The Hong Kong Group of
The Asian Patent Attorneys Association

6 September 2024

RESPONSE TO PUBLIC CONSULTATION PAPER ON COPYRIGHT AND ARTIFICIAL INTELLIGENCE ("Consultation Paper")

The Hong Kong Group of the Asian Patent Attorneys Association (HKAPAA) has been established and active in the field of Intellectual Property (IP) for 50 years. It is the de facto body for IP professionals in Hong Kong. Its members include the most experienced IP professionals in the field including solicitors, barristers and overseas qualified patent agents and attorneys. It has a close relationship with the Hong Kong Intellectual Property Department and connections with Government and Non-Government Organizations within the Intellectual Property community around the world, notably being officially recognised as an observer by the World Intellectual Property Organization (WIPO).

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1. INTRODUCTION

1.1 HKAPAA previously[1] supported the overdue amendments under the Copyright (Amendment) Ordinance 2022 (effective 1 May 2023), inter alia, strengthening copyright protection in the digital environment by providing for a technology-neutral communication right. Hong Kong historically had a pioneering approach in recognising the international importance of copyright law with a borderless approach to copyright subsistence[2], and was one of the first jurisdictions to recognise the importance of the Internet under a technologically neutral communication right[3]. Hong Kong formerly led the way in the treatment of copyright, but now seems more inclined to follow others. In our view, reform in this area is urgent to promote Hong Kong as an innovation and IP trading centre.

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[1] HKAPAA Response to Public Consultation Paper on updating Hong Kong's Copyright Regime (23 Feb 2022).

[2] Section 177 and 178 of the Copyright Ordinance provides that copyright subsists in a work, inter alia, if published or broadcast in Hong Kong *or elsewhere* or if the author is an individual domiciled or resident or having a right of abode in Hong Kong *or elsewhere*; or a body incorporated under the law of *any country, territory or area*.

[3] Section 26 of the Copyright Ordinance imposes civil liability for the act of "making available of copies of the work to the public by wire or wireless means, in such a way that members of the public in Hong Kong or elsewhere may access the work from a place and at a time individually chosen by them (such as the making available of copies of works through the service commonly known as the INTERNET)".

1.2 We are concerned that there are uncertainties in the Copyright Ordinance (the "**Ordinance**") as regards the subsistence and protection of AI-generated copyright works which should be clarified. Notably, the concept of computer-generated works is not expressly recognised in works other than literary, dramatic, musical and artistic **("LDMA")** works, and doubts remain as to the level of originality required for the subsistence of copyright in such works. We consider that further provisions should be introduced to provide a more complete legal regime, including clarifying subsistence, ownership and responsibility for infringement of copyright in AI-generated content. We also support a text and data mining ("**TDM**") exception to encourage investment, research and development for AI technology in Hong Kong.

2. COPYRIGHT FOR AI COMPUTER-GENERATED WORKS

2.1 With respect to computer-generated works, Hong Kong notably took the advanced approach under Section 11(3) of the Ordinance, when it was first introduced in 1997 following UK law at the time, by deeming the author of computer-generated LDMA works, where there is no human author, to be the "necessary arranger", i.e. "the person by whom the arrangements necessary for the creation of the work are undertaken"[4] (the "**CGW provision**"). It is important to note that the CGW provision only attempts to cover the issue of authorship, but not subsistence, of copyright in AI-generated works.

2.2 In the case of non-LDMA works (such as sound recordings and films), the deeming provision refers to an author being the producer, as the person by whom the arrangements necessary for the making of the recording or film are undertaken. It changes the meaning of author from the person arranging for the creation of the work to the more functional person arranging for the making of the work and, in such cases, it seems that no creativity is required. The author in this case may simply be the financier. The entrepreneurial nature of such works (likewise for computer-generated works) is further reflected by limiting the period of protection to 50 years, rather than by reference to the life of the author. For films, the principal director is also (unlike under the UK Act) deemed as an author, which clearly involves some human involvement.

