For discussion on
18 February 2025

Legislative Council
Panel on Commerce, Industry, Innovation and Technology

Enhancement of the Copyright Ordinance regarding Protection for Artificial Intelligence Technology Development – Outcomes of Public Consultation and Proposed Way Forward

PURPOSE

The Government conducted a two-month public consultation on copyright and artificial intelligence ("AI") from 8 July to 8 September 2024 and briefed Members on the contents of the consultation at the meeting of the Panel on Commerce, Industry, Innovation and Technology on 16 July 2024. This paper briefs Members on the outcomes of the public consultation and sets out the Government's proposed way forward for further enhancement of the Copyright Ordinance (Cap. 528) ("CO") regarding protection for AI technology development as pledged in the Chief Executive's 2024 Policy Address.

PUBLIC CONSULTATION AND PROPOSALS OF THE CONSULTATION PAPER

2. As mentioned during the briefing to the Panel on the public consultation in July last year, while actively building a comprehensive AI ecosystem, the Government is also mindful of the copyright issues arising from the technological development of AI (especially generative AI). To ensure that the local copyright regime stays robust and keeps pace with the times to align with technological and economic developments and maintain Hong Kong's competitive advantages, we see the need to focus on exploring further enhancement of the CO regarding protection for AI technology development to support high-quality development of the local innovation and technology ("I&T"), cultural and creative industries, and to

dovetail with Hong Kong's development into a regional intellectual property ("IP") trading centre, an international I&T centre and an East-meets-West centre for international cultural exchange as outlined in the 14th Five-Year Plan. Therefore, in accordance with the Chief Executive's 2023 Policy Address, we conducted a two-month public consultation on this subject from July to September last year.

3. For issues relating to generative AI and copyright, we have reviewed the relevant legislation in Hong Kong and other major jurisdictions as well as the prevailing market situations. The consultation paper looks into the issues in a holistic manner and our views are set out for public consultation as follows:

(a) **Copyright Protection of Works Generated by Generative AI ("AI-generated works"):** The existing CO already contains applicable provisions to protect the copyright of AI-generated works. Issues relating to the authorship and originality of such works should be determined based on all the circumstances of each individual case;

(b) **Copyright Infringement Liability for AI-generated Works:** The relevant provisions in the existing CO are broad and technology-neutral, which are sufficient to address copyright infringement cases involving AI-generated works;

(c) **Possible Introduction of Specific Copyright Exception:** The possible introduction of copyright exception will allow reasonable use of copyright works for computational data analysis and processing (commonly known as "text and data mining exception" ("TDM exception")), which covers conventional text and data mining and the training of AI models, and will be applicable to both non-commercial and commercial uses to foster the growth of the AI industry. The proposed TDM exception will ensure that the legitimate interests of copyright owners are safeguarded so as to strike a proper balance of interests between copyright owners and the public; and

(d) **Other Issues Relating to Generative AI:** The relevant issues are deepfakes and the transparency of AI systems. As these two issues cover various other domains and are not confined to the realm of copyright, we do not consider it appropriate to address them separately and solely from the perspective of copyright.

VIEWS COLLECTED DURING THE CONSULTATION PERIOD

4. We collected views from Members, various stakeholders and the general public through different channels during the consultation period, including briefing Members on the contents of the consultation at the Panel meeting on 16 July 2024; organising a total of three briefing sessions for copyright owners, the creative industry, the I&T industry and the IP industry; and holding a public forum on 2 August 2024. We also attended five discussion meetings organised by various stakeholder groups or educational establishments to gather the views of industries and different parties.

5. We have received a total of 62 written submissions, including –

(a) 24 from copyright owners or their organisations, such as licensing bodies, and various local and international organisations representing different creative industry sectors (including music, music recordings, films and videos, publishing, etc.);

(b) 11 from the I&T industry;

(c) 7 from IP practitioners' groups (including the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong Institute of Trade Mark Practitioners, and the Asian Patent Attorneys Association Hong Kong Group), and organisation or members of the legal sector; and

(d) 20 from other professional or industry bodies, chambers of commerce, statutory or non-governmental organisations, individuals, etc.

6. Written submissions received during the consultation period and with consent given for publication have been uploaded onto the website of the Commerce and Economic Development Bureau (www.cedb.gov.hk). The ensuing paragraphs summarise the views of the respondents with regard to the key issues for consultation (i.e. paragraph 3 above) and the Government's overall responses. Relevant details are set out in the **Annex**.

SUMMARY OF VIEWS AND THE GOVERNMENT'S RESPONSES

7. The respondents generally support the Government in reviewing Hong Kong's copyright regime regarding the development of AI technology, and consider the consultation timely. For individual issues, we note that there is no clear consensus among the respondents from different sectors holding divergent views.

(a) Copyright Protection of AI-generated Works

8. The respondents hold different views on whether the existing CO could offer adequate protection to AI-generated works. Most respondents agree that the CO has already provided copyright protection for AI-generated works, with some of them considering it unnecessary to amend the existing CO. However, some respondents view that the Government may enhance the certainty of the CO, especially for issues relating to the authorship and originality of AI-generated works, by formulating guidelines or amending the legislation.

9. On the other hand, a few respondents oppose the protection of AI-generated works afforded by the CO. They are of the view that the CO should focus on human authors and only protect works created by humans, rather than AI-generated works without a human author. Some of these respondents further suggest that the Government should repeal or amend the legal provisions relating to the protection for computer-generated works.

10. We fully recognise the importance of protecting AI-generated works. The provisions in the existing CO can reward and provide

economic incentives to persons who have put in efforts in the arrangements necessary for the creation of computer-generated works (including AI-generated works), fostering AI technology development and providing legal protection basis for commercialisation of AI-generated works. This aligns with the overarching goals of our copyright regime to encourage creativity and its investment. In the absence of sufficient justifications, we should not amend or repeal the existing legal provisions that offer protection for computer-generated works without thorough consideration, particularly having regard to the fact that generative AI technology is still developing and evolving rapidly, and that the relevant issues are still being discussed on the international front[1] and no uniform standards have been set.

11. Having considered the aforementioned views of respondents and the overall circumstances, including the scope of the provisions in the existing CO relating to computer-generated works, the market situation and international developments, we do not consider it justifiable to propose at this moment any substantive legislative amendments concerning copyright protection in respect of AI-generated works. As for the issues relating to authorship and originality of AI-generated works, we believe that they should be determined based on all the circumstances of each individual case, with regard to relevant facts and evidence, as well as the development of case law. At this stage, we consider that a pragmatic approach can be adopted by formulating guidelines to illustrate the existing legal principles and their applications with practical suggestions and specific examples.

(b) *Copyright Infringement Liability for AI-generated Works*

12. A majority of respondents from different sectors agree that the coverage of the existing CO applicable to infringement is broad enough to address liability issues relating to infringement cases involving AI-generated works on a case-by-case basis. A few of them opine that the Government may formulate guidelines to further explain the relevant legal situation or enhance the CO (such as to clearly prescribe or allocate

[1] In mid-December 2024, the United Kingdom ("UK") Government conducted a ten-week public consultation on matters relating to AI and copyright. Subject to the views received, the UK Government may consider repealing its legal provisions which provide protection for computer-generated works. We will closely pay heed to the development and outcomes of the consultation.

copyright infringement liability). Meanwhile, some other respondents believe that contractual arrangements in the market help determine the copyright infringement liability for AI-generated works.

13. On the other hand, a few respondents do not agree that the existing CO is capable of addressing copyright infringement cases involving AI-generated works. They are of the view that the CO could not provide for a clear allocation of copyright infringement liability with respect to such works, and submit that the contracts prevailing in the market tend to favour AI systems owners. They in general call for legislative amendments to clearly prescribe or allocate the copyright infringement liability. While some of them view that the Government should model on the existing safe harbour provisions applicable to online service providers to limit the liability of AI system developers, there are also respondents who opine that users of AI systems should not be held liable.

14. The copyright infringement liability of human-created works has all along been determined by virtue of the underlying facts, evidence and applicable laws in each individual case. The infringement provisions of the existing CO are broad in coverage and technology-neutral, and are also applicable to deal with infringement cases involving AI-generated works. As the person(s) to be held liable for infringements arising from AI-generated works and the extent of their liability may vary depending on the circumstances, we do not consider it appropriate for the law to rigidly prescribe and allocate copyright infringement liability for AI-generated works. Besides, as far as the international arena is concerned, there are currently no specific legal provisions governing copyright infringement issues involving AI-generated works.

15. We observe that where applicable, contractual arrangements employed in the market also help determine respective rights and obligations of the contracting parties (such as AI system owners and users) with regard to the creation and use of AI-generated works. In the absence of overriding public policy considerations, the contractual arrangements put in place in the free market should not be intervened rashly.

16. Taking into account the above reasons, we are of the view that there are no cogent justifications for introducing legislative amendments to the

existing provisions applicable to copyright infringement arising from AI-generated works. At this stage, a more pragmatic approach is to provide guidelines elaborating on how the existing legal provisions and principles for copyright infringement apply to infringement cases involving AI-generated works.

(c) Possible Introduction of TDM Exception

17. Except for copyright owners, most of the respondents (including the I&T industry, IP practitioners' groups, the legal sector, chambers of commerce and industry bodies) support the introduction of the TDM exception. The I&T industry in particular supports this proposal, considering that the exception can promote sustainable development of the AI industry and facilitate development of their AI business. Some supporters propose imposing several conditions on the exception, such as requiring lawful access to copyright works, rendering the exception inapplicable if copyright owners have expressly reserved their rights in advance (i.e. an "opt-out" option), etc.

18. On the other hand, copyright owners or their organisations generally oppose the introduction of the TDM exception, considering that the exception would intervene existing or emerging licensing arrangements in the market, prejudice the interests of copyright owners, and violate the "three-step test" requirement[2] under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights ("WTO TRIPS Agreement"). However, while expressing their objection, some copyright owners also suggest that if the Government finds it necessary to introduce such an exception, it shall be accompanied by applicable restrictive conditions. The proposed restrictive conditions include confining the exception for non-commercial research or uses only, providing an "opt-out" option, rendering the exception inapplicable if relevant licensing schemes are available, and/or improving the

[2] The "three-step test" under the WTO TRIPS Agreement requires that any copyright exception should ─
(a) be confined to "special cases";
(b) not conflict with a normal exploitation of the work concerned; and
(c) not unreasonably prejudice the legitimate interests of the copyright owner.

transparency of AI systems such as by imposing a requirement to keep and disclose records of using copyright works.

19. Having considered the general support of most respondents for the introduction of the TDM exception, the balance of reasonable interests between copyright owners and copyright users, and the overall benefits brought by the exception for the sustainable development of AI technology, we consider it necessary to introduce a TDM exception to the CO. In formulating this exception, we will make reference to relevant provisions in the existing CO and those of other jurisdictions, and impose restrictive conditions as appropriate to protect the interests of copyright owners according to the international standard of the "three-step test" such that a proper balance between the interests of copyright owners and those of society as a whole can be struck.

20. There is a practical need for the proposed TDM exception to cover both non-commercial and commercial uses. We consider that this inclusive approach is more in line with the current market needs, thus enabling the proposed TDM exception to achieve its maximum benefits. This is also consistent with the practices of some jurisdictions (like the European Union ("EU"), Japan and Singapore)[3]. We believe that the proposed TDM exception will bring Hong Kong significant benefits in respect of research and development, including fostering local AI technology development, boosting Hong Kong's competitiveness in the international I&T arena, and further enhancing our copyright regime to align with those of major jurisdictions with similar TDM exceptions[4].

(d) *Other Issues Relating to Generative AI*

21. Some respondents view that the Government should enact specific laws or frameworks to regulate the misuse of a person's name, likeness, voice or other indicia of identity by means of deepfake technology. Most of the suggested views traverse domains other than copyright, such as

[3] The UK Government is conducting a public consultation, proposing to introduce a new TDM exception with the same scope covering both non-commercial and commercial uses.

[4] For example, specific TDM exceptions are provided in the EU, Japan, Singapore and the UK, while an open-end fair use doctrine is adopted by the United States.

introduction of a freestanding right of personality or publicity, privacy protection and data security, prevention of criminal offences and ethical considerations. Some respondents further point out that the proposed regulation of deepfakes is a cross-domain issue and cannot be addressed by copyright law alone. As the issue of deepfakes is interconnected with a broad range of issues in multiple fields, and involves the application of existing laws under different domains[5], we do not consider it appropriate to address this issue solely from the perspective of copyright or IP.

