

## Slaughter and May Podcast

### Regulating AI - AI and Intellectual Property – A Whistle-stop Tour

<b>Intro</b>	As AI adoption increases, and governments and regulators across the globe grapple with how best to regulate AI, Slaughter and May are producing a series of 'Regulating AI' thought pieces that will consider some of the legal issues that arise from developing and using AI solutions. Our first piece in the series was a podcast that considered the competition law considerations arising from the use of algorithms. You can find this podcast on our website. This next piece in the series focuses on AI and intellectual property.
<b>Richard Barker</b>	Hi everyone and welcome to our podcast on AI and intellectual property. I'm Richard Barker, a PSL in the Intellectual Property team at Slaughter and May and I'm here with Laura Houston, one of the Partners in our team.
<b>Laura Houston</b>	Hi everyone – it's great to be here.
<b>Richard Barker</b>	So, in this podcast, we're going to take a look at some of the key IP considerations and issues which come up in the context of AI.
<b>Richard Barker</b>	Now we've all seen lots in the headlines about AI and how it will, or is, transforming our lives, from helping tackle the big issues facing the human race (think climate change or curing cancer) to making the services we receive more tailored and efficient (it's how Netflix knows what show to suggest next). And we know that from a legal perspective it raises a number of novel issues and those include issues relating to IP. AI and IP is an area of law which we are increasingly discussing with our clients, and which is catching the attention of legislators around the world.
<b>Richard Barker</b>	Here in the UK, the government and UK Intellectual Property Office (or "UKIPO" as it's commonly known) have been looking closely at whether our current IP rules are fit for purpose in a digital age, in particular when looking at AI.
<b>Richard Barker</b>	And so a good place to start may be for me to ask you Laura why, given everything else that's going on at the moment, IP protection for AI is on the UK government's agenda?
<b>Laura Houston</b>	Well to answer that, I think we first have to pause on where AI sits in the government's to-do list. So, the UK government has made it clear that AI is a top priority in its plan to become what it calls "the most pro-tech Government ever". <sup>1</sup> It wants the UK to capitalise on what is already, to be fair, a pretty strong position on the global stage around AI development and

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<sup>1</sup> Digital Secretary, Oliver Dowden, announcement of UK AI Strategy, 12 March 2021.

	<p>AI investment. I think we're currently third in that race behind China and the US so we are, on one view of the world, already punching well above our weight. But the government is keen to continue to build on that success. That's certainly played out in the UK's recent AI strategy which talked about the government's desire to lead the world over the next decade as 'a genuine research and innovation powerhouse'.</p> <p>So I think that's the headline objective from which all of this flows. And, of course, as we know, robust IP protection is going to be central to achieving these fairly ambitious aims because IP encourages, it protects, it rewards innovation, and that in turn propels investment and research, so you get this virtuous circle effect.</p> <p>And I guess before we go any further, I should just mention as an aside that we bandy the term AI around but it has in fact proven to be pretty difficult to pin down – we've seen some heavy criticism of the definition in the EU's draft AI legislation. So for today's purposes, and to keep things really simple for our chat, I'm going to refer to AI to mean computer systems that perform tasks that would usually require human input. That ranges from things we're all familiar with like speech recognition, like translation, virtual assistants that we know and love like Alexa, like Siri to much more complex AI systems like Deepmind's AlphaFold project, which you might have seen in the news – it uses AI and deep-learning to determine the 3D shapes of protein strands. So there is a really broad spectrum of complexity and indeed different use cases in which AI is deployed.</p>
<p><b>Richard Barker</b></p>	<p>Thanks Laura – I agree the terminology can be a bit of a minefield, but there are definitely some very interesting AI projects out there! So you talked about the importance of IP to the UK government's AI strategy but is that not just the application of our existing IP frameworks – what's special or difficult about AI?</p>
<p><b>Laura Houston</b></p>	<p>Oh, I mean where do we start. As with a lot of emerging technology, the development of AI has raised loads of IP questions such as: Should AI systems be protected by IP at all? If so, how do we protect them?</p>
<p><b>Laura Houston</b></p>	<p>And then there are questions around the outputs from AI systems – so should they also be protected? Who should own IP rights in things that are spat out by an AI system? Should ownership be reserved for humans or could AI itself be an owner?</p>
<p><b>Laura Houston</b></p>	<p>And then we shouldn't forget questions of infringement. What risks might arise through the development and use of AI? Can AI itself be liable for IP infringements or does ultimately the liability need to rest with a legal person?</p>

