

**Commerce and Economic Development Bureau (CEDB) Public Consultation on
Copyright and Artificial Intelligence**

(Issued in July 2024)

**Submission by
AALCO Hong Kong Regional Arbitration Centre**

1. Introduction

- 1.1. The business community, and in turn the society as a whole, will benefit with the fast and ethical development, deployment and adoption of Artificial Intelligence (“AI”), and AALCO Hong Kong Regional Arbitration Centre (“AALCO-HKRAC”) is pleased to respond to the consultation paper (“CP”) regarding copyright and AI.
- 1.2. As the Hong Kong Special Administrative Region (“**Hong Kong**”) rapidly develops its vibrant Innovation and Technology (“**I&T**”) ecosystem, industry 4.0 and AI, especially generative AI, will open doors and bring about tremendous opportunities to this city. According to an estimation conducted by Goldman Sachs in their 2023 report, by 2030, AI development has the potential to increase global GDP by 7%, equivalent to an additional USD 7 trillion in output.
- 1.3. AI, in particular generative AI, will bring significant opportunities across industries and wider communities into Hong Kong, such as digital economy, biotechnology, cyber security, Fintech, Web 3.0, insurance, retail, advance manufacturing, legal and other areas of services. Therefore, as a city that is privileged to have five of the Global Top 100 universities, a leading international I&T centre, an international financial centre, an Asia-Pacific legal dispute resolution and legal services hub, and with free flow of data and information between the East and West, Hong Kong must not miss out on this growing opportunity to grow and contribute, especially given we have unique advantages under the “One Country, Two Systems” and unwavering the support from the Central Government

of the People's Republic of China (“**PRC**”) and supportive national policies including the Greater Bay Area (“**GBA**”) plans as advanced in the National 14th Five-Year Plan.

- 1.4. Hong Kong should remain steadfast in the determination to contribute to the growth of and capitalise on the growth of AI developments. It is ever more apparent that the success of economy, the business operating environment, and the development of AI will depend heavily on collaborative efforts from comprehensive policies, legislations, data accessibility, people talents, technology and financial institutions.
- 1.5. AALCO-HKRAC is pleased to note that Professor Sun Dong, JP, the Secretary for Innovation, Technology and Industry, has announced that Hong Kong is currently developing a foundational model of a homegrown generative AI system. AALCO-HKRAC also welcomes the government's decision to set up infrastructures to facilitate the growth of the technology sector with developing projects like San Tin Technopole and Northern Metropolis. AALCO-HKRAC is of the view that the AI Supercomputing Centre at Cyberport would be a game-changer to help local research, attract AI companies, help groom home-grown AI companies, and support universities research, ushering through breakthroughs in “new quality productive forces”, advanced manufacturing and continuous development of our Smart City.
- 1.6. With regards to public policy, supportive data policies, including the “Memorandum of Understanding on Facilitating Cross-boundary Data Flow within the Guangdong-Hong Kong-Macau Greater Bay Area” in support of the “Standard Contract for the Cross-boundary Flow of Personal Information within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong)”, are beneficial to AI development. Since generative AI requires big data to facilitate the deep learning process, the chamber strongly calls on the Hong Kong Government to lead the wider community in utilizing our unique advantages position under “One Country, Two Systems” to leverage the region's access to international and Mainland datasets to enable and develop an impartial AI system. In recent years, the Hong Kong government have been devoted to advancing in the technological sector by encouraging and becoming the incubator for many local and start-up companies, promoting

social progress. For instance, with the help of relevant legislation, such as the Technology Start-Up Support Scheme for Universities (“TSSSU”), local graduates from the Chinese University of Hong Kong, the University of Hong Kong, the Hong Kong University of Science and Technology and more could be awarded a maximum of HKD 1.5 million each year and the highest of a three-year continuous sponsorship for commercial development projects that may contribute to the business community and the wider Hong Kong society.

- 1.7. The success achieved by one the world’s leading Gen AI company based in the USA today would not have been possible without finances and favorable policies and legislation. However, the leader of that company has openly prohibited users from Hong Kong and other parts of China from accessing that Gen AI system, and one has to wonder what data was used to train their AI engine, and whether such political stance and cultural differences would “translate” into an even more biased system if it was trained based on limited or selected sets of data with a certain worldview. In view of the growing geopolitical tension, many countries may be unethically deploying Gen AI to disparage other countries and economies, and Hong Kong’s international competitiveness and reputation could be impaired by such unfair attacks. The Hong Kong government must take the lead to help make Hong Kong’s best effort to fill the void and develop the world’s most impartial AI, and regain the authority to “tell the true stories”! Perfecting legislation, in fact passing an omnibus AI law, could provide safeguarding for the future development of AI.
- 1.8. To fully utilise the strengths Hong Kong possesses and further AI development, minor amendments to the copyright law may not be sufficient. As in other areas, especially when measured against development of technology, the law on AI lacks behind the development of AI. Meta has recently announced that it will refuse to offer future advanced AI models to the European Union due to the vagueness of European Union regulation. Without a pro-business, clear and comprehensive AI-specific legislation in Hong Kong, we will be wasting our unique advantages and potential first-mover advantage in the new AI era.
- 1.9. To reaffirm Hong Kong’s status as an international innovation I&T hub, not only does Hong Kong need to revise and reform the current Copyright Ordinance (Cap. 528) to