22. For other responses and suggestions relating to the overall transparency of AI systems which falls outside the domain of copyright (such as mandating the labelling of outputs of generative AI or deepfake contents, requiring providers of AI models to disclose the mode of operation of their models, the content or sources of such content for training the models, as well as making reference to other jurisdictions in formulating statutory frameworks or guidelines on AI), given that they cover multiple domains and are not confined to or even go beyond the realm of copyright and IP protection, we also do not consider it appropriate to address them separately and solely from the perspective of copyright or IP.

23. As the development of AI technology keeps evolving, the Government will continue to closely monitor the latest development and the international trend, with a view to reviewing and updating the relevant legislation and guidelines in a timely manner.

---

[5] As a matter of fact, the existing IP laws, including copyright law, are applicable to protect an individual's IP rights when deepfakes infringe on these rights. Depending on the actual circumstances and evidence of each individual case, if the deepfake content involves unauthorised use of a copyright work, trade mark and/or making of a misrepresentation causing damage to one's goodwill, legal actions may be initiated by the relevant person under the existing IP laws, i.e. on the basis of copyright infringement, trade mark infringement and/or common law tort of passing off. In cases where deepfakes involve non-IP scenarios, e.g. privacy and personal data protection issues, misinformation, or cybersecurity threats, etc., it may be more appropriate to address them under the relevant non-IP laws. Most of the laws enacted to prevent crimes in the real world are in principle applicable to the cyber world.

WAY FORWARD

(a) *Formulating Guidelines on Copyright Issues Relating to Generative AI*

24. As mentioned above, especially having regard to the coverage of the existing CO, the fast-changing landscape of AI technology development and the market practices, we consider that there is currently no sufficient justification to propose any legislative amendments concerning the copyright protection and infringement issues relating to AI-generated works. At this stage, we plan to draft a set of guidelines with practical suggestions and specific examples to further elaborate on the copyright protection and infringement issues relating to generative AI, as well as the relevant application of the copyright-related legal principles in different scenarios, with a view to assisting developers and users of AI systems in addressing the relevant issues.

25. Unlike legislative amendments, the formulation of non-legally binding guidelines provides more flexibility, allowing us to review relevant issues in a timely manner in response to the rapidly evolving AI technology and case law development, and to make appropriate adjustments or updates to the guidelines in a more agile manner. We hope that the guidelines can enhance the understanding of stakeholders and the public on the issue of AI and copyright, and serve as a reference for them when developing or using generative AI systems or further using AI-generated works.

26. Meanwhile, we will keep a close eye on the technological development, the discussions on relevant copyright issues in the international community (e.g. research conducted by the World Intellectual Property Organization and exchanges among its member states), as well as the development in other jurisdictions (e.g. the recent public consultation on copyright and AI conducted in the UK in December last year[6]) to ensure that the development of Hong Kong's copyright regime will keep in pace with international trends.

---

[6] See footnote 1 above.

(b) *Legislative Proposal to Introduce a TDM Exception*

27. As mentioned in paragraphs 19 to 20 above, having taken into account the views collected during the public consultation and the overall circumstances, we consider it necessary to amend the CO by introducing a specific TDM exception to allow reasonable use of copyright works for computational data analysis and processing.[7]

28. The proposed TDM exception will allow copyright users to make copies of copyright works for the purposes of computational data analysis and processing[8] without the licence of copyright owners. The proposed exception will cover both non-commercial and commercial uses to foster the growth of AI technology.

29. The proposed exception will be subject to restrictive conditions to comply with the international standard of the "three-step test" and to balance the interests between copyright owners and users. The key proposed restrictive conditions will include:

(a) Users must have lawful access to copyright works;

(b) Infringing copies must not be used;

(c) Copyright users are required to keep and disclose records of the source of copyright works;

---

[7] Apart from copyright works, the CO also provides protection to rights in performances. Most of the exceptions provided for copyright works in Part II of the CO are correspondingly provided for rights in performances in Part III of the CO. Likewise, as regards the proposed TDM exception, we will introduce an applicable exception in Part III of the CO to correspondingly stipulate that the making of a copy of a fixation for the purposes of computational data analysis and processing will not constitute an infringement of the rights in a fixed performance. The scope and restrictive conditions of the proposed exception are similar to those of the copyright exception (i.e. paragraphs 28 to 29) to be introduced for making copies of copyright works for the purposes of computational data analysis and processing.

[8] Computational data analysis and processing mainly includes the following —

(a) using computer programs to analyse and process data or information in copyright works in order to obtain insights, patterns, trends, correlations, predictions, etc.; and
(b) using a copyright work as an exemplar of a type of data or information to improve the functioning of a computer program in relation to that type of data or information.

(d) The proposed exception will not be applicable if relevant licensing schemes are available; and

(e) An "opt-out" option[10] is provided for copyright owners.

30. Regarding the "opt-out" option and the requirement of keeping and disclosing records of the source of copyright works, we understand that at the implementation level, application of technology can play an important role and the relevant technology is also developing fast. Apart from prescribing legal provisions to set out the principles, we propose formulating flexible and non-legally binding codes of practice or guidelines in the light of the actual situation or needs in the future to provide suggestions on the implementation of feasible opt-out options as well as guidance on keeping and disclosure of records of the source of the works, such as the extent of details of the information to be provided, for reference of stakeholders and industries.

31. We are in the process of drafting the detailed legislative proposals, with reference drawn from the practice of other jurisdictions. We will also carefully incorporate the views of different stakeholders on the proposed introduction of copyright exception, in particular the restrictive conditions of such exception.

32. Furthermore, we will take the opportunity to introduce minor, textual or miscellaneous amendments to certain provisions of the CO as appropriate, such as enhancing clarity and precision of the relevant provisions and repealing obsolete provisions.

33. We aim to introduce an amendment bill to the Legislative Council ("LegCo") in the first half of this year. We will continue to engage stakeholders during the legislative amendment exercise, with a view to securing passage of the amendment bill by the current term of the LegCo, thereby updating Hong Kong's copyright regime as soon as possible.

---

[10] I.e. the TDM exception will not be applicable if the copyright owners have expressly reserved their rights, such as indicating their choice to reserve their rights through machine readable means in the case of content made publicly available online.

34. Looking forward, we will continue to pay close attention to the international development of other copyright issues and keep under review Hong Kong's copyright regime, including the operation of the Copyright (Amendment) Ordinance 2022 since its implementation. We aim to conduct studies on other copyright issues of concern to stakeholders in a timely manner upon completion of the above review on AI and copyright and its follow-up work, so as to further enhance the law and institutional establishment for supporting the sustainable development of the I&T, creative and cultural industries.

ADVICE SOUGHT

35. Members are invited to note the outcomes of the public consultation and the way forward in this paper, and offer views on the legislative proposals set out in paragraphs 27 to 33.

Commerce and Economic Development Bureau
Intellectual Property Department
February 2025

Annex

Public Consultation on Copyright and Artificial Intelligence

Summary of Written Submissions and Administration's Responses

1. Copyright Protection of Artificial intelligence ("AI")-generated Works

Responding Organisations / Groups / Individuals	Summary of Views	Administration's Responses
Copyright owners / organisations / groups 1.1	**Views on copyright protection of AI-generated works** • Some copyright owners / organisations / groups agree with the copyright protection accorded to AI-generated works under the existing Copyright Ordinance ("CO"), and that there is no immediate need to amend the CO. • Many copyright owners / organisations / groups object to granting copyright protection to AI-generated work for various reasons, including: (a) such protection contradicts the purpose of copyright law; (b) AI-generated works do not meet the criteria of human authorship and originality; (c) AI-generated works will unfairly compete with human-created works; (d) such protection will discourage human creativity and investment in creativity;	• We note that there are different views on the copyright protection of AI-generated works. Upon consideration of all the views and overall circumstances, we acknowledge the importance of maintaining the protection of CGWs (including AI-generated works) under the CO. We consider that such protection is necessary to: (a) reward those who have made efforts in the necessary arrangements to create AI-generated works; (b) incentivise the use of AI for creation; and (c) provide legal certainty for the commercialisation of AI-generated works. • Such an approach will in turn incentivise investment in AI technology to advance creative capabilities,

	(e) economic incentives are unnecessary for AI-generated works; (f) the value and contribution of AI-generated works and human-created works to arts and culture are different; and (g) AI-generated works merely exploit existing human-created works. • Many copyright organisations / groups view that AI should be treated as a tool to assist the creation of works by humans. They maintain that the originality requirement must be human-centric to align with international norms and safeguard human creativity and authorship. While one copyright group notes the difficulty in determining the threshold for sufficient human authorship in cases involving AI, a few other copyright groups consider that such question should be left to the courts and addressed on a case-by-case basis. • Two copyright groups view that the computer-generated works ("CGWs") provisions are not intended to apply to generative AI, which produces random and unpredictable output. Extending interpretation of CGWs to cover AI-generated works would deviate from international standards, fail to incentivise investment in AI development, and may create bias in evaluating whether a work is AI-assisted or AI-generated, given the greater benefits that could potentially be derived from the	particularly given the increasing popularity of AI tools. It will also foster a virtuous circle of sustainable creation and technological development, aligning with the overarching objective of Hong Kong's copyright system to encourage creation and investment in creativity. • In the absence of sufficient and compelling reasons to the contrary, we consider it prudent to avoid hasty legislative amendments or the repeal of the long-standing legal protection afforded to CGWs (which cover AI-generated works) for the following reasons: (a) generative AI technology is ever-changing; (b) the related issues are still under active international discussion. For instance, the United Kingdom ("UK") has been conducting a public consultation on related matters, including its CGWs provisions, since December 2024; and (c) there is so far no uniform or widely accepted international approach in this regard. • Given the lack of established case law in this area and ongoing queries regarding the protection of AI-generated works, notably the distinction between AI-generated works and AI-assisted works, as well as the originality requirement and necessary arranger, we consider it more appropriate and practical to formulate a set of guidelines which will set out illustrative examples and serve as a reference for stakeholders and the public.

	former. • A few copyright groups suggest revising or repealing the CGWs provisions to avoid confusion.	• At the same time, we will continue to closely monitor advancements in AI technology, the latest discussion on the topic in the international community, and developments in other major jurisdictions to keep abreast of the international trend.
	• A copyright owner suggests that AI-generated works should enjoy the same protection term as ordinary literary, dramatic, musical and artistic works ("LDMA works") due to the substantial time and effort required for creating quality AI-generated works.	• Currently, the copyright protection for computer-generated LDMA works (including AI-generated LDMA works) is more limited than that of ordinary LDMA works, particularly in terms of the shorter duration of copyright. After considering the nature of computer-generated LDMA works and the differences between computer-generated LDMA works and ordinary LDMA works, we consider that the current copyright protection for computer-generated LDMA works is both reasonable and proportionate.
	Necessary arranger • A copyright group considers that the concept of necessary arranger appears inferior to that of a human author, as it values effort and investment over originality, thereby undermining the essence of copyright law. • A copyright owner finds it difficult to identify the necessary arranger in AI-generated works, while another copyright owner and a copyright organisation view that	• Under the current CO, for copyright to subsist in computer-generated LDMA works, such works must satisfy the originality requirement. By attributing copyright authorship to the necessary arranger, the CGWs provisions intend to reward and incentivise the persons who have put in efforts in the arrangements necessary for the creation of such works. This aligns with the overarching objective of Hong Kong's copyright

	the necessary arranger would be the copyright owner of the underlying works used in training and generating output, but not the creator of the AI tool.	system to encourage creation and investment in creativity. • Determining who qualifies as the necessary arranger is highly fact-sensitive and depends on the particular circumstances of each case. There is no hard and fast rule for identifying the necessary arranger that can be applied to all scenarios. The decision should be made on a case-by-case basis, taking into account the individual circumstances underlying each specific case.
	• A copyright group suggests that copyright and moral right protection in AI-generated works should be provided not only to the necessary arranger, but also the author or copyright owner of the underlying work to prevent unfair exploitation.	• Under the existing CO, if the use of copyright works in AI training or the creation of AI output involves any act restricted by copyright (e.g. copying the whole or substantial part of a copyright work) without the licence of the relevant copyright owner, it would constitute copyright infringement unless such act is permitted under a statutory copyright exception. In such cases, the relevant copyright owner may consider pursuing legal action under the CO. • In cases where an AI-generated work constitutes an infringement of moral rights of the author or director of the underlying work (see paragraphs 3.8 to 3.9 of the consultation paper), the affected author or director may also pursue legal action under the CO.