<p><b>Laura Houston</b></p>	<p>And I think it's fair to say in relation to all of these questions, we are finding ourselves assessing whether our current rules around IP work, or whether changes are going to be necessary in order to address some of these specific issues, these specific challenges that are raised by AI. So I think it's just that the age-old issue that it's almost impossible to entirely future proof the law so there are always going to be these unique challenges and unique questions which are raised by the application of our existing rules to something that wasn't contemplated or wasn't even in existence when those rules were originally cooked up.</p>
<p><b>Richard Barker</b></p>	<p>Well, it's clear there's a lot for us to talk about! Now Laura, as you've just said, there has been rapid innovation in AI which has led to uncertainty as to how the existing legal framework can and should be applied to this new technology. In the IP space, the UKIPO has been looking at AI specifically and we've seen a variety of consultations, calls for views and studies on AI and IP over the last couple of years. Can you tell us a bit more about what issues they have been considering?</p>
<p><b>Laura Houston</b></p>	<p>Yes, so as you say the UKIPO has been really busy in this space recently – they've been giving us lots to read. We've seen:</p> <ul style="list-style-type: none"> <li>(i) the initial call for views on AI and IP and that looked at AI in the context of all of the main IP rights, and posed specific questions relating to patents, relating to copyright, designs, trademarks and trade secrets, the whole range;</li> <li>(ii) we then had the follow-up consultation and that focused on copyright and patents specifically in the AI sphere;</li> <li>(iii) since then we've had a call for views on designs and that also included specific questions relating to AI; and</li> <li>(iv) most recently, we've had a study on IP and investment in AI.</li> </ul>
<p><b>Richard Barker</b></p>	<p>And it's interesting that you've mentioned a variety of IP rights there as I think people often just think about copyright or patents in this space.</p>
<p><b>Laura Houston</b></p>	<p>It's undoubtedly true that copyright and patents rightfully get the lion's share of attention and coverage here when we're talking about IP and AI. But I think all of the IP rights that I've mentioned have some role to play here.</p> <p>But I think I mentioned above, there's this distinction we should keep in our minds here when we start to delve into the detail between the AI system itself and then the outputs from that AI system – so they might engage different IP rights and they create different questions and different challenges for us to grapple with. So I think that's quite a useful distinction just to keep at the forefront of the discussion.</p>

<p><b>Richard Barker</b></p>	<p>That's a really good point to flag, Laura, and one for us all to bear in mind throughout this podcast. So noting that, if we think about the different IP rights you mention, what are some of those AI specific issues you've alluded to and do you think we are going to see any changes in the law around them? Shall we start maybe by thinking about copyright? That's one of the first rights you mention, and it's one which I know we often think about when we're talking about tech, software code etc.</p>
<p><b>Laura Houston</b></p>	<p>Indeed – as you say copyright is so often central to the question of IP protection in all things digital. As we know, copyright is a really important way that we protect software code (whether it relates to AI or not) and there are lots of reasons why it's relevant to AI. So I'm going to focus on three things that the UKIPO has recently looked at as part of its consultations:</p> <ul style="list-style-type: none"> <li>• first, copyright protection for AI systems themselves;</li> <li>• second, I'm going to look at copyright protection for computer-generated works; and</li> <li>• then going to look at machine learning and text and data mining which has also been a point of discussion in this context.</li> </ul>
<p><b>Laura Houston</b></p>	<p>Starting with the first of those points, copyright protection for AI systems where the code is written by humans. In some ways this is the easy one, it's just the application of our existing mechanics, so part of our closed list approach to copyright, protection is available for original literary works and the legislation (CDPA) is explicit about the fact that that will include computer programs. The relevant program or software must of course be "the author's own intellectual creation", so the sort of baseline requirement for copyright protection, as we know that is a relatively low threshold and so in practice source code for most computer programs for AI systems or otherwise will be protected by copyright.</p>
<p><b>Laura Houston</b></p>	<p>But what, then, if that code itself generates new code or other works? that's where we start to get into the juicy stuff and was one of the key issues that the UKIPO has really zoned in on – should a computer-generated work be capable of receiving protection or should such protection be reserved for human creators?</p>
<p><b>Laura Houston</b></p>	<p>Now the UK is actually already one of only a handful of countries which talks about IP protection specifically for computer-generated works – so the CDPA already talks about what authorship means in the context of computer-generated works (including in the context of ownership questions, term of copyright, moral rights). That law is however now 30-odd years old and it's fair to say a lot has changed in that time. A key question for the UKIPO was therefore whether the current copyright protection for computer-generated works is still fit for purpose, whether that is still the right answer.</p>

