CLLS – INTELLECTUAL PROPERTY LAW AND ARTIFICIAL INTELLIGENCE COMMITTEES

RESPONSE TO UKIPO CONSULTATION

A. INTRODUCTION

1. This is the response of the City of London Law Society ("**CLLS**") to the UK Intellectual Property Office's Consultation "Copyright and AI" (the "**Consultation**") issued on 17 December 2024.

2. The CLLS represents approximately 21,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients, from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees. This response has been jointly prepared by the CLLS Intellectual Property Law and Artificial Intelligence Committees. A list of the current members of those committees can be found at www.clls.org.

B. CONTEXT TO THIS RESPONSE

3. The CLLS notes that the government declined to sign an international AI agreement at the Paris AI Action Summit in February 2025. The Prime Minister's official spokesperson is reported as having explained this decision on the basis that the government will only sign up to initiatives that are in the UK's national interests. Following that theme, the CLLS considers that the questions posed by the Consultation require consideration of which outcome(s) are in the UK's national interests, including the aim of driving economic growth. The political nature of the decisions to be made coupled with the diverse interests of clients of CLLS member firms means that the CLLS has chosen not to adopt a position on the specific questions asked. Instead, the CLLS has opted to detail below certain issues for the government to consider *if* a certain option is chosen. Further, the CLLS anticipates that the UK government will consider its response to the Consultation alongside the government's related proposals in its AI Opportunities Action Plan, and proposed UK legislation such as the Data (Use and Access) Bill (recent amendments to which also touch on the issues addressed in the Consultation).

4. The CLLS anticipates that there will be further consultations in due course on the practical implementation of the decisions that are ultimately made. The CLLS considers that it will be able to provide valuable related input and it stands ready to support.

C. **ISSUES FOR CONSIDERATION**

5. If the government decides:

   a) that a data mining exception which allows right holders to reserve their rights and which is underpinned by supporting measures on transparency is the best option (see question 1), then (as recognised in the Consultation) it needs to be cognisant of the limitations of existing technologies that may function as an opt-out mechanism and the importance of providing useful standards and instructive guidance on the detail required in and methods of delivering such transparency;

   b) to implement a rights reservation, it should consider specifying certain technical standards for a machine-readable opt-out (see questions 9-11) and ensuring that such standards are workable and have pan-industry support before an exception is introduced. In the EU, a lack of technical standardisation has made it difficult to assess what constitutes a valid opt-out from a rightsholder. While it may not be appropriate to include granular technical requirements under primary legislation, the government could issue requirements under statutory instruments, codes of practice or guidance and/or could facilitate pan-industry cooperation/discussions/roundtables;

   c) to implement a rights reservation, it should consider whether it is appropriate for opt-outs to be supported by protections equivalent to those currently provided to technical protection measures and rights management information. It should also consider how models trained prior to introduction of a TDM exception should be handled, including their ongoing operation, re-training and output. If not, the government risks creating additional complexity, legal uncertainty and distortion of competition in the market in respect of AI models that were trained or fine-tuned, wholly or in part, prior to the introduction of any TDM exception;

   d) that it should have a role in encouraging collective licensing (see question 15), it needs to be aware that a one size fits all approach may not be appropriate given the diverse range of creators and rights holders;

   e) to take steps to encourage AI developers who train their models outside the UK to comply with UK copyright law before those AI models are made available in the UK (see questions 24 and 25), it should consider the legal and jurisdictional basis for doing so and the consequences of non-compliance with any proposed steps, given that the Consultation notes that copyright law is territorial and at present international approaches to this issue have not yet been aligned;

   f) that outputs generated by AI should be labelled (see question 40), it should consider the challenges that may emerge if a material proportion of AI outputs are not correctly labelled on a consistent basis, whether due to technical or operational reasons or a lack of / dishonest implementation by AI system providers or deployers. If end users start to rely on labelling to identify AI output, then bad actors could create uncertainty of provenance - and contribute to mis- and disinformation - by releasing AI outputs without a label, or by adding labels to non-AI generated material; and

g) that it will investigate the use of synthetic data to train models (see question 46), it should consider the following issues. First, that the creation of synthetic data may require the use of a copyright work (as synthetic data is often derived from an existing dataset) and so the broader points made in the Consultation will apply to that activity. Second, that the creation of synthetic data can infringe laws other than copyright, including privacy laws where the generated synthetic data is not fully anonymous. Third, that use of synthetic data may increase the risk of hallucinations, bias, and unreliability in AI models over time. This increases the importance of implementing AI assurance techniques to ensure that AI models operate accurately, fairly, and reliably (as acknowledged by the Government's guidance "AI Insights: Synthetic Data (HTML)" published on 10 February 2025).

Should you have any queries, please do not hesitate to contact either me, or Kevin Hart of the CLLS at 4 College Hill, London, EC4R 2RB at kevin.hart@clls.org or on 020 7329 2173.

Yours faithfully

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Chair

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