7th September, 2024

Division 3
Commerce and Economic Development Bureau
23/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong
By email: AI_consultation@cedb.gov.hk

Dear Sir/Madam,

Re Public Consultation on the Copyright and Artificial Intelligence (2024)

We, the International Federation of the Phonographic Industry (Hong Kong Group) Limited, are a group member of IFPI Worldwide. We comprise over 120 recording companies, primarily local, dedicated to sustaining the local music culture by investing in singing recording artists and musicians for both local and overseas markets.

The success of our recording industry has always been built upon Hong Kong's policy on copyright protection, which has always been vital for fostering innovation and creativity, providing essential incentives for creating and exploiting intellectual works. To position Hong Kong as a leading intellectual property hub, it is imperative that we have a robust Copyright Ordinance (Cap 528) (the "CO") that is not only aligned with international law and norms but also plays a crucial role in our economic development.

Building on the momentum of the Chief Executive's 2023 Policy Address, the Government has launched a pivotal two-month public consultation on "Copyright and Artificial Intelligence (2024)" ("Consultation")[1], a significant step in shaping the future of copyright in Hong Kong from 8 July 2024. This Consultation, a crucial step towards enhancing the CO in the context of artificial intelligence (AI) technology development, focuses on four critical areas related to generative AI and copyright. Our goal is to provide clarity and direction in these areas.

(i)   Copyright protection of AI-generated works[2];
(ii)   Copyright infringement liability for AI-generated works[3];
(iii) Possible introduction of specific copyright exceptions[4]; and

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[1] https://www.ipd.gov.hk/en/copyright/current-topics/public-consultation-on-copyright-and-artificial/index.html
[2] Our views are stated in paragraph 56.
[3] Our views are stated in paragraph 19.
[4] Our views are stated in paragraph 32.

(iv) Other issues relating to generative AI[5].

The ever-changing development of generative AI has disrupted our current business model. We are interested in sharing our perspectives on the topic, as we believe that by engaging in discussions and exchanging views, we can lead to a deeper understanding and innovative solutions within the international copyright laws and norms.

First and foremost, we suggest clarifying the legal status of AI-generated content, which is crucial in aligning with global copyright norms. This will address the complexities of determining authorship and ensure that the rights of human creators are protected while also accommodating AI technologies' innovative potential. By tackling these issues, especially those referred to and mentioned in the Consultation, we can create a more robust framework that reflects the realities of modern creativity and technology, including the above four critical areas in the context of the global copyright norms and laws to ensure that global copyright norms remain relevant and effective in protecting the interests of creators and innovators.

We wish to make the following submissions[6]:-

A   The Notion of Authorship

1.   The traditional requirement of human authorship in copyright law is a fundamental principle. It plays a pivotal role in asserting that the creator of an original work is its author, thereby fostering a legal framework that encourages human creativity. This mechanism incentivises individuals to engage in the creative process, even without a guaranteed reward.

2.   In common law countries like the UK, copyright protection is primarily seen as an economic tool. It incentivises intellectual labour, rewarding creators for their efforts and creativity. This perspective, deeply embedded in the legal system, ensures that creators are duly compensated for their work, enriching our culture and society.

3.   Influenced by the profound philosophies of Kant and Hegel, the personality rights theory posits that an intellectual work embodies its creator's personality or will. This theory, deeply rooted in philosophical thought, asserts that a work deserves protection because it reflects the creator's self-expression. According to this view, property is an extension of personality, serving as a means for self-actualisation and personal expression.

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[5] Our views are stated in paragraphs 67 and 74.
[6] We are grateful to Dr CW Wan for authoring this submission.

4.	In Europe, software, databases, and photos statutorily define originality for copyright protection as the "author's intellectual creation" (Article 1(3) Software Directive, Article 3(1) Database Directive, and Article 6 Term of Protection Directive refer).

5.	The international recognition of authors' rights as natural rights aligns with the concept of human rights. Article 27 of the Universal Declaration of Human Rights protects authors' moral and material interests from scientific, literary, or artistic production. No one can seriously argue that machines, dogs, or cats should have human rights.