<p><b>Laura Houston</b></p>	<p>And they looked at a few different options: they looked at making no legal changes; they thought about removing protection for computer-generated works entirely; or a sort of middle ground, of replacing current protection with something entirely new but likely of reduced scope or duration. Ultimately, they chose to do nothing, so maintain the status quo, make no legal change and they cited a couple of reasons for that. First they said well there is no evidence that the current protections for computer-generated work is causing any problem, that it creates any harm, so why change something that isn't broken and secondly, they said the impact of removing those current protections is just too uncertain, we're still in the early stage of seeing how AI is going to be used to produce creative content. So given where we are in that journey, I think they ultimately concluded that it wasn't appropriate to start reshuffling the deck and changing the landscape at this early stage.</p>
<p><b>Richard Barker</b></p>	<p>And, I suppose, deciding to keep things as they are was the most favourable position for AI out of the three options, and that supports the government's drive towards greater innovation and creativity, and becoming a leader in AI more generally. That's not to say, however, that there aren't any issues with the current regime – for example, how does the concept of originality work in this context? – but those are questions for another day.</p> <p>As an aside, it's also interesting that while a computer (or AI) can generate copyright-protectable work, as things stand, English law doesn't consider AI to have a legal personality and therefore AI itself can't own any IP in those works or be liable for any IP infringement that might arise in the course of generating them – either as part of training the AI system or during its later use.</p>
<p><b>Laura Houston</b></p>	<p>That's right – ultimately the law, certainly in the UK, will always find its way back to a legal person. In terms of infringement, exactly who might be liable will obviously always be a fact specific assessment but it is most likely to be the person that had control over the infringement. So, for example, in a development context it could be the AI developer, if copyright is being infringed in the course of training a system, it could even be a user if the AI generates a requested work and it's that requested work that infringes another's copyright, so it's going to be very much dependent on the facts at hand. But as a result, something that we are very much alive to, is that any contracts relating to AI or relating to use of AI always need to very carefully consider the question of liability, and make sure it's really clear on the face of the contract how that risk is allocated between the parties.</p>
<p><b>Richard Barker</b></p>	<p>I think that links nicely into the final point on copyright you said you'd discuss, around text and data mining.</p>
<p><b>Laura Houston</b></p>	<p>Yes indeed – keeping me on track! This is something that we are increasingly being asked to advise upon. Training AI often involves a process known as text and data mining or "TDM" for short. So a process of</p>

