



Sony Music Entertainment's Submission to the Hong Kong Commerce and Economic Development Bureau and Intellectual Property Department on the Public Consultation Paper entitled "Copyright and Artificial Intelligence"

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Introduction

Sony Music Entertainment is part of the global Sony family. Sony Music Entertainment ("SME") honours the creative journey, has nurtured some of music's most iconic artists and produced some of the most influential recordings of all time. Today, SME works in more than 100 countries, supporting a diverse and distinctive roster of talented creators at every level and on every stage. Situated at the intersection of music, entertainment, and technology, SME brings imagination and expertise to emerging products and platforms, embraces new business models, and employs breakthrough tools — all to support the creative community's experimentation, risk-taking, and growth.

SME appreciates the opportunity to provide background on its experiences with AI to date and its perceptions of the opportunities and risks as they relate to AI and copyright. SME has a long standing and significant presence in Hong Kong. SME's catalogue has been amassed over more than 100 years and includes seminal recordings from SME Hong Kong's current and former artists such as Jason Chan (陳柏宇), Leon Lai (黎明), Cass Pang (彭玲), Jenny Tsang (甄妮), Paula Tsui (徐小鳳) and Ekin Cheng (鄭伊健), as well as international artists including Adele, AC/DC, Beyonce, Elvis Presley, Harry Styles, George Michael, Michael Jackson and many more. Additional information about SME, its labels and artists can be found in its homepage: www.sonymusic.com.

The recorded music industry, and the wider creative industries, are a significant economic driver for Hong Kong. According to the Cultural and Creative Industries Development Agency (CCIDA) of the Hong Kong Special Administrative Region, in 2022 Hong Kong's creative industries generated in excess of HK\$62 billion of economic contribution (in terms of value-add), accounting for around 2.3% of Hong Kong's GDP and 3.6% of Hong Kong's total employment, and the trade value of creative industry-related goods exceeded HK\$687 billion, accounting for 7% of the total merchandise trade in Hong Kong.¹ CCIDA's publications speak of the future of creativity, the embrace of digitalisation, and the capability of Hong Kong's creative talent to promote Hong Kong as Asia's creative capital.² These economic contributions and this future potential are significantly put at risk by rushed, unbalanced and irreversible proposals for legislative reform – in particular, a text-and-data mining (TDM) exception from the right of reproduction under Hong Kong copyright law.

¹ https://www.ccidahk.gov.hk/en/facts_n_figures.html, accessed on August 26, 2024.

² Ibid.



Before addressing the specific areas of interest set out in the Public Consultation Paper (“**Consultation**”), SME wishes to first set out some of its experiences with AI in the music industry that touch on issues that are likely to be of interest to the Intellectual Property Department and the Commerce and Economic Development Bureau (“**Government**”).

AI has been of increasing relevance to artists and record labels – creating a variety of opportunities, as well as a few significant risks. Many artists now use AI tools for inspiration or to supplement their creations. The country artist Randy Travis recently released his first new song/recording since suffering a stroke 12 years ago.³ Billy Joel released his first music video in decades using de-aging AI that made him appear as he would have many years ago.⁴ David Gilmour (of Pink Floyd) and the Orb made available a global AI remix experience where fans could remix the audio and the artwork of “Metallic Spheres in Colour” using generative AI that was ethically trained with the authorization of rightsholders.⁵ The K-Pop artist Midnatt released a new song/recording simultaneously in 6 different languages: AI voice synthesis technology was used to improve the artist’s pronunciation in each language.⁶ SME anticipates that artists will increasingly find utility in AI tools for a variety of different purposes.

In the category of AI risks, SME sees evidence of large volumes of entirely AI-generated recordings that are beginning to inundate music streaming services. Currently, more than 100,000 songs are delivered to Spotify every day. It appears that an increasing number of these songs are AI-generated.

