your usage. An alternative way of protecting this technology under patent might involve accepting the initial dataset used in developing the first iteration of the algorithm. Another precondition for providing this data should be that personally identifiable data is shrouded, such as names, addresses, credit card details or other types of identifying numbers. Doing so may help to strike a balance between the demands of data privacy and the public transparency of patent. If this approach is employed, full details of the data can be disclosed in the patent application, as opposed to a description, which may not help future innovators build on this data.