6.	The Berne Convention establishes clear boundaries for copyright protection, requiring that a work be the author's "original intellectual creation." It also includes provisions for the copyright protection period years beyond the author's life and the author's moral rights, which are intrinsically linked to human creators. Consequently, copyright protection is limited to works of human authorship and cannot be granted to machines or non-human entities, such as dogs or cats.

7.	Copyright is unequivocally centred on human creativity, whether viewed as an economic tool or a natural right. Copyright protects original works that reflect the personality of their creators, emphasising the significance and value of individual creative efforts within the legal framework.

## B	The Unauthorised TDM Process infringes the Economic Rights of the Rightsholders.

8.	Text and data mining ("TDM") involves the electronic analysis of large volumes of copyrighted works, enabling AI systems to uncover patterns, trends, and insights that human reading might miss. The TDM process consists of three main stages:

   (i)	Accessing Stored Content
   (ii)	Extracting and/or Copying Content
   (iii)	Mining Text and/or Extracting Structured Data

9.	The third stage is where the actual TDM occurs, while the first two stages are foundational and often raise concerns about copyright infringement. Focusing solely on the authorship of AI-generated outputs without considering the TDM process itself is a significant oversight. The extensive unlicensed use of copyrighted material during TDM breaches both the reproduction right and the right to control adaptations of these works, mainly when the outputs are "based on" the training data.

10. Copyright owners face challenges because data mining requires digitising content for deep learning. This often results in losing control over digital copies of their works, as data miners may circumvent technological protection measures designed to restrict access to copyrighted content before conducting computational analysis.

11. A key point of contention between the human-centric approach and the open exceptions and limitations ("E&L") approach is the ability of generative AI systems to contextualise, iterate, and improvise upon copyrighted content. Traditionally, using copyrighted material necessitates the consent of copyright owners, which is crucial for training generative AI systems.

12. The human-centric approach emphasises obtaining explicit consent from copyright holders before utilising their content for AI training. This approach respects creators' rights and ensures they are compensated or credited for their work.

13. The CJEU has extended this notion of originality to all subject matter through its landmark Infopaq decision (Case C-05/08 Infopaq International, ECLI:EU: C:2009:465)[7] that copyright only applies to original works and that originality must reflect the "author's own intellectual creation." An original work must reflect the author's personality, which clearly means that a human author is necessary for a copyrighted work to exist. The data capture process infringes on the reproduction rights of the copyright owner.

14. It is trite that copyright only protects the expression of an idea; it does not protect ideas, concepts, systems, or methods of doing something. Undoubtedly, when the AI system incorporates AI training data into its algorithmic functions, it creates a reproduction. This process raises complex copyright and authorship issues, distinguishing between original creations and derivative works generated by non-human entities. Additionally, it is incomprehensible to justify protecting AI-generated works based on natural rights, as AI systems are not recognised as individuals with personalities. This raises important questions about the authorship of AI-created works, given that the AI system is responsible for forming the expression of the idea rather than the idea created by human users in the created work.

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[7] CJEU ruled that the data capture process, where 11 words are stored on computer memory, and abstracts are printed, can constitute partial reproductions that are protected by exclusive copyrights as set out in Article 2 of the Infosoc Directive, provided that the 11 words in themselves are works that are products of the author's own intellectual creations. The process of data capture occasionally involves abstracts of texts that are protected by copyright.

15. Conversely, the open E&L approach advocates for broader use of copyrighted content under certain exceptions and limitations, arguing that such practices promote innovation and technological advancement. Proponents of this view contend that non-expressive uses of protected content may not fall under the scope of the reproduction right, potentially shielding unlicensed TDM activities from liability. They assert that AI systems can contribute positively to society by learning from diverse sources without requiring individual permissions as utilitarian justifications for open E&L.

16. Some AI advocates propose a broad fair use principle, suggesting that copyrighted material should be generally available for AI training, akin to exceptions for search engines like Google. This is referred to as a non-expressive fair use exception.

