

Response to the Public Consultation on Copyright and Artificial Intelligence

From a multinational insurer

Introduction

We acknowledge the IPD's initiative to review the existing copyright framework and explore the implications of AI on the creation, use and protection of copyrighted works. We believe that a balanced and flexible approach is needed to foster innovation and creativity in the AI sector, while respecting the rights and interests of the original authors and users of the works.

Comments and Recommendations

- We **recommend** that the IPD **clarify** the liability and responsibility of AI users and creators for the infringement of third-party rights.
- We suggest that the IPD adopt a reasonable care standard, which would require AI users and creators to take reasonable steps to avoid or minimize the risk of infringement, such as obtaining licenses, conducting due diligence, implementing filters or safeguards, and providing attribution or notice. We believe that this would strike a balance between the interests of AI users and creators and the rights holders of the works.
- We agree that AI can be a tool, a user or a creator of copyrighted works, depending on the degree of human involvement and intervention in the process. We suggest that the IPD adopt a case-by-case analysis to determine the nature and role of AI in each scenario, rather than applying a rigid or uniform definition.
- We support the IPD's proposal to introduce a new exception for text and data mining (for the purposes of AI). We believe that this would facilitate the development and application of AI technologies, especially in the fields of research, education and public interest. We suggest that the IPD adopt a broad and technology-neutral definition of TDM, and allow the use of any type of works, subject to appropriate safeguards and limitations.
- We suggest that contractual agreement to assign the legal risk of copyright infringement may not always be the most equitable solution and could place undue burden on the party with weaker negotiating power, rather than the party best positioned to mitigate IP infringement risk.

Views from a Privacy Perspective

Privacy Concerns in AI: Data Protection and Ethical Implications

Beyond copyright, AI's reliance on vast datasets introduces significant privacy concerns. These concerns intersect with copyright law in various ways, particularly when AI systems use personal data in the creation of content.

Privacy Challenges:

1. **Data Collection and Usage:** AI systems often require large datasets, which may include personal data. This raises the risk of privacy violations if the AI inadvertently reproduces or reveals this data. Moreover, using copyrighted material in AI training further complicates the legal landscape, especially when such material includes personal data protected under various privacy laws.
2. **Ownership and Control:** Determining ownership of AI-generated content that incorporates personal data has direct privacy implications. Users need clear control

over how their data is used, particularly in AI-generated outputs. Ensuring that user consent is obtained and respected is crucial to maintaining privacy standards.

3. **AI and Profiling:** AI systems can create detailed profiles of individuals, leading to potential privacy infringements. The automated nature of AI decisions raises concerns about transparency and accountability, especially when these decisions are made without the individual's knowledge or consent.

Proposed Solutions to Privacy Challenges

Addressing privacy concerns in AI requires a multi-faceted approach that integrates legal, technological, and ethical considerations.

1. **Strengthening Data Protection Regulations:** Updating existing privacy laws, to specifically address AI-related issues is essential. Clearer guidelines on the consent required for AI processing of personal data and clearer rules on data anonymization can help protect individuals' privacy and copyright. In this context, may we suggest that the law explicitly draw references to the Guidance on the Ethical Development and Use of Artificial Intelligence, released by the Office of the Privacy Commissioner for Personal Data
2. **Privacy by Design:** Incorporating "privacy by design" principles into AI development ensures that privacy considerations are embedded from the outset. This approach could include using differential privacy techniques to prevent the extraction of individual data points, enhancing the overall security of AI systems.
3. **Legal Framework for Deepfakes:** Deepfakes, a specific AI-generated content form, pose unique privacy risks. Developing legislation that addresses the creation and distribution of deepfakes without consent is crucial. Additionally, promoting detection technologies and increasing public awareness can mitigate the impact of deepfakes on individual privacy.
4. **Transparency and Accountability:** Introducing mandatory transparency requirements for AI systems ensures that individuals understand how their data is processed. Establishing accountability mechanisms, such as independent oversight bodies, can help enforce compliance with privacy standards, ensuring that AI developers are held responsible for their systems' outcomes.
5. **Privacy Enhancing Technology:** Encouraging the use of PETs can help in exploring AI safely and effectively while preserving the privacy rights of an individual. Simple technologies like anonymization can render the data sets de-identifiable and yet enable availability of data sets for training AI.

Ethical Considerations and the Need for Ongoing Review

The ethical implications of AI, particularly concerning privacy, cannot be overstated. AI has the potential to infringe on privacy rights in ways that are not immediately apparent, raising concerns about the ethical balance between innovation and individual rights. Developing and enforcing ethical AI guidelines that prioritize privacy is essential. Introducing an ethical AI certification program could further ensure that AI systems meet high privacy standards.

Conclusion

The intersection of AI, copyright law, and privacy presents a complex and evolving challenge. As AI continues to shape the creative industries, it is essential that legal frameworks are updated to address the unique issues that arise from AI-generated content. This includes

ensuring that copyright protections are relevant and effective, while also safeguarding individual privacy rights.

Proposed changes to copyright law must consider their impact on privacy, incorporating transparency, accountability, and ethical considerations into the legal framework. Engaging privacy experts in the consultation process is crucial to ensuring that AI practices align with data protection regulations, ultimately protecting individual rights in the digital age. By addressing these challenges proactively, the HK can foster an environment where innovation and privacy coexist harmoniously, benefiting both creators and society at large.

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