

**A Submission to**

**The Commerce and Economic Development Bureau and the Intellectual Property  
Department of the HKSAR**

**in response to**

**Consultation Document on  
Copyright and Artificial Intelligence**

**by**

**The Joint University Librarians Advisory Committee (JULAC)**

September 2024

This submission is made by the Joint University Librarians Advisory Committee and represents the collective views of 8 UGC-Supported University Libraries in Hong Kong regarding the current review on Copyright and Artificial Intelligence

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## Preamble

1. The Joint University Librarians Advisory Committee (“JULAC”)<sup>1</sup> was established in 1967 by the Heads of Universities Committee (“HUCOM”). It is a forum to discuss, coordinate, and collaborate on library information resources and services among the libraries of the eight tertiary education institutions funded by the University Grants Committee (“UGC”) of the Hong Kong Special Administrative Region (“SAR”) of the People’s Republic of China.
2. The JULAC Copyright Committee (“JCC”) consists of one staff member from each JULAC Library and is constituted to deal with the following:
  - a. Under the direction of JULAC, the JULAC Copyright Committee will address issues and make recommendations as appropriate in relation to copyright matters;
  - b. To provide a focal point amongst members to assist in the resolution of issues of mutual concern related to copyright matters;
  - c. To enhance communication of copyright matters with other local organizations that is related to copyright reform and development;
  - d. The JCC will represent JULAC libraries in liaison and negotiations with all interested parties, including local and international licensing bodies, concerned groups in the copyright arena, Hong Kong Government departments and LegCo, on library-related copyright & licensing issues.

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<sup>1</sup> More details about JULAC and JCC in Appendix I.

## Response to the consultation document

### Chapter 2 - Copyright Protection for AI Generated Work - section 2.36 (page 21)

**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.**

1. The existing CO offers some protections for AI-generated works, but there is ambiguity in terms of authorship and copyright ownership of these works, especially when contractual arrangements are not present, or hard for the common end-user to dig out of a long “terms and conditions”.
2. Section 11(3) of the CO stipulates that “In the case of a literary, dramatic, musical, or artistic work, which is computer-generated, the author is taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.” The term “person by whom the arrangements necessary for the creation of the work” is ambiguous: it could refer to the programmer(s) who created the AI tool, the owner(s) of the AI tool, the licensee(s) of the tool, or the end-user who interacts with it.
3. Imagined scenario:

A university pays a subscription fee for an AI system to a company. An adult student prompts the system to create an LDMA for some coursework with sufficient originality to be copyrightable, which becomes popular and valuable. Who made “the arrangements necessary”? The AI company which provided the subscription to the tool? The university that paid for the subscription? The person who made the prompt?
4. We understand the point in the consultation paper’s section 2.23 through 2.26: that such arguments will need to be resolved in courts, case-by-case, considering the facts.
5. However, it is our opinion that most of the public would find this plan of action lacks sufficient detail. Descriptions in the legislation, or guidelines to be released by the IPD or CEDB would help the public and create a better environment to encourage “creation and investment in creativity while supporting innovation”.<sup>2</sup>
6. Guidance as to what the court will consider as “arrangements necessary”, along the lines of the information provided in CO 41(2) a-d would be helpful to the public of Hong Kong and the education sector. In that example, the CO states what factors a judge will consider when judging whether an instance of using copyrighted is “fair dealing” for the purposes of education.

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<sup>2</sup> *Copyright and Artificial Intelligence Public Consultation Paper*, p. 3.  
<https://www.ipd.gov.hk/filemanager/ipd/en/share/consultation-papers/Eng-Copyright-and-AI-Consultation-Paper-20240708.pdf>

7. In the consultation paper, it is mentioned that a similar expression is adopted in the definition of “producer” in sound recordings (page 10). However, in this context, we believe that AI is better to be considered as a tool that cannot claim copyright (like a sound recording producer’s equipment). We believe that the copyright should belong to the one controlling the tool, for example: the end-user providing prompts to the AI system.  
If that is the case, it would be clearer for people to define their authorship and copyright ownership of AI-generated works, thereby encouraging creativity.
8. If the author (creator) would usually be the prompter, or the programmer, then such additional information in the CO, or in guidance notes would be helpful to the public in Hong Kong, especially in the education sector.
9. One institution even strongly states that “It is important to introduce statutory enhancements that clarify copyright ownership and include measures to educate students on protecting their creations from Generative AI (GAI), ensuring they understand how to safeguard their intellectual property.”
10. The definition of “computer generated” in CO section 198.1 is clear enough.