protect the rights of parties from the creative industry; the government **must** also pass legislation specifically addressing AI law to set the international standard and promote ethical use of generative AI. This will strengthen the protection towards start-up companies, I&T industries and will attract AI-developing companies to be home-grown and be attracted to relocate to grow in Hong Kong.

2. AI-generated product's IP protection

2.1. In regards to the copyright protection of AI-generated products, the current provisions of the Copyright Ordinance (Cap. 528) on computer-generated work provide a certain degree of protection. Yet, there are still ongoing disputes in relation to the originality of the generated product by AI.

2.2. Although the Hong Kong common law doctrine "Sweat of the Brow" has set precedence for future judgments, the *ratio* has not been fully clarified. Although AALCO-HKRAC does content that legislation should be flexible when in face with the ever-advancing technology and its creation process, Hong Kong should be diligent and bold from policy consideration when deciding how to expand AI development and construct a clear legal framework to ensure that the originality of AI-generated work is protected, rather than passively waiting for relevant case law legal precedence and the lengthy prosecution process to come to an end.

2.3. Although no general consensus has been reached internationally on AI's IP issue, investors and creators across the globe are gauging their interest towards more accepting regions to effectively and legally safely develop AI, especially generative AI. Passively waiting for court ruled case law to be established under common law may cause Hong Kong to lose out on investors and creators who do not want to be held accountable for unexpected reasons.

3. Legal repercussions on infringement of AI-generated product

- 3.1. When the AI-generated products clearly include others' ordinary and original literary, dramatic, musical and artistic works (“**ordinary LDMA works**”) or films, such as with similar length and content, and/or images created by others, the infringement behaviour is the same as general copyright infringement behavior. Based on facts and evidence, it is easy for one to determine whether the moral rights of the author of the ordinary LDMA works or films have been infringed.
- 3.2. However, in most cases, AI is trained with ordinary LDMA works or films, and their final output may not necessarily have similarities to the models the AI was given. Nonetheless, the rights of the director and artist of these ordinary LDMA works or films should not be ignored.

4. Text and data mining activities

- 4.1. The CP recommends that text and data mining activities be included in copyright exemptions. This proposal is conducive to the development of talents within the commercial and creative industries, but we should also balance the interests of all parties, and solidify the concept of data sovereignty. Whilst promoting the development of the AI industry, we shall protect the interests and rights of authors or directors for ordinary LDMA works or films, which allows them to benefit from AI developments and act as an incentive to encourage them to continue their creation. An industry can prosper only when the interests of all parties are safeguarded and everyone can benefit from it.
- 4.2. AALCO-HKRAC agrees that the proposed “opt-out” option under the CP provides protections to copyright owners. For data within the Hong Kong jurisdiction, if the copyright owner indicates that they would like to reserve their right, they could “opt out” and demand AI developers not to use their work to train the AI model.
- 4.3. We can do more than just “opt out”. We can create positive incentives and reward creativity and sharing of creativity by proactively encouraging legal consented sharing of otherwise copyrighted materials. Through Web 3.0 with blockchain technology, AI-

generated work could identify individuals behind their work and provide rewards for their contributions if they are proactively willing and consenting to share their copyrighted works/data.

- 4.4. As an international and inter-governmental institutions and expert in LawTech, AALCO-HKRAC is willing to contribute and establish a **registration system** to allow these proactive copyright consents to be registered, thus allowing the possibility and a new industry of sharing/distributing profits and provide an incentive to creators. This has the potential to be a global consent, interchange and IP trading centre fit for the Web 3.0 and AI era.
- 4.5. Where there are disputes on sharing, AALCO-HKRAC is also eager to work with the government to create a new **adjudication system** that utilizes Web 3.0 technology to adjudicate the sharing distribution through a more impartial and transparent procedure. The sharing adjudication can be based on the significance of data used for the output that generates the revenue. Not only does this protect the IP rights of the data provided, but it could also develop more data resources for creating future generative AI, and further advance LawTech in Hong Kong. With the support of 48 member states of AALCO (Most of the Asia and Africa countries and 90% of them are active participants of Belt and Road Initiative), AALCO-HKRAC has the capability to extend the registration and adjudication system beyond Hong Kong and thus, strengthen Hong Kong as a regional legal services and disputes resolution hub.