2.3 The Consultation Paper takes the view that the CGW provision is capable of protecting AI-generated LDMA works and that the protection given to non-LDMA works, such as sound recordings and films, applies to AI-generated non-LDMA works. The different wording and basis for authorship and the lack of any express provision for computer-generated non-LDMA works means this is far from clear. While the Consultation Paper recognises that there are issues arising from the CGW provision, it suggests that these issues should be largely left open on the basis they are fact-specific and could be determined on a case-by-case basis, or could be dealt with in commercial contracts. We

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[4] There is a similar provision for identifying the designer under Section 3(5) of the Registered Designs Ordinance.

do not agree. As we discuss below, there are inherent problems in the CGW provision both in relation to ownership and subsistence of copyright.

2.4 An issue not addressed in the Consultation Paper or the current law is where AI generates works 'by itself', in the sense that it does so merely upon being asked to do so, based on existing algorithms and data without being given detailed descriptions of the final product or setting parameters or tools to work with or use. Examples include the use of AI to write a story or poem (e.g. the robot Xiaobin that writes a poem "inspired" by a photograph without any additional human instruction as to style or contents) and AI-generated standard form legal advice, generating and responding to court or Registry proceedings, with analysis and comments, or instantly generated translations. In this case, there is no human person undertaking the arrangements for creating or making of the works. This in turn affects both authorship and subsistence of copyright.

Author and Owner of Copyright

2.5 Section 11 of the Ordinance refers to the author of a work (including LDMA and other works) as the "person who creates it". While at law a person may be an individual or a corporation, it cannot be a machine. At present, under the Ordinance all LDMA works (including computer-generated LDMA works) must satisfy the originality requirement for copyright to subsist which according to case law involves some human involvement in their creation[5].

2.6 Under the CGW provision, the deemed author is not referring to the author of any underlying computer program, or the author of any computer-assisted work (where a computer may be used as a labour-saving tool, like a pen), but the 'necessary arranger' for the creation of works with no human author. For non-LDMA works, (contrary to what is said in para 2.9 of the Consultation Paper), in the absence of a CGW definition, it is not clear that protection is afforded for computer-generated works, since there is no identifiable person undertaking the arrangements for making the works (as the 'producer' is defined to be) or principal director.

2.7 It is arguable that the AI developer is the author, as the person making the arrangements for using the data for training, the algorithm and the AI systems' response to inputs. Alternatively, the user may be author or joint author as the person making the prompts without which the work would not have been generated. If it is the former, this could produce an unintended result as AI developers do not in practice provide any creative input (as the definition may require for LDMA works) specific to the particular AI-generated work and do not necessarily have knowledge about what is being generated. Further, from a user's perspective, if the main creative input is provided by the user in

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[5] As noted in paragraphs 2.20 and 2.21 of the Consultation Paper "*According to established case law, an ordinary LDMA work is considered original if a* ***human author*** *has expended sufficient independent skill, labour and/or judgment in the creation of the work, and the threshold for establishing originality in such cases is low"*

devising detailed and tailored prompts (and some modification later), it may be unfair if they only have joint ownership of copyright with the AI developer.

2.8 There are inherent problems with the deeming provisions where the author is taken to be the 'necessary arranger' as it does not resolve the issue of ownership for AI-generated works where multiple parties are involved in the generation of such works, ranging from the third parties whose works were used as training data, the AI programmer, the AI developer, the AI deployer (who, amongst other things, may select the training data), to the user devising and/or inputting the prompts.

2.9 It is unclear how the provisions might be interpreted by Hong Kong courts in the context of AI-generated works. It may favour arguments that the AI developer is the author (or at least a joint author) based on the English case *Nova Production Limited v Mozooma Games Limited* [2006] EWCH 24 (Ch), where the author of the computer-generated work was held to be the person who "*devised the appearance of the various elements of the game and the rules and logic by which each frame is generated and…wrote the relevant computer program*". The judge decided that the programmer was the person by whom the arrangements necessary for the creation of the works were undertaken (and not the user).

2.10 By contrast, the Beijing Internet Court recently ruled[6] that copyright may subsist in an AI-generated work based on human involvement, by entering detailed prompts and refining the images produced by an AI tool, while holding that the author was not the AI tool or its designer, but the human person involved who entered the prompts.