**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?**

11. Thus far, none of the 8 JULAC libraries has encountered a case of claiming protection for AI-generated works. However, we can imagine scenarios similar to that described in paragraph 3 above, and many others.

**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.**

12. Contractual arrangements in the market can provide some practical solutions to address copyright issues concerning AI generated work. However, contractual arrangements appear to be a most effective solution for those entities that enter into signed official contracts and money changes hands. For example, if a corporation or a university subscribed to a GenAI service provider to create images or music. Or, if a professional composer subscribes to a GenAI tool that helps them to compose music where the only input is the composer’s own work.
13. Here are further details on our views of the advantages and disadvantages of contractual arrangements to address copyright issues concerning AI-generated works.

**Advantages.**

- Contractual solutions can be implemented more quickly than legislative changes, which require lengthy processes and political negotiation.
- Contracts can be tailored to the specific needs and circumstances of the parties involved. Hence, flexibility allows for customized solutions that can address unique aspects of AI-generated works.
- Contracts can clearly define the rights and responsibilities of each party, including ownership, usage rights, revenue sharing, etc.

#### **Disadvantages**

- There may be significant power imbalances between parties, especially between giant tech companies and individual creators. This will result in contracts more favourable to the more powerful party with unfair terms (see section 13 below for more on this).
- Apart from the significant power imbalances between parties as mentioned, the vast difference in legal position border-off (out of jurisdiction) could further create uncertainty. In view of this, one institution suggests Government explore affirming to a set of common doctrines issued from WIPO.
- Contractual solutions may possibly create too much flexibility and uncertainty for legal debates or disputes.
- The drafting and negotiating processes can be complex and costly and become a barrier for smaller entities and individual creators.
- Contract enforcement can vary by jurisdiction, especially involving international agreements. This will create uncertainty and risk for parties involved in cross-border collaborations.

14. For individual end-users often may either use “free” versions of GenAI tools; or use tools subscribed to for them as a member of a group (e.g. university students and staff using tools subscribed to by their institutions), it would be very useful if the copyright ownership of the for text, music, or images produced from the human interacting with the system be made very clear on the platform. It is important that such a “contractual arrangement” not be buried in the midst of many lines of scroll-through in an overall “terms and conditions” before someone hits an “I agree” button. Instead, something along the lines of how over-the-counter medicines display warning labels on their packaging would be helpful.

15. It would be very important that if an AI system claims copyright ownership over (for example) proof-read text, that a human knows it ahead of time, so they can choose whether or not to give up their substantial creative contribution to the tool owner or subscriber.

### **Chapter 3 - Copyright Infringement Liability for AI-generated Works – section 3.20 (p. 28-29)**

**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.**

16. The majority of JULAC libraries do not agree that the existing law is sufficient for the prevention of copyright violation by GenAI models that train and generate material based on non-public domain material; nor is it sufficient to protect the end-user from potential liability.

17. In Hong Kong, the existing CO protects copyrighted materials from being used for AI training. However, in some countries, such as the USA, AI developers use copyrighted materials for training AI, claiming that such use qualifies as fair use. If end-users in Hong Kong use AI systems that have been trained on copyrighted materials, the system may generate content that infringes on copyright, leaving the end-user possibly liable for infringement.
18. For example, currently in the USA there is a case by the Author’s Guild against the company Open AI for its use of copyrighted material to train its ChatGPT<sup>3</sup>. From our understanding, OpenAI will argue from a “fair use” position, which would not work in a fair dealing environment like Hong Kong. Similarly, in the UK there is a case where Getty Images is suing Stability (Stable Diffusions producer) *Getty Images (US) Inc. v Stability AI*, although there, one of the main questions appears to be whether or not the actions took place in the UK<sup>4</sup>. There is also a lawsuit filed in the USA in December 2023, where the New York Times is suing OpenAI for use of its material in training its GPT models<sup>5</sup>.
19. The above are all examples of organizations and companies with “deep pockets” starting lawsuits against other large corporations. Individual authors or artists often lack the means to embark on such a course. It is in the public interest that all people and their work be protected, while at the same time, the end-users of these systems be protected from possibly violating the intellectual property interests of others through the development of commercial works.
20. It is our experience in university settings, that it is often difficult, or even impossible, for end-users to determine if an AI-generated output is based on copyrighted work. This is mostly a result of a lack of transparency on the part of the companies creating these AI systems: they rarely disclose the data sources used for training. Therefore, we view it is necessary to introduce statutory clarification regarding the liability for copyright infringement from AI-generated works in these circumstances.
21. Some companies, like Semantic Scholar are forthright in declaring where their content data comes from<sup>6</sup>. Other AI companies are less forthright, which makes things more confusing for the end user. It can also make problem to authors and artists who may find AI tools generating material in their style, reducing the market for the work of the original author or artist.