		• Given the legal recourses already available under the CO for copyright and moral right protection in relation to the underlying work, we do not see a cogent justification for extending the copyright and moral right protection in AI-generated works to the author or copyright owner of the underlying work used in AI training.
	<u>Views on contractual arrangements</u> • Some copyright owners / organisations / groups find that contractual arrangements provide a practical solution to address various copyright issues relating to AI-generated works. • On the other hand, two copyright groups find that contractual arrangements are problematic for reasons such as unfair contractual practices, a lack of standardisation across different AI tools, uncertain enforceability, and the fact that contracts only bind the contracting parties.	• We note the divergent views on the effectiveness of contractual arrangements between AI system owners and end-users in resolving issues associated with AI-generated works. Whilst contractual arrangements may have limitations, they represent a pragmatic solution for defining the respective rights, obligations and potential liabilities of the contracting parties. They are the result of informed and mutually agreed decisions made by the relevant parties after careful consideration of the terms and conditions, and, where possible, further negotiation. • Hong Kong is renowned for its free and open market where contractual flexibility is highly valued. Contractual arrangements are particularly suitable in the context of AI, where each AI platform or tool involves distinct roles, responsibilities, risks and legal implications. We consider that any attempts to standardise contractual terms across different platforms or mandate the simplification of indemnity clauses would

		fail to account for the unique circumstances of each case and would not effectively serve the interests of the parties involved.
	Other issues • A copyright organisation emphasises the need to clarify the source of the training data of AI to prevent granting copyright protection to works generated from infringing copies, and prejudicially affecting the rights of the copyright owners. • A copyright group suggests distinguishing AI-generated works from human-created works (e.g. by imposing watermarking or labelling obligations on AI developers) to ensure the correct application of the law.	• Please refer to Part 4.2 below (titled "**Transparency of AI systems**") for our responses on disclosing the source of training data of AI systems and watermarking or labelling.
Innovation and Technology ("I&T") organisations / groups 1.2	**Views on copyright protection of AI-generated work** • Some I&T organisations / groups agree with the copyright protection accorded to AI-generated works under the existing CO, and a number of them support no change to the current law. In particular, an I&T organisation considers that copyright protection for AI-generated works plays a pivotal role in instilling confidence in the legitimate production and exploitation of works created by AI systems.	• Please refer to Part 1.1 above (titled "**Views on copyright protection of AI-generated work**") for our response on maintaining the existing protection of CGWs (including AI-generated works), our proposal to provide practical guidelines, and our continuous efforts in monitoring international developments. • Furthermore, given the sufficiently broad scope of the existing CGWs provisions under the CO and their

	• A few I&T groups object to granting copyright protection to AI-generated works because (a) such protection contradicts the purpose of copyright law; (b) AI-generated works do not meet the criteria of human authorship and originality; and (c) economic incentives are unnecessary for AI-generated works. • A few I&T organisations / groups consider that the use of AI does not automatically deny copyright protection to its output. They contend that the key question is whether a sufficient degree of human skill and judgment is involved in the creation process, regardless of the instruments, tools or technologies used. • A few I&T organisations / groups suggest making reference to the approaches in Japan, the European Union ("EU") and the United States ("US") to enhance the CO. They also suggest: (a) creating a new category of copyright work for AI-generated works; (b) clarifying copyright ownership in different situations; (c) setting out factors for the determination of AI-generated works and AI-assisted works; (d) redefining the originality requirement for AI-generated works; (e) imposing labelling requirements; and/or (f) strengthening international collaboration on	possible application to AI-generated works, we do not consider it necessary to introduce a new category of copyright works specific to AI-generated works. We consider that the existing CGWs provisions are flexible and adaptable, allowing them to effectively accommodate emerging technologies. • As for the proposal to define the originality requirement for AI-generated works, it is important to note that the legal principles for the originality test in respect of ordinary LDMA works were developed by case law under the common law system adopted in Hong Kong. We anticipate that the same would also apply to AI-generated works. Again, this approach allows for a flexible and dynamic interpretation that is adaptable to advancements in technology and changing creative processes. • For our response on the suggested labelling requirements, please refer to Part 4.2 below (titled "**Transparency of AI systems**").

	enforcement. • Two I&T orgnisations / groups suggest, while maintaining the CGWs provisions, the Government should: (a) redefine the term "computer-generated"; (b) remove the expression relating to the necessary arranger; (c) explicitly categorise AI-generated works as CGWs and recognise AI developers / trainers as authors, and/or (d) grant users the right to communicate AI-generated works for non-commercial purpose. • Some I&T organisations / groups suggest providing guidance on issues such as the distinction between AI-generated works and AI-assisted works, objective assessment of risks associated with AI (including legal risks), copyright ownership of AI-generated works, etc. • An I&T organisation suggests that the Government should continuously engage in industry consultation to gather insights from various sectors, monitor the developments on AI and copyright in other major jurisdictions, and avoid rushing into legislative amendments without sufficient deliberation.	

	Views on contractual arrangements • An I&T organisation finds contractual arrangements a transitional solution for various issues pending update of the legal framework. However, it acknowledges that contracts have inherent constraints (e.g. they could not change the legal requirement of originality). • Another I&T organisation suggests providing template contract provisions to help streamlining negotiations and establishing consistent market practices.	• Please refer to Part 1.1 above (titled "**Views on contractual arrangements**") for our response. • Furthermore, as contractual arrangements are highly fact-sensitive and need to be tailored to the needs and negotiations of the parties involved, there is no universal template that can be applied to the issue of copyright ownership for all kinds of AI-generated works. This is evident from the varying ownership arrangements in contracts currently available in the market. In view of the above, we do not consider that template contracts could account for the unique circumstances of each case and effectively serve the interests of the parties involved.
	Other issues • An I&T group considers that copyright protection should not apply to AI algorithms or training data. • An I&T organisation opposes granting copyright protection to users' prompts as it would hinder innovation, whereas another I&T organisation suggests clarifying whether users' prompts are protected by intellectual property ("IP").	• The current CO already provides a sufficiently clear definition of copyright works. Under the existing provisions of the CO, copyright subsists in original literary works (including computer programs and compilations of data that constitute intellectual creations because of the selection or arrangement of their contents), as well as in original dramatic works, original musical works, original artistic works, sound recordings, films, etc.

		• In cases where AI algorithms, training data or prompts meet the requirements for copyright to subsist (e.g. constituting a literary work and fulfilling the originality requirement), they can also be considered as copyright works under the CO. We see no cogent justification to deny such copyright protection solely because these elements are related to AI.
	• An I&T organisation suggests establishing a task force dedicated to exploring and developing innovative tools for protecting and managing the copyright of AI-generated works.	• The current CO provides legal protection to AI-generated works. However, the management of such protection primarily rests with copyright owners, who may opt for different strategies and tools to manage the copyright of their works. We welcome the development of innovative tools by the industry in this regard and will continue to monitor the latest developments.
	• An I&T group proposes developing regulations for fair charging schemes by AI developers to balance ownership rights and user contributions.	• Hong Kong is renowned for its free and open market. Charging schemes offered by AI developers can vary widely, influenced by factors such as market demand and supply, the nature and quality of AI tools, the scope and duration of the services provided, and any customisation required to meet specific needs. Given this diversity, it is difficult to establish standard rules for determining what constitutes a fair charging scheme across the board. Instead, we encourage active negotiation between the relevant parties to reach mutually agreeable terms.

IP practitioners' groups / legal organisation / lawyers 1.3	**Views on copyright protection of AI-generated works** • Most IP practitioners' groups, lawyers and a legal organisation agree with the copyright protection afforded to AI-generated works under the existing CO. An IP practitioners' group further views that any legislative amendment in this regard would be premature, as the AI technology is still developing and the copyright subsisted in and authorship of AI-generated works should continue to be assessed on a case-by-case basis. • A lawyer views that AI-generated works should not be protected by copyright as they are made based on the analysis of raw data and algorithms. • Many IP practitioners' groups, lawyers and a legal organisation suggest clarifying the legal position regarding the copyright protection of AI-generated works. Their proposals include: (a) providing a clearer definition and list of factors for the courts to determine the authors and copyright owners of AI-generated works; (b) revising the definition of CGWs to explicitly cover scenarios where the human author's input is insufficient to make the AI-generated work his original copyright work; (c) clarifying the originality requirement for CGWs; (d) deeming the author as the user who provides	• Please refer to Part 1.2 above (titled "**Views on copyright protection of AI-generated works**") for our response.

	instructions that reflect a sufficient degree of his own original expression in the AI-generated work, unless there is contrary evidence; (e) alternatively, introducing a new *sui generis* right for CGWs to encourage AI development; (f) providing guidelines on how to determine the necessary arranger; and (g) establishing a task force to consider the relevant issues. • A few IP practitioners' groups, a legal organisation and a lawyer view that whilst the existing CO is flexible enough to cope with the ever-changing technological advancements, Hong Kong should proactively establish a clear legal framework regarding the originality of AI-generated works, rather than relying on the gradual development of case law.	
	<u>Views on contractual arrangements</u> • A few IP practitioners' groups generally agree that contractual agreements may provide a practical solution for addressing copyright issues concerning AI-generated works.	• Please refer to Part 1.1 above (titled "**<u>Views on contractual arrangements</u>**") for our response. We will closely monitor the development of market practices under the purview of copyright and IP protection.

	• A few IP practitioners' groups are concerned about issues such as unequal bargaining power between AI developers and end-users, and/or possible anti-competitive behaviours of AI companies. One of them suggests examining ongoing AI-related investigations worldwide and considering various regulatory approaches to minimise the risk of anti-competitive practices.	
Others including professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies 1.4	**Views on copyright protection of AI-generated works** • Many professional bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies agree with the copyright protection accorded to AI-generated works under the existing CO, and see no immediate need to amend the CO. • A few chambers of commerce / statutory or non-governmental organisations consider that whilst the CO provides protection for AI-generated works, it might be difficult to distinguish between ordinary LDMA works and computer-generated LDMA works. They also find the concepts of originality, authorship, copyright ownership, and necessary arranger for AI-generated works ambiguous.	• Please refer to Part 1.2 above (titled "**Views on copyright protection of AI-generated works**") for our response.

	• A few chambers of commerce / non-governmental organisations / companies suggest making legislative amendments or issuing guidelines to clarify the issues related to originality, authorship, copyright ownership and/or necessary arranger.	
	• A statutory body suggests regular review of the CO, exploring the possibility of shortening the copyright term for CGWs and a tiered copyright system for CGWs and human works.	• Comparing to the duration of copyright protection for ordinary LDMA works created by a human author (i.e. the lifespan of the human author plus 50 years after his death), the duration of copyright protection for computer-generated LDMA works (i.e. 50 years from which the works were made) is already shorter. We consider that this limited duration of protection for computer-generated LDMA works under the current law is both reasonable and proportionate.
	Necessary arranger • A non-governmental organisation considers that copyright should belong to the person controlling the AI tool (e.g. the user). However, a few individuals opine that the copyright of AI-generated works should not, or should not solely, belong to the user when the AI tool was trained with works created by others without consent. An individual further considers that the copyright of AI-generated works should belong to the owner of the underlying work used in training and generating output.	• Please refer to Part 1.1 above (titled "*Necessary arranger*") for our response. • Regarding the suggested modification of the CGWs provisions to provide for a list of factors for determining the necessary arranger, we note the lack of case law in this area. As such, we do not consider it prudent to propose specific factors for inclusion in the legislation at this stage. Ultimately, the courts must consider all the circumstances of each case when determining the

	• A non-governmental organisation suggests modifying the CGWs provisions to provide guidance on how the court will consider necessary arrangement (e.g. a list of factors similar to the existing fair dealing copyright exceptions under the CO). • A company suggests adopting a case-by-case approach to determine the nature and role of AI in each scenario, instead of applying a rigid or uniform definition.	necessary arranger. In the meantime, we plan to provide guidelines which will set out illustrative examples and serve as a reference for stakeholders and the public.
	Views on contractual arrangements • Some professional bodies / chambers of commerce / non-governmental organisations / individuals / companies agree that contractual agreements provide a practical solution to address various copyright issues related to AI-generated works. • A non-governmental organisation considers that contractual arrangements are more effective for entities entering into official contracts with monetary consideration, and that copyright ownership of AI-generated works should be made clear on AI platforms for individual end-users who use the AI tools for free.	• Please refer to Part 1.2 above (titled "**Views on contractual arrangements**") for our response regarding contractual arrangements and the suggestion to provide templates for such arrangements.

