

QUESTIONNAIRE ON ARTIFICIAL INTELLIGENCE POLICIES

BACKGROUND

Artificial Intelligence (AI) has become a strategic priority for many governments across the globe. In addition, data are a critical component of AI since AI applications rely upon machine learning techniques that use data for training and validation.

As well as AI capacity building, education and regulatory measures, there is a question whether the established intellectual property (IP) system should be modified to in response to AI developments. WIPO has been requested by Member States to provide a forum for discussion of AI and IP Policy, which also includes data. WIPO has therefore started an open conversation on AI/data and IP, including a draft issues paper¹, and is planning to continue the conversation in Geneva on May 11-12, 2020.

REQUEST FOR INFORMATION

In order to aid this discussion, WIPO is seeking to collate country/regional information regarding strategies, frameworks and legislation of relevance to AI/data and IP.

This questionnaire aims at taking stock of the different national and regional landscapes of legislation and instruments applicable to AI/data and IP.

A summary of the answers provided in this questionnaire will be used to create a publicly available resource to facilitate information sharing. Personal information provided, such as contact details of individual persons, will not be made publicly available but may be used solely by the Division of AI Policy to share the results of the questionnaire and to gather further information in the future.

Please send the completed questionnaire, including null responses, to ai2ip@wipo.int.

¹ https://www.wipo.int/about-ip/en/artificial_intelligence/call_for_comments/index.html

NATIONAL AI STRATEGIES

1. Does your country have a national/regional AI strategy in place?

- No
- Yes
- Draft/proposed only
- Do not know

2. If so, does the AI strategy identified in Q1 consider IP?

- No
- Yes
- Draft/proposed only
- Do not know

3. Please provide details of the AI strategy identified in Q1 (name, short description, year, URL, responsible organization name and, if relevant, its relation to IP).

In 2018, Estonia set up a horizontal taskforce involving experts from the public and private sectors and academia to determine how Estonia could benefit from and advance the take-up of AI. In May 2019, this taskforce, led by Ministry of Economic Affairs and Communications and Government Office, presented its report and proposals. Based on this report, in July 2019 the Estonian Government adopted "**Estonia's National Artificial Intelligence Strategy 2019-2021**" – a plan on how to implement the expert group's recommendations. The strategy is a sum of actions that the Government will take to advance the take-up of AI in both the private and public sectors, to increase the relevant skills and research and development (R&D) base as well as to shape the legal environment. According to the current strategy, at least 10M EUR in 2019-2021 will be invested towards the implementation of the AI strategy. There are plans to update the strategy with more concrete actions to protect human rights and ensure adherence to ethical principles (these areas were still being studied at the time of adoption of the strategy). Based on the initial experience collected in the short term 2019-2021, Estonia intends to draft a national long-term strategy for AI.

The national AI strategy 2019-2021 does not propose any specific strategy regarding IP. The only reference to IP concerns the suggestion that one of the measures in developing AI R&D in Estonia should be ensuring support in IP matters to companies involved in AI R&D.

Responsible organization for AI strategy: Ministry of Economic Affairs and Communications

Estonia's National Artificial Intelligence Strategy 2019-2021, available in English here: https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf

Report of Estonia's AI Taskforce, available in English here: https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_486454c9f32340b28206e140350159cf.pdf

AI AND IP LEGISLATIVE MEASURES

4. Does your country have any measures/provisions in its IP framework that were specifically enacted for AI (an example would be a modification of copyright law for computer generated works)?

- No
- Yes
- Draft/proposed only
- Do not know

5. Please provide details of the relevant legislative measures/provisions identified in Q4 (name, section, short description, year and URL).

While there aren't any measures or provisions in the IP framework established specifically due to the emergence of AI, there exists a text and data mining exemption in the Estonian Copyright Act since 2017 which, among else, enables training of AI algorithms in the academic and research sphere using copyrighted content. Specifically, the Estonian Copyright Act permits to carry out text and data mining without the authorization of the author and without payment of remuneration, provided that such use does not have a commercial objective. See § 19 sub-section 3^{bf} of the Copyright Act, available in English here: <https://www.riigiteataja.ee/en/eli/504042019001/consolide>.

6. Is there any case law relevant to AI and IP in your country/region?

- No
- Yes
- Do not know

7. Please provide details of the decision(s) relating to Q6 (name, short description of subject matter, year and URL).

EXAMINATION GUIDELINES

8. Has your country's IP office (or other IP registration body) amended its examination guidelines and procedures due to AI-related inventions or works?

