



3510-16-P

## **DEPARTMENT OF COMMERCE**

### **Patent and Trademark Office**

**[Docket No. PTO-C-2019-0038]**

### **Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation**

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO”) is gathering information about the impact of artificial intelligence (“AI”) technologies on intellectual property law and policy. To assist in gathering this information, on August 27, 2019, the USPTO published questions related to the impact of artificial intelligence inventions on patent law and policy and asked the public for written comments. Those questions cover a variety of topics, including whether revisions to intellectual property protection are needed. The present notice extends this inquiry to copyright, trademark, and other intellectual property rights impacted by AI.

**DATES:** Written comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Written comments should be sent by email to *AIPartnership@uspto.gov*.

Comments may also be submitted by postal mail addressed to the Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria VA 22313-1450. Although comments may be

submitted by postal mail, the USPTO prefers to receive comments via email.

Because written comments and testimony will be made available for public inspection, information that a respondent does not desire to be made public, such as a phone number, should not be included in the testimony or written comments.

**FOR FURTHER INFORMATION CONTACT:** Coke Stewart, Office of the Under Secretary and Director of the USPTO, (571) 272-8600.

**SUPPLEMENTARY INFORMATION:** Artificial Intelligence (AI) technologies are increasingly becoming important across a diverse spectrum of technologies and businesses. AI poses unique challenges in the sphere of intellectual property law. At a January 31, 2019 conference on “Artificial Intelligence: Intellectual Property Policy Considerations,” USPTO explored a number of those challenges.<sup>1</sup> On August 27, 2019, the USPTO published a request for comment regarding AI’s impacts on patent law and policy. As a continuation of this work, the USPTO is also considering the impact of AI on other intellectual property rights.

*Issues for Comment:* The USPTO seeks comments on the copyright, trademark, and other intellectual property rights issues that may be impacted by AI. The questions enumerated below are a preliminary guide to aid the USPTO in collecting relevant information to evaluate whether further guidance is needed and to assist in the development of any such guidance with respect to intellectual property policy and its relationship with AI. The questions should not be taken as an indication that the USPTO has taken a position, or is predisposed to any particular views. The USPTO welcomes comments from the public on any issues that they believe are relevant to this

---

<sup>1</sup> A videotape of the entire conference, along with the agenda and an overview of the conference, are available at <https://www.uspto.gov/about-us/events/artificial-intelligence-intellectual-property-policy-considerations>.

topic, and is particularly interested in answers to the following questions:

1. Should a work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work, qualify as a work of authorship protectable under U.S. copyright law? Why or why not?
2. Assuming involvement by a natural person is or should be required, what kind of involvement would or should be sufficient so that the work qualifies for copyright protection? For example, should it be sufficient if a person (i) designed the AI algorithm or process that created the work; (ii) contributed to the design of the algorithm or process; (iii) chose data used by the algorithm for training or otherwise; (iv) caused the AI algorithm or process to be used to yield the work; or (v) engaged in some specific combination of the foregoing activities? Are there other contributions a person could make in a potentially copyrightable AI-generated work in order to be considered an “author”?
3. To the extent an AI algorithm or process learns its function(s) by ingesting large volumes of copyrighted material, does the existing statutory language (e.g., the fair use doctrine) and related case law adequately address the legality of making such use? Should authors be recognized for this type of use of their works? If so, how?
4. Are current laws for assigning liability for copyright infringement adequate to address a

situation in which an AI process creates a work that infringes a copyrighted work?

5. Should an entity or entities other than a natural person, or company to which a natural person assigns a copyrighted work, be able to own the copyright on the AI work? For example: Should a company who trains the artificial intelligence process that creates the work be able to be an owner?
6. Are there other copyright issues that need to be addressed to promote the goals of copyright law in connection with the use of AI?
7. Would the use of AI in trademark searching impact the registrability of trademarks? If so, how?
8. How, if at all, does AI impact trademark law? Is the existing statutory language in the Lanham Act adequate to address the use of AI in the marketplace?
9. How, if at all, does AI impact the need to protect databases and data sets? Are existing laws adequate to protect such data?
10. How, if at all, does AI impact trade secret law? Is the Defend Trade Secrets Act (DTSA), 18 U.S.C. 1836 et seq., adequate to address the use of AI in the marketplace?
11. Do any laws, policies, or practices need to change in order to ensure an appropriate

balance between maintaining trade secrets on the one hand and obtaining patents, copyrights, or other forms of intellectual property protection related to AI on the other?

12. Are there any other AI-related issues pertinent to intellectual property rights (other than those related to patent rights) that the USPTO should examine?

13. Are there any relevant policies or practices from intellectual property agencies or legal systems in other countries that may help inform USPTO's policies and practices regarding intellectual property rights (other than those related to patent rights)?

**Dated:** October 23, 2019.

**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2019-23638 Filed: 10/29/2019 8:45 am; Publication Date: 10/30/2019]