	• A company suggests issuing best practice guidelines or templates for contractual arrangements relating to AI-generated works. Such resources would help businesses navigate ownership and licensing issues more effectively.	

2. Copyright Infringement Liability for AI-generated Works

Responding Organisations / Groups / Individuals	Summary of Views	Administration's Responses
Copyright owners / organisations / groups 2.1	**Views on existing law** • Most copyright owners / organisations / groups view that the current law is broad and flexible enough for determining the copyright infringement liability for AI-generated works, and support maintaining the current copyright framework. In particular, some of them view that the existing principles for assessing copyright infringement are suitable for AI, and that infringement liability should be assessed on a case-by-case basis, depending on individual facts as well as the role and degree of involvement of each relevant party. Rigid rules would hinder courts' ability to handle unique situations involving emerging technologies. • A copyright group specifically mentions that the principles for assessing the infringement of moral rights remain fit for purpose. • A minority of copyright organisations / groups disagree that the existing CO is sufficient to address infringement liability issues arising from AI-generated works. A few of them view that key entities in the generative AI chain	• We agree with the majority view that the existing CO and the relevant legal principles are broad, general and technology-neutral to deal with copyright and moral right infringement liability arising from AI-generated works. Same as human-created works, determining copyright infringement liability for AI-generated works should depend on the underlying facts and evidence of each individual case. • There is no hard and fast rule as to whether the creation and/or use of AI-generated works constitute infringement, and if so, who should be held liable. Instead of amending the infringement provisions in the CO to include rigid rules for determining and assigning liability, we consider that the current CO remains flexible and adaptable enough to new technologies and evolving methods of committing infringements. • Since determining copyright infringement liability requires a case-by-case analysis of facts and evidence, the party to be held liable will vary from case to case.

	(e.g. AI system providers) should bear the liability for copyright infringement in the AI process.	Imposing a predetermined allocation of liability in the CO across the board would compromise the unique circumstances of each case. Such an approach risks imposing inappropriate onus on specific parties, be it AI system owners, users or any other participants, without adequately considering the circumstances of individual cases.
	• A copyright owner and a few copyright groups submit that they face challenges in pursuing legal claims on copyright infringement arising from AI-generated works due to evidentiary hurdles such as identification of specific works infringed and proof of access by AI platforms.	• To enhance transparency, we propose to impose a condition in the proposed text and data mining ("TDM") exception which requires copyright users to keep a record of copyright works used and disclose the same to the relevant copyright owners. • In practice, we notice that some copyright owners employ technical solutions, such as digital watermarking, to protect their copyright works in the digital environment. If an alleged infringing work contains a digital watermark, it can assist in identifying and addressing potential instances of infringement.

	• A copyright owner and a few copyright organisations demand statutory clarification on the infringement liability for AI-generated work. In particular, they suggest that the CO should be amended to make it clear that the exploitation of unlicensed copyright works in AI training and creation of generative AI output amount to copyright infringement, and that there should be clear allocation of liability among AI developers, end-users, and other participants.	• Under the existing CO, it is clear that if the use of copyright works in AI training and creation of AI output involves any act restricted by copyright without the licence of the relevant copyright owners, it would constitute copyright infringement unless such act is permitted under any statutory copyright exception. We see no cogent justification to deviate from these existing general principles when determining copyright infringement for AI-generated works. • Regarding the suggested allocation of liability, please refer to our response above.
	• Some copyright owners / groups call for statutory transparency requirement for record-keeping and disclosure of the content used to develop and train AI models. They believe that such requirement could help their enforcement of rights and ensure accountability in the AI process.	• As mentioned above, we have taken into account the transparency issue when deciding on our proposed TDM exception, in which a requirement will be imposed for copyright users to keep a record of copyright works used for disclosure to the relevant copyright owners.

	<u>Views on contractual arrangements</u> • A copyright owner and a few copyright groups support that contractual arrangements between AI system owners and end-users can provide benefits of clarity and precision for the relevant parties in respect of their respective expectations, responsibilities and circumstances under which infringement liability will arise. • A copyright organisation comments that the effectiveness of contractual terms between AI system owners and end-users depends on the availability of input and output licences given by copyright owners to AI system owners in the first place. • A copyright owner and some copyright groups disagree that contractual arrangements can effectively resolve copyright infringement disputes, mainly because such arrangements favour AI system owners only while users do not have much bargaining power. In particular, a copyright group mentions that the indemnity clauses may contain multiple carve-outs, making it necessary to examine which party is ultimately responsible for the infringement. Another copyright group raises several problems in relation to the contractual arrangements between AI system owners and end-users, for example, AI system owners can unilaterally change the agreements	• We note the divergent views on the effectiveness of contractual arrangements between AI system owners and end-users in resolving infringement liability issues associated with AI-generated works. Whilst contractual arrangements may have limitations, they represent a pragmatic solution for defining the respective rights, obligations and potential liabilities of the contracting parties. They are the result of informed and mutually agreed decisions made by the relevant parties after careful consideration of the terms and conditions, and, where possible, further negotiation. • Hong Kong is renowned for its free and open market where contractual flexibility is highly valued. Contractual arrangements are particularly suitable in the context of AI, where each AI platform or tool involves distinct roles, responsibilities, risks and legal implications. We consider that any attempts to standardise contractual terms across different platforms or mandate the simplification of indemnity clauses would fail to account for the unique circumstances of each case and would not effectively serve the interests of the parties involved.

	without users' consent; there is no standardisation of contractual terms across different platforms; and the contractual terms only apply between the contracting parties.	
	<u>Other views</u> • A copyright group warns against "AI laundering" and the unauthorised use of copyright works by offshore AI models.	• Views noted.
	• A copyright organisation submits that the proposed treatment of AI-generated works in the consultation paper does not set limits on the proportion that AI can copy. It suggests that mere copying and use without originality should be considered as infringement caused by the computer, and the person who created and arranged the relevant computer program should be held liable.	• Under the existing CO, copyright in a work is only infringed if a whole or substantial part of the work is taken. The CO has no fixed quantitative measures for determining what constitutes a "substantial part", as this depends on both the "quantity" and "quality" of the material copied. Additionally, whether the act in question constitutes copyright infringement and who should be held liable will have to be determined based on the underlying facts and evidence of each individual case. These general legal principles should not be altered solely because the act involves the use of computers or AI systems. Preserving laws that are general, technology-neutral and adaptable is essential as technology continues to evolve.

	• A copyright owner and a copyright organisation submit that the immaturity of similarity detection tools makes it difficult for copyright owners to locate instances of infringement in AI output.	• We believe that the capabilities of similarity detection tools will continue to improve as technology advances, with new tools emerging in response to the growth of generative AI systems. On the other hand, we notice that some copyright owners employ technical solutions, such as digital watermarking, to protect their copyright works in the digital environment. If an alleged infringing work contains a digital watermark, it can assist in identifying and addressing potential instances of infringement.
I&T organisations / groups 2.2	**Views on existing law** • Most I&T organisations / groups agree that the current CO is adequate and sufficient for addressing infringement associated with AI-generated works. They view that the infringement liability for AI-generated works should be determined based on the underlying facts and applicable law on a case-by-case basis, acknowledging the uniqueness of the circumstances of individual cases. An I&T group views that the legal principles for determining infringement liability for AI-generated works should be no different from that of human-created works, which is less concerned with the particular method or technology used in the creation of the work. Another I&T organisation comments that copyright owners have sufficient remedies against infringers under the existing CO.	• Please refer to Part 2.1 above (titled "**Views on existing law**") for our response.

	• An I&T organisation and an I&T group urge the Government to keep updated on the global trend and industry development as AI technology develops, while cautioning against making hasty legal updates or policy changes.	• We recognise that the issue of AI and copyright remains an area of ongoing international exploration and discussion. We will continue to closely monitor advancements in AI technology, the latest discussion on the topic in the international community and developments in other major jurisdictions to keep abreast of the international trend.
	• An I&T organisation views that the current legal framework is inadequate in handling copyright infringement caused by AI-generated works as it does not fully consider AI characteristics (for example, the unpredictable behaviour and autonomous decision-making of AI systems and the involvement of multiple players in the AI development and usage process) which may lead to liability disputes.	• As mentioned above, we consider that the existing CO is sufficiently broad, general and technology-neutral to address issues of copyright infringement liability for AI-generated works. In cases where infringement arises from such works, liability would be determined by virtue of the underlying facts and evidence of each case. Relevant factors include the works involved, the AI systems used, the acts in question, the roles and degree of involvement of the parties, the applicable laws, etc. We believe that the unique characteristics of AI will be appropriately considered during the fact-finding process and in the evaluation of evidence when determining liability.
	• An I&T organisation expresses concerns regarding the potential moral rights infringement in AI-generated content. It views that the current inadequacies in addressing the implications of AI on moral rights lead to uncertainty for creators of existing copyright works, AI developers and users.	• The existing statutory provisions on the protection of moral rights under the CO are equally applicable to AI-generated works which involve original LDMA works, as well as films. Determining whether an infringement of moral rights has occurred is a matter of fact and evidence, assessed on a case-by-case basis. Therefore,

		we see no cogent justification to introduce legislative amendments to the existing statutory provisions governing moral rights infringement specifically for AI-generated works.
	• An I&T organisation and a few I&T groups propose clarifying the CO by defining the infringement liability for AI-generated works. They suggest that liability should be allocated to different players (such as AI developers, owners and users) depending on their respective roles and fault. In particular, some suggest that given AI developers' lack of control over AI-generated works, liability should rest solely with the party intending to prompt the AI system to generate infringing output. • An I&T organisation and a few I&T groups suggest including safe harbour provisions in the CO to specifically limit AI developers' liability in circumstances where they have taken reasonable steps to limit or stop copyright infringement when being notified (e.g. notice and take down of infringing content).	• Please refer to Part 2.1 above (titled "**Views on existing law**") for our response on not allocating liability to any specific party. • Having considered the roles of AI developers in devising AI tools that generate output, their partial or full control over alleged infringing AI-generated output (for example, by implementing feasible system measures or safeguards), the non-comparable nature between AI developers and intermediary online service providers under the existing CO, and the proportionality of introducing a safe harbour regime specific to AI developers, while balancing the rights of copyright owners, we find no cogent justification to introduce a specific safe harbour regime to limit AI developers' liability for copyright infringement arising from AI-generated works.

	• Some I&T organisations / groups call for guidance on the copyright implications of using generative AI platforms. One I&T group suggests that such guidance should require AI developers to maintain records of the provenance of AI-generated content and clarify that AI developers should not be held liable for infringing output due to users' prompts that violate the terms and conditions of the AI tool.	• View noted. We plan to provide guidelines on how the existing legal provisions and principles for copyright infringement apply to cases involving AI-generated works.
	<u>Views on contractual arrangements</u> • A few I&T organisations / groups comment that the contractual arrangements between AI system owners and end-users are an effective means to address infringement liability issues arising from AI-generated works. One of them further proposes the introduction of a non-mandatory template contract to streamline negotiations and standardise market practices. • An I&T organisation views contractual arrangements between AI system owners and end-users as a temporary solution to mitigate risks stemming from legal uncertainty. However, it submits that such arrangements have limitations, such as difficulties in forming contract due to the unpredictability and randomness of AI, as well as challenges in addressing contractual breaches and enforcing remedies.	• Please refer to Part 2.1 above (titled "**<u>Views on contractual arrangements</u>**") for our response. • Furthermore, as contractual arrangements between AI system owners and end-users are highly fact-sensitive and subject to the needs and negotiations of the parties involved, there is no universal template that can be uniformly applied to all AI systems. This is evident from the diverse terms and conditions currently available in the market. In view of the above, we do not consider that a non-mandatory template contract could effectively address unique situations or provide clarity to the parties.