	<p>throwing a load of data into a computer system in order for the system to analyse that information to spot patterns and trends. In doing so, you're teaching the AI effectively, to properly interpret data, to learn from the data and that thereby increases its accuracy when the system then seeks to perform a task. So it is effectively the training wheels of an AI system is absolutely critical to its development.</p> <p>Now, unsurprisingly, the data and information that is used in that TDM process may well be protected by copyright. So it might consist of things like artwork, books, you might be feeding in music, photographs, all sorts. In order to analyse that information, the AI system is usually reproducing the underlying work in some shape or form and making a copy. So, if the work used is unlicensed, if the work contains copyright protected material there is almost necessarily a risk of infringement there by copying.</p>
<p><b>Laura Houston</b></p>	<p>Now that's obviously something that AI developers are very much alive to, they are not blind to that risk and recognise the need to seek to mitigate that. There are some obvious ways of trying to do that, so for example trying to ensure that the materials that are being used are no longer protected by copyright (that is unlikely to be feasible in the vast majority of circumstances) or obtain licences from the copyright owners to avoid the infringement risk, but again, that's likely to be a pretty unwieldy, possibly practically impossible, task and you're then at the mercy of a third party who might see dollar signs etc. so not a panacea for all ills there.</p> <p>However, it's worth noting that there might be relevant exceptions baked into legislation here. The most useful one being the one that is specifically for text and data analysis, so that sits in section 29A of our copyright legislation, the CDPA. This exception was introduced back in 2014 and it provides a specific defence to copying a work in order to carry out a computational analysis of anything recorded in that work. So that sounds like a bit of a slam-dunk really, that is exactly what is happening with the TDM process but it is subject to certain conditions being met. And critically, one of those conditions is that the copying is done for non-commercial purposes, which unsurprisingly can be pretty problematic for most AI developers.</p>
<p><b>Laura Houston</b></p>	<p>But - it looks like this is all about to change. The UKIPO has just looked at this exception specifically as part of its consultation on AI and IP and has decided to introduce a new exception that does allow TDM for any purpose, so without that non-commercial limitation. So clearly great for business, great for AI developers, probably great for the government's overriding objective in terms of its AI strategy. Obviously not such great news for rights owners, particularly as it looks like they will not be able to opt out (as they can in the EU). So perhaps unsurprisingly, we've therefore seen a fair bit of pushback on this expansion, particularly from creative industries, who are concerned about what they see as this unjustified incursion on their rights. So they consider there is already sufficient co-operation and that rights</p>

	<p>holders and developers rub along quite nicely, so this proposed expansion is unnecessary and really a bit of a blunt tool for what it's trying to achieve. Against that backdrop I think it does still remain to be seen exactly how things are going to pan out here. One possibility is that rights-holders might seek to take back control and use technological measures or paywalls in order to give them increased control over the distribution and dissemination of their protected works. That will help them because based on what we have seen, the UKIPO is still going to require that access to the materials is lawful in the first place and so technological measures or paywalls might help a rights holder to just keep a handle on that.</p>
<b>Richard Barker</b>	<p>I think it's going to be really interesting to see how that all plays out. At this stage, it's still not entirely clear when we can expect to see the proposed change in the law so, for now, we need to remember that the exception remains limited to TDM for non-commercial purposes. But it's definitely something for people involved in the AI field to keep their eyes on.</p> <p>Before we move on from this topic, is it worth just briefly touching on database rights?</p>
<b>Laura Houston</b>	<p>We probably should, it's really just to flag that the IPO has said that this new TDM exception will apply not just to copyright but also to sui generis database rights. So as you'll recall, those are the rights that protect the content of a database, whereas copyright has historically been focussed on protecting the structure of a database. So seeking to extend the exception in this way I think would help to ensure that we have consistency across IP rights and we don't have this gap in the scope of defences.</p>
<b>Richard Barker</b>	<p>Okay, let's move on to patents now. So, a patent can be a very important right for an AI developer but it's not one that we always think about here in the UK. It's interesting to note that in its recent study on IP and investment in AI, the UKIPO reported that interview participants from the technology sector shared a common misconception that core AI software is not patentable.</p>
<b>Laura Houston</b>	<p>So this is the age old debate in the context of software - it all stems from the Patents Act (so the key piece of patent legislation in the UK) which states, on its face, that computer programs "as such" are excluded from patentability. So people tend to cling to that and say therefore no chance of being able to get patent protection for software.</p>
<b>Laura Houston</b>	<p>But it is a lot more nuanced than that, in fact there is a body now of really quite complex case law which has developed on the meaning of this exclusion. Ultimately, what that boils down to is that software related inventions, including for our purposes AI systems, <u>can</u> be patented if, crucially, they provide a technical contribution and that is subject to certain rules and limitations. Now these rules are the same for AI as for any other computer-implemented invention. There's probably a whole separate</p>

