

Submission

To the Commerce and Economic Development Bureau
on the Public Consultation on Copyright and Artificial Intelligence (“**AI Consultation Paper**”)

1. **Background on the Composers and Authors Society of Hong Kong Limited**

- 1.1 We, the Composers and Authors Society of Hong Kong Limited (“**CASH**”), submit our comments on the AI Consultation Paper.
- 1.2 CASH has a long-established history in Hong Kong, having been founded in 1977. CASH administers and enforces collectively the rights of composers and authors of musical works subsisting under the Copyright Ordinance (Cap. 619) (“**CO**”). CASH currently manages the copyright of musical works for over 3 million local members and members from more than 80 overseas affiliated societies. All royalties after deduction of CASH’s administrative costs are distributed in full to our members.
- 1.3 As a collecting society, with significant local and international repute, our mission is to protect our members’ creativity and the commercial value of their copyright works by ensuring that users who want to enjoy and use our members’ copyright works obtain appropriate licenses and pay the required royalties. This system has protected and encouraged creativity in the music industry and enabled users to enjoy musical works without infringing copyright. It strikes the perfect balance for our members and users in Hong Kong. Therefore, we consider that licensing to be the best way to balance the interests of users of copyright works, in particular, prolific users such as AI companies on the one hand and copyright owners on the other.

2. **Summary**

- 2.1 Our submissions can be summarized as follows: -
- 2.1.1 Copyright protection should not only be provided to the “arranger” of the works but should also extend to the author/owner of the underlying work. Moral rights should be protected for computer-generated works.
- 2.1.2 The text and data mining (“**TDM**”) exception proposed by the Government is too extensive. The exception should be limited to non-commercial use only, with an opt-in option instead of an opt-out option.
- 2.1.3 Where there is commercial use of copyrighted material for TDM purposes, owners of the work should be remunerated, and the remuneration should be based on licensing arrangements between the owners and the AI companies.

2.1.4 A balance should be maintained between copyright and creativity. The foundation of copyright law is to protect creativity. The current laws on computer-generated works and the proposed TDM exception devalues the creators' works and does not promote and protect creativity.

2.2 We will take each of these points in turn below.

3. Copyright attribution of AI output

3.1 The current legal position is that musical work which is computer generated should be protected under the CO. The author of such work is taken to be the person by whom the arrangements necessary for the creation of the work are undertaken [*CO Section 11(3)*]. More restrictive moral rights (compared to musical works created by a human author) are afforded to computer-generated musical works, namely, the right against false attribution of a work [*CO Section 96*].

3.2 The current legal position does not provide adequate protection to owners of the underlying work and may disincentivize creatives and investment in the sector. The current position only affords protection to the “arranger” and we submit that the “owner” of the underlying work should also be protected under copyright laws. Otherwise, there is a risk that the arranger may unfairly exploit the copyrighted material.

3.3 When an AI work is generated, there should be a reference list that is simultaneously generated to identify the authors or composers of the underlying works used to develop the AI-generated work. Copyright of the AI-generated work should then also be attributed to the authors or composers of such works.

3.4 Due to the information and resource disparity between copyright owners and AI platforms, copyright owners cannot determine whether their works have been used. The burden to accurately identify the works used and the authors or composers of the materials should therefore lie with the AI developer.

3.5 Where the “owner” of the underlying work is identified and provided copyright protection, the right against false attribution should equally be extended to the owner. There is a risk that AI-generated works could be falsely claimed by an individual or falsely attributed to a person. It should not be the case that only the arranger of the AI-generated work is protected.