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<sup>3</sup> <https://authorsguild.org/app/uploads/2023/12/Authors-Guild-OpenAI-Microsoft-Class-Action-Complaint-Dec-2023.pdf>

<sup>4</sup> <https://www.reedsmith.com/en/perspectives/2024/02/getty-v-stability-ai-case-goes-to-trial-in-the-uk-what-we-learned>

<sup>5</sup> [https://nytco-assets.nytimes.com/2023/12/NYT\\_Complaint\\_Dec2023.pdf](https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf)

<sup>6</sup> <https://www.semanticscholar.org/faq#paper-sources>

22. Some artists find the need to deploy [Glaze](#) or other technological fixes to protect their art from being taken and used for AI tools without their permission, with no license. However, such technologies may lose effectiveness over time, plus put a burden on the original author or artist.
23. Thus, we suggest the IPD and the CEDB to consider legislation (modify the CO) to require GenAI tool creators and providers operating in Hong Kong that provide service with trained or pre-loaded content, to disclose how they obtained the training data/content.
24. The GenAI companies trained with or pre-loaded with content should be required to make a statement on their tools as to the “ingredients” of their tool: the corpus of material from which it derives its training and content. This is not impossible. For example, the GenAI tools, Elicit and Consensus both state simply and clearly that their corpuses come from Semantic Scholar<sup>78</sup>.
25. Such required disclosure, to list the “ingredients” of the training data or tool content, can be seen as similar to how the government requires food and medicines to be labelled, so the end user can know what they’re ingesting: For example in [Food and Drugs \(Composition and Labelling\) Regulations \(Cap. 132, section 55\) Section 4](#) or Chinese Proprietary medicines to labelled in the Chinese Medicines Regulation ([Cap. 549, Part 8 Requirements Regarding Labelling of Containers and Packages](#)).
26. As mentioned in the Consultation paper, 2.16, the EU recently published the EU Artificial Intelligence Act. We note that in section 107 it states:

“In order to increase transparency on the data that is used in the pre-training and training of general-purpose AI models, including text and data protected by copyright law, it is adequate that providers of such models draw up and make publicly available a sufficiently detailed summary of the content used for training the general-purpose AI model. While taking into due account the need to protect trade secrets and confidential business information, this summary should be generally comprehensive in its scope instead of technically detailed to facilitate parties with legitimate interests, including copyright holders, to exercise and enforce their rights under Union law, for example by listing the main data collections or sets that went into training the model, such as large private or public databases or data archives, and by providing a narrative explanation about other data sources used. It is appropriate for the AI Office to provide a template for the summary, which should be simple, effective, and allow the provider to provide the required summary in narrative form”<sup>9</sup>

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<sup>7</sup> <https://www.semanticscholar.org/faq#content>

<sup>8</sup> <https://consensus.app/home/blog/welcome-to-consensus/>

<sup>9</sup> EU Artificial Intelligence Act <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689>



27. A bill requiring such disclosure of training datasets was also recently introduced in the United States House of Representatives in April 2024<sup>10</sup>. It proposes that a person who creates a training dataset... that is used in building a generative AI system needs to submit a summary of the dataset used and a URL for the dataset to the Register of Copyright and that the URL for the dataset be made publicly available.
28. We note that Hong Kong has no official registry of copyright like the USA or an AI Office, like the EU. Instead, we suggest that the government consider to establish a unit under the CEDB or the IPD to ensure that GenAI tools that come pre-loaded with content or training have their “ingredients” listed properly. This could be similar to how the Centre for Food safety was launched under the Food and Environmental Hygiene Department in 2005.
29. We also suggest that the CO be modified to indemnify the end-users against copyright violation if the end-user generates material that contains un-licensed material that the tool they used was pre-loaded with or trained upon and this was not disclosed by the tool’s owner.
30. However, at least one of the JULAC libraries believes that these issues could be helped if the IPD release a guideline or white paper for reference by AI tool developers, distributors and users on these issues, with no need to modify the CO.
31. One member also suggests HK government strongly encourage AI companies that create tools from trained or pre-loaded content providers and to take charge of the sub-license deals on the trained or pre-loaded content providers’ behalf, so as to further minimise uncertainty and put a vigilant role on the GenAI tool creators over copyright infringement.
32. Yet other libraries note that in the UK, a consultation has shown a stalemate on how copyright holders can protect their material from copyright infringement by AI training via a voluntary code of conduct or practice.<sup>11, 12</sup>