2.11 This is also in contrast to the US approach that is broadly to deny copyright in circumstances where a work is AI-generated by user prompted AI, based both on lack of human authorship and originality.[7]

2.12 Clarification of the CGW provision and non-LDMA works provisions is thus required with respect to ownership mainly focussed on which party was necessary arranger for any creative input or making of the works in question. In this regard, the Ordinance may be amended to contain a clearer definition and list of factors that the court should

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[6] *Li Yunkai v. Liu Yuanchun* (Beijing Internet Court Civil Judgment (2023) Jing 0491 Min Chu No. 11279).

[7] See Review Board of the United States Copyright Office Re: Second Request for Reconsideration for Refusal to Register SURYAST (December 11, 2023): *"The US Copyright Act protects "original works of authorship fixed in any tangible medium of expression". The Courts have interpreted the statutory phrase "works of authorship" to require human creation of the work…… For this reason, courts have uniformly rejected attempts to protect the creations of non-humans through copyright.*"; and Thaler v. Perlmutter in which the U.S. District Court for the District of Columbia explained: *By its plain text, the 1976 Act . . . requires a copyrightable work to have an originator with the capacity for intellectual, creative, or artistic labor. Must that originator be a human being to claim copyright protection? The answer is "yes" …. because copyright protection is only available for the creations of human authors."*

consider in determining who is the author and/or owner of copyright in AI-generated works.

Subsistence of Copyright

2.13 As indicated above, the GGW provision for LDMA works only deals with authorship and hence ownership, but it does not assume subsistence of copyright in a computer-generated work. It is an issue whether such a work must also meet the originality requirement. Were there a human author, this would involve demonstrating some skill, labour and effort in creating the work, though the threshold is not high. However, in the case of a computer-generated work, originality should be more likely equated to sound recordings and films (entrepreneurial works) that need only be original in the sense of 'not copied' from an earlier work. Furthermore, the basic copyright principle is that copyright does not protect an idea, but the expression of an idea and in the realm of generative AI, simply instructing an AI machine to create a work may amount to no more than communicating an idea.

2.14 While the Ordinance does not contain a definition of originality, under current case law originality is defined by reference to the skill, labour and/or judgment of human authors[8]. The definition of "computer-generated" under the Ordinance as a work "generated by a computer in circumstances such that there is no human author of the work"[9] does not sit well with the concept of originality which relates to the creative skill and effort of human authors. It further complicates the question of whether copyright protection is available to AI-generated LDMA works. For example, who is to be considered in assessing the originality requirement – the developer/programmer of the AI system, the person who selected the training data, the operator of the AI system generating the work or the user devising and/or making the prompts?

2.15 If, as a matter of policy, AI-generated works are to attract copyright (which would be consistent with the general position for computer generated works), whatever the amount or type of human involvement, this should be expressly and clearly provided for in the same way as for sound recordings and films. If AI-generated works (including those that do not result from creative skill and effort of human authors) are to attract copyright, the legislation should make clear that copyright subsists in cases where the person undertaking the "necessary arrangements" to create an AI-generated work does so by giving instructions which may be simple prompts.

2.16 One way to do this is to remove the requirement for originality with the complications it creates for AI-generated LDMA works and treat them like films and sound recordings where there is no requirement of originality, but applying a rule that copyright does not

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[8] See footnote 5 above.

[9] Section 198 Copyright Ordinance.

subsist in an AI-generated work to the extent that it is a copy taken from a previous work.

2.17 The 2022 UK consultation on this issue interestingly noted that the law on computer-generated works was unclear and contradictory[10] and considered amendments including introducing a new *sui generis* right for such works, chosen to reflect the effort or investment put into their creation, maybe as short as 5 years. Under this option, the "author" of the computer-generated work would still be the "necessary arranger", while other related or underlying original works would still be protected under existing principles. Hong Kong could decide to adopt such an imaginative approach to encourage AI development here.

2.18 The Consultation Paper proposes that the question of how computer-generated LDMA works will be evaluated to satisfy the originality requirement should be left to case law development. Waiting for this and other issues to be determined by developing case law allows for flexibility and adaptability to technological advancements, but there will meanwhile be uncertainty in the AI industry which would discourage innovation and growth. This is particularly true for Hong Kong where the CGW provision remains untested in courts, despite having been in place for over 20 years.