5. **Other topics related to generative AI**

- 5.1. The ethical issues of generative AI are interweaved in its development, and updates to the Copyright Ordinance alone would not allow the business world and AI companies and the global tech community to fully take into account ethics, privacy, data security, traceability and other related issues. With this in mind, EU has already launched the AI Act. Our country, China has even introduced the Global AI Governance Initiative, so-sponsoring by 140 countries, to encourage countries to commit to a vision of common, comprehensive,

cooperative, and sustainable security, and put equal emphasis on development and security and build consensus through dialogue and cooperation, and develop open, fair, and efficient governing mechanisms, in a bid to promote AI technologies to benefit humanity and contribute to building a community with a shared future for mankind.

- 5.2. Currently, Hong Kong has multiple guidance frameworks that encourage the creation of ethical AI, such as the “Ethical Artificial Intelligence Framework” from the Office of the Government Chief Information Officer and “Guidance on Ethical Development and the Use of Artificial Intelligence” from the Office of the Privacy Commissioner for Personal Data.
- 5.3. These guidelines provide basic principles for companies and self-assessed checklists to ensure AI models’ ethical development and responsible regulation. However, the guidelines are not legally binding, hence reinforcing Hong Kong’s need to further improve and implement a thorough and effective AI regulatory framework.
- 5.4. At the moment, many generative AI models are trained with Western databases, which may result in the generated outcome showing implicit biased worldview and ideologies. In hopes of creating a more accurate model, Hong Kong should promote local establishments for data training centres (by allowing companies to purchase and create branding with AI) and hire Mainland Chinese technology companies to provide additional support. Through training with local, Mainland and international datasets, Hong Kong could fully utilise the advantages of the “One Country, Two Systems” policy to build a just and accurate generative AI model.
- 5.5. Transparency is another significant issue for the generative AI system. Hong Kong could take reference of the “Interim Measures for the Management of Generative Artificial Intelligence Services” that was jointly published in July 2023 by the Cyberspace Administration of China, the National Development and Reform Commission, the Ministry of Education, the Ministry of Science and Technology, the Ministry of Industry and Information Technology, the Ministry of Public Security, and the National Radio and

Television Administration, to establish a thorough legal framework to ensure the transparency of generative AI systems and prevent technology companies from promoting and disseminating AI-generated content with harmful themes, such as abuse, harassment and self-harm.

- 5.6. The popularisation of generative AI has promoted the development of the digital economy and played an important role in the transformation of industry 4.0 in Hong Kong. In line with the Hong Kong I&T Development Blueprint promulgated by the Innovation, Technology and Industry Bureau, the Hong Kong government could consider to establish a new set of AI certification standards to fortify the ethical use of AI in Hong Kong and provide AI developers with greater confidence to grow and hence accelerate Hong Kong's industrial transformation.
- 5.7. Furthermore, since social resources will be used for AI development, AI developers should also give back to society. For instance, the government could request relevant businesses to regularly provide AI-related educational services to the public to educate users on the opportunities and challenges AI may bring. This will not only improve Hong Kong's productivity and efficiency, but also help Hong Kong's businesses to integrate with the GBA. The results will benefit Hong Kong, our country and the people, and we could share the success with other countries and regions that agree with the Five Principles of Peaceful Coexistence to consolidate Hong Kong's role as a "super-connector", or even a "super value-adder". Ultimately, this will strengthen China's ties with the world, especially with countries and regions that are more inclined to use non-US-centric biased generative AI or AI from other countries or regions.
- 5.8. As Hong Kong gradually integrates into the GBA, generative AI can help achieve its goal of becoming a world-class smart city and I&T centre. By establishing partnerships with many well-known universities, such as the Chinese Academy of Sciences and the University of Oxford, Hong Kong can continue to grow and develop on this new track, new technology, new platform and new mechanism while consolidating its core role as an international research and development centre in the Asia-Pacific regions. In addition, with

InnoHK's newly established healthcare insurance, AI and robotics institute, generative AI could provide effective assistance and inspiration to Hong Kong's growing number of researchers and scientists.

6. Conclusion

6.1. A healthy industrial environment is the cornerstone of development. Against the backdrop of the government's vigorous promotion of I&T policies along with the gradual improvement of Hong Kong's relevant regulatory system, it is now the best time for all walks of life to upgrade and transform.

6.2. In this modern era where AI seems to be the state-of-the-art in new technological developments across many industries, to maximize the development and impact of new quality productive forces and promote the vision of Hong Kong becoming a world-class smart city, the Hong Kong government must cooperate with various departments and institutions to prepare for AI's rapid growth and manage all aspects of societal concerns regarding AI. Hong Kong should observe and take reference from the Mainland and overseas experience to formulate a set of sustainable and effective legislation, with the aim to develop an international benchmark. This could serve as a clear signal to the international communities, attracting AI developers and investors and assisting various trades and industries in promoting the development of Industry 4.0 and AI in Hong Kong to achieve "A Vibrant Economy for a Caring Community".