

# Legal reform on the horizon in the world of Artificial Intelligence

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**FOR most start-up companies and SMEs operating in the energy sector, innovation and investment in digital technology are becoming increasingly important factors as they plan for growth in a post-pandemic environment.**

Artificial Intelligence (AI) is continually evolving as a key asset underpinning investment decisions because of the way in which it can support that innovation in a number of ways. As with many other more traditional forms of intellectual property, ownership in the output is key. Unfortunately, the existing legal framework in the UK has not yet been developed to deal with the question of ownership of intangible assets created by AI. However, that could all be about to change.

A recent Court of Appeal case ruled against the party who had been seeking to argue that the inventor of a patent application was the AI machine. The UK's Intellectual Property Office (IPO) had determined that a real person had to be identified as the inventor and the Court of Appeal upheld that decision. The party in that case has won similar cases in Australia and South Africa where their courts

have found that the same AI system could be recognised as the inventor for patent purposes.

In the US and the UK, the courts have continued to follow the general rule in those jurisdictions that for patent purposes only human beings can be inventors. Although the law in the UK has for some time recognised copyright protection in computer-generated works where there is no human creator, it remains the case that patent protection is not available for AI devised inventions.

Businesses need more certainty around the ownership rights of AI generated assets so that they can generate research and development investment in that technology. Reform of the legislative framework in the UK is on the horizon, but first the IPO has launched a consultation which runs until January 7, 2022 as part of the UK Government's wider National AI Strategy to try and strike the right balance between providing sufficient incentives for development of AI whilst at the same time promoting human creativity and innovation.

The consultation is seeking views on a number of possible legislative changes,

to include allowing patent applications to identify AI as the inventor, to expand the understood meaning of an 'inventor' to include humans who are responsible for the creation of an AI system or possibly to develop an entirely new type of protection specifically for AI-devised inventions.

If the law does indeed develop to the point that it recognises that the AI system is the creator of new patented technology, does it follow that the AI system has separate status as a legal person in its own right? This gives rise to many difficult questions not just about the ownership of the technology but the accountability for any actions carried out by an autonomous AI system.

It's not inconceivable that the law could develop to the point that autonomous AI systems have a status similar to children, with humans being ultimately responsible for the machine in the same way as a parent or guardian is responsible for their child. It will be very interesting to see how this develops in 2022.

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