	<p>podcast worth of content on exactly what that all means but suffice to say that it is definitely not the case that AI software is never patentable.</p>
<b>Richard Barker</b>	<p>I think that's right, and the UKIPO grants lots of patents for computer and software implemented inventions including in the field of AI.</p>
<b>Laura Houston</b>	<p>Yes quite. That's not, however, to say that all AI inventions will be patentable. To give an example, and as was pointed out by various respondents to the UKIPO's consultation, AI algorithms which have been applied to image processing have been found to qualify for patent protection, whereas AI algorithms applied to text processing are excluded.</p> <p>Now all of that might seem a bit arbitrary and might feel quite difficult to align in terms of making the cases line up with one another with a consistent message, so the English courts have come up with a few "signposts" to try to help us to determine whether a software implemented invention will in fact be patentable. These are things like: whether the software has an effect on a process outside of the computer; or whether it results in the computer operating in a new way; or whether it makes the computer better in the sense of being more efficient etc. So, for example, if a piece of computer software or an AI invention has a technical effect on a process outside of the computer, so let's take say an automatic method of selecting a contactless payment to avoid the problem of "card clash", that external effect means that the computer software or AI invention is less likely to be excluded.</p> <p>But it is a little bit of a minefield. The government has acknowledged that this isn't the easiest area of law and has rightly concluded, I think, that more clarity around when this exclusion will apply is going to be necessary for AI inventors. So they have promised to publish enhanced IPO guidelines on patent exclusion practice for AI inventions and indeed to engage with AI interested sectors as part of that process – which I think will be really quite illuminating but another watch this space for now.</p>
<b>Richard Barker</b>	<p>We also shouldn't forget about the other patent exclusions either –so even if an AI invention is deemed to be more than a computer program as such, it might still fail if it's directed to, for example, a mathematical method or a method of doing business. Likewise, you won't get a patent if your AI invention fails any of the other standard patent hurdles such as novelty, inventive step or sufficient disclosure.</p>
<b>Laura Houston</b>	<p>Exactly. You've still got to tick all of those boxes and meet all of those other base requirements.</p> <p>Now I mean I think this patentability topic can all feel a little bit arbitrary, in terms of whether or not your AI invention will be patentable, whether you can seek protection in that way. Rightly or wrongly, it does seem to have a real world impact on a proposition's viability. Many investors, particularly US</p>



	<p>based, will have a sort of hard and fast rule that innovative organisations must have patents, or they must have made patent applications, before there will be sort of investor appetite, before they will be willing to invest. Now, according to the UKIPO's study, that's because patents are seen by investors as being an endorsement of the AI. So the granting authority saying yes this is good stuff and they are saleable assets in the event that the organisation stops trading. Of course, we all know that logic doesn't necessarily hold – so a patent may well not be worth the paper it is written on and it certainly shouldn't be construed as a sort of badge of success or approval for the tech itself – but it is I think, much to the frustration of many, proving tricky to prize investors away from that sort of supposed comfort blanket of patent protection. So if you are unable to obtain patent protection, I think particularly frustrating for start-ups, it can be really difficult to bring in that external investment, whether rightly or wrongly.</p>
<p><b>Richard Barker</b></p>	<p>Yeah, I think that's right.</p> <p>Talking about situations in which you can't get patent protection, it's also currently not possible for an AI system to be named as an inventor for patent purposes, even if it did generate the invention. This issue has been considered by the English courts, as well as many foreign courts, in the Thaler / DABUS line of cases which I know many people are aware of, and in those cases, the courts pretty much all held that an inventor must be a natural person. But it was also something that the UK Government looked at as part of its potential reforms wasn't it?</p>
<p><b>Laura Houston</b></p>	<p>Yes, perhaps unsurprisingly given the amount of noise around the subject more general, but yes the UKIPO did look at this question as part of its consultation on AI and IP.</p> <p>The outcome of the consultation was that, for now, there should be no change to UK patent law and so AI systems will still not be able to be named as inventors (in the same way that AI systems can't be authors of copyright) so it is at least consistent. But the general view is that AI is not really yet sufficiently advanced to truly invent without some degree of human intervention and therefore because there is necessarily some degree of human intervention, the current UK patent laws are fit for purpose to protect AI-assisted inventions. The UKIPO was also, rightly I think, hesitant to change the law here, to change the law on inventorship without their being consensus on an international level, just because of the difficulties that could otherwise be created in relation to international patent filings. I mean you can imagine things becoming incredibly complicated and chaotic if we adopted a different approach to fundamental questions of inventorship to the wider international community, particularly given unified patent filing procedures like the PCT, I think it would just become a sort of almighty mess.</p>