**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?**

33. At this point, none of the JULAC libraries has an experience in pursuing or defending against such infringements. However, as seen above, we are aware that such cases have arisen in other jurisdictions. We also note there are companies whose business is to help people find out if their images have been used to train GenAI tools without their knowledge or

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<sup>10</sup> [https://schiff.house.gov/imo/media/doc/the\\_generative\\_ai\\_copyright\\_disclosure\\_act.pdf](https://schiff.house.gov/imo/media/doc/the_generative_ai_copyright_disclosure_act.pdf)

<sup>11</sup> <https://www.rpc.co.uk/thinking/artificial-intelligence/ai-guide/generative-ai-addressing-copyright/>

<sup>12</sup> <https://www.gov.uk/government/consultations/ai-regulation-a-pro-innovation-approach-policy-proposals/outcome/a-pro-innovation-approach-to-ai-regulation-government-response>

permission < <https://haveibeentrained.com> > , which leads us to believe this is not an uncommon issue.

**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?**

34. The majority of JULAC members believe that contractual terms can have a useful place in governing the use of AI tools and intellectual property, but that they are not sufficient alone.
35. Contractual terms between organisations can work well. For example, in December 2023, OpenAI signed license agreement with a large news provider, Axel Springer<sup>13</sup>. But as addressed in section 2, some AI companies do not contact copyright owners seeking permission to use their material to train their models.
36. Furthermore, even between two contracting entities of good will, ensuring that the end-users know what they can and cannot do presents difficulties. For example, one JULAC library re-contracted with a database provider which had a new clause in the license allowing a certain degree of text-mining and use with GenAI tools. It was difficult to clarify the meaning and substance of this clause to the end-users. It took a several weeks of communication between the library team, the company's sales manager based in the region, and the legal team at the company's home office to develop some plain language to explain what the library users could and could not do. Thus, while contract is a good and useful option; we would strongly welcome the CO to create a base layer of known legal rights and obligations in regard to the development and use of AI tools.
37. Many contractual terms state that end-users will be liable for any legal consequences of AI-generated works. However, when using AI tools to generate any works, it is often difficult or impossible for end-users to determine if the AI tools use any un-licensed material. This poses a risk to end-users of unintentionally infringing copyright when using a tool, especially since the data sources used for training AI systems are often undisclosed (as mentioned above in paragraphs 21-26).

#### **Chapter 4 – Possible Introduction of Specific Copyright Exception – section 4.18 (page 38)**

**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?**

38. JULAC libraries strongly support adding a TDM Exception into the CO to facilitate AI technology applications for teaching, learning, and research activities conducting in academic institutions and to incentivize the use and development of AI technology for research, teaching and learning for non-commercial purposes.

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<sup>13</sup> <https://edition.cnn.com/2023/12/13/tech/open-ai-axel-springer-chatgpt/index.html>

39. We note that publishers and other copyright holders have started to add terms into license agreement for restricting use of licensed product on AI. TDM often requires separate licences for university students or researchers to apply AI tools to the licensed products for the purpose of educational or research activities. Such licensing may often present obstacles of the use of AI and other data processing technologies in academic institutions. These restrictions pose substantial barriers to the effective use of AI in research, teaching and learning for non-commercial purposes in academic institutions.
40. Additionally, in the absence of a possible licensing scheme, a TDM exception could facilitate research. A concrete example: a scholar at one of the universities had to go to a lot of trouble and enlist librarians help to establish copyright status and in some cases try to seek permission to use the text of pdfs of old translations (most of them pre-1950) of the Christian bible into various Chinese languages (e.g. Hakka, Chiu Chow, etc.,) in order to create a corpus for linguistic analysis of pronunciation changes over the past centuries. A TDM exception for this sort of scholarship would have greatly facilitated this scholarly work.
41. A TDM exception would help align Hong Kong with international practices. As mentioned in 4.8, a number of jurisdictions, such as the UK, the EU, Japan and Singapore, have adopted TDM exceptions in their copyright laws. Since Hong Kong is an international education hub, it would be beneficial for Hong Kong to adopt TDM exception(s) for non-commercial purposes to foster research, teaching and learning activities.
42. Introducing the TDM Exception would promote more equitable access to information, allowing researchers and students from academic institutions in Hong Kong, regardless of their financial resources, to engage in valuable AI-driven research and learning activities. This can lead to a more inclusive and diverse academic environment, ensuring that all institutions, whether well-funded or not, have the opportunity to benefit from advancements in AI technology
43. JULAC libraries believe it is important that the TDM exception be for **educational, scholarly, or non-commercial purposes only**. Back in 2020 it was found that a Mainland company harvested the theses and dissertations (not only metadata but also the full text) of JULAC and Macao universities, and sold a database called HKMO 港澳优秀博硕论文库 to libraries in Mainland at an annual subscription fee ~RMB80K each year. JULAC took legal action and a law firm issued letters to the company as well as three additional organizations in China. The database was eventually taken down in early 2021
44. JULAC libraries believe that it is important for a TDM exception to require lawful, access to the material, similar to the UK's "[The Exception for Text and Data Mining \(TDM\) in the Proposed Directive on Copyright in the Digital Single Market - Technical Aspects](#)".