This proliferation of AI-generated content is driven in part by AI start-ups that allow users to create machine-generated music. Udio, for example, is a text-to-music generative AI company that was noted to generate 10 recordings per second or 864,000 new recordings in the course of one day.⁷ Suno, another text-to-music AI company, has attracted 12 million users and recently launched a mobile app.⁸ The Suno and Udio models were both trained without permission on SME’s full catalog of recordings in order to improve the quality of the recordings those models now produce to compete with SME’s recordings on streaming services, diluting the label revenue pool in which SME participates with artists and rightsholders. Suno and Udio also monetize the recordings through the sale of subscriptions to users of their platforms, all without sharing any revenue with the artists and rightsholders whose content is foundational to the Suno and Udio recordings. Subscribers of those platforms are able to generate market payments from the music streaming services for the AI generated tracks. Udio generates roughly 10 songs per second. In roughly a day and a half, Udio could match the scale (though not the quality) of recordings in SME’s catalog amassed over close to 150 years. SME and the other major record companies recently initiated litigation against both Suno and Udio

³ <https://www.rollingstone.com/music/music-country/andy-travis-releases-ai-song-1235014871/>

⁴ <https://www.billboard.com/music/pop/billy-joel-ai-video-turn-the-lights-back-on-1235609544/>

⁵ <https://www.pnnewswire.com/news-releases/the-orb-and-david-gilmour-launch-metallic-spheres-in-colour-ai-global-remix-project-for-fans-301994401.html>

⁶ BTS label Hybe used AI to make its K-pop artist Midnatt multilingual, FastCompany (May 2023) available [here](#).

⁷ <https://www.bloomberg.com/news/articles/2024-05-06/suno-udio-and-more-the-ai-music-era-is-here-not-everyone-is-a-fan> also covered in MBW - <https://www.musicbusinessworldwide.com/the-train-has-left-the-station-ai-music-platform-udio-is-already-spitting/>.

⁸ <https://musically.com/2024/07/03/suno-releases-its-first-mobile-app-after-attracting-12m-users/>.

based on their widespread unauthorized copying of copyright protected works to train their AI systems.⁹

The influx of AI-generated recordings in music streaming services results in direct commercial harm to legitimate recording artists. The AI recordings vie for consumers' time and attention. Streaming providers allocate a share of revenue (a "label pool") across all the content that is streamed. The influx of large volumes of content that have low streaming rates will nonetheless reduce the revenue paid to artists and human creators. To make matters worse, as noted in the press, Spotify recently removed a number of AI-generated tracks after detecting artificial streaming of these tracks (that is, repeated playback of tracks via bots for the purpose of artificially increasing the number of plays, rather than for actual human enjoyment of the music).¹⁰ This exacerbates the financial harm to legitimate recording artists, who are deprived of their fair share of the label pool. Any text and data mining exception to the CO will only serve to deliver unjust and unwarranted advantages to well-funded AI companies that could solve their data issues through commercial arrangements.

Another risk associated with certain AI models is that they enable the creation of "deepfakes" or soundalike recordings that mimic the voice and sound of recording artists. The deepfakes cause commercial and reputational harm to artists and songwriters. They can confuse or mislead the public as to the level of involvement of the artist, including whether the artist supports the AI and whether the artist is being paid for consumption of the AI content.

SME observed this impact first-hand when one of its popular hip-hop artists, Travis Scott, announced that his new album would be called "Utopia". Prior to its release, a group of aspiring writers and producers conspired on the online social platform Discord to create an entire album of 10 new songs written by the group, but with vocal performances created by an AI digital replica model in the voice of Travis Scott. They called this "Utop-AI" and used Travis Scott's name and image on the artwork. Although Travis Scott had nothing to do with the AI project, his name and likeness are all over it and users are drawn to it entirely because of their interest in the artist. In this example, the creators have misused AI tools to literally put words in the artist's mouth, denying him the right to control his voice and his creative expression, which is the essence of his career and livelihood as a recording artist.