<p><b>Richard Barker</b></p>	<p>I agree with that.</p> <p>Ok, so we've talked about copyright and patents, and we've briefly mentioned database rights. What other rights or protections can companies seek to rely on in relation to their AI?</p>
<p><b>Laura Houston</b></p>	<p>I suppose, design rights are another one to bear in mind. I think they are the slightly neglected sibling in this conversation within the legal world and possibly understandably so. Given that design rights essentially seek to protect the appearance of a product, computer programs themselves are excluded from design protection. But that doesn't mean they are entirely irrelevant in an AI context. For example, AI technologies might be involved in creating new designs and indeed some elements of AI software, might also be protectable by design right, such as graphical user interfaces.</p>
<p><b>Laura Houston</b></p>	<p>So within the context of design rights, we have both the Registered Designs Act 1949 (that's the legislation that deals with UK registered design rights) and we also have the CDPA (which provides for protection for UK unregistered designs). Now they both contain specific provisions which identifies who the author or designer will be for computer-generated work. Essentially, the person who made the arrangements necessary for the creation of the design will be the author of the work and this effectively mirrors the position in copyright. It is generally understood that this wouldn't allow AI to be the author or owner of a registered or unregistered UK design because AI doesn't have a legal personality and this position was supported by the responses the UKIPO received to its call for views on designs earlier this year. The majority of responses to that call for views also came to the conclusion that that was the right approach. But as with lots of things in this space, the UKIPO has confirmed in its wider consultation on IP and AI that it will continue to monitor the situation as AI systems develop and our use of these systems develops, particularly in the context of design processes.</p>
<p><b>Laura Houston</b></p>	<p>Possibly just two other sub-points worth flagging here if I may. Firstly there are currently no equivalent computer-generated designs provisions in relation to supplementary unregistered designs, so we just have to be careful of not falling into the trap of assuming that that is entirely consistent across all design rights. Those supplementary unregistered designs, and you might recall those are the ones that were created as a result of Brexit, they offer equivalent UK protection to what was previously available for unregistered Community designs, they don't go into this computer generated designs position. So I think we can probably expect to see this harmonised at some point, particularly if there is a move to a single unregistered design right but that's the position as at today.</p> <p>And just one other point worth flagging is that we talk about the rules around who will be treated as the author or the designer of computer-generated designs as if that is all very straightforward and easy to apply, of</p>