17. Justice Sotomayor sought to differentiate Google v. Oracle in several key respects. She emphasised that, when applying the fair use provision, "copyright's protection may be stronger where the copyrighted material ... serves an artistic rather than a utilitarian function." [8]. This distinction highlights the varying degrees of protection afforded to creative works based on their purpose and the context in which they are used.

18. However, any fair use or dealings must comply with the three-step test, particularly for non-commercial research purposes. Establishing a blanket exception for using copyrighted materials in AI training could violate international norms and laws, highlighting the necessity for an opt-in or opt-out mechanism. The three-step test is a fundamental mechanism that contributes to ensuring – in compliance with global, regional and national laws alike – that a fair balance is struck between the protection of copyright and related rights, on the one hand, and third-party rights and legitimate interests, on the other.

19. Copyright infringement liability for AI-generated works

We submit that **any unauthorised copyright work in TDM attracts copyright infringement liability for AI-generated works as a matter of global copyright law** unless a work is licensed, out of copyright, or used under a specific exception,

20. Furthermore, AI systems' capacity to remix and iterate on copyrighted content raises critical questions regarding originality and ownership, challenging traditional notions of authorship and copyright.

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[8] *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 143 S. Ct. 1258 (2023).at 1274 (quoting *Google v. Oracle,* 141 S. Ct. at 1197).

C   Text and Data Mining (TDM) Exceptions:

21.   Japan and Singapore have adopted purpose-specific TDM provisions in Asia, while Hong Kong is now considering legislating in this area.

22.   Japan was the first to introduce 2011 an E&L specifically concerning TDM, which is broadly phrased but does not establish a limitless exception and limitation. The Japanese Copyright Act, as reformed, permits the unauthorised use of a work for data analysis. This includes the extraction, comparison, classification, or other statistical analysis of language, sounds, images, or other elemental data from a substantial number of works or large volumes of similar data. However, this is subject to two key conditions:

     (i)   The individual conducting the analysis must not aim to "personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work" (as stated in Article 30-4 of the Japanese Copyright Act).

     (ii)   The analysis must not cause unreasonable prejudice to the copyright owner's interests, considering the nature or purpose of the work and the circumstances of its exploitation (referenced in Articles 30-4, 47-5 (1) and (2)).

23.   The individual conducting the analysis must not aim to "personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work" (as stated in Article 30-4 of the Japanese Copyright Act).

24.   The analysis must not cause unreasonable prejudice to the copyright owner's interests, considering the nature or purpose of the work and the circumstances of its exploitation (referenced in Articles 30-4, 47-5 (1) and (2)).

25.   Thus, blanket copying of protected content to train a generative AI model—where such use could reasonably be expected to require licensing from the rights holder—may not be permitted. Additionally, copying protected content to train AI that can generate outputs substitutive of the original works or content protected under related rights would also be prohibited under the TDM framework (Article 47-5).

26.   A key amendment to the 2021 Singapore Copyright Act introduces a defence against copyright infringement specifically for machine learning, provided that the purpose is not to generate new works.[9] The exceptions apply in commercial and non-commercial contexts and cannot be overridden by contracts. However, the usage of infringing copies remains restricted.

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[9] Section 244 of the Singapore Copyright Act refers.

27. The defence extends to using copyrighted works to "verify the results of the computational data analysis carried out" and allows sharing the same work with another party, as long as it involves "collaborative research or study relating to the purpose of the computational data analysis."

28. Minister Edwin Tong emphasised that "computational data analysis treats the works as data points and does not make use of the expressive nature of the works, which is what copyright fundamentally seeks to protect."[10] He also noted that a "case-by-case determination by the Courts" is still required, likely due to the open interpretation of terms like "lawful access" and "computational data analysis." For a meaningful balancing exercise to safeguard the interests of the rightsholders, courts in Singapore would have to review the fulfilment thereof in light of the circumstances at hand.

29. Legal uncertainty regarding the threshold of specific Text and Data Mining exceptions exists in jurisdictions like Japan and Singapore. This ambiguity can create challenges for organisations looking to utilise these exceptions effectively. Additionally, the transaction costs associated with enforcing TDM exceptions may be prohibitively high, particularly for commercial uses of the data. These factors can deter businesses from engaging in data-driven innovation, ultimately hindering the potential benefits that TDM could offer in these markets.

