

WIPO QUESTIONNAIRE ON ARTIFICIAL INTELLIGENCE POLICIES

NATIONAL AI STRATEGIES

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

A 1:

Yes.

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

A 2:

Yes: The Artificial Intelligence (AI) Strategy of the Federal Government sets out a framework for a holistic policy on the future development and application of AI in Germany. The federal government is – among other measures - supporting institutes of higher education, public-sector research institutions and SMEs as they file patents.

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).

A 3:

Artificial Intelligence Strategy, Federal Government, Status: adopted in November 2018 (is currently being developed further)

<https://www.ki-strategie-deutschland.de/home.html>

Responsible organization: Federal Ministry for Economic Affairs and Energy, Federal Ministry of Education and Research, Federal Ministry of Labour and Social Affairs

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)?

A 4:

No.

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

A 5:

No measures or provisions have been specifically enacted for AI in the field of copyright.

However, text and data mining (TDM) is considered an important technology forming the basis for machine-based learning and hence for AI.

On 1 March 2018, Germany enacted a copyright exception for TDM for non-commercial scientific purposes in Section 60d of the German Copyright Act

https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html#p0446

Articles 4 and 5 of the new DSM Copyright Directive (EU) 790/2019 now provide TDM limitations and exceptions, which are in part broader than Section 60d UrhG in its current version. The Directive has to be transposed into national law until 7 June 2021. Germany intends to transpose these provisions in a new Section 44a ('general' TDM exception) and a revised Section 60d UrhG (TDM for scientific research).

A discussion draft of the transposition law can be found here (in German):

https://www.bmiv.de/SharedDocs/Gesetzgebungsverfahren/DE/Gesetz_I_Umsetzung_EU_Richtlinien_Urheberrecht.html

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

A 6:

No.

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

A 7:

n/a

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?

A 8:

No.

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

A 9:

n/a

DATA RIGHTS

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

A 10:

Yes – enacted law

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

A 11:

Protection for database works and a sui generis right for databases were introduced in Germany in transposition of the European Database Directive 96/6/EC.

Section 4 para 2 of the German Copyright Act (*Urheberrechtsgesetz – UrhG*) protects database works.

A database work is a collection whose elements are arranged systematically or methodically and the individual elements are individually accessible by electronic or other means. In order to receive copyright protection as a database work, the selection or arrangement of the data must constitute the author's own intellectual creation.

Sections 87a et seq. UrhG provide for a sui generis right for the maker of a database.

A database is a collection of works, data or other independent elements arranged in a systematic or methodical way and individually accessible by electronic or other means and whose obtaining, verification or presentation requires a substantial qualitative or quantitative investment (Section 87a para 1 UrhG).

The maker of the database is the person making the substantial investment. They have the exclusive right to reproduce and distribute the database as a whole or a qualitatively or quantitatively substantial part of the database and to make this available to the public (Section 87b para 1 UrhG).

The relevant provisions can be found here:

https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html#p0658

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

A 12:

No.

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

A 13:

n/a (there is no ownership or other exclusive right in data in Germany)

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?

A 14: No.

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

A 15: n/a

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).

A 16:

The Federal Chancellery is currently coordinating the work on a national data strategy. To this end, the federal government started a public consultation end of February until 3 April. The data strategy could address questions of data access and use.