IP practitioners' groups / legal organisation / lawyers 2.3	**Views on existing law** • Almost all IP practitioners' groups / legal organisation / lawyers generally agree that the same infringement principles, as they stand, should equally apply to both human-created and AI-generated works, with liability determined based on facts and evidence on a case-by-case basis. In addition, one IP practitioners' group opines that it is premature to amend the CO to apportion liability for infringement. Instead, it suggests that such issues should be decided by the judiciary, having regards to the circumstances of each case.	• Please refer to Part 2.1 above (titled "**Views on existing law**") for our response.
	• An IP practitioners' group, a legal organisation and a lawyer remark that the creation of AI-generated content may or may not constitute copyright infringement as the generation process might not involve an act restricted by copyright or the AI output may not be identical to the training data.	• We agree that the issue of infringement liability is ultimately a question of fact and evidence, and there is no absolute answer as to whether the creation of AI-generated content must or must not constitute copyright infringement. In cases involving AI-generated works, if the content only incorporates an idea or an insubstantial part of a pre-existing copyright work, it would not constitute copyright infringement. This is all along the basic legal principle of copyright infringement, regardless of whether the work concerned is created by human or generated by AI.

	• On the other hand, an IP practitioners' group disagrees that the existing law is broad and general enough for addressing infringement liability issues arising from AI-generated works. It views that issues regarding subsistence and ownership of copyright in AI-generated works may impinge on liability. It advocates for greater certainty regarding copyright infringement based on users' prompts and the use of third-party training data. It further proposes exploring the introduction of a safe harbor regime for AI developers to limit their liability. Under such a regime, AI developers would not be held liable in cases where users' prompts cause AI systems to copy substantial parts of existing copyright works, provided that the AI developers have taken reasonable steps to limit or stop the infringement upon notification.	• Please refer to Part 2.1 above (titled "**Views on existing law**") for our response. To provide more illustrations and guidance, we plan to provide guidelines on how the existing legal provisions and principles for copyright infringement apply to cases involving AI-generated works. • With respect to the suggested introduction of a safe harbour regime for AI developers, please refer to Part 2.2 above (titled "**Views on existing law**") for our response.
	• An IP practitioners' group observes that no country has enacted specific law establishing criminal liability solely for AI-related copyright infringement. Nonetheless, the group suggests that the CO should introduce criminal liability (accompanied with a defence of good faith) for the willful sale or distribution of AI-generated work for trade or business purposes, where the seller or distributor has knowledge that the work is an infringing copy.	• The existing criminal offences under the CO (including sale or distribution of infringing copies of a copyright work) and the relevant defences are equally applicable to AI-generated works. Having considered the coverage of the existing criminal offences, the proportionality of the proposed offence, public interests and international trends, we see no cogent need to introduce a new criminal offence or amend the existing criminal provisions specifically for infringements involving AI-generated works.

	<u>Views on contractual arrangements</u> • An IP practitioners' group agrees that the availability of contractual terms between AI system owners and end-users provides a concrete and practical basis for resolving disputes over civil liability for copyright infringement, so long as there are ongoing efforts to address potential anti-competitive behavior of AI system owners. • Another IP practitioners' group observes that click-wrap, browse-wrap, or shrink-wrap agreements are extensive and often include disclaimers, exclusion or limitation of liability, and indemnity clauses in favour of AI service providers. The enforceability of these agreements depends on notice and incorporation of the relevant terms forming the contract and conscionability of the terms. • On the other hand, an IP practitioners' group disagrees that contractual terms between AI systems owners and end-users offer a concrete and practical basis for resolving disputes as the enforcement of contractual exclusions and indemnities is likely to be difficult and costly.	• Please refer to Part 2.1 above (titled "**<u>Views on contractual arrangements</u>**") for our response.

Others including professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies 2.4	**Views on existing law** • A professional body, some chambers of commerce, an individual and a company support the view that the current law is sufficient for dealing with infringement liability for AI-generated work, and agree that there is no need to modify the CO specifically for AI-generated works. Some of them emphasise the importance of determining liability on a case-by-case basis, and oppose rigid rules assigning liability to specific persons. A chamber of commerce particularly views that the common law practice in Hong Kong will gradually develop guidelines and principles adapting to changing technologies, and provide a more contextual approach to copyright infringement liability arising from AI-generated works. • On the other hand, a non-governmental organisation views that the existing law is insufficient to prevent copyright infringement by generative AI models and to protect end-users from potential liability. In particular, it claims that the lack of transparency of AI systems makes it difficult to determine if an AI-generated output is based on copyright work. It suggests modifying the CO to require generative AI developers in Hong Kong to disclose how they obtain their training data, establish a unit to ensure proper disclosure, and indemnify end-users against copyright infringement if the AI output contains	• Please refer to Part 2.1 above (titled "**Views on existing law**") for our response, including those on not allocating liability to any specific party and transparency. In particular, as liability may vary depending on the specific circumstances of individual cases (see illustrations in paragraph 3.6 of the consultation paper), we do not support amending the CO in a way that could compromise fairness before any fact finding. Specifically, we do not advocate amending the CO to mandate AI developers to indemnify end-users or specify end-users' liability for third-party rights infringement.

	unlicensed material that was not disclosed. • A company suggests clarification of the liability of AI users for third-party rights infringement and adoption of a "reasonable care" standard. This standard would require AI users to take reasonable steps to avoid or minimise the risk of infringement.	
	• A statutory body and a company suggest developing practical guidelines to ensure compliance of the copyright law and help end-users make informed decisions before using AI-generated works.	• View noted. We plan to provide guidelines on how the existing legal provisions and principles for copyright infringement apply to cases involving AI-generated works.
	<u>Views on contractual arrangements</u> • A professional body, some chambers of commerce and a company submit that licensing practices between AI system owners and end-users can effectively resolve infringement disputes, providing a stable institutional environment for market participants. • On the other hand, a non-governmental organisation believes that while contractual terms can be useful for governing the use of AI tools and IP, they are not sufficient alone. The organisation proposes amending the CO to create a base layer of known legal rights and obligations regarding the development and use of AI tools.	• Please refer to Part 2.1 above (titled "**<u>Views on contractual arrangements</u>**") for our response. • Furthermore, regarding the proposed creation of a base layer of rights and obligations for the development and use of AI tools, we consider that the existing provisions in the CO already provide a clear and comprehensive framework of general legal principles for rights and infringement liabilities of copyright works. These provisions are broad and technology-neutral, making them applicable to the AI context. As such, we see no cogent justification to introduce a specific set of rules in this regard.

	• A company views that relying on contractual agreements to assign the legal risk of copyright infringement may not always be the most equitable solution, as it could place an undue burden on the party with weaker bargaining power.	
	<u>Other views</u> • A statutory organisation is concerned that the cross-border nature of copyright infringement in respect of AI might complicate the interpretation of end-users' liability. It considers that close collaboration with international counterparts is indispensable.	• Combating cross-border copyright infringement is not unique to AI or Hong Kong. It has long been a global challenge, even before the emergence of generative AI systems. We will continue to closely monitor international developments in this respect.
	• An individual comments that the comparison of different types of works for similarity is complex and influenced by cultural and local contexts. A tool that aligns with human perception and allows for transparent assessment of similarity can be beneficial. Furthermore, the traceability of generative AI prompts can help infer intention regarding potential infringements.	• Views noted.

3. Possible Introduction of Specific TDM Exception

Responding Organisations / Groups / Individuals	Summary of Views	Administration's Responses
Copyright owners / organisations / groups 3.1	**Majority views** • Nearly all the responding copyright owners / organisations / groups oppose the introduction of the proposed TDM exception, mainly on grounds of the following: *(a) Violation of international obligations* • Some copyright owners / organisations / groups submit that the proposed TDM exception violates international obligations, i.e. the "three-step test" requirement as set out in the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention") and the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights ("WTO TRIPS Agreement"). A few of them view that (a) the exception is too broad in scope as it allows TDM activities for any purposes; (b) it would directly undermine the licensing market for TDM uses, which conflicts with the normal exploitation of works by copyright owners; and (c) the output of an AI model trained in reliance on the proposed TDM exception	• The Administration is fully aware that the proposed TDM exception must, as other existing copyright exceptions provided for in the CO, comply with the "three-step test" requirement under the Berne Convention and the WTO TRIPS Agreement. The "three-step test" requires that any copyright exception should (a) be confined to "special cases"; (b) not conflict with a normal exploitation of the work concerned; and (c) not unreasonably prejudice the legitimate interests of the copyright owner. The "three-step test" has also been incorporated into the CO. • The proposed TDM exception will adhere to the same international standard and be limited to a special case (i.e.

	would compete with the copyright work that has been copied, which undermines the interests of copyright owners.	for a defined and specific purpose) and subject to the primary consideration under section 37(3) of the CO that (a) the act does not conflict with a normal exploitation of the copyright work by the copyright owner; and (b) the act does not unreasonably prejudice the legitimate interests of the copyright owner. To strike a proper balance between the interests of copyright owners and users, we will also propose conditions to the TDM exception, including lawful access to copyright works, rendering TDM activities unauthorised if licensing schemes are available or copyright owners have expressly reserved their rights (i.e. an opt-out option), and copyright users are required to keep and disclose records of the source of copyright works.
	(b) Disruption of licensing market • The majority of copyright owners / organisations / groups submit that the licensing market for TDM activities exists and is emerging, with leading AI companies reaching agreements with different copyright holders (e.g. publishers and music companies). • Some of them opine that licensing is an effective, practical and mutually beneficial arrangement for creators and businesses, including the AI industry. Licensing also ensures that creators are protected and remunerated.	• Copyright protects creators' property rights in their intellectual and creative works, allowing them to receive remuneration. We value the importance of licensing in driving the commercialisation of copyright works and economic growth. We are also aware of the existing and emerging market practices as generative AI develops. As mentioned above, we intend to impose a condition, among others, on the proposed TDM exception to the effect that if a licensing scheme is available for conducting the act permitted under the proposed TDM exception, the proposed TDM exception

		will not be applicable. This condition makes reference to the existing copyright exceptions in the CO which contain similar condition and serves to respect the available licensing schemes, without disrupting the licensing market.
	(c) Potential harm to creative and AI industries • Some copyright owners / organisations / groups submit that the proposed TDM exception could disrupt the creative ecosystem and reduce incentives for creators to create and for copyright owners to invest in high-quality content. Ultimately, it may affect the development of AI due to the decrease in new training data for AI systems.	• We believe that the proposed TDM exception, having regard to the interests between copyright owners and copyright users (including AI developers), can foster an ecosystem where creative, innovation and research & development ("R&D") industries thrive with synergy effect. For example, AI tools may facilitate human creation and research, while the creation and research findings may support the training of AI systems for further advancement. • By imposing appropriate conditions on the proposed TDM exception, including lawful access, subject to licensing schemes or opt-out and requiring copyright users to keep and disclose records of the source of copyright works, we consider that the proposed TDM exception would strike an appropriate balance between the interests of copyright owners and users.

