

## Copyright Law Compliance Issues Involved in the Use of AI-Generated Content

The Use of AI-Generated Content sparks innovation yet raises ownership and infringement concerns for businesses



The rapid advancement of Artificial Intelligence (AI) has transformed content creation for Hong Kong businesses, enabling the efficient production of marketing materials, design assets, and analytical reports. However, the existing Copyright Ordinance (Cap. 528) does not expressly address AI-generated content, creating uncertainties regarding ownership and potential infringement liabilities. It is important to properly understand the copyright challenges posed by AI-generated content, their implications, and practical strategies to navigate the evolving legal framework while addressing ethical obligations.

### *Legal Framework*

The Copyright Ordinance establishes the foundation for intellectual property protection in Hong Kong, safeguarding original literary, dramatic, musical, and artistic works. AI-generated content can be classified as “computer-generated works” under Section 11(3), with copyright vesting in the person responsible for the arrangements necessary for the work’s creation, typically the business or individual deploying the AI tool. Such copyright endures for 50 years from the year of creation (Section 17(6)). Unlike human-authored works, computer-generated works do not attract moral rights, such as the right to attribution or protection against derogatory treatment.

The ordinance, however, lacks specific provisions for AI-related issues, particularly Text and Data Mining (TDM), a process integral to AI model training that often involves processing copyrighted datasets. Without a dedicated TDM exception, unauthorised use of copyrighted materials risks infringement. Hong Kong’s fair dealing provisions, which permit limited use for purposes such as research or criticism, are significantly narrower than fair use regimes in jurisdictions like the United States. To address this gap, the Hong Kong government conducted a public consultation from July to September 2024, proposing a TDM exception to be introduced in 2025. This exception, when adopted, will authorise TDM for both commercial and non-commercial purposes, subject to conditions including lawful access to data and opt-out mechanisms for copyright owners.

## *Copyright Ownership*

Determining copyright ownership for AI-generated content is a critical issue for businesses. The Copyright Ordinance designates the person or entity undertaking the necessary arrangements as the copyright owner. For instance, a marketing firm utilising AI to produce promotional materials would typically hold the copyright, provided it facilitated the content's creation. However, the involvement of third-party AI platforms introduces complexities, as their terms of service may assert ownership or confer only limited licences to users. Certain AI platforms, through their terms of service, require users to grant a license to use generated content for purposes such as platform operations or service improvement, which may limit the user's exclusive control over their work. Businesses should carefully review these clauses to ensure alignment with their commercial objectives and secure comprehensive rights for commercial exploitation.

Contractual arrangements with AI service providers are equally vital to prevent disputes. Such agreements should explicitly delineate copyright ownership and liability for potential infringements. For small and medium enterprises (SMEs), clear contractual provisions minimise the risk of costly legal conflicts, ensuring control over commissioned content.

## *Infringement Risks*

Under Hong Kong's Copyright Ordinance, copyright infringement encompasses unauthorized use of protected works, including but not limited to reproducing, adapting, distributing, or publicly displaying literary, artistic, musical, or other creative content. Businesses utilizing AI for training models or generating content risk infringement lawsuits if they employ unlicensed copyrighted materials, such as text, images, audio, or databases. Consequences include civil damages, court-ordered injunctions prohibiting use of infringing content, and, in cases of intentional distribution, criminal liabilities such as fines or imprisonment. For instance, an SME using AI to produce product descriptions or designs that inadvertently reproduce or adapt copyrighted content may face compensation claims and be required to cease its use.

The training of AI models frequently involves datasets that may incorporate copyrighted works, such as texts, images, or audio files. Absent permission or a legal exception, such use may constitute copyright infringement, particularly given the current absence of a TDM exception in Hong Kong. The proposed TDM exception, as detailed in a February 2025 Legislative Council paper, seeks to authorise TDM provided that data is lawfully accessed, no infringing copies are created, records of data sources are maintained, and copyright owners' opt-out rights are respected. The specific terms will depend on the final legislation.

Pending the enactment of this exception, businesses must ensure that training datasets are either licensed or in the public domain to avoid liability. Non-compliance may lead to significant litigation risks, where disputes could precipitate financial penalties and necessitate disclosures to shareholders, potentially undermining market confidence.

