Artificial intelligence and copyright – are existing laws sufficient in Hong Kong?

Introduction

With its wide range of applications, it is undeniable that artificial intelligence (AI) opens us enormous business opportunities and transforms business models. AI revolutionises how businesses can be conducted beyond ways that we could have imagined. Whilst AI brings in increased efficiency and productivity, the risks associated with its use cannot be overlooked. One of the most important issues revolving around the use of AI is copyright. This warrants specific attention with the emergence of generative AI.

Generative AI can seem like magic. Image generators such as Stable Diffusion and Midjourney can produce remarkable visuals in different styles. The resulting products are often fascinating, with both quality and speed of creation being elevated to a different level compared to general human performance. Thus, it is not surprising that AI has been well received in workplaces worldwide. According to the OECD AI surveys, four in five workers said that AI had improved their performance at work and three in five said it had increased their enjoyment of work.[[1]](#footnote-1) Workers were also positive about the impact of AI on their physical and mental health, as well as its usefulness in decision making.[[2]](#footnote-2) Not embracing AI in the workplace would be a missed opportunity to boost productivity and efficiency. In Hong Kong, workplaces have seen a significant increase in the use of AI, with 88 per cent of knowledge workers in the city use generative AI tools, higher than the global average of 75 per cent.[[3]](#footnote-3)

Copyright protection plays a crucial role, on the one hand in fostering creativity by ensuring that the efforts of writers, artists, designers, filmmakers, publishers, and other contributors in the creative industries are rewarded, and striking a balance between the rights of copyright owners and the public interest on the other.

AI and Copyright Laws in Hong Kong

Similar to most jurisdictions, copyright is recognised in Hong Kong as a form of property right which protects the way authors express themselves.[[4]](#footnote-4) Copyright owners have the exclusive right to carry out certain acts in respect of the work, most importantly, to copy and exploit (e.g. sell) the work, and to prevent others from copying or exploiting the work without authority.

Under the Copyright Ordinance[[5]](#footnote-5) (CO), copyright protection is afforded to largely two different sets of creations. The first type is original literal, dramatic, musical and artistic works (LDMA works) and the second type is copyright which subsists in sound recordings, films, broadcasts, cable programmes and the typographical arrangement of published editions (non-LDMA works).[[6]](#footnote-6) Traditionally, the authors of copyright works are natural persons. However, with the emergence of generative AI in recent years, a significant shift has occurred. Nowadays, machines and computing systems can generate works such as literature (e.g. poetries, novels), visual arts (e.g. videos and media works), music composition (e.g. songs, orchestral arrangements) and beyond. This development sparks an unprecedented shift in the creative realm, profoundly impacting both the production and consumption of creative works.

Objectives of the paper

The existing provisions of the CO have already provided the backbone for copyright protection of AI-generated works, covering both AI-generated LDMA works and AI-generated non-LDMA works. In particular, the provisions governing computer-generated works in the CO provide long-standing copyright protection for computer-generated LDMA works. However, clarity is lacking as to the extent of protection in the existing regime. Questions arise in relation to the author of AI works as well as the application of moral rights, which are rights long recognised for the integrity of a natural person author. Other issues relate to the appropriateness of a new exemption, especially when the use is of a commercial nature. Litigation revolving around these issues are pending, as can be seen in the courts of the United States[[7]](#footnote-7) and the United Kingdom[[8]](#footnote-8).

The purpose of the paper is to seek for a solution for Hong Kong, having regard to both the rights of copyright owners on the one hand and the need to preserve and foster development in technology. The paper begins with an overview of the copyright regime in Hong Kong, identifying relevant provisions in relation to AI. The second part analyses the sufficiency of the CO, drawing insights to ongoing cases and disputes in the United States and the United Kingdom. A comparative analysis with other jurisdictions (primarily the European Union and the United Kingdom) will be made with the objective of curating a feasible regime for Hong Kong.

1. Lane, M., M. Williams and S. Broecke (2023), “The impact of AI on the workplace: Main findings from the OECD AI surveys of employers and workers”, OECD Social, Employment and Migration Working Papers, No. 288, OECD Publishing, Paris, https://doi.org/10.1787/ea0a0fe1-en. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)
3. See Xinmei Shen, ‘Hong Kong issues first AI data protection guidelines, promises more compliance checks’ 11 June 2024, South China Morning Post https://www.scmp.com/tech/policy/article/3266156/hong-kong-issues-first-ai-data-protection-guidelines-promises-more-compliance-checks. [↑](#footnote-ref-3)
4. Section 2 Copyright Ordinance Cap 528. [↑](#footnote-ref-4)
5. Cap. 528. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. *See Getty Images v. Stability AI; Tremblay v. OpenAI; J.L. v. Alphabet Inc.; Concord Music Group, Inc. v. Anthropic PBC.* [↑](#footnote-ref-7)
8. *Getty Images v. Stability AI*[2023] EWHC 3090. [↑](#footnote-ref-8)