Soundalikes can also create consumer confusion. Stefanie Sun (孫燕姿), a Singaporean artist, discussed the impact of a number of "AI-Sun Yanzi" accounts on social media that have released covers of songs using AI clones of her voice. The soundalikes appear to have caused confusion with her fans who are currently listening to her AI persona recordings more than her actual music.¹¹

SME believes that these deepfakes unfairly compete with a recording artist's commercial music products, in addition to depriving these artists of income they should be entitled to.

⁹ <https://www.bbc.com/news/articles/ckrrr8yelzvo>

¹⁰ AI music app Boomy has created 14.4m tracks to date. Spotify just deleted a bunch of its uploads after detecting 'stream manipulation', Music Business Worldwide (May 2023), available [here](#).

¹¹ Singaporean artist Stefanie Sun feels under threat from AI clones, Music Ally (May 2023), available [here](#).

These rapidly-proliferating AI product lines have already begun to undermine the legal rights of music companies and recording artists, creating unfair market outcomes where a third party is allowed to misappropriate the goodwill, reputation and persona of an artist.

The same issues can be extrapolated across the creative industries in Hong Kong, and the proposed legislative reforms set out in the consultation paper are likely to cause severe harm to those vital cultural and economic drivers if reforms are introduced without robust safeguards and only after extensive consultation with the creative industries.

In response to your questions (in blue italics below) as raised in the Consultation Paper:

[2.36] In light of the above, we would like to invite views and supporting evidence on the following issues—

- Do you agree that the existing CO offers adequate protection to AI-generated works, thereby encouraging creativity and its investment, as well as the usage, development, and investment in AI technology? If you consider it necessary to introduce any statutory enhancement or clarification, please provide details with justifications.*

SME does not believe that AI recordings generated in fractions of a second deserve the same copyright protection as human-created works. The roots of international copyright law lie in human authorship and creative endeavour, with the legal concept of “originality”, required in many jurisdictions for copyright to subsist in literary, dramatic, musical or artistic works, often defined by reference to a human artist’s own intellectual creation and requiring that the work reflect the human artist’s own personality. The output music generated in seconds by AI music tools, often trained without permission to extract patterns from the works of decades of human genius and effort so that those patterns can be harnessed by others, requires little or no human endeavour by the user of the AI tool. Even where the AI developer, its investors and many others in the ecosystem may have made the arrangements necessary for the AI tool ultimately to generate the relevant output music, the output music itself does not reflect any human author’s own intellectual creation or personality.

The time, energy, creativity and talent that humans bring to bear warrants copyright protection and underpins the recognition of value in the copyrighted work. Affording copyright protection to CGWs – particularly those generated on a massive scale by AI tools – undermines the value of copyright and will ultimately reduce investment in creative sectors. Some technology companies will inevitably create their own AI recordings to populate their downstream, vertically integrated music and social media platforms, siphoning significant market share from human artists and record companies, rendering investment in human music less attractive.

We appreciate the argument that technology companies will invest more in AI if governments make it easier for them to expropriate artistic and creative works, essentially treating creative works as mere “data”. But to what end?

Allowing AI companies to expropriate one of their material inputs without compensation would amount to an unjustified and unsustainable subsidy to the AI sector, distorting the true economics of AI, and discouraging continued investment in the original human creation that is essential to the long-term performance of AI models. The value of art and culture is directly related to the scarce nature of that human resource. Once that finite pool of art is exhausted by the AI systems, the real damage will be done. And yet, tech executives continue to articulate the view that copyright protected content posted online becomes “freeware” or fair game for training data.¹²

- *Have you relied on the CGWs provisions of the CO in the course of claiming copyright protection for AI-generated works? If so, in what circumstances, how and to what extent has human authorship featured in these works? Have you experienced any challenges or disputes during the process?*

SME has not relied on the CGWs provisions of the CO in claiming copyright protection for AI-generated works. If an SME artist uses elements that are AI-generated in the course of creating a song that is primarily human authored, SME treats the work as a whole as a human-created work. SME’s view is consistent with established copyright law principles in many jurisdictions that acknowledge that while the AI-generated portion of a work might not be entitled to copyright protection, the human-authored portion remains eligible for such protection.