4. Introduction of a TDM exception

4.1 While wording for the TDM exception has not been proposed at this stage, the Government has put forward the following suggestions in the AI Consultation Paper: -

4.1.1 include both commercial and non-commercial use; and

- 4.1.2 impose conditions on the proposed TDM exception, e.g., requiring lawful access to copyright works, not permitting TDM activities if licensing schemes are available or including an opt-out option for copyright owners.
- 4.2 The current proposed exception is too extensive. The TDM exception should be limited to non-commercial use only.
- 4.3 The danger of a TDM exception that includes commercial use is that (i) works may be exploited by anyone, and (ii) the works of copyright owners would be devalued.
- 4.3.1 Businesses of any size, located anywhere in the world, would be able to access all of CASH's members' copyright works for free for the purposes of TDM. The law does not differentiate, say between a large US tech firm and an AI start-up based in the Hong Kong Science Park. Both parties will be able to freely exploit the work of our members without any compensation or credit provided to our members.
- 4.3.2 Where new material is created, companies across the world would be able to obtain copyright and commercially exploit the work, without having obtained permission from the copyright owner and/or paid a licence fee. There would be a huge transfer of value from individual copyright owners to AI companies, rendering the copyright owners unable to firstly, grant or refuse permission for the use of their work and secondly, unable to receive compensation where their work has been used. Creators may no longer be motivated to seek jobs within the creative industries.
- 4.4 In respect of an opt-out system, the copyright owner is required to expressly reserve the right to text and data mining to themselves. In addition, in an opt-out system, there is uncertainty on the type of opt-out notification which would suffice. Would a simple notice on the copyright owner's own website/platform or on CASH's website suffice or would something more be required such as notification to multiple AI companies by the copyright owner. If the latter is contemplated, this would be unduly burdensome. An opt-out system would mean that AI and tech companies are free to text and data mine any works, which are protected by copyright, unless the owners of the work have expressly reserved their rights. This unfairly shifts the burden to the owner who has to take a positive step to safeguard their right.
- 4.5 We suggest, instead, that an opt-in system be implemented. The default position should instead be the following: it is illegal to use any music without permission, unless the author or the composer has expressed an intention to sell their rights to the tech company. This is consistent with market practices, e.g., where musicians agree to license their works to be played in a public place, and the spirit of copyright protection, which is to protect creativity. If AI companies are able to exploit the author and composers' works without their knowledge, consent and without paying due compensation, authors and composers such as our members, would not be rewarded for their creativity and hard work.

- 4.6 An exception which potentially impacts the lawful rights of copyright owners should only be applied in the most narrow sense i.e. when they are justified and quantified. The current market practice demonstrates that creatives do not, by default, wish to relinquish their copyright in their works and provide a blanket permission to AI companies to train and develop their systems based on their works. Whilst there are not many examples of collective societies granting licenses to AI companies to use its members' works to train and develop any AI system, largely because this is still an evolving topic, examples may be gleaned from other industries.
- 4.7 For example, in May 2024, Sony Music (representing artists such as Doja Cat, Celine Dion and others) issued a letter to more than 700 AI companies and streaming platforms warning that they are prohibited from using its music from training, development or commercialization of AI systems, unless expressly authorised.¹ Warner Music Group has expressed a similar intention.²
- 4.8 The market practice of expressly prohibiting TDM activities unless authorised should demonstrate that the music industry does not want their works to be exploited without permission or payment of licence fees.

5. Suggestions on possible remuneration for owners for their exploited work

- 5.1 It should be left to market practices (e.g., licensing schemes) to dictate the terms and conditions of how copyrighted materials are used for commercial purposes.
- 5.2 CASH already has in place licenses, such as public performance licences, digital online licences that third parties must obtain in order to play or perform copyright works legally in public places, make available works on online platforms, etc. A license should equally be required for AI companies to use material from copyright owners for TDM activities.
- 5.3 Several large-scale AI tools have already been trained and developed exclusively on the basis of fully licensed or otherwise on materials which were legally obtained. For example, the platform Stable Audio Open, a text-to-audio model for generating samples and sound effects, was trained using nearly 500,000 recordings licensed under CC-0, CC-BY and CC-Sampling+.³

¹ <https://www.sonymusic.com/sonymusic/declaration-of-ai-training-opt-out/>

² <https://www.wmg.com/wp-content/uploads/2024/07/WMG-Statement-Regarding-AI-Technologies.pdf>

