WIPO dialogue on intellectual property and artificial intelligence

Second session

Draft summary of intellectual property policy and artificial intelligence

Issue 6: Authorship and Ownership

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

There must necessarily be a human creator who will be at the origin of any literary and artistic creation, even if generated by AI.

ii) 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?

It should be vested in the human creator of the work.

No, legal personality cannot be granted to an AI application which creates original works autonomously.

In specific conditions, an AI application (production of original works) may be granted legal personality, that is, be vested with copyright; an example would be an artificial musical score.

iii) 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?

Yes, a separate *sui generis* system of protection should be envisaged for creations generated by AI, taking into account the links between the management of works of the mind and artificial works.

Issue 7: Infringement and Exceptions

i) ***Should the use of the data subsisting in copyright works without authorization for machine learning constitute an infringement of copyright? If not, should an explicit exception be made under copyright law or other relevant laws for the use of such data to train AI applications?***

No. Under Moroccan legislation, this use is not considered an infringement of copyright, particularly for learning purposes (see Article 12 of Law No. 2.00 on copyright and related rights). Accordingly, the law should provide for an exception that allows the use of data that trains AI applications.

ii) ***If the use of the data subsisting in copyright works without authorization for machine learning is considered to constitute an infringement of copyright, what would be the impact on the development of AI and on the free flow of data to improve innovation in AI?***

If the use of data for machine learning is considered an infringement of copyright, AI development and innovation would be limited to its development. However, there should an exception under the law for all infringements of the normal use of artificial creation, which would be unduly prejudicial to the legitimate interests of the author.

iii) ***If the use of the data subsisting in copyright works without authorization for machine learning is considered to constitute an infringement of copyright, should an exception be made for at least certain acts for limited purposes, such as the use in non-commercial user-generated works or the use for research?***

Yes. The law should provide for an exception for limited purposes, such as for the use of non-commercial works generated by users or use for research.

iv) ***If the use of the data subsisting of copyright works without authorization for machine learning is considered to constitute an infringement of copyright, how would existing exceptions for text and data mining interact with such infringement?***

For AI, the law must issue new exceptions to enable adequate consistency of this interaction with the infringement.

v) ***Would any policy intervention be necessary to facilitate licensing if the unauthorized use of data subsisting in copyright works for machine learning were to be considered an infringement of copyright?***

Measures should be taken to regulate the licensing.

vi) ***How would the unauthorized use of data subsisting in copyright works for machine learning be detected and enforced, in particular when a large number of copyright works are created by AI?***

To detect the copyright infringement, it is necessary to create a centralized and secure digital database.

Issue 8: Deep Fakes

i) ***Since deep fakes are created on the basis of data that may be the subject of copyright, to whom should the copyright in a deep fake belong? Should there be a system of equitable remuneration for persons whose likenesses and "performances" are used in a deep fake?***

Copyright over these creations should be vested in the creator of the work relating to the deep fake and to the creator of the data. An equitable remuneration system is imperative.

Issue 9: General Policy Issues

i) Are there seen or unforeseen consequences of copyright on bias in AI applications? Or is there a hierarchy of social policies that needs to be envisaged that would promote the preservation of the copyright system and the dignity of human creation over the encouragement of innovation in AI, or vice versa?

Lawmakers should consider passing a law to encourage the preservation of the copyright system and the dignity of human creation.

DATA

Issue 10: Further Rights in Relation to Data

i) Should IP policy consider the creation of new rights in relation to data or are current IP rights, unfair competition laws and similar protection regimes, contractual arrangements and technological measures sufficient to protect data?

Yes. It is crucial to allow for new rights in relation to data to ensure that competition is fair. This means that contractual arrangements and technological measures should relfect this trend.

ii) If new IP rights were to be considered for data, what types of data would be the subject of protection?

In general, the types of data to be protected is those similar to copyright, such as literary and artisitic works.

iii) If new IP rights were to be considered for data, what would be the policy reasons for considering the creation of any such rights?

The policy reasons are summarized below.

- the resemblance of the creation of literary and artisitics works to that of AI;
- changes in how society consumes these artificial creations, which are gaining traction;
- they generate considerable financial resources.

iv) ***If new IP rights were to be considered for data, what IP rights would be appropriate, exclusive rights or rights of remuneration or both?***

The rights to be envisaged are exclusive rights and rights of remuneration.

v) ***Would any new rights be based on the inherent qualities of data (such as its commercial value) or on protection against certain forms of competition or activity in relation to certain classes of data that are deemed to be inappropriate or unfair, or on both?***

The new rights will be based on the inherent qualities of data as regards their commercial value.

vi) ***How would any such rights affect the free flow of data that may be necessary for the improvement of AI, science, technology or business applications of AI?***

These rights will indeed affect the free movement of data, which will create national wealth in industry, culture, the economy and scientific and technological development.

vii) ***How would any new IP rights affect or interact with other policy frameworks in relation to data, such as privacy or security?***

These new IP rights will not influence policy frameworks in relation to data is there is rigorous case law protecting privacy or security according to *Moroccan Law No. 09-08 on the protection of natural persons in relation to the processing of personal data which protects the privacy and security of people and their personal data*.

The interaction of these laws with these policies will be mutual and without difficulty.

viii) ***How would any new IP rights be effectively enforced?***

The new IP rights will be effectively enforced by collective management systems and mechanisms that are based on adequate information systems which allow for flexible and secure interaction between the rightholders and the users or data in the digital environment with which countries now have to contend.

Issue 12: Capacity Building

i) What policy measures in the field of IP policy might be envisaged that may contribute to the containment or the reduction in the technology gap in AI capacity? Are any such measures of a practical nature or a policy nature?

To contain or reduce the technology gap in AI, policy measures in IP could include the following:

- capacity building ;
- training and on-the-job-training for practitioners ;
- inclusion of education on AI in school and university programs;
- secure Internet access ;
- ongoing technical assistance by AI professionals;
- respect for traditional and artificial copyright; and
- access to information and databases in compliance with applicable laws.

These measures are both practical and policy-oriented.

Issue 13: Accountability for Decisions in IP Administration

i) Should any policy or practical measures be taken to ensure accountability for decisions made in the prosecution and administration of IP applications where those decisions are taken by AI applications (for example, the encouragement of transparency with respect to the use of AI and in relation to the technology used)?

Yes. Measures must be taken to encourage IP applicants to comply with transparency norms.

ii) Do any legislative changes need to be envisaged to facilitate decision-making by AI applications (for example, reviewing legislative provisions on powers and discretions of certain designated officials)?

Yes. Changes in legislation should be envisaged.