- No
- Yes
- Draft/proposed only
- Do not know

9. Please provide details of the relevant guidelines and sections identified in Q8 (name, short description, year and URL)

DATA RIGHTS

10. Does your country/region have any legislative measures/provisions for database rights?

- No
- Yes - enacted law
- Draft/proposed law only
- Do not know

11. Please provide details of the relevant legislative measures/provisions identified in Q10 (name, short description, year and URL).

Rights of makers of databases: the Estonian Copyright Act grants independent protection for databases by establishing *sui generis* rights for makers of databases to protect investments made by them. The maker of a database has the exclusive right to authorize or prohibit making of extractions from the database (or from a substantial part thereof) and re-utilization of the database (or a substantial part thereof). See Chapter VIII¹ of the Copyright Act, available in English here: <https://www.riiqiteataja.ee/en/eli/504042019001/consolide>. The database rights entered into force on 06.01.2000.

12. Does your country recognize any rights or ownership in data?

- No
- Yes
- Draft/proposed only
- Do not know

13. Please provide details of the relevant legislative measures/provisions identified in Q12 (name, short description, year and URL).

There are no data ownership rights recognized in Estonia. However, there are certain rights related to data that arise from the Personal Data Protection Act and the Copyright Act.

Rights concerning processing of personal data: personal data is protected under the Personal Data Protection Act, establishing rights and restrictions in processing data which are related to an identified or identifiable natural person. The current Personal Data Protection Act is in force from 15.01.2019 and is available here: <https://www.riiqiteataja.ee/en/eli/523012019001/consolide>.

Rights related to data in the Copyright Act: data *per se* is not protected by the Estonian Copyright Act (§ 5(7) of the Copyright Act). However, a collection of information may be protected by copyright, provided that it meets the criteria for copyright protection as a result of creative activity in selecting or arranging the information (see § 4(2), § 4(3)(22) and § 34 of the Copyright Act). Furthermore, certain use of collection of data which constitutes a database may be protected with a *sui generis* database rights (see Q11 above).

14. Does any AI strategy identified in Q1 or other strategy consider data and any creation of a *sui generis* right for data and/or databases?

- No
 Yes
 Draft/proposed only
 Do not know

15. Please provide details of the data strategy identified in Q14 (name, short description, year, URL and responsible organization name).

There aren't any strategy documents proposing creation of a new *sui generis* right for data and/or databases (please note that there already exists a *sui generis* database right in Estonia – see Q11 above).

However, there are two strategy documents, which set out to ensure better utilization of data in public sector and advance the development of data economy:

1. The Estonia's national artificial intelligence strategy 2019-2021 (see Q3). Adopted in 2019. Available here: https://f98cc689-5814-47ec-86b3-db505a7c3978.filesusr.com/ugd/7df26f_27a618cb80a648c38be427194affa2f3.pdf.
2. Estonian Digital Agenda 2020, which is the national strategy for developing the information society and ensuring cyber security. Updated version adopted in 2018. Available here: https://www.mkm.ee/sites/default/files/eesti_infouhiskonna_arengukava_2020.pdf.

Responsible organization in adopting the data strategies: Ministry of Economic Affairs and Communications

OTHER AI AND IP RELATED INFORMATION

16. Please provide details of any other related processes related to AI/data and IP undertaken in your county/region, for example, public consultation processes, guidance notes for legislative interpretation, policy guidance, communications, working groups, etc. (name, short description, year and URL).

In addition to the strategy documents and reports outlined above (the Estonia National Artificial Intelligence Strategy 2019-2021, Report of Estonia's AI Taskforce and Estonian Digital Agenda 2020), there are a few other AI-related developments:

- **#KrattAI: The Next Stage of Digital Public Services in #eEstonia.** It is a vision paper issued by the Ministry of Economic Affairs and Communications and Government Office calling for proposals on how to revolutionize public services in the age of AI. Published on 24.02.2020. Available here: https://f98cc689-5814-47ec-86b3-db505a7c3978.usrfiles.com/ugd/7df26f_b4433364c1e941c9a5a7633f7555bddf.pdf.
- **Legal Analysis on the Use of Autonomous Vehicles.** The analysis was ordered by the Estonian Government Office and constitutes an analysis on the legal concerns arising with the adoption of autonomous vehicles. Among else, the analysis covers the issue of legal personhood and liability of AI algorithms and robots under the existing legal regime, and proposes possible regulatory solutions. Published on 14.10.2017. Available here: https://triniti.ee/wp-content/uploads/sites/2/2017/10/L%C3%95PPRAPORT_Anal%C3%BC%C3%BCs-SAE-tase-4-ja-5-s%C3%B5idukite-kasutusele-v%C3%B5tmiseks_Riigikantselei_okt-2017.pdf.

