

Hong Kong Retail Management Association
Feedback to the Public Consultation Paper on Copyright and Artificial
Intelligence
13 September 2024

In response to the public consultation paper on Copyright and Artificial Intelligence released on 8 July 2024 by the Government, the Hong Kong Retail Management Association (“HKRMA”) would like to present some members’ key concerns over the proposed introduction of a Text and Data Mining (“TDM”) Exception into the Copyright Ordinance Cap. 528 (“CO”) as follows:

- 1. Clarification is required as to the copyright licensing mechanisms or procedures which cover retail-sector online images and works.** Members of the retail sector, especially those operating e-commerce businesses or platforms where many images of products and product descriptions are displayed online (which may be copyright-protectable works), may not be viewed as “traditional” copyright owners or licensors. Since these e-commerce businesses/platforms are publicly available, they may be targets of “scrapping” or other TDM activities. It is unlikely that established copyright licensing mechanisms or procedures are in place to cover such works which is different from other types of copyright works that are licensed through copyright collective bodies.
- 2. Additional details are therefore needed to clarify how the TDM Exception will function to consider whether retail-sector copyright owners “authorise” such TDM activities and how an “opt-out” mechanism would work for the TDM.** It is noted that the Government proposes a potential opt-out mechanism where copyright owners can “opt-out” of the TDM Exception’s application by expressly reserving their rights or imposing restrictions. It is unclear to what extent the copyright owners need to expressly reserve their rights in order for the “opt-out” to be effective. For example, whether a simple provision that ‘All Rights Are Reserved’ on the e-commerce website/platform’s Terms of Use suffices and what type of restrictions are required, whether technological and/or contractual.



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- 3. There are also concerns over the costs for Domain Name System (“DNS”) traffic relating to TDM activities and responsible/ethical TDM practices.** TDM activities may cause additional DNS traffic and in turn drive up domain services costs and other operation costs which are borne by the domain/website operator (e.g. the e-commerce business/platform operator). Whilst certain AI tools adopt responsible and/or ethical TDM practices to reduce the impact of such activities, this differs by tool. It is also worth considering whether the Government should impose additional requirements for compliance with such responsible and/or ethical TDM practices in order for the TDM Exception to apply.

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