**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?**

45. A TDM exception would clarify the conditions under which library-subscribed resources can be used for TDM activities. It would also provide flexibility for publishers to “opt-out” by adding an AI clause that prohibits the use of their content in connection with generative artificial intelligence systems, as some publishers have already done
46. Under this system, publishers and copyright holders interested in safeguarding their rights, or choosing not to grant licenses for TDM, would be required to clearly specify their conditions (as stated in 4.17). This openness could potentially make accessing copyrighted material for TDM more straightforward.
47. JULAC libraries believe that just as the exceptions for fair dealing for the purposes of giving and receiving instruction (41A) or Playing or Performing Works in the Course of Educational Activities (43) make it easier for teachers and students to teach and learn without unduly injuring the interests of copyright owners, so a TDM exception could help scholars and researchers in Hong Kong. It would facilitate the recognition of content eligible for Text and Data Mining (TDM) under this exception, thereby promoting scholarly and research projects that rely on these permissions

**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?**

48. Licensing of TDM activities is becoming more common in the academic libraries and in the scholarly publishing and content database markets; but it is still far from universal. It would make research easier if a TDM exception were in the law, for when TDM is not addressed in a contract.
49. Such an exception could also provide a useful baseline when different parties develop contractual agreements. If they don’t want to have to bother negotiating TDM into a contract, it provides a legal rule, for both parties to understand and rely upon.

**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?**

50. All JULAC libraries agree that “lawful access”, is essential to address a balance between the legitimate interests of copyright owners and copyright users.
51. One library suggests that in addition to aligning Hong Kong’s TDM exception with Singapore’s that the UK’s stipulation of “sufficient acknowledgement” be added.

52. Yet another library suggests that the HKSAR government consider facilitating reporting activity and whistle-blower protection for those who wish to report on unauthorized TDM. This is NOT the general consensus of JULAC.

## **Chapter 5 – Other Issues Relating to Generative AI**

### **Deep Fakes**

53. JULAC libraries are glad to have the information about how concerns over the creation of deepfakes can be dealt with under existing laws of Copyright, Trademark, Personal Data protection, Defamation, Publication of Intimate Images, Personating Public Officer, and Dishonesty offences.

### **Transparency of AI Systems**

54. We addressed concerns about transparency and disclosure in our responses to Chapter 3. We draw your attention again to paragraphs 21-26, of our response, where we suggest a way forward to have GenAI tools that are trained or pre-loaded with content that operate in the Hong Kong market disclose their content and training data sets (ingredients).

## Appendix 1

### About the Joint University Librarians Advisory Committee (JULAC)

The Joint University Librarians Advisory Committee (“JULAC”) was established in 1967 by the Heads of Universities Committee (“HUCOM”). It is a forum to discuss, coordinate, and collaborate on library information resources and services among the libraries of the eight tertiary education institutions funded by the University Grants Committee (“UGC”) of the Hong Kong Special Administrative Region of the People’s Republic of China.

<b>University</b>	<b>University Library Director / University Librarian</b>
The Chinese University of Hong Kong	Mr. Benjamin MEUNIER
City University of Hong Kong	Prof. Stella PANG
The Education University of Hong Kong	Dr. Sidney CHENG
Hong Kong Baptist University	Mr. Christopher CHAN
The Hong Kong Polytechnic University	Dr. Shirley WONG (JULAC Chair 2024-25)
The Hong Kong University of Science and Technology	Dr. Gabi WONG
Lingnan University	Dr. Louisa LAM
The University of Hong Kong	Ms. Flora NG

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<b>University</b>	<b>Copyright Liaison</b>
The Chinese University of Hong Kong	Mr. John BAHRIJ (Chair)
City University of Hong Kong	Mr. Edwin LAW
The Education University of Hong Kong	Mr. Emil LI
Hong Kong Baptist University	Ms. Wing WOO
The Hong Kong Polytechnic University	Ms. Cindy LUI
The Hong Kong University of Science and Technology	Ms. Victoria CAPLAN (Secretary)
Lingnan University	Ms. Mandy TSE
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