	course the reality is that can create a whole plethora of issues when you try to apply those rules to practical scenarios.
<b>Richard Barker</b>	You mean in terms of how do you go about identifying the person who made the necessary arrangements?
<b>Laura Houston</b>	Exactly. That's often not a straightforward question to answer, and that applies both in the design right context but also in the copyright context.
<b>Richard Barker</b>	I've got some sympathy with that.  Lastly, I'm conscious we haven't really talked about trademarks. Should people be thinking about those too for AI?
<b>Laura Houston</b>	They're clearly of less relevance, I mean the UKIPO did consider whether AI could become a purchaser such that the average consumer assessment would need to take AI into account. They also considered whether any special treatment was required to contemplate AI being an infringer, but ultimately they concluded that the AI systems and AI world is not yet sufficiently developed to impact core legal concepts of trademark law in that way and therefore they concluded that the current regime is fit for purpose.
<b>Laura Houston</b>	Having said that, there are still some interesting points to consider from a legal perspective. So, for example, when we think about assessment of confusion, similarity, things like whether phonetic and aural comparisons might become more relevant than visual elements because we are looking more at voice assistant technologies becoming more prevalent within society. And of course there is just the obvious base relevance of trademarks, in that registered trademarks will be used to protect names and brands of companies' involved in AI, indeed of products, AI systems, but that is all just application of our good and well known rules around trademark protection.
<b>Laura Houston</b>	But before we wrap up, I also just wanted to mention confidentiality. So whilst it's not technically an IP right, AI developers should also be considering whether they simply should be keeping their AI systems confidential.
<b>Richard Barker</b>	That's a good point to raise, confidentiality is one of those rights that people often forget about but it can be really valuable. I mean, as an example, Google's famous search algorithm is protected as a trade secret so we can see where the value might lie.
<b>Laura Houston</b>	One of the key protections of using the confidentiality or trade secrets is that there is no time limit to protection, so provided certain criteria are being met - such as the information remaining confidential and, for trade secrets, that it's still commercially valuable you still can maintain your protection.

	And it's not an insignificant advantage that there is no time consuming or costly procedure to go through in order to secure that protection.
<b>Laura Houston</b>	But, as with everything else, there are challenges associated with seeking to protect AI in this way. AI systems are often built on existing technology, they often use open source code, wide distribution and therefore it might be sort of totally fictional to suggest that you can therefore keep the information within them confidential. Additionally (unlike patent protection), as we know, confidentiality or trade secret protection does not give you monopoly rights. So competitors are therefore entirely free to independently create the information that you are otherwise seeking to protect and you'll have no recourse in that scenario. Possibly, most fundamentally, there is of course always a risk that confidentiality may be breached, and once information is out there it is usually impossible to put that genie back in the bottle so you're just left with a breach of confidence action against someone who might not have very deep pockets. But it is definitely another tool in the armoury we should keep in mind when thinking about how best to protect AI.
<b>Richard Barker</b>	Thank you so much Laura for that whistle-stop tour of AI and IP law. I think we're just about up for time now, but there's plenty of food for thought.
<b>Laura Houston</b>	Absolutely – I mean from an IPO/Government perspective, this is going to continue to be a hot topic for the foreseeable as we watch this space. Legislative change, changes in the way in which we use AI and the way it is deployed within society, there is a general theme of needing to see how AI is going to develop. So I think this is just the start of a long process of assessing the suitability of our current regime for the new world that we find ourselves in.  From what we've seen to date, it looks like the UK will be adopting an AI-friendly stance, so I think it's going to be really interesting to see how that plays out and whether other jurisdictions follow suit.
<b>Richard Barker</b>	Thanks, Laura. It's been fascinating to get your thoughts on this and I really appreciate you taking the time to talk to me today.
<b>Laura Houston</b>	Thanks very much.
<b>Richard Barker</b>	<b>NOTE: (Additional update recorded on 8th March 2023)</b> Demonstrating the fast paced-nature of AI developments in this space, since this podcast was recorded the Government has indicated that it will no longer be proceeding with the proposed new TDM exception for copyright and database rights. We have also seen the UK IPO publish a new set of guidelines clarifying how it will examine patent applications for inventions relating to AI, and the Supreme Court has heard an appeal by Dr Thaler in the DABUS patent case considering whether AI can be an inventor for patent purposes.

Look out for further thought pieces and insights from our Regulating AI series. Over the coming months we will be discussing issues arising in areas such as employment, data protection, financial regulation and ESG.

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