30. Japan and Singapore may address these issues by establishing guidelines and support mechanisms for commercial data-driven research and development. Still, such guidelines must inevitably comply with the three-step test.

31. The TDM exception in the UK is confined to non-commercial research only. It is also worth noting that in the EU, the exception has an "opt-out" option (i.e., allowing copyright owners to exclude their works from AI activities).

32. **Possible introduction of specific copyright exceptions;**

    (i)   We submit that any new exception for data analysis, including text and data mining, allows lawful access to protected works, promoting data-driven innovation while safeguarding the interests of copyright owners. However, this exception must be subject to the three-step test and be limited to TDM only. Opt-out options must be available, as they involve digitally reproducing copyrighted works. However, any use of the data for creating an AI-generated work infringes the adaptation rights of the right owners to make a derivative

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[10] POS. (2022, November 24). Factsheet on Copyright Act 2021.https://www.ipos.gov.sg/docs/default-source/resources-library/copyright/copyright-act-factsheet.pdf

work and, therefore, must be excluded. This helps to ensure that the rights of creators are respected while enabling the benefits of data analysis.

(ii) We further submit that developers and copyright owners should collaborate to foster a sustainable, fair, and beneficial use of AI in content creation that respects copyright rights while encouraging innovation. This collaboration should involve compliance with the three-step test, promoting transparency and accountability by disclosing works used in TDM, adhering to copyright laws by obtaining necessary permissions, and fairly compensating copyright owners for using their content in AI-generated works. Additionally, it is vital to protect the moral rights of creators, including attribution and the integrity of their work, while following ethical guidelines that prioritise fairness, inclusivity, and respect for diverse perspectives in AI development.

D   An Alternative for TDM Exceptions: Markets for AI Training Data

33.   It is important to recognise that markets for AI training data are rapidly evolving in response to AI's development. However, the primary challenge lies not in supply or demand but in transaction costs. Identifying and clearing billions of individual rights claims would be impractical for AI developers. Performance rights societies, such as CASH, HKRIA, and IFPI (HKG), enable venues to obtain broadcasting and performance rights licenses for extensive music catalogues, effectively reducing transaction costs by incorporating administrative expenses into license fees. These organisations can provide a one-stop solution for clearing TDM rights for musical sound recordings. Similarly, other entities act as market clearinghouses, offering content licenses through catalogues available a la carte or with bulk pricing plans. An example is Getty Images, a market clearinghouse for independent graphic artists and photographers. Additionally, technological tools such as automated licensing platforms are expected to streamline compliance with copyright laws and facilitate TDM, further reducing transaction costs and making it easier for AI developers to access the data they need.

E   Authorship without an Author

34.   AI-generated content can't be copyrighted because it isn't considered a human creator's work. Where there is no human author, a work cannot be original, and without originality, a work cannot be protected by copyright. Such work belongs, thus,

to the public domain, which is traditionally defined as encompassing intellectual elements not protected by copyright or whose protection has elapsed[11].

35.   Copyright is designed to promote human creativity by protecting the expression of ideas rather than the ideas themselves, necessitating human involvement in authorship[12]. Consequently, copyright does not protect algorithms, which are merely sequences of steps for possessing and calculating data, and the outputs of generative AI are not inherently creative expressions of user input. As such, computer-generated works should not be copyrightable since they reflect the user's ideas rather than the user's personal creativity, meaning the user should not be entitled to copyright protection.

36.   Unlike many countries, New Zealand, the UK, Ireland, Hong Kong, South Africa, and India provide copyright protection for computer-generated works without human authors. Since copyright cannot vest in machines or non-human actors, the author of a computer-generated work is designated as "the person by whom the arrangements necessary for the creation of the work are undertaken."

