

**Asia Internet Coalition (AIC) Feedback on the Proposed Enhancement of the
Copyright Ordinance Regarding Protection for Artificial Intelligence
Technology Development – Outcomes of Public Consultation and Proposed
Way Forward (“Consultation Conclusion”)**

29 May 2025

To:

Division 3, Commerce and Economic Development Bureau (CEDB)
23rd Floor, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Re: Response to the Proposed Enhancement of the Copyright Ordinance regarding Protection for Artificial Intelligence Technology Development – Outcomes of Public Consultation and Proposed Way Forward (**“Consultation Conclusion”**)

The [Asia Internet Coalition](#) (AIC) is a leading industry association of Internet and technology companies that promotes the understanding and resolution of Internet policy issues in the Asia Pacific region. Our mission is to represent the Internet industry and participate in and promote stakeholder dialogue between the public and private sectors, sharing best practices and ideas on Internet technology and the digital economy.

We appreciate the Government’s commitment to modernizing Hong Kong’s copyright framework to better support innovation, as pledged in the Chief Executive’s 2024 Policy Address. We also welcome the commitment made by the Financial Secretary in his Budget Speech¹ on 26 February 2025 to leverage Hong Kong’s unique strengths under the “One Country, Two Systems” principle and its internationalized environment to develop the city into a global hub for AI exchange and cooperation.

We have previously submitted comments on the Public Consultation on Copyright and Artificial Intelligence (2024) in September 2024, and are appreciative of the opportunity to contribute further insights on key issues raised during the public consultation by

¹ The 2025-26 Budget Speech, Financial Secretary of the Hong Kong Special Administrative Region

providing our feedback on the Consultation Conclusion regarding proposed enhancements to the Copyright Ordinance (Cap. 528). Our recommendations are aimed at ensuring that the Copyright Ordinance continues to evolve in a manner that fosters responsible AI innovation, protects intellectual property rights, and supports Hong Kong's ambitions to be a leading international I&T and IP trading centre.

We have provided feedback on key topics of the Consultation Conclusion, including the flexible and context-sensitive interpretation of the three-step test, and specific conditions proposed for the text and data mining (TDM) exception, to support AI innovation in Hong Kong by avoiding overly restrictive conditions, prioritizing contractual agreements, and promoting proportionate disclosure.

We appreciate your consideration of our comments detailed below, and look forward to the opportunity to continue our engagement in this important policy process. Should you require any clarification or further information, please do not hesitate to contact our Secretariat at Secretariat@aicasia.org.

Sincerely,

Secretariat
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations

1. The Three-Step Test Should be Interpreted Flexibly

AIC acknowledges that the “three-step test” under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO TRIPS) serves as an important safeguard against excessive limitations to copyright protection, however we recommend that it should not be interpreted in an overly restrictive manner that undermines legitimate public interest objectives, such as scientific progress and economic development. As emphasised in the Max Planck Institute Declaration², the test should be viewed as “an indivisible entirety” requiring a comprehensive overall assessment rather than a rigid step-by-step application.

This balanced interpretation better aligns with copyright law's fundamental purpose of incentivising both the creation and dissemination of works. Second, it recognizes that limitations and exceptions are vital policy tools for jurisdictions to address specific cultural, social, and economic development needs. Third, it acknowledges that while market-based compensation is important, this must be balanced against other legitimate interests including fundamental freedoms, competition, and broader social welfare.

In our view, adopting a flexible and context-sensitive interpretation of the three-step test can help ensure that the text and data mining (TDM) exception contributes meaningfully to Hong Kong’s broader policy objectives. These include enhancing competitiveness in the innovation and technology sector, aligning with global developments, and reinforcing Hong Kong’s position as an international hub for AI and IP trading.

2. TDM Exception Should be Broad and Flexible and Not Subject to Overly Restrictive Conditions

AIC advocates for a broad and flexible TDM exception that is not subject to overly restrictive conditions. AI models, particularly foundational large language models, require access to large, diverse datasets to be effectively trained and reach their full potential. Overly restrictive copyright regimes that create barriers to using publicly available data for AI training could negatively impact citizen’s access to AI applications and services which reflect their local culture, including local languages. There is also a potential risk that narrow exceptions or complex

² Max Planck Institute for Innovation and Competition. (2008). [A Balanced Interpretation of the “Three-Step Test” in Copyright Law](#).

compliance requirements could reinforce market imbalances, benefiting large incumbents with the resources to navigate licensing schemes, while disproportionately impacting smaller firms and startups seeking to innovate in Hong Kong's growing AI sector.

A more flexible TDM exception would align with the fundamental goals of copyright protection, which focuses on protecting authors' unique creative expression and preserving their rights rather than restricting access to underlying facts, data, or ideas contained within copyrighted works. It is worth noting that jurisdictions such as Japan and Singapore, who are subject to the TRIPS Agreement and the three-step test, have implemented non-restrictive TDM exceptions under their respective copyright regimes, offering compelling examples of how flexible and well-crafted exceptions can both fulfil international obligations and support innovation, research, and public interest objectives. As a leading jurisdiction aiming to be a hub for innovation and technology, we hope the Hong Kong Government will remain open to shaping a TDM exception that strikes a balance between promoting AI development and safeguarding copyright interests.

We would also like to emphasise a crucial technical point: AI models do not store the actual training data used to create them. As highlighted in a recent discussion paper by The Hamburg Commissioner for Data Protection and Freedom of Information³, during the training process, original data is transformed into highly abstracted mathematical representations called embeddings that capture patterns and relationships between elements but do not retain the specific content from the original training data. The trained model stores only these statistical representations, not the raw training data itself. This technical reality, which is also valid for other types of content, like image, video, and audio, reinforces that using copyrighted works for TDM activities does not involve the enjoyment of the author's expression in the copyrighted works, and therefore, no restrictive conditions should be imposed on the TDM exception.

