DACS ®

WIPO consultation on Artificial Intelligence and Intellectual Property Policy

Summary

DACS is grateful for the opportunity to provide views and evidence to WIPO in respect of the relationship between artificial intelligence (AI) and intellectual property. As AI becomes ever more present in peoples' lives and work, it is a timely moment to consider the impact it will have on IP rights. DACS is pleased to share overarching observations on copyright-related matters that were highlighted in the WIPO issues paper:

- AI-generated works always rely on human intervention.
- Words such as 'data' are broad, and care should be taken when developing policies that use these words.
- Copyright licensing offers practical solutions to help AI developers use copyright-protected works in a way that rewards copyright owners. No further exceptions to copyright are needed to improve AI training or innovation.
- Copyright implications are important but cannot be considered in a vacuum. AI will have ethical, social and practical implications that will need to be considered too.

About DACS

DACS is the UK's flagship collective rights management organisation for visual artists, representing over 100,000 artists worldwide. DACS manages copyright and Artist's Resale Right on behalf of visual artists and champions their sustained contribution to the creative economy.

Through research and development partnerships, DACS has become a thought-leader in technology, from blockchain to AI. DACS is already harnessing the potential of AI in day-to-day applications and innovative uses for helping licensing artistic works to customers. We welcome the development of AI applications to increase the availability of visual works in a way that generates equitable remuneration to artists.

Human intervention

The WIPO issues paper states that "AI applications are capable of producing literary and artistic works autonomously". To gain a deeper understanding of how AI works in practice, DACS has collaborated with AI researchers, developers and experts, including Andrew Burgess, an AI adviser. Burgess states[1] that it is a common misconception that AI applications have the capacity to carry out autonomous actions and processes. Instead, AI applications have a **narrow** intelligence predicated on an input-and-output basis. An AI application must first receive information to then carry out its function, whether that is speech recognition or image analysis. AI applications must be trained by a human to do this task, and AI applications are given information by a human also.

AI cannot replicate the human intelligence needed to create original literary, artistic or musical works in the way that a human can. The works an AI application may 'create' (i.e. the application's output after receiving an input of other information) can only ever be a derivative work. As such, questions around authorship and collaborative ownership would need to be considered first before considering if or when an AI application can autonomously produce creative works.

Use of language

AI developers often describe the information they use to train an AI system or application as 'data', however it is not a specific term – it is a broad concept that could include anything from a short numerical sequence to a substantial part of a copyright-protected work. Whilst the word 'data' is used frequently in journalism and reporting, use in a policy context could put copyright protection at risk.

AI made headlines in the art world in 2018 when an auction house sold the first work that was 'created' by an algorithm. One of the creators of the algorithm explained that the system used was "fed… with a data set of 15,000 portraits painted between the 14th century to the 20th"[2] Many paintings from the 20th century are still protected by copyright depending on when the author died, yet rather than considering the paintings as 'works', the AI developer refers to them as 'data'. If

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[1] Burgess, Andrew, *Why We Should Be Narrow Minded About AI*, accessed 14.02.2020: https://aibusiness.com/narrow-ai-andrew-burgess/

[2]: Christie's, *Is artificial intelligence set to become art's next medium?* 12.12.2018 accessed 14.02.2020 https://www.christies.com/features/A-collaboration-between-two-artists-one-human-one-a-machine-9332-1.aspx

this language filters down into policy making, it will become established and accepted that original artistic works are, for the purposes of AI, just a set of data, and as a consequence the rights of individuals who created those artistic works will be eroded.

We urge that WIPO is cautious over the use of language and the impact this may have on copyright owners.

Licensing

Existing copyright exceptions cover a broad range of activities and in many countries these exceptions are sufficient for various stakeholders to use copyright-protected works in a balanced way. AI developers can make use of relevant copyright exceptions as much as any other stakeholder can under their national legislation. As such, DACS considers that AI developers have a range of exceptions already available to them and there is no need for these to be expanded further. If there is a lack of understanding of copyright in the AI-related industry, this could be dealt with through targeted copyright education and awareness.

Additionally, licensing opportunities are increasingly more flexible and more efficient, as licensors begin to adopt certain technologies themselves. DACS has carried out research and development into using tools like blockchain to create more transparency in the art market[3], and these tools can also be used for creating efficient, large scale licensing opportunities.

We would be pleased to work together with WIPO to encourage and support licensing initiatives around the world that can respond to a greater application and use of copyright-protected works in any industry, including AI-related industries.

Other aspects of AI

DACS' work with academics, researchers and experts in new and developing technologies has highlighted the need for joined-up thinking. AI has the power to radically alter the way people

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[3] Duncan MacDonald-Korth, Vili Lehdonvirta and Eric T. Meyer; Alan Turing Institute, Oxford Internet Institute, *The Art Market 2.0 Blockchain and Financialisation in Visual Arts*, 2018: https://www.dacs.org.uk/DACSO/media/DACSDocs/Press%20releases/The-Art-Market-2-0-Blockchain-and-Financialisation-in-Visual-Arts-2018.pdf

work and live their lives, therefore conversations on AI must take into account human rights, data protection and privacy laws, ethics, employment, and societal, cultural and economic impacts. These topics should be discussed alongside conversations on AI's relationship with IP.

We recommend to WIPO to continue its work on AI with joined-up initiatives with other organisations that look at AI's impact on a wider scale.

We thank you for your time and we look forward to collaborating with you further.

For further information please contact:

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