Generative AI and Intellectual Property (IP) regulation in the UK: walking a difficult tightrope

Summaries

What is "generative AI"?

"Generative AI" roughly refers to artificial intelligence (AI) systems that generate content (such as text or images) based on prompts users provide.

Generative AI systems are built off the back of text and data mining (TDM) techniques that feed into machine learning models.

A user-friendly interface then allows us to input prompts and interact with the model.

Why might "generative AI" need legislating?

Amongst other things, generative AI raises questions about intellectual property (IP).

"IP refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. [IP] is protected in law by, for example, patents, copyright and trademarks." [1]

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And TDM techniques can effectively infringe upon IP rights.

[1] World Intellectual Property Organisation (n.d.) What is intellectual property? [online: https://www.wipo.int/about-ip/en/]

How might TDM infringe upon IP rights?

TDM is the use of automated techniques for the compilation and analysis of data, such as text. Large datasets may be compiled without regard to the IP rights of those who created the data.

In the UK, the copy of text and data analysis does not infringe copyright if conducted for non-commercial research purposes,[2] originally as per EU rules.[3]

However, TDM constitutes the backbone of generative AI systems, which are often for commercial use.

[2] Copyright, Designs and Patents Act 1988, S.29A
[3] Intellectual Property Office (2022) Consultation outcome: Artificial Intelligence and Intellectual Property: copyright and patents: Government response to consultation

"Unleashing the power of AI is a top priority in the plan to be the most pro-tech Government ever."[3]

[3] Intellectual Property Office (2022) Consultation outcome: Artificial Intelligence and Intellectual Property: copyright and patents: Government response to consultation

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Walking a tightrope between innovation and IP rights

In June 2022, the UK government "decided to introduce a new copyright and database exception which allows TDM for any purpose,"[3] extending the exception to commercial uses.

In February 2023, it was announced that the proposal would not go ahead following a consultation and to ensure proportionate regulations that reflect the UK economy.

[3] Intellectual Property Office (2022) Consultation outcome: Artificial Intelligence and Intellectual Property: copyright and patents: Government response to consultation
[4] Freeman (2023) George Freeman responds to debate on AI and intellectual property rights, *Commons Hansard*

"We need to be careful to ensure that the creative industry can flourish, and that the rights of the creators, who may or may not want their material to be used, are not trampled over."[4]

[4] Freeman (2023) George Freeman responds to debate on AI and intellectual property rights, *Commons Hansard*

Tightening the tightrope between innovation and IP rights

In March 2023, it was recommended that the UK government "work with the AI and creative industries to develop ways to enable TDM for any purpose."[5]

The case for greater TDM exemptions is brought back to the table by appealing to advancements in generative AI.

It is critical that the government not take the bait that is "AI hype" – people's rights should take precedence in AI regulations

[5] Vallance, P. (March 2023) Pro-innovation Regulation of Technologies Review; Digital Technologies
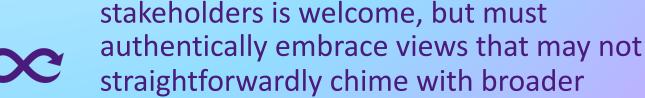
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IP rights may be at stake because of the government's pro-innovation approach to regulating AI.

However, generative AI systems are only one AI tool, and it is questionable to justify infringing on workers' rights for faster technological innovation.

The call to collaborate with relevant stakeholders is welcome, but must authentically embrace views that may not straightforwardly chime with broader government policies.

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How we can help

Communications: deliver accurate and meaningful narratives without recreating myths about AI

Technical advice: Identify and implement relevant standards and tools for your context

Public engagement: ensure impactful innovation through community management and public involvement

Governance: Foster responsible research and innovation with practices throughout organisational processes