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**BEFORE THE
Commerce and Economic Development Bureau and
Intellectual Property Department of Hong Kong**

**Public Consultation on Copyright and
Artificial Intelligence (2024)**

8 September 2024

NATIONAL MUSIC PUBLISHERS' ASSOCIATION COMMENTS

The National Music Publishers' Association ("NMPA") respectfully submits these comments to the Commerce and Economic Development Bureau ("CEDB") and the Intellectual Property Department ("IPD") of Hong Kong in response to the Public Consultation on Copyright and Artificial Intelligence (the "Consultation"). NMPA is the principal trade association in the United States representing American music publishers and their songwriter partners. Our members represent over 90% of the music publishing market in the U.S., including music publishers and administrators of all catalog and revenue sizes, from large international corporations to small businesses and individual creators. As their voice, NMPA protects, promotes, and advances the interests of music's creators. NMPA is also a member of the International Confederation of Music Publishers ("ICMP") and the Copyright Alliance, both of which organizations have also submitted comments in this Consultation.

NMPA submits these comments to echo and support the positions taken by ICMP and by the Copyright Alliance against the Proposed TDM Exception in the Consultation document, which we believe would be profoundly detrimental to the creative industries. We respond specifically to three of the questions raised in Paragraph 4.18:

What further justifications and information can be adduced to support (or roll back) the idea of introducing the Proposed TDM Exception into the CO with a view to incentivizing the use and development of AI technology and pursuing overall benefits?"

NMPA opposes the introduction of the Proposed TDM Exception into the Copyright Ordinance ("CO") of Hong Kong. A TDM exception would fundamentally harm both the economic

future of human creators and the creative industries, by limiting or eliminating the already-existing marketplace for licensing copyrighted works for AI training.

The Proposed TDM Exception would enable AI developers to cannibalize the market for human-created music and other copyrighted works used in AI training, without compensating creators for their essential contribution to the AI training process. Developers of generative AI systems take copyrighted works made by human creators to create commercial services that generate works that ultimately compete in the marketplace with the human-created works they were trained on. If AI developers are not required to properly license the works they use from copyright owners, it will have significant adverse effects on both the potential market for the copyrighted works themselves and on the existing and future market for licensing copyrighted works for AI training.

We also note that while training non-generative AI may in some situations be done for noncommercial or research purposes, training *generative* AI models is a fundamentally commercial endeavor: it cannot be considered merely “research” to take copyrighted works to build an AI model that will create outputs that are likely to substitute for or supplant the original works used to build the model. Any justification that copyrighted works are being used for generative AI model training for a noncommercial or research purpose should be viewed skeptically. Any commercial entity could front-end their AI endeavors with “research” arms or outsource text and data mining to “noncommercial” entities, and then shift to commercial exploitation, leaving the creators of the copied works with no compensation.

Is copyright licensing commonly available for TDM activities? If so, in respect of which fields/industries do these licensing schemes accommodate? Do you find the licensing solution effective?

As mentioned in the comments submitted by the Copyright Alliance, there are already many existing licenses for the use of copyrighted works to train AI systems. This licensing process is underway in the music industry.¹ For example, Stability AI reportedly trained its audio model, Stable Audio, on a licensed music library,² as did Meta for its text-to-audio model, MusicGen.³ Voluntary licensing to AI developers is only the latest example of the music industry providing technology ventures large-scale access to musical works and sound recordings through voluntary licensing. Numerous audio-only and audiovisual platforms, including YouTube, TikTok, Facebook, Instagram,

¹ Hibaq Farah, *Google and Universal Music working on licensing voices for AI-generated songs*, The Guardian (Aug. 9, 2023), available at <https://www.theguardian.com/technology/2023/aug/09/google-and-universal-music-working-on-licensing-voices-for-ai-generated-songs> (“Google and Universal Music are negotiating a deal on how to license the voices and melodies of artists for artificial intelligence-generated songs.”).

² *Announcing Stable Audio, a product for music & sound generation*, Stability.ai (Sept. 13, 2023), available at <https://stability.ai/blog/stable-audio-using-ai-to-generate-music>.

³ *Introducing AudioCraft: A Generative AI Tool for Audio and Music*, Meta (Aug. 2, 2023), available at <https://about.fb.com/news/2023/08/audiocraft-generative-ai-for-music-and-audio/> (“MusicGen . . . was trained with Meta-owned and specifically licensed music.”).

Peloton, Snapchat, Twitch, Triller, and many others, have obtained licenses covering the vast majority of musical works and sound recording markets directly from music publishers and record labels.⁴ There is no reason why AI developers cannot do the same.

The volume of works that AI developers claim to need does not absolve the need for licensing. Every new technology is novel at the start, and many technology companies believe that they require massive scale to succeed. Fortunately for technology developers, the music industry has a fully-developed market for licensing works in bulk.

What conditions do you think the Proposed TDM Exception should be accompanied with, for the objective of striking a proper balance between the legitimate interests of copyright owners and copyright users, and serving the best interest of Hong Kong? Are there any practical difficulties in complying with the conditions?

The Consultation document suggests that opt-out solutions “allow copyright owners to prevent their online copyright works from being used in the training of respective AI models” by “sending notifications or employing specified digital approaches.” *Consultation*, 4.12. NMPA does not believe that any version of an opt-out system would provide adequate protections for copyright owners. An opt-out scheme that requires rightsholders to opt out on an AI company-by-AI company or application-by-application basis is simply not feasible given the sheer volume of AI companies and applications. Copyright owners, particularly individual creators and small businesses, could not possibly meet such a burden. Nor would an opt-out system that requires rightsholders to opt out particular websites or files from AI training work in practice because rightsholders do not control most of the websites where their works appear. Additionally, given the proliferation of online piracy, copyright owners are rarely aware of all of the places their works appear online, and so could not possibly protect against the TDM of all of those copies.

For these reasons, NMPA respectfully urges the CEDB and IPD not to move forward with the Proposed TDM Exception. We appreciate the opportunity to provide this feedback and thank you for your consideration.

⁴ See, e.g., *NMPA and TikTok Announce Global Multi-Year Partnership Agreement*, NMPA (July 23, 2020), available at <https://www.nmpa.org/nmpa-and-tiktok-announce-global-multi-year-partnership-agreement> (describing a partnership with TikTok giving “NMPA members the ability to opt-in to a licensing framework that allows them to benefit from their works included on TikTok”); Tatiana Cirisano, *Facebook Strikes Deals With Major Labels to License Music On Its Gaming App*, *Billboard* (Sept. 14, 2020), available at <https://www.billboard.com/pro/facebook-deals-major-labels-license-music-gaming-app/> (“Facebook has entered a series of new music licensing deals with labels and publishers for its Facebook Gaming platform, letting livestreamers who play video games for the platform’s community of 200 million monthly viewers legally add songs from a vast catalogue of popular music to their videos.”); Glenn Peoples, *Pandora and Sony/ATV Reach Multi-Year Agreement*, *Billboard* (Nov. 5, 2015), available at <https://www.billboard.com/music/music-news/pandora-sony-atv-multi-year-licensing-agreement-6753769/>; *Warner/Chappell Music and Pandora Sign Licensing Agreement*, Warner Music Group (Dec. 15, 2015), available at <https://www.wmg.com/news/warnerchappell-music-and-pandora-sign-licensing-agreement-21071>; U.S. Copyright Office, *Copyright and the Music Marketplace* (Feb. 2015) (“CMM”), at 56 (“The licensing of music for inclusion in audiovisual works . . . occurs in the free market for both musical works and sound recordings.”).

Respectfully submitted,

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