*WIPO conversation on intellectual property and artificial intelligence*
*Comments from Rachel Free 13 Feb 2020*
*These comments are my personal opinion and not the opinion of any clients or of CMS.*

In the document "Draft issues paper on intellectual property policy and artificial intelligence" there is a request for comments on "the correct identification of issues and if there are any missing issues".

Missing issue - anthropomorphism
I would like to mention the dangers of anthropomorphism with regard to artificial intelligence technology. Society needs to remember that humans are responsible for artificial intelligence systems because this will help use artificial intelligence technology ethically. Therefore there is a need to avoid using language that refers to an artificial intelligence algorithm as if it were a person. In issue 3 section 9 (iii) there is language "having an AI replacing a person skilled in the art" which seems to be anthropomorphic.

Missing issue - AI ethics
The role the patent system might potentially play in giving a business incentive for transparency of AI technology needs to be discussed.

Missing issue – Patent infringement
It would be useful to include a section regarding patent infringement. There are lots of patent infringement issues which are specific to artificial intelligence technology. Some of these centre around the fact that it is often difficult to detect infringement of a patent for an artificial intelligence algorithm.

Issue 5: general policy considerations for the patent system
The role the patent system might potentially play when there is a need to determine accountability for AI technology can be added as an issue for discussion. Ownership and accountability are separate but linked in some ways. Generally speaking, in the case of a patent for an AI algorithm used to provide a service, any party who wants to provide the service takes a license from the patent holder or is the patent holder. If the AI service is used and some harm results, then it is potentially possible to find from the patent register the details of the owner and licensees. Since patents are used in most jurisdictions then an international way of finding information from patent registers is given, which might be useful to aid further investigation into which entity is accountable.

Issue 26: in the field of IP are there any measures or issues that need to be considered that can contribute to reducing the adverse impact of the technology gap in AI? Using the patent system to incentive sharing of knowledge about how technology works is an issue to consider here. Since patents are a type of "universal language" where the format of a patent document is the same in most countries of the world, patents are a good way to share knowledge.

Missing issue – reflexive nature of administrative decisions where an AI algorithm is used as part of the decision making process
An issue concerns how to appropriately deal with the reflexive nature of IP administrative decisions in the case where an AI algorithm is used as part of the decision making process. IP administrative decisions are arguably reflexive because they affect society and in turn are affected by society. In the case of a new trade mark application, a decision to allow the trade mark registration may depend on a decision, influenced by society and culture, as to whether the mark is distinctive. Once the trade mark registration is established and the brand awareness increases there is an influence on society and culture from the brand. Once an AI algorithm is used as part of the adjudication process it will influence the reflexive loop.