	(d) Scope of the proposed TDM exception • About half of the opposing copyright owners / organisations / groups suggest limiting the scope of and/or imposing restrictive conditions on the proposed TDM exception, should the exception be introduced. • Some copyright owners / organisations / groups suggest limiting the scope of the proposed TDM exception to non-commercial purposes or non-commercial research purposes only. A few copyright groups suggest making a differentiation between commercial and non-commercial purposes (i.e. adopting the EU approach).	• Having considered the technological advancement, international trend, current market usages, the Government's policy objectives (particularly in fostering AI development) and the overall benefits envisaged, we consider that introducing a TDM exception covering both commercial and non-commercial purposes is an appropriate and fit-for-purpose approach. • We also recognise that the differentiation between commercial and non-commercial uses has become increasingly blurred in practice. Many TDM activities nowadays include some sort of commercial endeavours, such as business analytics and privately funded R&D projects. • Furthermore, the proposed inclusive approach aligns with the approaches taken by other overseas jurisdictions. For instance, Japan and Singapore already provide a broad TDM exception for both commercial and non-commercial uses. Similarly, the UK recently proposed a similar TDM exception covering commercial and non-commercial uses for public consultation in December 2024. • In proposing a broad TDM exception, we will ensure a proper balance of interests between copyright owners

		and users. To achieve this, appropriate conditions will be imposed on the proposed TDM exception.
	(e) Conditions of the proposed TDM exception • Some copyright owners / organisations / groups suggest imposing conditions on the proposed TDM exception, including but not limited to lawful access to copyright works, non-availability of the exception if licensing schemes are available, opt-out option for copyright owners (see discussion below), record-keeping of works used and disclosure to copyright owners, sufficient acknowledgement / proper attribution; any copies made pursuant to the TDM exception must be dealt with solely for the purpose of TDM activities and retained only for as long as necessary for the TDM activities concerned; and restriction of further communication / distribution / dealing of copies, etc.	• We propose the following conditions for the proposed TDM exception: (a) lawful access to copyright works; (b) an infringing copy must not be used; (c) copyright users are required to keep and disclose records of the source of copyright works; (d) the exception is not applicable if relevant licensing schemes are available; and (e) rendering TDM activities unauthorised if copyright owners have expressly reserved their rights (i.e. an opt-out option). • We consider that the proposed conditions are proportionate and justifiable in balancing the interests of copyright owners and users so that users are allowed to use copyright works by virtue of the proposed TDM exception without infringing copyright, while copyright owners can maintain certain control over their works. • In fact, most, if not all, of the proposed conditions are also present in other jurisdictions' TDM exceptions. For example, (a) the lawful access condition is found in the TDM exceptions of the UK (both existing and

		proposed), Singapore and the EU; (b) the opt-out option is available in one of the TDM exceptions in the EU and the UK's proposed TDM exception. • The licensing scheme condition and the requirement for copyright users to keep and disclose records of the source of copyright works are based on references to the existing copyright exceptions in the CO and the relevant provision in the EU AI Act respectively.
	(f) Opt-out option • In relation to the opt-out option, a few copyright owners / organisations / groups opine that it would impose burden on copyright owners (particularly on small businesses) to take positive step to safeguard their rights and question its effectiveness. • Instead, a handful of copyright owners / organisations / groups suggest that an opt-in mechanism should be adopted to better safeguard the interests of copyright owners.	• In proposing the opt-out option, we aim at an appropriate rights reservation that can be made by copyright owners with ease and respected by copyright users in a fairly accessible manner. • A copyright exception should permit certain reasonable use of copyright works without the need to obtain licence / consent from the relevant copyright owners. The suggested opt-in mechanism, which requires copyright owners to expressly permit the use of his or her works, is not compatible with this concept. Nevertheless, we consider that the proposed conditions to the TDM exception will be able to achieve a proper balance of interests between copyright owners and users.

	<u>Other views</u> • A copyright owner supports introducing a TDM exception (accompanied with conditions concerning sensitive data, government data, etc.) to foster AI technology development and artistic creation. It is further submitted that copyright licensing is not commonly available for TDM activities.	• If the use of sensitive data or government data involves the copying of copyright works, it will be governed by the CO and thus may be covered by the proposed TDM exception, if applicable. On the other hand, if the use of sensitive data or government data does not involve any use of copyright works, the CO would not be an appropriate avenue to regulate such data.
	• A copyright organisation / group does not oppose a TDM exception provided that it is subject to the "three-step test", limited to TDM activities only, with an opt-out option available, and AI outputs that infringe the right of adaptation are excluded. It submits that further collaboration between copyright owners and AI developers is needed for promoting transparency and accountability. It also emphasises the importance of protecting the moral rights of creators.	• Please refer to the above item titled "*(a) Violation of international obligations*" for our responses on compliance with the "three-step test", and the proposed conditions for the TDM exception such as the opt-out option, licensing scheme condition, the requirement for copyright users to keep and disclose records of the source of copyright works, etc. • Since the proposed TDM exception does not exempt the infringement of the right of adaptation, any AI-generated output that infringe this right would constitute copyright infringement under the CO, unless the user obtains a licence from the copyright owner or the act in question falls within other applicable copyright exceptions under the CO.

		• Since the proposed TDM exception concerns exception to copyright and rights in performances only, it does not affect the moral rights of authors and directors protected under the CO.
	• A copyright owner requests clarification on whether machine learning should strictly require licensing.	• Under the existing CO, if the process of machine learning involves the use of other's copyright work and constitutes an act restricted by copyright (e.g. copying for extraction, collection, re-utilisation, digitalisation, formatting, storage, etc.) in relation to the whole or a substantial part of such work, it would constitute copyright infringement unless the user obtains a licence from the relevant copyright owner or the act in question falls within any of the copyright exceptions under the CO. • If the proposed TDM exception is introduced, in cases where the process of machine learning falls within the scope of the TDM exception and all conditions therein are complied with, it will not constitute copyright infringement.

I&T organisations / groups 3.2	**Majority views** • Almost all the responding I&T organisations / groups support the introduction of a TDM exception. *(a) Scope of the proposed TDM exception* • Most of the I&T organisations / groups prefer a broad and flexible TDM exception that includes both commercial and non-commercial uses. In particular, a few I&T groups suggest following the broad approaches taken in jurisdictions like Singapore and Japan. They generally believe that a broad TDM exception can (i) provide legal clarity and protection for AI developers and researchers to access and utilise diverse data sources needed; (ii) reduce administrative burden and transaction costs in obtaining licenses for using copyright materials in training process; and (iii) facilitate AI development and foster innovation and investment, thus driving economic growth. • However, two I&T organisations suggest restricting the proposed TDM exception for the purposes of non-commercial scientific research only.	• We share the majority views. Please refer to Part 3.1 above (titled "*(d) Scope of the proposed TDM exception*" and "*(e) Conditions of the proposed TDM exception*") for our specific responses on the proposed scope and conditions of the proposed TDM exception.

	(b) *Conditions of the proposed TDM exception* • A few I&T groups view that the use of copyright works for TDM activities does not involve the enjoyment of the author's expression in the copyright works, and thus no condition should be imposed on the TDM exception. • On the other hand, a few I&T organisations propose to impose the condition of lawful access to copyright works, while two organisations further suggest conditions to balance the interests of copyright owners, for example, secured data storage, limited retention period, acknowledgement of source or attribution of copyright owners, and/or stricter conditions for commercial uses, etc.	
	(c) Opt-out option • A few I&T organisations / groups support imposing an opt-out mechanism on the proposed TDM exception to protect the rights of copyright owners while enabling TDM activities. • However, a few other I&T organisations / groups oppose compulsory opt-out or licensing conditions. They view that such conditions would undermine the purpose of a TDM exception, as allowing copyright owners to reserve their rights through opt-out or licensing schemes would	• When introducing the proposed TDM exception, we will ensure that a proper balance of interests between copyright owners and users is struck, and the exception is compatible with the "three-step test" as required by the Berne Convention and WTO TRIPS Agreement. • We consider that the provision of an opt-out option is critical to balance the interests of copyright owners and users so that users are allowed to use copyright works by virtue of the proposed TDM exception without infringing

	block the access to valuable data sources and fragment comprehensive datasets needed for high-performing AI models, leading to suboptimal model performance, bias propagation and missed opportunities for breakthrough discoveries and innovations. An I&T organisation further submits that opt-out is impractical as it is very difficult for users to confirm whether the copyright owners have opted out for individual works, especially for small and medium-sized enterprises and startups. If an opt-out option is to be provided in the proposed TDM exception, the above respondents suggest a clear and standardised machine-readable opt-out so as to minimise administrative burdens on AI developers, while providing adequate protection to copyright owners. • A few I&T organisations prefer voluntary industry measures for copyright owners to opt out.	copyright, while copyright owners can maintain certain control over their works. • Our proposal for the opt-out option aims to establish a straightforward and accessible mechanism for copyright owners to reserve their rights, while maintaining the flexibility in implementation as the relevant technologies develop. In particular for copyright works made publicly available online, the opt-out is proposed to be made by machine-readable means.
	<u>Other views</u> • An I&T group views that it might be proper to contemplate legislation to address copyright-related issues concerning generative AI only when the courts have made decisions on relevant disputes.	• Having considered the majority views we have received, the technological and international developments in this regard as well as the assessment of the circumstances, we consider that it would be an appropriate time to introduce the proposed TDM exception to the CO.

	• A few I&T organisations submit that licensing of copyright works for TDM activities is less prevalent than expected. Some of the licences recently announced may go beyond TDM activities.	• Views noted.
	• An I&T organisation views that the proposed TDM exception does not violate international obligations, and can meet the requirements of the "three-step test" under the WTO TRIPS Agreement.	• Please refer to Part 3.1 above (titled "*(a) Violation of international* obligations") for our response on compliance with the "three-step test".
	• An I&T group notes that the Singapore government launched a consultation on, among others, whether it should prescribe an exception for computational data analysis to the prohibition on circumventing technological measures that control access to copyright works or protected performance.	• We note that upon consideration of the views it received, the Singapore government decided not to introduce a new prescribed exception to allow circumvention of access control measures for computational data analysis, on grounds that the access control measures are necessary to support the lawful access safeguard in its copyright exception for computational data analysis. • At present, we have no plan to introduce an exception to allow circumvention of effective technological measures for the purposes of TDM under Part IV of the CO. This aligns with our objective of balancing interests by imposing a lawful access condition on the proposed TDM exception so as to ensure that copyright owners can maintain control over their copyright works, for example, by means of effective technological measures to restrict access.

IP practitioners' groups / legal organisation / lawyers 3.3	• All the responding IP practitioners' groups / legal organisation / lawyers agree with introducing a TDM exception, except one IP practitioners' group which expresses no comments thereon. *(a) Scope of the proposed TDM exception* • Most of the IP practitioners' groups / legal organisation / lawyers support a broad TDM exception which covers both commercial and non-commercial TDM activities to encourage development of and investment in AI technology in Hong Kong. An IP practitioners' group highlights that the distinction between commercial and non-commercial uses is blurred, particularly in the Internet world. • On the other hand, an IP practitioners' group suggests restricting the proposed TDM exception for the purposes of non-commercial research and educational activities, while noting that defining what constitutes non-commercial may be challenging. • An IP practitioners' group finds it questionable as to whether the development of generative AI would fall under the proposed exception as TDM performed for generative AI or machine learning would arguably not be for the purpose of analysis or improving performance of the AI system but to generate new works based on data	• We share most of the views. Please refer to Part 3.1 above (titled "*(d) Scope of the proposed TDM exception*") for our specific response on the proposed scope of the proposed TDM exception covering commercial and non-commercial uses. • We will consider this view when defining the scope of the proposed TDM exception.

	scraped from the Internet. TDM exception should expressly recognise that it does not preclude purposes where the mined data is used in the training for the generation of new works. • An IP practitioners' group proposes that the TDM exception should disallow the texting and mining of personal data, particularly biometric data, in the absence of express consent of the individual whose image, voice or other data is recognisable, as a quick deterrent to the misuse of deepfakes.	• If the use of personal data, particularly biometric data, involves the copying of copyright works, it will be governed by the CO and thus covered by the proposed TDM exception. On the other hand, if the personal data does not involve any use of copyright works, we view that the CO would not be an appropriate avenue to regulate such data. • Any use of personal data should be subject to the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"), including the six Data Protection Principles which cover the entire life cycle of the handling of personal data, from collection, retention, and use to destruction. For example, using personal data (including a photograph of a living individual), regardless of whether the personal data is obtained from the public domain, for the purpose of creating deepfakes would require the prescribed consent (i.e. consent that is expressly and voluntarily given and has not been withdrawn by the data subject in writing) of the data subject if such use goes beyond the original purpose for which the personal data is collected or a directly related purpose, unless the exemption(s) under Part 8 of the

		PDPO applies / apply.
	(b) Conditions of the proposed TDM exception • A few IP practitioners' groups view that the proposed TDM exception should include a condition that only allows use of legally obtained or freely accessible copyright works. • An IP practitioners' group views that a restriction on further dealing with the copy of a copyright work made under the proposed TDM exception will render the exception ineffective as an AI tool, in generating content, necessarily involve such dealings.	• We intend to include a condition of lawful access to copyright works. • When considering the conditions for the proposed TDM exception, we will ensure that the scope of the permitted act under the exception is essential for conducting the TDM activities. If the act of further dealing does not fall into the prescribed scope of the TDM exception (or other copyright exceptions), copyright users cannot rely on these exceptions to avail themselves of the infringement liabilities.
	(c) Opt-out option • Some IP practitioners' groups / legal organisation / lawyers support an opt-out option for the proposed TDM exception, which provides a balance between innovation and control over copyright. An IP practitioners' group nevertheless notes that there are reservations about the practicality of the opt-out option and some copyright owners advocate for an "opt-in" option. It urges the Government to consider the prevalent international trend when formulating policy.	• Please refer to Parts 3.1 and 3.2 above (titled "*Opt-out option*") for our response on the proposed opt-out condition. We will closely monitor the relevant international trend.