## *Implications for Businesses*

The copyright challenges associated with AI-generated content have distinct implications for listed issuers and SMEs. For listed issuers, infringement disputes pose material financial and reputational risks, potentially triggering disclosure obligations and affecting share valuations. In sectors such as advertising and e-commerce, where proprietary content is a key competitive differentiator, the risk of AI-generated outputs inadvertently replicating existing works necessitates rigorous compliance measures to safeguard corporate interests. To mitigate risks, businesses must ensure AI datasets are licensed or in the public domain and comply with requirements under the forthcoming TDM exception.

SMEs, constrained by limited resources, face heightened vulnerabilities to legal complexities. A single infringement claim could impose significant financial burdens, particularly for businesses in creative or digital commerce sectors reliant on AI-generated product descriptions or visuals. Both listed issuers and SMEs require tailored, practical strategies to harness AI's benefits while mitigating legal exposure.

To address copyright risks, businesses should adopt a series of prudent measures. A thorough review of the terms of service of AI platforms is essential to confirm ownership or unrestricted usage rights for generated content. Businesses must also ensure that AI training datasets are sourced from licensed materials or the public domain. Upon enactment of the TDM exception, adherence to its requirements, such as maintaining data records and respecting opt-out provisions, will be imperative.

Contractual agreements with AI service providers should unequivocally assign copyright to the business and clarify liabilities for potential infringements. Businesses should further establish robust processes to scrutinise AI-generated content for similarities to existing works, leveraging technological tools or legal expertise to ensure originality. Ongoing vigilance regarding legislative developments, including the TDM exception and anticipated government guidelines in 2025, will enable businesses to align their practices with the evolving regulatory framework. These measures provide SMEs with cost-effective compliance solutions and reinforce the governance frameworks of listed issuers.

### *International Perspectives*

Global jurisdictions have adopted varied approaches to AI and copyright, offering instructive comparisons for Hong Kong. The United Kingdom attributes copyright for computer-generated works to the arranger, similar to Hong Kong, and provides a TDM exception for research purposes, with proposals to expand its scope. The European Union authorises TDM for research and commercial purposes, subject to an opt-out mechanism, balancing innovation with creators' rights. The United States denies copyright protection to AI-generated works absent human creativity. In China, certain judicial decisions have recognised copyright for AI-generated content, assigning ownership to users or developers.

The World Intellectual Property Organization (WIPO) continues to facilitate global discourse on AI and copyright, potentially influencing Hong Kong's future legislative framework. Businesses with cross-border operations must navigate these divergent regimes to ensure compliance.

### *Future Developments*

Hong Kong is proactively modernising its copyright regime to accommodate AI innovation. The TDM exception will provide legal clarity for AI training activities, aligning Hong Kong with progressive jurisdictions such as the European Union and Singapore. The government also intends to publish guidelines to assist businesses and developers in complying with the new framework, designed to remain adaptable to international developments. The Legislative Council paper reflects robust stakeholder support for the TDM exception, with a majority advocating a broad scope to foster AI advancement. Continued monitoring of global trends, including WIPO's initiatives, will be critical for businesses to anticipate and adapt to prospective reforms.

### *Conclusion*

AI-generated content presents substantial opportunities for Hong Kong businesses, yet it introduces complex copyright challenges. The Copyright Ordinance provides a framework for recognising AI outputs as computer-generated works, but uncertainties surrounding ownership and TDM expose businesses to legal risks. The forthcoming TDM exception and associated guidelines will enhance regulatory clarity, enabling responsible innovation. By diligently reviewing terms, sourcing compliant training data, securing clear contractual arrangements, verifying content originality, and adhering to ethical standards, businesses can mitigate risks while fostering fair competition. Businesses must remain attuned to local and international developments to fully capitalise on AI's potential while upholding their intellectual property obligations.

To discover how we can assist your organization in addressing the copyright uncertainties of AI-generated content and ensuring adherence to Hong Kong's evolving legal framework in this area, please scan the QR code below to explore our customized legal services.



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