37.   Section 178 of the UK Copyright Designs and Patents Act 1988 ("CDPA") enables copyright protection in works generated by a computer when there is no human author, **designating the author of such a work as "the person by whom the arrangements necessary for the creation of the work are undertaken" (section 9(3) CDPA).** The copyright term is reduced to 50 years (section 12(7) CDPA), and no moral rights apply to the work (section 79(2) (c) CDPA)—**specifically**, the rights to be identified as author and object to derogatory work treatment.

38.   Hong Kong followed the UK approach; section 11 (3) of the CO protects works generated by a computer work which is generated by a computer in circumstances such that there is no human author of the work (section 198 (1) CO). The term of protection is 50 years from the date of creation (section 17 (6) CO), and the Author of Computer-Generated Works is the one who makes the necessary financial arrangements to produce it (section 11 (3) CO) and no moral rights attached to the works (section 91 (2) (c) CO).

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[11] Dussolier S. Scoping WIPO Study on Copyright and Related Rights and the Public Domain) at 24: "the entrance to the copyright building is conditioned of finding of some degree of originality in the work."; https://www.wipo.int/edocs/mdocs/mdocs/en/cdip_4/cdip_4_3_rev_study_inf_1.pdf
[12] *Nova Productions Ltd v Mazooma Games Ltd* (2006) RPC 379. The court emphasised that copyright protection does not extend to ideas or principles underlying a computer program, only to the specific expression of those ideas.
Article 2 of the WIPO Copyright Treaties: Scope of Copyright Protection Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

39.   This framework separates authorship from creativity by designating a human as the "author" of works generated by AI, even though the AI itself creates the original work. This separation is troubling within the broader context of copyright law, where creativity and authorship are typically intertwined. Initially, the ownership of the copyright in computer-generated works was not in question because the program was merely a tool that supported the creative process; very much like a pen and paper, these provisions were intended to protect outputs like weather maps, Google maps and data from expert systems rather than to treat computers as mere tools for creative expression.

40.   The rule of authorship for computer-generated works represents a legal fiction that undermines the principle that the author is the creator of the work. In one case, when considering the working of section 9 (3) of CDPA, the court[13] they refused to grant author status to a game user, noting that their input needed artistic merit and met the necessary arrangements for creation. This ambiguity about who qualifies as the person making those arrangements complicates the application of this legal fiction and undermines legal certainty.

41.   The central question then becomes the extent of copyright-protected human input in works that involve human and AI contributions. Although programmers with the data to create the new work and users may contribute to the output, should they be considered authors when the underlying computer program is copyrightable? Arguably, the designation of "the person by whom arrangements are undertaken" implies some level of human intervention. Current legal frameworks that acknowledge computer-generated works still trace authorship back to human involvement, indicating that, to some degree, computers function as tools in this context.

42.   Section 9(3) of the CDPA is doctrinally inconsistent and should be reconsidered. It asserts that computer-generated works lack a human author, making it impossible to attribute creative choices or judgment to any individual. The originality criterion cannot apply to these works, as it fundamentally relies on the relationship between a human author and the work, not the computer that generates the expression. This limitation further explains why moral rights do not extend to computer-generated works.

43.   Moreover, the definition of the "author" as the individual who makes the arrangements for creating a computer-generated work is problematic. It suggests that only legal entities could be authors, while in reality, a human could make those arrangements.

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[13] *Nova Productions Ltd v Mazooma Games Ltd* (2006) RPC 379

44.   The self-contradictions of the UK and HK statutes show well that copyright law cannot encompass emergent or computer-generated works coherently, and it distorts the shape of the common concepts and the integrity of the copyright system

45.   Daniel J. Gervais argues that[14] The rationale for protecting computer-generated works needs to be revised. A thorough examination of copyright law's history and purpose leads to the conclusion that outputs not stemming from human creative choices should belong to the public domain. The pertinent question, he contends, is whether such productions can be considered original works of authorship—if so, then the machine, not a human, should be recognised as the author.

46.   Granting copyright to AIs does not align with the utilitarian justification for protection. AIs do not require incentives to create and cannot reap the economic benefits associated with copyright protection, which is the primary rationale for such protection. It is more so for the user who has not genuinely created anything.