2.19 These issues could and should in our view be clarified. Leaving matters to case law risks the development of an important area of the law being dependent on which cases are brought before the courts, how long this will take, how well parties present their cases in court and whether judgments in particular cases adequately consider the broader issues and policy. It is in practice most unlikely that court decisions will resolve many of the issues raised and will inevitably take a very long time to work through the judicial system while cases are most likely to be decided on narrow grounds or settled without any court decision.

2.20 It is a policy question whether AI-generated works should attract copyright, who should own such copyright and what would constitute infringement, whether by a human or a robot. Without clarity in such circumstances, parties in legal proceedings may have to pay considerable legal costs in an attempt to clarify the legal position and substantial administrative and judicial resources may be required to resolve the issues. We believe

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[10] *"From a legal perspective, a computer-generated work must be original if it is to receive protection. But the legal concept of originality is defined with reference to human authors and characteristics like personality, judgement and skill. It has been argued that the law is unclear and contradictory."* Artificial Intelligence and Intellectual Property: copyright and patents - GOV.UK updated 28 June 2022 https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/artificial-intelligence-and-intellectual-property-copyright-and-patents)

this matter includes public policy issues that should be addressed in legislation rather than relying on court decisions based on the current wording of the Ordinance.

3. INFRINGEMENT BY AI-GENERATED WORKS

Infringers of Copyright

3.1 AI users and developers would benefit from more certainty on:

- Liability for (or liability for authorising) copyright infringement based on output caused by a user, especially where the user has made input prompts that instruct, suggest, or allude to copying.

- Liability for copyright infringement for the use of third-party training data (which may include copyright works) to train their AI systems.

Liability for infringing output of an AI-system

3.2 Where the user's prompts cause the AI system to produce an output that copies a substantial part of some training data, should the person who input the prompts and/or the AI system provider or developer be liable? It is arguable that an AI developer should not, in most cases, be liable in such a scenario because of the following:

(a) An AI system typically generates output independently based on user prompts where the AI developer is not usually involved and has no knowledge of what users are generating.

(b) The output may not reproduce the whole or a substantial part of an earlier copyright work (the test for copyright infringement).

(c) The "black box" nature of AI technologies means that even AI developers may not fully understand the decision-making process of their AI systems and cannot predict what their AI systems are capable of generating.

3.3 Under the Ordinance, there is the possibly that the AI developer or provider may be held liable/jointly liable for copyright infringement or for authorising an infringing act on the basis that they have (through the AI system) collaborated with the user, or have control over the AI system that reproduced the whole or a substantial part of a copyright work in the output work.

3.4 The risks are higher where the infringement is brought to the attention of the AI developer or AI provider. While they can seek to rely on contractual exclusions and indemnities, enforcement is in any event likely to be difficult and costly. The situation is similar to that of online service providers ("**OSPs**") who could potentially be liable for copyright infringement occurring on their platforms caused by subscribers.

3.5 To limit OSP's liability, the Ordinance was amended to include a safe harbour based on certain conditions, including notice and takedown. It is worth exploring whether a similar safe harbour should be available to AI developers to limit their liability in circumstances where user's prompts cause the AI systems to copy substantial parts of existing works, and the AI developer takes reasonable steps to limit or stop copyright infringement when notified (for example, by preventing too much of a single item of training data being used in the output).

4. TDM EXCEPTION FOR AI SYSTEM DEVELOPMENT

Fair dealing and TDM exception for using training data

4.1 There are already numerous copyright infringement cases being brought against search engines where only a portion of a large number of works is taken for indexing purposes and fair use defences are raised. Wholesale copying of a vast number of entire works for training AI platforms is on an entirely different scale and inevitably involves infringement, though it is argued that this is an internal process to create transformative works with no dissemination to the public of the original works.

4.2 It is, however, questionable whether development of generative AI would fall under the usual conditions for exemption of copyright infringement for TDM for computational data analysis. This is because TDM performed for developing generative AI or machine learning, would arguably not be for the purpose of analysis or improving the performance of the AI system, but to generate new works based on data scraped from the internet. It may also be limited by a requirement that the data be lawfully accessed and would be subject to the right of owners to opt out or set conditions as to use, including requiring licence fees.