In some cases concerning actions *against* AI generated works, social media platforms have refused to act on SME takedown requests for deepfakes if those requests are not framed as copyright-based. Takedown regimes, to be useful and to protect creators, should be expanded to cover the full breadth of potential issues IP owners and creators will have to confront, including in the area of name and likeness and rights of publicity.

- *Do you agree that the contractual arrangements in the market provide a practical solution for addressing copyright issues concerning AI-generated works? Please elaborate on your views with supporting facts and justifications.*

SME agrees that contractual arrangements in the market could provide a practical solution to address copyright issues concerning AI-generated works, particularly as it relates to the training of AI systems. SME has negotiated agreements with many of the largest tech companies (e.g., Bytedance, Tencent, Netease, Google, Apple, Meta, Amazon, Microsoft, etc.) for the better part of 20 years. Those agreements typically cover SME’s entire catalog of recordings for a variety of service offerings. Although the agreed contractual

¹² <https://www.theverge.com/2024/6/28/24188391/microsoft-ai-suleyman-social-contract-freeware>;
<https://www.theverge.com/2024/8/14/24220658/google-eric-schmidt-stanford-talk-ai-startups-openai>

terms may be hard fought and require very real compromise, as is the nature of true arms' length negotiations, SME consistently and by necessity forges agreement in order to continue to build its business and to support the investment needed to sustain it. Unfortunately, most AI companies are not approaching SME for training licenses. Those companies pay handsomely and compete vigorously for the necessary AI talent and human resources. They are also investing billions of dollars into the requisite computing and server power. But in relation to the third and final major input into their AI systems (i.e., training content and data), the AI companies generally refuse to pay despite acknowledging that their systems cannot improve and function at peak performance levels without rich content and data sets like those available in SME's catalog of recordings. The answer to the AI companies' dilemma is not to offer a TDM exception, but rather to require that these companies undertake the same kinds of licensing conversations they undertake in the ordinary course of running their businesses, establishing a fair and competitive market for data and for artistic works. A TDM exception is not required to resolve any kind of market failure: content rightsholders stand ready and willing to license content and data for AI training with appropriate controls, parameters and compensation. But AI companies have largely made a bet that they can assume the legal risk of training on copyrighted works without seeking appropriate licenses or compensating rightsholders. We hope that the Hong Kong government will not support this wager with legislation that would severely undermine intellectual property rights.

[3.20] To facilitate our further consideration of our policy position, we would like to invite views and supporting evidence on the following issues—

- Do you agree that the existing law is broad and general enough for addressing the liability issues on copyright infringement arising from AI-generated works based on the individual circumstances? If you consider it necessary to introduce any statutory enhancement or clarification, please provide details with justifications.*

While reproducing copyrighted content for AI training is clearly a copyright-infringing act, we do not believe the current law is clear enough in its allocation of joint and several liability for acts of infringement arising from AI-generated works involving multiple participants (including the AI developer and the end-user of the AI tool). Instead of clarifying that an exception for data mining might apply, the CO should be modified to reiterate that consent and approval of rightsholders is required for AI training. The copyright protection granted to computer-generated works should also be removed or, if not removed, should be clarified as not applicable in the context of mass generative AI outputs or other similar AI-generated works that do not involve much or any meaningful human intellectual endeavour or creativity reflected in the algorithmically-created output.

SME invests tens of millions and in many cases hundreds of millions of dollars each year to continue to invest in and build its catalog of recordings. SME also spends many millions marketing and promoting both the artists and the recordings concerned. The return on SME's investment is not achieved in a short window after release. To the contrary, the small fraction of recordings that become "hits" generate the long-term return that justifies the broader investment over periods of decades. Successful musical works remain valuable for the full life of copyright and beyond.