47.   The Consultation notes that the current CO supports AI-generated works. However, this approach must be reviewed in light of the challenges posed by generative AI and the uncertainties surrounding the authorship of non-human-created works. The evolving landscape of AI raises important questions about the definition of authorship and originality, which are central to copyright law.

48.   We propose that Hong Kong reforms section 11 (3) and other relevant sections fully comply with the requirements of the Berne Convention and other applicable international treaties overseen by WIPO.

E   Distinctions between Computer-Assisted and Computer-Generated Works

49.   As previously explained, many countries, except the UK, Ireland, Hong Kong, South Africa, and India, do not extend copyright protection to AI-generated works due to the absence of human originality. Most copyright laws require a human author to contribute original and creative elements for a work to be eligible for protection. The U.S. Copyright Office has clarified that works generated entirely by AI, without any human intervention, do not qualify for copyright protection, as the law necessitates the involvement of a human author who infuses originality into the work; however, when humans use AI as a tool and incorporate their own creative input, those human-authored elements can receive copyright protection. This framework maintains the principle of originality, which is fundamentally tied to human authorship.

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[14] Daniel J. Gervais, The Machine as Author, 105 Iowa Law Review. 2053 (2020). Available on https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=2176&context=faculty-publications

50. Thus, there are significant differences in copyright protection between human-generated and AI-generated works. Copyright promotes and safeguards human creativity, not machine creativity. In the case of AI-generated works, the user cannot be considered the author, as the AI primarily determines the expression of the idea. Conversely, AI-assisted content involves human expertise in drafting, structuring, editing, or brainstorming, essential for ensuring uniqueness and quality.

51. In an Australian case, a court declared that a work generated with computer-assisted instruction could not be protected by copyright because a human did not produce it[15].

52. In 1985, a UK court recognised the copyrightability of a computer-assisted object. Judge John Whitford [16] concluded that the computer was not an author, viewing it as a tool similar to a pen. He stated, "The computer was no more than the tool by which the varying grids of five-letter sequences were produced to the instructions, via the computer programs, of Mr. Ertel." He further articulated that "in computer-assisted work, the software is merely a tool to produce the final product, and so the copyright vests in the person utilising the software." In contrast, he noted that computer-generated work is created without the expenditure of significant human skill and effort.

53. Therefore, AI systems should be treated as powerful tools in the creative industry rather than the creator of a work in response to the user's idea input. They can act as facilitators that enhance and expand human creativity. They can assist artists, writers, musicians, and other creators by providing new ideas, automating repetitive tasks, and offering innovative solutions that might not have been considered otherwise, using AI to inspire, refine, and bring unique, original ideas to life.

54. For example, AI tools can assist musicians in creating new compositions by offering inspiration and harmonisation without infringing upon existing works. Music labels collaborate with companies like OpenAI's MuseNet and Amber Music to explore these tools further. Similarly, the film industry employs AI, such as DeepBrain, for special effects and script analysis, enhancing creativity while respecting original scripts and ideas.

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[15] Paragraph 57 of the Judgment in *Acohs Pty Ltd* v *Ucorp Pty Ltd* 2012 FCAFC 16: "On appeal, the appellant sought to invoke the notion that in any given case of a literary work whose creation has been assisted by computer, the question whether the work has been created by a human author or by human authors is one of fact and degree: *Telstra Corporation Ltd v Phone Directories Company Pty Ltd* (2010) 194 FCR 142 at [118] per Perram J and [169] per Yates J. To this end, we were taken in the course of argument, to an example of the relevant source code. **This example simply confirmed the discrete nature of the source code as a separate work created by the operation of the Infosafe program on other elements entered into the Infosafe system. It did not emanate from the authors. It was not an original work in the copyright sense."**
https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2012/16.html
[16] Express Newspapers v Liverpool Daily Post [1985] 3 All ER 680

55. In sum, treating AI as a tool to enhance human creativity can lead to more efficient and innovative outcomes and foster a more dynamic and inclusive creative industry where AI and human ingenuity work together, providing incentives for human innovation and creativity.