4.3 We previously noted[11] that the use of third-party copyright works, such as data and images, by AI systems for machine learning purposes should be considered under any TDM exception. The issue has been addressed in other jurisdictions including the EU, UK, Japan, Singapore, and is being discussed in Australia, Canada and New Zealand.

EU position

4.4 The EU Copyright Directive 2019/790[12] defines TDM in Article 2 as *any automated analysis technique aimed at analyzing text and data in digital format for the purpose of generating information, including, but not limited to, patterns, trends, and correlations*.

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[11] HKAPAA Response to Public Consultation Paper on updating Hong Kong's Copyright Regime (23 Feb 2022).

[12] Articles 3 (Text and data mining for scientific research purposes) and 4 (Exceptions or limitations for the purposes of text and data mining).

4.5 The exception allows large amounts of copyright works and database material to be used for scientific research or for TDM purposes, including by AI systems to generate new content, subject to various requirements, including requirements that the user has lawful access to the content for TDM purposes, there is no conflict with the normal exploitation of the content or unreasonable prejudice to the interests of the owners, and the copyright or database right has not been expressly reserved by the owners.

UK position

4.6 In the UK, only non-commercial uses are covered by the TDM exception. As a result of EU rules, unlike in Hong Kong, the UK's relevant fair dealing exception is limited to research for non-commercial purposes and based on lawfully accessed copyright material.

US position

4.7 The US considers that its current law on fair use and research covers TDM, so no specific TDM exception is provided. In this respect it is noted that the US Government was heavily lobbied by copyright creators not to introduce a further specific exception.

Singapore position

4.8 Under the Copyright Act 2021, the TDM exception includes conditions including:

- The copy is made only for the purpose of computational data analysis (i.e. using a computer program to identify, extract and analyse information or data from the work or recording, or to improve the function of a program in relation to that type of information or data).
- The copy is not used for any other purpose.
- The copy is not supplied to any person other than for the purpose of verifying the results of the computational data analysis or collaborative research or study.
- There is 'lawful access' to the material from which the copy is made.
- Any contract term is void to the extent that it purports, directly or indirectly, to exclude or restrict any permitted computational data analysis use.
- The first copy must not be an infringing copy.

4.9 Although the provision is not restricted to non-commercial purposes, its scope is limited to computational data analysis, and it expressly excludes supply to any person other than for verifying the results, or for collaborative research or study. Commercial use of the resultant material is thus not within the scope of the exception. A further key element is 'lawful access', which is likely only to cover material that is publicly available or has been subscribed to, but expressly excludes material obtained by circumventing paywalls or other technological protection measures, or in breach of the terms of use of a database.

Hong Kong position

4.10 We note that the Consultation Paper proposes a TDM exception to encourage development of AI technology while bearing in mind the need to balance the interests of copyright owners by imposing conditions on the exception (the scope of which remains to be seen).

4.11 The Ordinance expressly exempts "fair dealing" with a work for the purposes of research or private study from copyright infringement. Research for commercial purposes can in theory be covered by fair dealing, but in determining "fair dealing" the court must take into account all the circumstances of the case and four factors in particular (which are non-exhaustive):

(a) the purpose and nature of the dealing;

(b) the nature of the work;

(c) the amount and substantiality of the portion dealt with in relation to the original work as a whole; and

(d) the effect of the dealing on the potential market for or value of the work.

4.12 The main consideration for fair dealing is that it should not conflict with a normal exploitation of the work by the copyright owner and should not unreasonably prejudice the legitimate interests of the copyright owner[13].

4.13 Based on the above factors, research for a commercial purpose is less likely to be considered fair dealing unless the commercial research does not copy an excessive part of a work. As the Consultation Paper suggests (at footnote 70 on page 31), it will be challenging to rely on fair dealing for commercial TDM activities, where the AI system training may copy and store the whole copyright work, unless courts place less weight on factor (c) in relation to AI system training.