	• On the other hand, a few IP practitioners' groups do not support or have reservations about the opt-out option or otherwise contract-out or technological restrictions that prevent copyright works being used as training data of AI models. In particular, an IP practitioners' group is concerned that these conditions, by negating the TDM exception, would make AI development more costly and limit data sources crucial for AI training, thus affecting the quality of AI models developed in Hong Kong. • Further to the opt-out option, a legal organisation and a lawyer express their willingness to establish a registration system for copyright owners to proactively consent to the use of their works and allow sharing of profits. They also urge a new adjudication system to adjudicate disputes arising from the distribution of profits.	• We welcome industry-led practices that could facilitate the licensing of copyright works by copyright owners. Under the existing CO, disputes relating to a licensing scheme in operation or proposed to be operated or granted by a licensing body can be adjudicated by the Copyright Tribunal. Besides, alternative dispute resolution such as arbitration can be adopted to resolve disputes arising from copyright licences and the distribution of profits thereof.
	<u>Other views</u> • A few IP practitioners' groups note that the Singapore government launched a consultation on, among others, whether it should prescribe an exception for computational data analysis to the prohibition on circumventing technological measures that control access to copyright works or protected performance.	• Please refer to Part 3.2 above (titled "**<u>Other views</u>**") on our response in relation to circumvention of technological measures.

Others including professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies 3.4	**Majority views** • A majority of the responding professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies support the introduction of a TDM exception. • They generally view that the introduction of a TDM exception could provide legal certainty and competitiveness, attract innovative companies, foster research and AI development, and promote Hong Kong as an international innovation and technology centre. • A few respondents suggest that the proposed TDM exception should align with the practices adopted by other jurisdictions (e.g. Singapore) and the international norm for maintaining competitive advantage. *(a) Scope of the proposed TDM exception* • A non-governmental organisation proposes to restrict the scope of the TDM exception to educational, scholarly or non-commercial purposes. It opines that such an exception incentivises the use and development of AI technology for research, teaching and learning, and promote more equitable access to information. A handful of individuals view that the proposed TDM exception should not cover commercial uses.	• We share the majority views and consider that it would be an appropriate time to introduce the proposed TDM exception to the CO. • Please refer to Part 3.1 above (titled "*(d) Scope of the proposed TDM exception*") for our specific response on the proposed scope of covering commercial and non-commercial uses.

	(b) Conditions of the proposed TDM exception • A few professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies agree with imposing conditions on the exception for a proper balance of interests. Proposed conditions are lawful access to copyright works, opt-out option for copyright owners (see discussion below), and/or sufficient acknowledgement. • A respondent views that a restriction on further dealing with the copy of a copyright work made under the proposed TDM exception will render the exception ineffective as an AI tool, in generating content, necessarily involve such dealings.	• Please refer to Part 3.1 above (titled "*(e) Conditions of the proposed TDM exception*") for our specific response on the proposed conditions for the proposed TDM exception. • Please refer to Part 3.3 above (titled "*(b) Conditions of the proposed TDM exception*") for our response on the further dealing restriction.
	(c) Opt-out option • A few professional body / chamber of commerce / statutory organisation / company agree with the proposed TDM exception with an opt-out option provided to copyright owners, while a chamber of commerce and a statutory organisation respectively note the challenges in executing the opt-out and the potential hindrances imposed on innovation. • On the other hand, a respondent views that an overly restricted TDM exception, in particular the EU's opt-out	• Please refer to Parts 3.1 and 3.2 above (titled "*Opt-out option*") for our response on the proposed opt-out condition.

	option, is not conducive to the development of the AI industry. • If an opt-out option is to be provided, a chamber of commerce suggests that consideration should be given as to how the opt-out can be expressed in a clear and standardised machine-readable manner; an industry body seeks clarification on the extent of rights reservation; and a respondent suggests that a valid opt-out has to be notified to and confirmed by AI developers.	
	<u>Other views</u> • A chamber of commerce suggests approaching the introduction of the proposed TDM exception in a cautious manner due to the existing conflicts between copyright owners and AI developers, although the exception will undoubtedly boost the advancement of AI language models. A guideline for industry best practices is suggested.	• Having considered the majority views we have received, the technological and international development in this regard as well as the overall assessment of the circumstances, we consider that it would be an appropriate time to introduce the proposed TDM exception to the CO.
	• A non-governmental organisation submits that whilst the licensing for TDM activities is becoming more common in the academia, scholarly publication and content database markets, it is still far from universal. A respondent also submits that licensing of copyright works for AI training is currently uncommon and impractical in reality.	• Views noted.

	• A respondent notes that the Singapore government launched a consultation on, among others, whether it should prescribe an exception for computational data analysis to the prohibition on circumventing technological measures that control access to copyright works or protected performance.	• Please refer to Part 3.2 above (titled "**Other views**") on our response in relation to circumvention of technological measures.
	• An industry body is concerned that TDM activities may cause additional Domain Name System traffic and drive up costs borne by the e-commerce business / platform operators, and suggests imposing additional requirements on responsible and ethical TDM practices to reduce the impact.	• We will monitor the implementation situation after the proposed TDM exception is introduced.

4. Other Issues Relating to Generative AI – Deepfakes and Transparency of AI Systems

4.1 Deepfakes		
Responding Organisations / Groups / Individuals	**Summary of Views**	**Administration's Responses**
Copyright owners / organisations / groups 4.1.1	• A copyright owner and a copyright group consider that content created using deepfake technology, particularly through the unauthorised use of a person's indicia of identity, unfairly competes with and economically harms artists, songwriters and music companies. Such content also damages their reputation and causes confusion among the public. • Some copyright owners / organisations / groups suggest specific protection measures such as: (a) enacting specific laws on personality right; (b) establishing a fast-track relief mechanism such as notice and takedown system; (c) imposing heavy punishment on infringement of personality right; and/or (d) adopting a comprehensive approach that combines enforcement, rulemaking, and public advocacy.	• Whilst Hong Kong does not have a freestanding right of personality or publicity, existing legal recourses and remedies are available to tackle the unauthorised use or imitation of a person's indicia of identity by means of deepfake technology in appropriate cases. These include, subject to the underlying circumstances and evidence of each case, existing IP laws (including copyright law, trade mark law and the common law tort of passing off) as well as non-IP laws (including defamation law, personal data protection law and criminal law). • As the issue of deepfake traverses different legal domains which are not exclusive to copyright or other IP rights, we do not consider it appropriate to address the issue solely from the copyright perspective. The question of introducing a personality right, which is not categorised as an IP right, requires careful and comprehensive consideration by all relevant parties, taking into account the local circumstances. The Government will continue

		to closely monitor policies formulated by other major jurisdictions and any emerging international standards on this front.
	• A copyright owner views that the existing laws can address deepfake cases that involve fraud, but proposes amending the criminal law to address sexual harassment and revenge porn by means of deepfake technology.	• Most existing laws designed to prevent crimes in the physical world are, in principle, also applicable to the cyber world, meaning that actions in the digital realm must also comply with the law. Depending on the specific facts and evidence of each case, various legal recourses and remedies are available to address the misuse of a person's indicia of identity through deepfake technology. These include defamation law, personal data protection law and criminal law. • In particular, the Crimes Ordinance (Cap. 200) was amended in 2021 to introduce offences related to the publication or threatened publication of intimate images without consent. These offences are also applicable to images altered by AI technology to depict an intimate body part or an intimate act of an individual.

	• A copyright group considers that while the existing legal frameworks may be suitably equipped to tackle infringements by means of deepfake technology, prominent and clear labelling of deepfake content is crucial in ensuring its recognisability by businesses and consumers.	• It is observed that mandatory requirements for labelling AI-generated output (including deepfake content) in other major jurisdictions, such as Mainland China and the EU, are incorporated into a comprehensive set of AI regulations that extends beyond copyright and IP laws. We do not consider it appropriate to address the issue solely from the copyright perspective.
	• A copyright group suggests providing clarification that the copyright exceptions in the CO, such as the exception for the purpose of parody, cannot be applied to justify the creation and use of unauthorised deepfake content or other fraudulent representations of real individuals by means of AI technology.	• The CO and the copyright exceptions therein would come into play when the deepfake content or other fraudulent representations of a real individual involves the use of others' copyright works. However, we reiterate that a person's indicia of identity *per se* is not subject to copyright protection under the CO. Thus, it would not be appropriate to rely on the CO (e.g. the copyright exceptions) as a legal means to prohibit the misuse of a person's indicia of identity in the creation and use of deepfake content. • In cases where the creation and use of deepfake content do not involve the use of copyright works, any misuse of a person's indicia of identity can, where appropriate, be tackled by other existing legal recourses and remedies, such as the common law tort of passing-off, defamation law, personal data protection law and criminal law.

I&T organisations / groups 4.1.2	• An I&T organisation considers that the issues of deepfakes and transparency of AI systems go beyond the scope of copyright law. They emphasise the need for a coordinated effort involving other government departments and their regulatory frameworks, and urge the Commerce and Economic Development Bureau ("CEDB") to take the lead in addressing these matters.	• As mentioned above, the issues of deepfakes and transparency of AI systems traverse different legal domains including privacy and personal data protection issues, misinformation and cybersecurity threats. Consequently, various government bureaux, departments and related statutory bodies are involved in addressing these matters. CEDB will coordinate with other government bureaux, departments and related statutory bodies to take forward measures related to copyright and IP protection in alignment with the overarching policy objective of the Government.
	• An I&T organisation sees the critical importance of addressing the nexus of issues surrounding deepfakes and transparency and making policy recommendations to combat misuse of deepfakes such as (a) protecting content authenticity; (b) detecting and responding to abusive deepfakes; and (c) promoting public awareness and education. • An I&T organisation and an I&T group recommend enacting specific legislation to guard against the misuse of deepfake content, and to strengthen the protection on data security and privacy. Another I&T group suggests the Government continue discussion with different stakeholders on the issues of deepfakes and transparency of AI systems, and provide further guidance to clarify the	• Please refer to Part 4.1.1 above for our response. • As for the practical guidance on the use of AI in relation to the law concerning privacy and personal data protection as well as the ethical use of AI, please refer to the guidance notes issued by the Office of the Privacy Commissioner for Personal Data ("PCPD") (see footnote 3 of the consultation paper) and the Ethical AI Framework issued by the Digital Policy Office ("DPO") of the Government (see paragraph 5.20 of the consultation paper). Different sectors of the industry may adopt suitable principles and measures having regard to their individual circumstances.

	laws.	
IP practitioners' groups / legal organisation / lawyers 4.1.3	• An IP practitioners' group considers that the existing laws are not particularly effective to combat the issue of deepfakes. It proposes that the TDM exception should disallow the texting and mining of personal data, particularly biometric data, in the absence of express consent of the individual whose image, voice or other data is recognisable, as a quick deterrent to the misuse of deepfakes.	• Please see our response in Part 3 where the introduction of the proposed TDM exception is discussed.
Others including professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies 4.1.4	• A company proposes developing legislation that addresses the creation and distribution of deepfake content without consent. • An individual considers that deepfake technology inherently carries a very high risk of being misused for fraud or other deceptive purposes. The individual proposes implementing strict regulations such as (a) duty to inform the person being imitated using deepfake technology; (b) non-commercial use of deepfake content unless with consent from the person being imitated; and (c) the person being imitated must be properly remunerated.	• Please refer to Part 4.1.1 above for our response.

	• A company suggests implementing stringent measures in the regulatory framework to identify and mitigate the misuse of AI in creating deceptive or harmful content.	
	• A company proposes promoting the development and adoption of detection technologies and increasing public awareness of the risks and implications associated with deepfakes.	• We note that the Police have been working on various fronts to educate the public about the general concepts of AI as well as the fraudsters' latest modus operandi, so as to prevent individuals from falling victim to scams. The Police hold press conferences from time to time to explain common fraud tactics, and demonstrate how fraudsters use deepfake technology in scams. Additionally, through their Facebook page and the CyberDefender website, the Police disseminate information on the latest crime situation and anti-deception advice related to deepfake technology. • Furthermore, we note that the PCPD has launched a series of anti-fraud publicity activities and videos, which remind the public of the importance of protecting personal data privacy.