56. No Copyright protection of AI-generated works

(i) We respectfully submit that AI-generated works should not be protected by Copyright. These creations should remain in the public domain, allowing anyone to use, modify, or distribute them freely. Any purported short-term grant, such as sui juris rights, would tempt the users to falsely claim authorship of AI-generated works to secure complete copyright protection. Robust authorship criteria that require demonstrable human involvement in the creation process are essential to mitigate this risk. This will ensure that copyright protection is granted fairly and transparently according to the international copyright norm for authorship.

(ii) Establishing clear guidelines and enforcement mechanisms that prevent false claims and ensure that credit is accurately assigned to the generative AI, which, as a non-human entity, generates the work (which becomes public domain at the time of creation from TDM), is essential. By implementing these measures, we can foster accountability in using generative AI while protecting the rights and reputations of the person(s) involved in the human creative process.

F   The Human Artistry Campaign

57. It would be important to refer to the Human Artistry Campaign.[17] For this Submission, we align with and share their values and goals regarding AI and Copyright policies.

58. The Human Artistry Campaign, launched in March 2023, represents a coalition of nearly 200 organisations from different countries and regions, including the Recording Academy and the National Music Publishers Association, aimed at addressing the challenges posed by AI in the creative sector. The campaign emphasises the importance of human authorship and creativity, advocating for ethical guidelines in AI usage that protect artists from unauthorised imitations. By promoting transparency, balanced copyright policies, and public awareness, the campaign seeks to ensure that AI tools enhance, rather than replace, human creativity, recognising the unique contributions of individual artists.

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[17] https://www.humanartistrycampaign.com/

59. The landscape of the Hong Kong music industry has evolved significantly over the last 20 years, primarily influenced by the Internet and the need to align with major global repertoire centres. This shift has necessitated a strong focus on live concert revenue, which has become not just important but essential for remaining competitive in an increasingly crowded market. As artists and record labels adapt to these changes, maximising earnings from live performances has proven vital for sustaining their business models and supporting ongoing investments in talent development.

60. The urgency of this shift is evident, as record labels are required to make significant investments in developing artists and their repertoire, which is crucial for the sustainability of their business models. The weight of these increased investments can only be balanced by integrating artist management and live performance operations within the label. Success in recording—particularly through hit records—is vital for the financial viability of the label and, by extension, the entire music industry, providing a sense of security about their investments.

61. Taylor Swift's world tour success is a prime example of how live performances can be a significant revenue generator for artists. Her tours, with their massive audiences, translate into substantial ticket sales and merchandise revenue. This financial success underscores the potential of live concerts as a primary income source, highlighting the importance of effective marketing, strategic planning, and fan engagement. These tools empower artists and labels, ensuring their success in the modern music industry, particularly in competitive markets like Hong Kong.

62. Like other repertoire export markets worldwide, such as South Korea, the UK, the US, and Japan, Hong Kong labels and artistes' live concert revenue often extends beyond local markets, contributing significantly to overall earnings. Thus, the interplay between recorded music success and live performance revenue is vital for the sustainability and growth of the Hong Kong music industry in the current digital age.

63. With 80% of income in the Hong Kong music industry derived from live performances and artists' management, the reliance on authentic human artistry is paramount. As the industry evolves, any misguided AI policies that fail to recognise and protect the contributions of performing artists could devalue live performances. This poses a significant threat to the careers of those who have invested years in honing their craft, undermining the core of the music ecosystem that thrives on genuine artistic expression and connection with audiences.

64. The rise of AI-generated music and content could confuse audiences, blurring the lines between authentic artistry and machine-generated imitations. This would undermine the unique value of live performances and reduce the incentive for audiences to support human artists. Consequently, policymakers must implement regulations that

promote innovation while safeguarding the rights and livelihoods of performing artists to ensure the sustainability of the music industry in Hong Kong.

65.   We share the views and goals of the Human Artistry Campaign, emphasising the importance of human authorship and creativity. The campaign advocates for ethical guidelines in AI usage that protect artists from unauthorised imitations. By promoting transparency, balanced copyright policies, and public awareness, the campaign aims to ensure that AI tools enhance rather than replace human creativity, recognising the contributions of individual artists.

