

8 MARCH 2019
FUTURELAB.LEGAL

MR ED SANTOW
AUSTRALIAN HUMAN RIGHTS COMMISSION GPO BOX 5218
SYDNEY NSW 2001



By Email: tech@humanrights.gov.au

RE: Submission to the Artificial Intelligence: Governance and Leadership White Paper

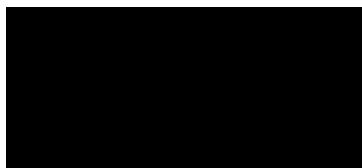
This submission is made on behalf of FutureLab.Legal ("FLL") in response to the Artificial Intelligence: Governance and Leadership White Paper which was released in January 2019 ("the White Paper").

This submission briefly addresses a concern FLL is considering in its approach to Intellectual Property Rights ("IPR") and the fundamental role they play at the intersection of AI and Human Rights. FLL focuses on the Future of Law across all protagonists in the Legal Industry of which one is the Regulator (or Government). In seeing the trends occurring in a global market and envisioning the forward movement of AI in our own nation - we seek to place our submission in the context of being better prepared in responding to the rapid changes to technology.

It should be noted that Submissions under other representative bodies may have been contributed to by Quddus, namely through The Legal Forecast submission in response to the White Paper. This submission is made solely under the auspicious of FutureLab.Legal.

We trust that this submission is of assistance to the Commission. Please do not hesitate to contact Quddus to discuss this submission.

Sincerely,



Quddus Pourshafie
Founder, FutureLab.Legal



Introduction

1. The advancement and penetration of “AI” (as defined in the White Paper) has presented challenges and opportunity to the global landscape, prompting critical inquiry which in this case has resulted in a process of consultation and discovery.
2. As it relates to Human Rights, AI application has shown to impede or at time transgress on well established human rights - some scenarios of which have been described in the White Paper. Our concern and approach is focused on the invention and innovation of AI and how such inventions and their inventors may require a more robust system of IPR protection.
3. FLL finds that in the current climate of IPR - particularly in one of the largest by volume for patents, the United States - we are seeing increase in Administrative and Executive Government encroachment on what is traditionally a Judicial process as it pertains to defending the IPR of an Individual, Inventor or company.
4. A recent Supreme Court of the United States (SCOTUS) decision¹ determined that patents filed in the USA are considered a public right, rather than the traditional private right it has been for centuries. This creates a dynamic where The Director or any of the commissioners (equivalent) of the Patent Trial and Appeal Board (PTAB) can make final decisions and cancellations regarding patent review through Inter Partes Review (IPR), after the patent has already been granted and conferred on the applicant.
5. Essentially, patent rights once conferred on the applicant and traditionally defended in a private manner through the independent Judiciary are now vulnerable to the executive government through the Patent Trial and Appeal Board (PTAB) using Inter Partes Review (IPR). Due to the nature of appointment of the Director of PTAB, patent review is indirectly exposed to lobby efforts and effected by larger technology corporations that earmark substantial funds in order to effect policy decisions and more directly favourable circumstances for the health of their own business.
6. This creates a sentiment, that whilst not immediately relevant to Australia, will eventually diminish the pursuit and creation of valuable IP for those focusing their efforts in developing AI solutions for a global market.
7. *A Responsible Innovation Organisation should equally uphold the IPR of those who it seeks to regulate.*

¹ Oil States Energy Services, LLC, Petitioner v. Greene's Energy Group, LLC, et al.

Among the questions posed for consultation, we wish to address the following:

What should be the main goals of government regulation in the area of artificial intelligence?

8. Regulation should proceed from an acknowledgement of establishing who owns and is therefore responsible for the AI. Creation of Artificial Intelligence, and the use of that AI should be treated as separate instances. Responsible oversight in this case will need to differentiate between who created the AI: weighed against its own criteria and susceptible to its own liabilities, and who used that AI technology: for intended or unintended purposes.
9. Registration and protection of the inventor of the AI will be a fundamental establishment to then branch into successful regulation. Without proper protections of the IPR of the inventors of AI, the regulation of AI will lack the foundational justice and change the style of governance from collaborative to adversarial. This would be at odds with the concept of a Responsible Innovation Organisation.

Considering how artificial intelligence is currently regulated and influenced in Australia:

(a) What existing bodies play an important role in this area?

10. In the context of establishing and maintaining IPR of individuals who develop AI technologies, IP Australia is the peak body.

(b) What are the gaps in the current regulatory system?

11. Robust categorization and extended protections that current patents, copyright and trademark protocols may fail to remain current with the pace and advancement of technology.

Would there be significant economic and/or social value for Australia in establishing a Responsible Innovation Organisation?

12. To the extent that an RIO:
 - a. Is capable of working with inventors and creators to establish extended protections for their AI inventions,
 - b. Works alongside other institutions and peak bodies in developing a framework for extended IPR protections and,

- c. Able to demonstrate through this framework a possible pathway forward for international soft law in protecting IPR of new technologies,
13. The RIO will create substantial incentive for individuals, inventors and companies to seek Australia as the sovereign in which they base their inventive developments. The flow on effect of such steps needs little explanation by way of the valuable IP that will be developed and exploited here in Australia and across a global market.

Under what circumstances would a Responsible Innovation Organisation add value to your organisation directly?

14. As a regulatory body willing to partner with, or provide resources to an organisation such as FutureLab.Legal: the value will be in our ability to better track the developments and future implications of technologies and how they interact with the law, expanding the network of organisations and increasing the flow of information, ultimately supporting the role an RIO plays in our representative society.
15. FLL appreciates the opportunity afforded to it to comment through the submission process. We would welcome any opportunity to discuss these points further. Please contact Quddus Pourshafie with any queries by email: quddus@futurelab.legal