



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 publically available resource to facilitate information sharing. Personal information provided, such as contact details of individual persons, will not be made publically 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).

Strategy Digital Switzerland, 2018 (renewed every 2 years), Business Office Digital Switzerland (GDS), from the Federal Office of Communications OFCOM.
 URLs: <https://www.bakom.admin.ch/bakom/en/homepage/digital-switzerland-and-internet/strategie-digitale-schweiz.html>
 See also: <https://strategy.digitaldialog.swiss/en/#pr>

Regarding IP in particular: see Objective Transnational portability of content - Access to digital content is improved.
 URL: <https://strategy.digitaldialog.swiss/en/data-digital-content-and-artificial-intelligence/objective-6>

Interdepartmental Working Group on Artificial Intelligence. The various reports mention some policies challenges that will probably face the IP system.
<https://www.sbf.admin.ch/sbf/fr/home/politique-fri/fri-2021-2024/themes-transversaux/numerisation-fri/intelligence-artificielle.html>

Open Government Data, 2014, Open Government Data Office, Federal Statistical Office
 URL: <https://www.bfs.admin.ch/bfs/en/home/services/ogd.html>

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).

Exception for scientific purposes (Art. 24d new Federal Act on Copyright and Related Rights as on 01.04.2020): Nowadays, large quantities of information, such as text and images, are also available electronically. Particularly in the field of research, analysis of this data is increasingly automated as this makes it easier to find patterns, similarities and differences. The research technology employed for this purpose, called text and data mining, automatically saves a copy of the information to be analysed on a separate server. This copy in particular could be perceived as being problematic in terms of copyright.

In order to use the new opportunities of digitalisation and strengthen Switzerland as a location for research, authors will no longer be able to prohibit the automatically created copies that are necessary for analysis. The appeal made for an exception for scientific purposes is based upon the assumption that the copies are primarily stored for the purpose of scientific research and are required for technological reasons. In addition, researchers need lawful access to the work. This means that they must acquire this work themselves or that it is available from a library.

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Art. 24d Federal Act on Copyright and Related Rights (Copyright Act, CopA), SR 231.1, URL: <https://www.admin.ch/opc/en/classified-compilation/19920251/index.html>
 Entry into force as of 01.04.2020.

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).

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).

Please refer to the Word document attached.

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).

[End of document]

WIPO - QUESTIONNAIRE ON ARTIFICIAL INTELLIGENCE POLICIES

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

Ultimately, there is no such thing as true property over data, but there are several types of rights, whether they are rights of control, prohibition against third parties, access or other concepts. On the one hand, the following ownership-like rights can be mentioned, in particular:

- the rights that individuals can exercise over their personal data (Federal Act on Data Protection (FADP), CC 235.1);
- the right of prohibition against third parties provided by trade secrets (Art. 4 let. c, Art. 5 and Art. 6 Federal Act against Unfair Competition, CC 241; Art. 162 Swiss Criminal Code, CC 311.0; e.g. Art. 41, 321a, 423 Swiss Code of Obligations, CC 220; etc.)
- intellectual property rights over intangibles that may constitute data, e.g.:
 - Copyright and Related Rights over works that may constitute data (literary, scientific, musical, pictorial, photographic works, etc.);
 - patents over technical solutions that may constitute data;
- the right of prohibition against third parties based on test data protection for pharmaceutical (Art. 12 Federal Act on Medicinal Products and Medical Devices (Therapeutic Products Act, TPA), CC 812.21) and agrochemical products (aRT. 52 Ordinance on the Placing on the Market of Plant Protection Products, CC 916.161).

On the other hand, the following "access rights" can be mentioned, in particular:

- exceptions under data protection law (Federal Act on Data Protection (FADP), CC 235.1);
- exceptions under intellectual property laws, e.g.:
 - exception for text and data mining in copyright law;
 - research exemption in patent law.
- antitrust law (any data withheld unlawfully by a dominant undertaking) (Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA), CC 251).
- open data policies for public data (Open Government Data Strategy);