Allowing training on SME recordings without permission is equivalent to a compulsory transfer of highly valuable rights from creators to AI companies. That transfer of rights will cause long lasting and extreme damage to SME and the human artists in whom it invests, as well as the wider creative industries in Hong Kong. We increasingly see that algorithmic playlists on music streaming services include AI-generated songs. But it is early days. The damage is not yet obvious, even though the evidence of AI's negative impact on artists is growing. The AI companies will have paid significant sums to create AI, while investing nothing in the rich data that includes SME recordings in order to train the AI into something useful. They are producing new AI generated recordings and bringing the fight directly to artists, as they endeavour to attract users' time and attention away from human created content. We see recordings from Suno, Udio and other AI services proliferating throughout the music streaming platforms.

It would be illogical and unsustainable to require an investor in a valuable asset to allow competitors to use that valuable asset to create competing assets without consent or compensation. Copyright and other intellectual property rights have well-recognized limits, but there is no overarching rationale to transfer such significant value to the big tech companies simply so they can avoid the headache of negotiating another license with rights holders. Such a policy would fundamentally undermine the economic basis for Sony Music's business activity and distort competition in the AI market by assigning zero value to one of its key inputs.

- *Have you experienced any difficulties or obstacles in pursuing or defending legal claims on copyright infringements arising from AI-generated works? If so, what are such difficulties or obstacles?*

SME has encountered difficulties and obstacles in pursuing legal claims on copyright and related infringements arising from AI-generated works. SME encountered difficulty securing takedowns of AI-generated recordings purporting to feature AI versions of SME recording artists. Those AI generated works tended to include either the musical portion of an SME recording (i.e., instrumental beds) with an AI vocal layered on top of the SME recording, or a

deepfake mimicking the voice of an SME artist as part of a new recording. SME has sent over 30,000 takedowns to social media and other platforms seeking to remove the AI generated recordings that were not sanctioned or approved by the artists concerned. All takedowns were sent with the approval of the artist. Several platforms refuse to remove this content if there is not clear evidence of a copyright violation, though other rights including rights in name, voice and likeness or personal data may be infringed. It would be helpful if SME were able to cite legal precedent in Hong Kong requiring takedowns of content on the basis that it infringes name, image, voice or likeness rights of the artist concerned without requiring SME to engage in full-scale litigation to resolve the infringement.

SME has also encountered difficulty in bringing appropriate lawsuits related to unauthorized use of SME recordings and other owned content to train AI because of the evidentiary hurdle requiring that SME identify the specific works infringed and provide evidence of the infringement concerned. AI platforms are now savvy enough to conceal their training data. They also implement filters to limit outputs that are produced with key words (e.g., an artist's name) that are likely to produce a protected work or contain well known song lyrics. Nonetheless, the recording industry has been able to prompt Suno and Udio to reproduce soundalikes of well-known recordings, clearly signalling that SME and other rightsholders' content was used in training. Many jurisdictions are beginning to recognize as a best practice that AI companies should be required to maintain records detailing the data used to train the models and to publish extensive details of their training datasets. The maintenance, publication and transparency of such records is vital to SME in order to enforce its rights and to assess the scope of unauthorized use of its content. SME encourages the Government to support record-keeping, publication and transparency obligations.

As an example, recently enacted legislation in certain jurisdictions, including the AI Act in the EU, make clear that record-keeping and disclosure of training dataset summaries (and related infringing acts) will be enforceable legal requirements even if the infringing acts do not occur in the EU, so long as the model is made available in the EU. Those new regulations recognize that the scope of AI services is inherently worldwide, but laws seeking to protect intellectual property cannot adequately address all the risks to artists and creators of creating a TDM exception that allows for training of commercial AI systems.