4.14 In view of the current uncertainty about whether the fair dealing exception for research covers commercial TDM activities, an express TDM exception covering both commercial and non-commercial uses would facilitate the development and use in Hong Kong of AI technology. At the same time, as discussed above, it is questionable whether development of generative AI would fall under the usual conditions for exemption of copyright for TDM limited to computational data analysis. Any TDM exception should therefore expressly recognize that it does not preclude purposes where the mined data is used in training for the generation of new works and limit the ability of copyright owners to opt out or otherwise prevent their works being used as part of training data for generative AI systems. At the same time, it is imperative to have legal rules in place

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[13] TRIPS Article 13 provides: *Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder*.

that support in practical terms the broader policy goals of encouraging the development and use of AI technology in Hong Kong, and not cause a competitive disadvantage to Hong Kong developers and users bearing in mind the position in other jurisdictions.

4.15 It is noted that the Ordinance includes prohibitions on circumvention of effective technological prevention measures[14], with specific and limited exemptions that do not cover TDM. Such measures, unless amended, could effectively be preventing TDM activities. We note that Singapore is currently considering extending its TDM exemption to allow circumvention of such measures.

5. DATABASE RIGHT

5.1 Unlike in the EU and UK, Hong Kong has no sui generis database right[15], nor does the Ordinance cover databases[16]. In the UK, databases are protected both as compilations attracting copyright and under a sui generis right protecting the contents of a database for 15 years. That period may be extended if there is a substantial change to the contents of the database "resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment".

5.2 A database does not have to be original but merely "a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means"[17], provided the maker of the database has made a "substantial investment" in obtaining, verifying or presenting the contents of the database (which has been interpreted[18] to cover only substantial investment in obtaining, verifying and presenting data from independent sources, not simply creating a database). In theory, a database right could be created by AI if there was sufficient investment but, as with non-LDMA works, the owner of a database under UK law is its 'maker', being defined as the person who "takes the initiative in obtaining, verifying or

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[14] Section 273H Copyright Ordinance.

[15] TRIPS Article 10(2) provides: *Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.*

[16] Section 4 Copyright Ordinance defines a literary work as including "*a compilation of data or other material, in any form, which by reason of the selection or arrangement of its contents constitutes an intellectual creation, including but not limited to a table*."

[17] Section 3A CPDA 1988

[18] *British Horseracing Board v William Hill* CJEU C-203/02 [2004]

presenting the contents of a database and assumes the risk of investing in that obtaining, verification or presentation".

5.3 Importantly, the existing UK TDM exception does not extend to database rights, but was intended to cover such rights before the proposal was dropped in 2023. A database right is a potentially valuable right for database owners. For greater balance, the introduction of a broadly based TDM exception may be combined with an amendment to cover protection for databases under a sui generis database right.

6. RESPONSES TO ISSUES RAISED

6.1 In addition to the points discussed above, our response to the issues raised at paragraphs 2.36, 3.20 and 4.18 of the Consultation Paper are as follows:

2.36 We do not agree that the existing provisions of the Ordinance offer adequate protection to AI-generated works.

- *In particular, the Ordinance should be amended to clarify whether for subsistence of copyright in AI-generated works requires having at least an element of human effort, skill and labour or it is sufficient merely to have a "necessary arranger" and/or a person giving instructions.*
- *We do not agree that contractual arrangements in the market provide a practical solution for addressing copyright issues concerning AI-generated works. There should be a legislative framework expressly clarifying copyright in AI-generated works, apart from any contractual provisions.*

3.20 We do not 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.

- *Questions regarding subsistence and ownership of copyright in AI-generated works also impinge on liability, including who has the right to sue and who may be sued.*
- *Is the "necessary arranger" and/or the user of AI-generated works liable for infringement of any underlying copyright material or can liability for copyright infringement be disclaimed (as some AI developers now do)?*
- *Likewise, could AI users waive any rights to copyright in AI-generated works as a means of avoiding copyright infringement?*
- *For the same reasons as above, we do not agree that contractual terms between AI system owners and end-users for governing AI-generated works offer a concrete and practical basis for resolving disputes over copyright infringements in relation to these works.*

4.18 *We support the introduction of a TDM exception with a broadly well-defined scope to meet the policy objectives. Please see comments above.*

- *To be effective in attracting AI investment and development, the proposed TDM exception should be as broad as possible, with limits on contracting out or other legal or technological restrictions. To balance the interests, the exception may include TDM for commercial purposes but not commercial use of the output. The subsistence and ownership of copyright and a possible database right to cover AI-generated works, as well as liability for infringement of such works or underlying work should also be confirmed and clarified.*