



### 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 paper<sup>1</sup>, 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](mailto:ai2ip@wipo.int).

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<sup>1</sup> [https://www.wipo.int/about-ip/en/artificial\\_intelligence/call\\_for\\_comments/index.html](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).

## 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).

Legislation:

*Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018*

*Designs Act 2003, s 135A*

*Patents Act 1990, s 223A*

*Plant Breeder's Rights Act 1994, s 76B*

*Trade Marks Act 1995, s 222A*

Description:

In 2018, the Australian Government passed a number of amendments to the Designs, Patents, Plant Breeder's Rights and Trade Marks Acts to enable the Commissioner of Patents and Registrars of Trade Marks, Designs and Plant Breeder's Rights to arrange for the use of a computer program to make decisions, exercise powers and comply with obligations under the legislation.

<https://www.legislation.gov.au/Details/C2018A00077>

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

- No  
 Yes  
 Do not know

(Note: In Australia there is a general principle that artificial persons do not have standing to sue for infringement.)

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

Previous cases have considered computer generated works involving data in relation to copyright. These cases could be authoritative.

*IceTV Pty Ltd v Nine Network Australia Pty Ltd* [2009] HCA 14  
<http://eresources.hcourt.gov.au/showCase/2009/HCA/14>

Subsistence of copyright in weekly TV program schedules involving computer generation.

*Acohs Pty Ltd v Ucorp Pty Ltd* [2010] FCA 577

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2010/2010fca0577>

Subsistence of copyright in data sheets generated electronically.

## 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).

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

- No
- Yes
- Draft/proposed only
- Do not know (As this subject is the matter of court cases, we refrain from commenting.)

(Note: In Australia, data, which are not public knowledge, can be protected as a trade secret by the action for breach of confidence (either in contract or equity). This action does not acknowledge or enforce any proprietary interest in data, but rather enforces a personal obligation not to use or disclose confidential data for unauthorised purposes.)

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

Recognition of rights in works involving data depends on individual cases and circumstances. In addition to the two cases cited in the response to question 7, there is another case that is relevant:

*IceTV Pty Ltd v Nine Network Australia Pty Ltd* [2009] HCA 14  
*Acohs Pty Ltd v Ucorp Pty Ltd* [2010] FCA 577  
*Telstra Corporation Limited v Phone Directories Company Pty Ltd* [2010] FCAFC 149  
<<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2010/2010fcafc0149>>  
Subsistence of copyright in the compilation of a telephone directory.

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).

## 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).

Australia does not have processes underway specifically in relation to AI/data in conjunction with IP. However, the Australian Government is undertaking work around general AI policy, including the AI technology roadmap, AI ethics framework and related consultation. Further details are available at <https://www.industry.gov.au/strategies-for-the-future/artificial-intelligence>.

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In relation to Question 4, as previously noted the Australian Government passed several legislative amendments in 2018 to arrange for the use of a computer program to make decisions, exercise powers and comply with obligations under the legislation.

- a. Public consultation on introduction of computerised decision-making into Trade Marks, Patents, Designs & Plant Breeder's Rights Acts

Information on the public consultation process undertaken for these reforms is available on IP Australia's website.

<https://www.ipaustralia.gov.au/about-us/legislation/ip-legislation/intellectual-property-laws-amendment-productivity-commission-response-part-1-and-other-measures-act>

Guidance notes for legislative interpretation of these legislative amendments are available in the accompanying explanatory memorandum on Australia's Federal Register of legislation website.

[https://www.legislation.gov.au/Details/C2018B00067/Explanatory%20Memorandum/Text#\\_Toc509828379](https://www.legislation.gov.au/Details/C2018B00067/Explanatory%20Memorandum/Text#_Toc509828379)

- b. IP Australia's Automated Decision Governance Plan & Computerised Decision Register

IP Australia has instituted internal governance arrangements so that computerised decision-making will only be implemented for a decision with the direct approval of the Commissioner of Patents or the Registrars of Trade Marks, Designs and Plant Breeder's Rights. The approval is not carried out by another employee. If a computer program makes an incorrect decision, the Commissioner/Registrar has the power to substitute that decision. A computer-implemented decision may be challenged in the same way as any other decision of the Commissioner/Registrar (e.g. in court).

These arrangements include a framework and policy to govern the use of automated decision-making systems applied to any decision, power or obligation under IP Australia's legislation; and a Computerised Decision-Making Register. Together, these internal governance arrangements ensure that the power is used judiciously.