- *Do you agree that the availability of contractual terms between AI system owners and end-users for governing AI-generated works also offers a concrete and practical basis for resolving disputes over copyright infringements in relation to these works? If not, could you share your own experience?*

SME does not agree that the availability of contractual terms between AI system owners and end-users governing AI-generated works offers a concrete and practical basis for resolving disputes over copyright infringements in relation to these works. Other than a handful of AI companies that seek to cultivate a reputation for respecting creators' IP rights, most AI platforms, including many high profile AI companies, are seeking to use copyright works without reaching any contractual agreement with the authors of those works, resulting in the risk to users that the AI outputs may be infringing. Even where contractual agreements are reached, the AI platform invariably has tremendous market power, and users have no practical option but to sign the "click through" to access the service. Infringements contained in outputs should not be the ultimate responsibility of the user. The AI system creates the output. The responsibility for the AI systems' exposure to infringing content lies squarely with the AI company.

[4.18] In light of the above, we would like to invite views and supporting evidence on the following issues—

- *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 incentivising the use and development of AI technology and pursuing overall benefits?*

SME respectfully requests that the Government allow the free market to solve the issue of acquisition of training data for AI systems. It is estimated that global investment in AI surpassed \$154 billion in 2023 and is expected to pass \$300 billion by 2026.¹³ AI companies are financially well positioned to pay for the data they need to train their AI systems. In the absence of TDM and other copyright exceptions, and with clear provisions stating that use of copyright works for AI training constitutes copyright infringement, AI companies will quickly take the necessary steps to secure permission for AI training. We are already seeing this beginning to happen in some contexts with high-profile AI companies. Licensing deals between AI providers such as OpenAI and Google with news publishers and social media platforms such as The Financial Times, News Corporation, The Atlantic and Axel Springer after several AI providers were sued by news organizations. The tech community has the financial and computing resources necessary to solve their own data needs. The extraordinary remedy and special treatment being considered in this case disregards the stated interests of innumerable creators and artists, as well as the rightsholders who invest in media and entertainment businesses. The TDM mechanisms proposed will cause lasting damage to those businesses and will impair investment that supports them.

- *How would the Proposed TDM Exception overcome the obstacles/limitations you have experienced in conducting TDM activities and facilitate the development of your business and industry?*

¹³ <https://www.idc.com/getdoc.jsp?containerId=prUS50454123> .



The proposed TDM exception would negatively impact SME's business and the business of its recording artists. The TDM exception would undermine the presumption that consent is required for a third party to use a protected work. That consent requirement underpins the entire music industry and many other creative industries. Today, SME relies on contracts with technology companies that offer consumer streaming services for roughly 80% of its worldwide revenue. If those very same technology companies are now authorized to use SME recordings to create new recordings that they can use to populate their online services, resulting in a reduction in payments to human artists and creators as a direct result of their vertical integration, it will wreak major damage on the creative ecosystems through which human artists make their works of various kinds available. If artists cannot afford to make a living through their work, then they will be forced to find other means to live. The impact of reduced participation in the arts will have a serious negative impact on the media and entertainment businesses and will ultimately damage the performance of AI models by depriving them of a consistent supply of high quality original human content. And to what end? To allow technology companies to avoid negotiating permission to acquire one of their most important inputs?

- *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 addressed in the previous section, a market for licensing TDM is emerging with leading AI companies reaching agreement with multiple news publishers and social platforms. This trend is likely to extend into other media sectors. For example, in respect of music, Universal Music has announced licensing partnerships with AI companies such as Soundlabs, Boomy and Endel, and together with Warner Music licensed YouTube for an AI experiment called 'Dream Track. SME has conducted meetings with 350+ AI companies in the recent past and has authorized training in certain limited circumstances. However, because of the legal uncertainty created by TDM exceptions in other jurisdictions, many AI companies are not coming to the table with meaningful offers that represent or reasonably approximate the value of the rights being sought. The legal uncertainty around required permissions for training has undermined what is otherwise an effective and thriving market for music licensing. The AI companies have elected to wait to see if they can get away with using all the books, art, news reports, recordings, videos and other artistic works they can access by any means without payment before they will engage in serious licensing discussions. That dynamic has slowly started to shift as more AI companies become the subject of litigation and as more AI companies come to the realization that, although they may not want to pay for "data", they have the financial resources to do so. That dynamic is playing out and evolving primarily in the United States. The CO's proposed TDM framework would

