



香港創意產業協會
Hong Kong Creative Industries Association

6 September 2024

Division 3
Commerce, Industry and Tourism Branch,
Commerce and Economic Development Bureau
23rd Floor, West Wing,
Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong
(Email: AI_consultation@cedb.gov.hk)

HONG KONG CREATIVE INDUSTRIES ASSOCIATION'S VIEW ON THE ISSUES OF COPYRIGHT AND ARTIFICIAL INTELLIGENCE

We, Hong Kong Creative Industries Association Limited (“HKCIA”), established since 2015, are comprised of various sectors of the local creative industry. With a total of 20 participating organizations and individuals, we represent widely the copyright and IP industries in Hong Kong. *(For more details about HKCIA, please refer to our official website hkcia.org.)*

We appreciate the Government's efforts to foster the growth of the Hong Kong data economy. But we disagree with the Government's permissive approach to the introduction of the proposed TDM exception, as it will prejudice copyright owners' legitimate interests in exploiting and receiving remuneration for their works. Our views are set out below.

Although the exact wording for the proposed TDM exception has yet to be determined by the Government, we understand from the Paper that the proposed TDM exception will be on the permissive side of the spectrum, providing support for both commercial and non-commercial TDM activities. In other words, the effect of the proposed TDM exception will be that anyone can scrape text and data created by others and use it for commercial gain without payment to the original creator, as long as the conditions imposed are met.

1

Hong Kong Creative Industries Association Limited

Room A, 17/F., 78 Hung To Road, Kwun Tong, Kowloon, Hong Kong | Telephone: 2785-0363



香港創意產業協會
Hong Kong Creative Industries Association

The current legislative framework and the creative industries already offer accessible licensing options for use of copyright works. Introducing a specific copyright exception for TDM as the Government proposes will allow AI content to be generated freely using copyright works, with no compensation to the rights holders. The proposed TDM exception therefore discourages creativity and disadvantages owners who currently have the legal right to be paid for the use of their works for TDM activities.

It is also possible that infringers may take advantage of the proposed TDM exception to use copyright works without authorization in computer-based data analysis and processing activities. As commonly known, these mining activities often require the input of a large batch of data originating from different sources, and the final result of a TDM project does not usually contain any original parts of the content used in the process. Even if a rights holder's works have been unlawfully accessed, copied and used in TDM activities, as the output is shaped by a mix of vast quantities of data, it would be difficult to identify and prove the subsistence of copyrighted content and pursue legal actions. Also, copyright owners will not be able to rely on similarity detection tools to locate and pinpoint instances of infringement within the output due to the immaturity of these technologies. For example, although the "Turnitin" software is used to compare submitted papers to text in a massive database of content, it still requires a certain level of similarity for identifying areas that match other pieces of writing. Accordingly, we take the view that the proposed TDM exception will allow further misappropriation of copyright works and will seriously undermine the current intellectual property framework.

We propose the TDM exception should be limited to non-commercial research only and impose the same conditions to protect rights holders' legitimate interests, as opposed to the Government's attempt to include in the proposed exception commercial uses. Although the introduction of an exception that applies to commercial TDM is intended to speed up development of AI, it will inevitably render rights holders unable to charge for licenses for TDM and come at the cost of the creative industries.



香港創意產業協會
Hong Kong Creative Industries Association

Before formulating pro-innovation legislative proposals to benefit AI developers, we aver that an improved protection mechanism that effectively prevents unauthorized access to data and ensures greater transparency over the data used for TDM must be in place.

(1) The Copyright Ordinance lacks specific provisions to govern devices used for accessing unauthorized and illegal content on the internet, including TV set-top boxes and application programmes. Illicit streaming devices are commonly used and can be easily purchased in Hong Kong, but the current offences under the CO do not seem to be applicable on all occasions, even with the newly added criminal sanctions against unauthorized communication of copyright works to the public. It is therefore necessary to include in the CO provisions similar to those under the Copyright Act in Singapore, imposing liabilities on infringers who engage in commercial dealings with illicit streaming devices.

(2) There is no copyright-specific site blocking mechanism under the CO for rights holders to require online service providers to take steps to prevent or disable local subscribers or users from accessing infringing websites or online locations without permission. The remedy of general injunction available for copyright owners is deficient in a sense that it is not affordable to many private and small businesses, it may become futile in the long term given the possibility of circumvention of the blocked sites and its granting is solely at the court's discretion.

We support the Government's aims to improve innovation and promote Hong Kong as an AI superpower. However, we take the view that such goals should not be pursued to the detriment of Hong Kong's current copyright framework and the successful creative industries who contribute considerably to the city's rich cultural heritage.

Thank you for your kind attention. Should there be any queries to the views we have put forth above, please feel free to contact our Hon. Secretary, Mr. Sam Ho at anytime.



香港創意產業協會
Hong Kong Creative Industries Association

Yours sincerely,
For and on behalf of
Hong Kong Creative Industries Association

Derek Lee
Its: Chairman

Copied to:

Hon. MA Fung-kwok
Hon. Kenneth FOK Kai-kong

HKCIA's members include (in alphabetical order):

1. Asian Licensing Association Company
2. Broadteck International Company
3. Cine-Century Entertainment
4. Enrich Culture Group
5. Hong Kong Comics & Animation Federation
6. Hong Kong and International Publishers' Alliance
7. Hong Kong Reprographic Rights Licensing Society
8. Hong Kong Theatres Association
9. Intercontinental Interactive
10. International Federation Against Copyright Theft (Greater China)
11. M & C Toy Centre
12. Metro Broadcasts
13. Motion Picture Licensing Company (Hong Kong)
14. PCCW Media
15. Song Entertainment
16. Television Broadcasts
17. Vobile Hong Kong