66.   Recording and performing artists of different genres of music would face significant challenges from AI-generated content that can mimic their styles and voices. Superstars globally advocate for artists' rights, underscoring the need for policies that safeguard originality and protect against unauthorised uses of likenesses. Legislative frameworks are essential to recognise and protect the unique contributions of human creators and performing artists, allowing them to thrive in an increasingly automated world.

67.   Other issues relating to generative AI

We respectfully submit that Hong Kong should consider these goals when legislating our AI policy to foster a balanced approach that encourages innovation while preserving the value of human creativity and artistry and that Hong Kong should consider these goals to foster a balanced approach that encourages innovation while preserving the value of human creativity and artistry when legislating our AI policy.

G   Misinformation Deepfake and Voice Cloning

68.   Although it is not part of the Consultation, we want to raise the issues as the problems are getting worse through generative AI to create multimedia content, and we expect an increase in misinformation and deepfake incidence.

69.   AI-generated fake media undermines trust, enabling fraud and causing reputational damage. Hong Kong needs explicit laws against fraud, defamation, and the unauthorised use of someone's likeness, which could effectively address the malicious use of AI-generated media.

70.   AI-generated music also creates challenges, making it difficult for audiences to distinguish between authentic human-created music and AI imitations. AI-generated "clones" of famous artists may outcompete the originals in terms of availability, cost,

and accessibility, raising ethical concerns about using AI to mimic real artists without their consent. One of the latest innovations in this area is deepfake vocal synthesisers, which can make a singer's voice sound like a famous artist's or create entirely synthetic voices.

71.   The risks of voice cloning and similar AI technologies require a multidisciplinary response. Addressing these challenges can rely on more than just technology; more than self-regulation and copyright law alone is needed to protect the public. It is imperative to utilise a comprehensive approach—including enforcement, rulemaking, and public advocacy—to ensure that the potential benefits of AI are realised for consumers and fair competition.

72.   In the U.S., Tennessee's Voice and Image Security (ELVIS) Act went into effect on July 1, 2024, addressing the unauthorised cloning and generation of fakes using artificial intelligence (AI). The act aims to protect podcasters and voice actors, regardless of their fame, from the unscrupulous use of their voices and likenesses. Violations of the ELVIS Act can result in civil actions or criminal charges, providing a legal framework to deter misuse and safeguard the rights of creators in the digital age. This legislation reflects a growing recognition of the need for robust protections against the potential harms posed by AI-generated content.

73.   The music industry is particularly concerned about exploiting artists' voices and likenesses through AI without consent, credit, and compensation. In response to these growing concerns, on January 10, 2024[18], Representatives María Elvira Salazar (R-FL) and Madeleine Dean (D-PA) introduced the No Artificial Intelligence Fake Replicas And Unauthorized Duplications (No AI FRAUD) Act. This bill aims to establish a federal framework to protect Americans' individual rights to their likeness and voice against AI-generated fakes and forgeries. By creating legal protections, the No AI FRAUD Act seeks to ensure that artists retain control over their identities and can safeguard their work from unauthorised exploitation in the age of artificial intelligence.

74.   **Other issues relating to generative AI**

We suggest the government establish a cross-policy branch task force dedicated to developing a comprehensive legal framework to address the challenges posed by deep fakes and cloning in AI development. This task force should encompass various stakeholders, including legal experts, technologists, and representatives from the creative industries, financial services sectors and other interest groups, to ensure that

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[18] https://www.congress.gov/bill/118th-congress/house-bill/6943/text?s=9&r=1

the framework effectively balances innovation with protecting individual rights. By proactively addressing these issues, the government can help safeguard against potential abuses of AI technology while fostering an environment conducive to responsible development and use.

We are grateful for the opportunity to make this submission. Please do not hesitate to reach out if you require any additional information.

Yours sincerely,
For and on behalf of
International Federation of the Phonographic Industry
(Hong Kong Group) Limited

Fung Tim Chee, Ricky BBS
Chief Executive Officer

c.c. Committee Members – IFPI (Hong Kong Group) Limited