4.2 Transparency of AI systems		
Responding Organisations / Groups / Individuals	**Summary of Views**	**Administration's Responses**
Copyright owners / organisations / groups 4.2.1	• Some copyright owners / organisations / groups stress the importance of imposing transparency obligations on AI developers and/or deployers. A few of them view that transparency requirements can help foster responsible and ethical development of trustworthy AI systems, promote accountability, build public trust in AI technologies, etc. Suggested measures include (a) maintaining detailed records of training data and proof of authorisation; (b) making those records available to rights-holders and users; (c) disclosing AI capabilities and limitations to end-users; and (d) attribution or labelling of AI-generated output. • On the other hand, a copyright group considers disclosure of use of AI in content creation should only be required when absolutely necessary as it can impair consumer experience.	• The issue relating to the overall transparency of AI systems traverses multiple domains. It is observed that in other major jurisdictions including Mainland China and the EU, transparency obligations such as labelling requirement and/or disclosure of record of training content (not limited to copyright works) are incorporated into a comprehensive set of regulations that extends beyond copyright and IP laws. We do not consider it appropriate to address the issue solely from the copyright perspective. • We notice that in practice, the market has been playing a key role in enhancing the transparency of AI, e.g. there are tools specifically aimed at detecting AI-generated content; AI developers have integrated digital watermarks into their AI-generated images, etc. These industry initiatives will certainly complement regulatory efforts, providing practical solutions to further enhance transparency in AI applications. • The Government will continue to closely monitor policies formulated by other major jurisdictions and any

		emerging international standards. This will help us formulate appropriate and feasible follow-up actions that can suit local circumstances and sustain a robust AI ecosystem in Hong Kong.
I&T organisations / groups 4.2.2	• An I&T organisation and an I&T group propose requiring AI developers to maintain records of the training data for disclosure. On the other hand, an I&T organisation considers that the training data used in AI training are valuable trade secrets, and submits that disclosure of training data does not provide practical benefits for resolving copyright disputes but risks leakage of trade secrets. Therefore, it views that careful consideration should be given before imposing any transparency obligations. • An I&T organisation considers that a compulsory labelling requirement should be imposed on AI-generated output. It also considers that transparency is related to the issue of deepfakes and proposes measures such as (a) making the deepfake technology transparent to the public; (b) informing users of potential risks and privacy issues; (c) establishing guidelines and policies to define the scope and rules of use of deepfakes; and (d) adopting content verification and watermarking technologies to authenticate digital content.	• Please refer to Part 4.2.1 above for our response.

	• An I&T organisation proposes formulating comprehensive guidelines that encompass data governance, security, and copyright protection for AI developers and analysts, and recommends enhancing copyright traceability through watermarking.	• In addition to the guidance notes issued by the PCPD (see footnote 3 of the consultation paper) and the Ethical AI Framework issued by the DPO of the Government (see paragraph 5.20 of the consultation paper), the Government has commissioned a local generative AI research centre to examine and suggest appropriate rules and guidelines on the accuracy, transparency, and information security of AI technology. Based on the study results of the research centre, the Government will explore how best to promote the development and application of AI-related technology.
	• An I&T organisation highlights the need to address the transparency issue. It has taken actions such as regularly publishing transparency notice to provide detailed information about AI systems' capabilities, limitations and intended uses to enable responsible integration and use of AI systems.	• We welcome any proactive measures taken by the market players, which help build trust with users and demonstrate a responsible commitment to foster a more transparent digital environment. Such industry initiatives will certainly complement regulatory efforts, providing practical solutions to further enhance transparency in AI applications.
IP practitioners' groups / legal organisation / lawyers 4.2.3	• A legal organisation and a lawyer suggest taking reference from Mainland China's Interim Measures for the Administration of Generative Artificial Intelligence Services to establish a thorough legal framework to promote transparency in generative AI systems and prevent the promotion and dissemination of harmful AI-generated content.	• Please refer to Part 4.2.1 above for our response.

	• An IP practitioners' group recommends closely monitoring the development of a guidance for content authentication and watermarking to label AI-generated content in the US.	
Others including professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies 4.2.4	• A statutory organisation recommends incorporating requirements on transparency of source of training data and labelling of deepfakes comparable to those in the EU AI Act into the CO, applying mandatory watermarking to AI-generated content, and developing a reliable and robust tool to help consumers identify AI-generated content. • A company proposes introducing mandatory transparency requirements for AI developers to ensure that individuals understand how their data is processed, and recommends establishing accountability mechanisms, e.g. independent oversight bodies to help compliance with privacy standards.	• Please refer to Part 4.2.1 above for our response.

	• A professional body and an individual consider that AI-generated content should be distinguished from human-created content by labelling or including a declaration (in the case of academic publications). The professional body further suggests that databases and references used in AI processes should be cited to distinguish AI-generated content and human-AI collaborative content. • A chamber of commerce suggests formulating guidelines to encourage industry best practices to promote transparency in the use of copyright works in AI training, encompassing aspects such as curation and preprocessing of datasets and prevention of use of pirated content. These guidelines should also define the scope of data that AI system developers and operators should collect and maintain.	

5. Other Issues

Responding Organisations / Groups / Individuals	Summary of Views	Administration's Responses
Copyright owners / organisations / groups 5.1	• Two copyright organisations / copyright groups consider it important to promote education on the ethical development and deployment of AI, and public awareness of copyright.	• The Government fully recognises the importance of education in promoting the ethical development and deployment of AI as well as public awareness of copyright, and has made continuous efforts in this regard. For example, DPO has formulated the Ethical AI Framework to provide a set of practical guidance to help identify and manage potential risks and ethical issues such as privacy, data security and management when government bureaux and departments adopt AI-related technologies (see paragraph 5.20 of the consultation paper). The Intellectual Property Department has been conducting IP training and educational programmes to raise public awareness, including on matters related to copyright. The PCPD has also published guidance materials on the development, procurement and use of AI from the perspective of personal data privacy (see footnote 3 of the consultation paper).

	• A copyright organisation and a copyright owner consider that before formulating pro-innovation legislative proposals, it is crucial to improve existing copyright protection mechanism to prevent unauthorised access to data by introducing into the CO: (a) specific provisions similar to those under the Copyright Act in Singapore to impose liabilities on commercial dealings with illicit streaming devices ("ISDs"), and (b) a copyright-specific site-blocking mechanism which allows administrative bodies to block access to piracy websites.	*(a) ISDs* • The CO already contains a number of provisions to deal with online copyright infringement activities, which can be applied to combat ISDs under suitable circumstances. In addition, the Copyright (Amendment) Ordinance 2022 ("Amendment Ordinance") (effective 1 May 2023) has introduced a new communication right for copyright owners and elaborated on the meaning of "authorisation" of copyright infringement in the CO. Since the implementation of the Amendment Ordinance, the Customs and Excise Department has conducted multiple enforcement operations to combat infringement activities involving unauthorised communication of copyright works to the public, among which some are specifically related to ISDs. • Furthermore, it appears that most overseas jurisdictions (except Singapore and Malaysia) do not have specific provisions relating to ISDs in their copyright legislation. • The Government will continue to monitor the effectiveness of the current provisions in the CO and assess whether further legislative amendments are necessary.

		(b) Copyright-specific site-blocking mechanism • As to the copyright-specific site-blocking mechanism, the existing relief under the High Court Ordinance (Cap. 4) already provides copyright owners with a tool to seek injunctions against online copyright infringement. Considering this, along with the potential impact on freedom of access to information, we consider it not necessary to introduce a judicial site-blocking mechanism specifically for copyright infringements. • It is important to note that copyright is a private property right. Unless a criminal offence is involved, civil legal action should be undertaken by the copyright owners to protect their rights. • The proposal of administrative site-blocking mechanism contradicts the general principle that issues of infringement and relief should be decided by the courts rather than by administrative bodies. The courts play an impartial and independent role, ensuring that all parties' arguments are heard, all evidence is evaluated, and rights of all parties are balanced before making a fair decision. Since the relevant decisions relate to freedom to seek, receive and impart information and may have far-reaching

		implications, we consider that the courts are the most appropriate forum for resolving these matters. • In view of the above reasons, we consider it inappropriate to introduce an administrative site-blocking mechanism.
	• A copyright owner proposes extending the copyright term for human-created works to 70 years to align with the practice of many jurisdictions.	• The current review focuses on the copyright issues relating to AI. After completing this review and its associated follow-up work, we will consider other copyright issues of concern to stakeholders in subsequent reviews of the local copyright regime. These issues will be considered based on their respective priorities, as well as the evolving international landscape and developments.
I&T organisations / groups 5.2	• An I&T organisation suggests formulating a system for collective management on licensing of copyright works for AI training and improving its technical support and infrastructure.	• We will keep in view the market development and international trend, and consider the issue in subsequent reviews of the local copyright regime.
IP practitioners' groups / legal organisations / lawyers 5.3	• A legal organisation and a few lawyers suggest measures such as introducing AI-specific legislation, building a thorough and effective AI regulatory framework (including an AI risk management mechanism), establishing a new set of AI certification standards, etc. to address the rights protection and the ethical and legal implications of AI.	• The issues of AI traverse multiple legal domains. Various government bureaux, departments and related statutory bodies are devising policies and measures to tackle the diverse challenges associated with AI under their respective purviews. For example, as mentioned above, the PCPD has issued guidance materials on the development,

		procurement and use of AI from the perspective of personal data privacy (see footnote 3 of the consultation paper). Similarly, the DPO has formulated the Ethical AI Framework to provide a set of practical guidance to help identify and manage potential risks and ethical issues such as privacy, data security and management when government bureaux and departments adopt AI-related technologies. The above framework, covering guiding principles, best practices and assessment template, is published online so that different sectors of the industry can adopt suitable principles and measures having regard to their individual circumstances (see paragraph 5.20 of the consultation paper). • The Government will continue to closely monitor the development of society and the relevant policies, regulations and initiatives formulated by other jurisdictions, as well as any emerging international standards, and consider appropriate and feasible follow-up actions. This vigilance ensures that the Government's strategic responses and long-term planning for promoting AI development are well-suited to local circumstances, fostering and sustaining a robust and thriving AI ecosystem.

	• An IP practitioners' group suggests introducing a *sui generis* database right. 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.	• The current review focuses on the copyright issues relating to AI. After completing this review and its associated follow-up work, we will consider other copyright issues of concern to stakeholders in subsequent reviews of the local copyright regime. These issues will be considered based on their respective priorities, as well as the evolving international landscape and developments. • Please also see our response in Part 3 where the introduction of the proposed TDM exception is discussed.
	• A legal organisation and a lawyer suggest establishing local data training centres and seeking Mainland China's technical assistance to develop just and accurate generative AI models to avoid biased output of AI models, and requesting AI developers to regularly provide AI-related educational services to the public. • An IP practitioners' group points out the possibility of anti-competitive behaviors by dominant AI companies and unfair contracts towards consumers, and suggests the Competition Commission consider amendment of the Competition Ordinance (Cap. 619) to specifically address these issues.	• Views noted. However, these issues fall outside the scope of copyright and IP rights, and will not be dealt with in this consultation exercise.

Others including professional or industry bodies / chambers of commerce / statutory or non-governmental organisations / individuals / companies 5.4	• An individual and a statutory organisation consider it crucial to educate the public on copyright issues, ethical implications and regulations of AI. A company recommends introducing clear guidelines on the ethical use of AI, ensuring compliance with the relevant IP laws.	• Please refer to Part 5.1 above for our response.
	• A statutory organisation finds it unclear whether non-fungible tokens (NFTs) and virtual works are covered by the existing CO, and suggests regularly reviewing the coverage of the CO to keep up with the times and international standards. A professional body considers that the legal framework should be able to accommodate information generated by AI (including no-document format) to ensure proper recognition and protection of the IP involved.	• Works, whether in physical form or electronic form, are protected by copyright as long as they fall within the categories of copyright works defined in the CO. Therefore, the underlying works of NFTs, virtual works or contents generated by AI (including those in electronic formats) may be covered by the CO in suitable circumstances.
	• A chamber of commerce proposes establishing a fund to promote the development of local cultural and creative industry. The Government may provide the initial fund and encourage or request AI developers to contribute to the fund.	• Views noted. However, the issue falls outside the scope of copyright and IP rights, and will not be dealt with in this consultation exercise.