represent a step backward and would most assuredly further delay our efforts to develop a dynamic and innovative AI licensing market.

- *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?*

SME does not support the Proposed TDM Exception and would not likely support a legislative initiative that would create a broad exception to the CO. Current exceptions to copyright are narrowly tailored and do not allow copying of entire catalogs of creative works for a commercial purpose without permission or compensation.

It is notable that in the United Kingdom, a proposal to expand the existing TDM exception to cover commercial uses was shelved after it was pointed out to the government the harm that would result to the creative industries in light of generative AI. It is also notable that, in jurisdictions that currently have a TDM exception, all of the exceptions were considered and enacted *prior to* the recent proliferation of AI-generated content. The existing TDM exceptions around the world were drafted broadly enough to also cover the use of copyright works for TDM in AI training – which results in unintended harmful consequences to the creative industries. The European Commission is reportedly examining reform of its own TDM exceptions, given the lack of clarity and legal uncertainty resulting from the TDM exceptions adopted in 2019. It would be premature for Hong Kong to adopt TDM exceptions at the present time.

As set out above, the negative consequences of AI in the music industry are quickly becoming apparent. If left unchecked, the risk of devaluing creative content and discouraging investment in human creativity is significant. This is precisely the kind of unintended consequence that may well come to pass in jurisdictions that have broad TDM exceptions.

Therefore, if it is considered that some form of TDM exception is appropriate to introduce into Hong Kong's copyright law despite the significant risks, the exception should be precisely tailored to minimise the harm that could result to innovation in the creative sectors. It is essential that any TDM exception is limited in scope and enables rightsholders to opt out so that it is not in violation of international law, in particular the Berne Convention and WIPO Copyright Treaty, which are both binding on the Hong Kong Special Administrative Region: exceptions to copyright must only be afforded in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of rightsholders. To that end, SME considers that any Proposed TDM Exception should be limited to a clarification that the making copies of a copyright work, to which the user has lawful access, for the



sole purpose of research for a non-commercial purpose, similar to the existing TDM exception under UK law. In such circumstances, it should be clarified that a model trained within these narrow parameters for non-commercial research purposes cannot subsequently be used or made available or accessible for any commercial purposes, otherwise bad faith commercial actors may seek to exploit what was intended as a good faith non-commercial research exception for commercial gain. AI companies should be required to maintain records of all training data, publish details of their training datasets, and where possible, the use of the copyright work should be accompanied by appropriate attribution.

In line with Hong Kong's status as one of the freest economies in the world¹⁴, as previously mentioned, the Proposed TDM Exception should also be subject to rightsholders' ability to choose to opt out through a variety of means, including by public declaration, notice to AI companies and other means.

To safeguard against the risk of uncontrolled copying and dissemination of copies made, there must be restrictions on dealings with any copies of a copyright work made pursuant to the Proposed TDM Exception, including that such copies must be legally acquired, cannot be used for any other purpose, and may only be retained for as long as necessary for the purpose.

Any dealings with copies made that are outside of such purpose, unless authorised by the copyright owner, would fall outside the scope of the exception. This is in line with the TDM exceptions of the UK, the EU, and Singapore.

We thank you for giving us the opportunity to make this submission. If you require any further information/clarification on any of the above points, please contact us.

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¹⁴ <https://www.info.gov.hk/gia/general/202309/19/P2023091900717.htm>, accessed on August 27, 2024.