Regarding the specific conditions proposed for the TDM exception in the Consultation Conclusion, our comments are as follows:

(a) Allocation of Responsibility for Identifying Infringing Content in AI Training

We recognize the importance of upholding copyright protections in the AI development process. However, placing the burden on AI developers to verify the copyright status of each item used in training datasets would be practically

³ Hamburg Commissioner for Data Protection and Freedom of Information. (2023). [Discussion paper: Large language models and personal data](#).

unfeasible and economically inefficient, given the massive scale of data typically involved and the absence of a comprehensive registry of protected works and rights-holders. This approach could create operational challenges, risks disproportionately disadvantaging smaller firms and startups, effectively making AI development the exclusive domain of large tech companies with substantial resources.

A more practical alternative may be to focus on AI developers to ensure lawful access to training data, while empowering rights-holders who are better positioned to recognize their works to monitor and take action against infringement copies in the public domain. This balanced framework could help foster innovation in AI development while maintaining meaningful copyright protections through a more efficient allocation of responsibilities between different stakeholders.

If this condition to TDM exception must be included, we recommend that the legislation specify that AI developers would only be liable for copyright infringement when they have actual knowledge that specific works used in AI training are infringing copies. Such an approach could better balance innovation and rights protection without creating undue compliance burdens.

(b) Disclosure Requirements for Training Data

While transparency in AI development is a key consideration, we recommend that disclosure obligations should be applied proportionately, and designed to support innovation. Mandating detailed disclosure of training data sources could force AI developers to lose valuable trade secrets and protection for confidential business information, including proprietary datasets and licensing arrangements, without serving a compelling public interest.

Moreover, overly detailed disclosure requirements could create security vulnerabilities, such as exposure to data manipulation or poisoning attacks. This disclosure burden would fall particularly heavily on smaller firms and startups, who often have limited resources to comply with extensive disclosure obligations. To avoid unintended consequences and maintain competitiveness with nearby jurisdictions like Japan and Singapore, we recommend that the Government conduct comprehensive consultations with industry stakeholders before implementing any disclosure provisions, ensuring that obligations are clearly scoped and targeted, and do not impose undue burdens on AI developers, while also not benefiting rights-holders.

(c) Licensing Schemes and TDM Exceptions

Making the TDM exception contingent on the existence of licensing schemes may inadvertently restrict access to training data and complicate AI development, creating barriers for AI developers, especially those relying on large and diverse datasets to train models.

Licensing schemes, especially at the scale required for AI model training, are often fragmented and difficult to implement effectively, particularly disadvantaging independent rights-holders and smaller AI developers and startups who may be burdened by high transaction costs and limited access⁴.

We believe it is important to maintain a clear distinction between protected expression and unprotected elements such as facts, ideas, and raw data. A broad licensing requirement risks conflating these distinctions, potentially limiting access to the volume and variety of data needed for robust AI development. This could lead to less effective model performance and increased risk of data bias.

To strengthen Hong Kong's position as a competitive AI hub and ensure access to comprehensive datasets for AI model training by AI developers, we suggest that the Government to consider the range of international practices in this area. For example, nearby jurisdictions such as Japan and Singapore have introduced TDM exceptions that are not contingent on licensing availability, with the aim of facilitating innovation while maintaining core copyright protections. While approaches may vary, examining these models could provide useful insights as Hong Kong develops its own framework.

(d) Opt-Out Mechanism for TDM

Introducing opt-out mechanisms could significantly limit the effectiveness of the TDM exception and present complex implementation challenges for AI developers to build high-performing models. Such an opt-out mechanism could lead to fragmentation of training datasets, as AI developers would have uneven access to available data sources. Attempts to make opt-outs quick and simple could also lead to excessive reservation of content by default, significantly reducing the pool of available training data, and leaving AI developers to patch together incomplete, biased datasets. The resulting limitations would inevitably

⁴ Martens, B. (2024) "[Economic arguments in favour of reducing copyright protection for generative AI inputs and outputs](#)," Working Paper 09/2024, Bruegel

lead to suboptimal model performance, increased bias, and missed opportunities for breakthrough innovations in AI development in Hong Kong.

Beyond the policy concerns, at present there are no standardised, globally accepted technology solutions for implementing opt-outs for TDM activities. Creating new legal rights before establishing clear technical standards for their implementation could exacerbate legal ambiguity around AI and copyright, potentially deterring AI development in Hong Kong.

Given Hong Kong's goal to spearhead its innovative R&D as well as industrial application of AI through the establishment of the Hong Kong AI Research and Development Institute, it might be counterproductive to implement an opt-out regime before fully understanding its practical implications and developing global alignment on harmonised, machine-readable protocols and standards for exercising rights reservations.

(e) Role of Contractual Obligations

Contractual agreements between parties have proven effective in offering business a practical and adaptable mechanism to managing diverse rights, risks, and expectations in fast-evolving sectors like AI. These agreements, typically based on mutual consent, can be tailored to specific commercial contexts, and allow for bespoke solutions that better reflect the nature of each party's operations and risk management needs than prescriptive legislative measures.

As such, introducing rigid legislative requirements that may override or limit these arrangements could unintentionally disrupt well-functioning business models, deter collaboration, or jeopardize the protection of trade secrets. Such measures may also constrain the very flexibility that has enabled innovation and cross-sector partnerships to flourish in Hong Kong's digital economy. Rather than mandating prescriptive conditions through legislation, we believe the policy objective could be better served by supporting a flexible legal environment that encourages voluntary collaboration and contract-based solutions while ensuring adequate safeguards. This approach would help maintain Hong Kong's position as a hub for digital innovation and business-friendly regulation.