³ <https://stability.ai/news/stable-audio-open-research-paper>

- 5.4 Creative Commons (“CC”), the entity providing the CC-0, CC-BY and CC-Sampling+ licenses, is a nonprofit organization that enables sharing and reuse of creativity and knowledge through the provision of free legal tools, e.g., licenses. Stable Audio Open’s dataset consists of CC recordings from Freesound (a collaborative repository of CC licensed audio samples) and Free Music Archive (an online repository of royalty-free music).⁴
- 5.5 In Studio Audio Open’s research paper, they also mention another platform, MusicGen which has well-documented training data and licences and is trained exclusively on licensed copyrighted data.⁵
- 5.6 In the streaming sector, it was reported that YouTube offered to pay Universal Music Group, Sony Music Entertainment and Warner Records “lump sums of cash” in exchange for licensing their songs to legally train its AI music tools.⁶ Separately, in the publishing industry, OpenAI has negotiated licensing deals with several news publishers, e.g., Financial Times, Axel Springer and the Atlantic.⁷
- 5.7 As evident by the long-standing licensing practices in place in different sectors, licensing is a practical and mutually beneficial arrangement for creators and businesses that derive value from copyrighted materials. These licensing arrangements should also be used in Hong Kong for TDM activities. These arrangements will ensure that only those who have negotiated a licensing deal may exploit the work and creators are given due compensation for their works.
- 5.8 In terms of how royalties can be calculated, this should be determined by the industry and if there is a disagreement, the parties should be able to refer any disagreement to the Copyright Tribunal, which has jurisdiction to hear and determine disputes relating to licenses granted by licensing bodies (CASH is a registered licensing body with certificate no. 20220001⁸) under sections 161 to 166 of the CO.

6. Maintain the balance between copyright vs. creativity

- 6.1 CASH supports the Government’s goal to establish greater legal certainty in the relationship between copyright protected works and AI. However, this should be balanced against the rights of the creators and the need to encourage creativity.

⁴ <https://arxiv.org/pdf/2407.14358>

⁵ <https://arxiv.org/pdf/2407.14358>

⁶ <https://www.technologyreview.com/2024/06/27/1094379/ai-music-suno-udio-lawsuit-record-labels-youtube-licensing/>

⁷ <https://www.reuters.com/technology/financial-times-openai-sign-content-licensing-partnership-2024-04-29/>;

<https://www.reuters.com/business/media-telecom/openai-signs-content-deals-with-atlantic-vox-media-2024-05-29/>

⁸ <https://www.ipd.gov.hk/filemanager/ipd/common/copyright/cr-register/20220001/20220001.pdf>

- 6.2 In the Chief Executive’s 2023 Policy Address, the Government indicated that it is actively promoting the cultural and creative industries.⁹ Consistent with the goal to promote the creative industries, the Government should also safeguard the copyright owners’ interests. Where the owners’ interests are not protected and works are exploited without fair compensation, authors may be disincentivised to continue creating.
- 6.3 The proposal set out in the AI Consultation Paper will unfairly impact copyright owners, in particular, our members. There will be no credit for computer-generated works and the broad TDM exception will impact the ability to obtain fair remuneration on the use of their works, this creates a disconnect between the Government’s goal and the implications of the legislation and proposed exception.

7. **Conclusion**

7.1 We therefore ask that: -

- 7.1.1 copyright protection and moral rights protection of computer-generated works be extended to the owner of the underlying works; and
- 7.1.2 the TDM exception should be narrowed to non-commercial use only with an opt-in option (the other imposing conditions suggested by the Government should also be implemented, i.e., requiring lawful access to copyright works, not permitting TDM activities if licensing schemes are available). Commercial use of copyrighted materials for TDM activities should be dictated by market practices.

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⁹ <https://www.policyaddress.gov.hk/2023/en/p63a.html>