INTA

Comments In Response to the Draft Ethics Guidelines For Trustworthy AI

January 14, 2019

These comments are in response to the EU Commission’s first draft of its ethics guidelines for the development and use of artificial intelligence (AI). They were prepared by the Artificial Intelligence and Decisions by Machines Subcommittee of INTA’s Emerging Issue Subcommittee.

The below comments follow the structure of the EU public consultation, and will be sent through the online portal.

Respecting Fundamental Rights, Principles and Values - Ethical Purpose

- On the Principle of Justice - Be Fair (page 10): Human review of AI decisions should be included as part of the Principle of Justice. While Governance of AI Autonomy (Human oversight) is mentioned later in the document, INTA stresses the importance of human intervention when legal consequences are involved. The Principle of Justice demands the possibility that automatized decisions with legal impact may be revised by a human being. Human review should be done by individuals who have not participated in the programming of the corresponding AI system, to prevent possible bias.

Realising Trustworthy AI

- On the Data Governance Requirement to Achieve Trustworthy AI (page 14): INTA would like to add that AI solutions must rely on transparent and precise data, especially when used by governmental entities to make decisions. For example, in the trademark field, if a government trademark agency uses an AI software program to decide if a trademark can be registered or not, but that program has a database which is incomplete or inaccurate, the decision it will reach would be inadequate. INTA believes that Adequate Data Governance must rely on transparent and complete data.

- Regarding Standardization (page 21): INTA acknowledges the importance of accreditation systems, professional codes of ethics and standards for fundamental rights compliant design. We recognize the fundamental role of trademarks and intellectual property rights to secure trustworthy AI systems.

Assessing Trustworthy AI

- Regarding the Use Case of “4) Profiling and Law Enforcement” (page 28): INTA stresses the importance of human review, transparency and completeness of the data, and explicability. INTA understands that it is essential that those who use AI to make decisions are able to explain which was the process to reach that decision, what were the parameters loaded in the system, and what data and algorithms were used.

General comments
After careful analysis of the guidelines, due to the generic nature of the document and its intention to provide high level principles across all industries (not directed specifically to the practice of law or trademarks), INTA considers that specific comments on the ethical dimensions of intellectual property (IP) or intellectual property rights (IPRs), since they are not part of the scope of the draft guidelines, would not be applicable at this stage.