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NEW HONOURS

IP STARS

from ManagingIP

We have been recognized as **Top Tier Law Firm for Trade Mark – Foreign Firms** in the PRC and **Top Tier Law Firm for Copyright & related rights, Patent prosecution, Trade Mark prosecution, Patent disputes and Trade Mark disputes** in Hong Kong SAR in this annual world survey which provides in depth analysis and rankings of over 1,500 IP firms and 5,000 practitioners globally in the trade mark, patent and copyright fields.

CHINA BUSINESS 商 LAW JOURNAL 法



We are honored to be recognized as one of the **Leading International Firms for Intellectual Property (Copyright)** in the 2024 China Business Law Awards which are based on nominations received from China-focused corporate counsel and legal professionals around the world.

The Trademark Lawyer

GLOBAL REACH, LOCAL KNOWLEDGE

We are pleased to be featured and recognized in The Trademark Lawyer Magazine as an **Award Winning Law Firm 2024** amongst the **Top 10 Trademark Firms and IP Practices** in Hong Kong.

Congratulations

We are proud of the recognition given to our lawyers and congratulate them on their achievements.

WWL Who's Who Legal: IP 2024



Annie Tsoi



Andrea Fong

Annie Tsoi and **Andrea Fong**, respectively Head and Consultant of our Intellectual Property Practice Group, have been recognized as Recommended Leader in IP – Trademarks in Hong Kong SAR.

IP STARS from ManagingIP



Andrea Fong

Andrea Fong, Consultant of our Intellectual Property Practice Group, has been recognized as Patent star 2024 and Trade mark star 2024.

New Face

We warmly welcome the following colleague.

Hulka Lo re-joined our Corporate and Commercial Practice Group as a Partner in 2024. Hulka's practice encompasses a wide range of corporate and commercial matters including mergers and acquisitions, minority investments, corporate finance and general banking, and has a particular emphasis on the real estate sector. She also has experience acting for leading banks and financial institutions on various lending transactions involving private companies, publicly-listed companies, and real estate investment trusts (REITs). Prior to re-joining, Hulka practiced at the Hong Kong office of a US law firm for over 6 years.



Hulka Lo

Talks & Seminars

We are pleased to be involved in, and contribute to, legal education in Hong Kong SAR, China and other regions.

Annie Tsoi, Head of Intellectual Property Practice Group, upon invitation by the Vocation Training Council presented on “Management and Protection of Trademark and Copyright in Mainland China 內地商標與版權的管理與保護” on 10 July 2024. It was one of the IP Training Programs organized by the Hong Kong Intellectual Property Department, attended by over two hundred local entrepreneurs, owners and managers of local SMEs with interest in IP trading and management.

Hong Kong
Intellectual
Property
Department

About Us

深圳前海管理局
法治建設處

We have the pleasure of receiving representatives from 深圳前海管理局法治建設處 on their courtesy visit on 24 July 2024.



From left to right: Representatives from 深圳前海管理局法治建設處, our Senior Partner Raymond Chan, 前海管理局法治建設處處長 宋亮, our Partners Paul Liu and Annie Tsoi, 前海管理局法治建設處高級主任 閻佳

ATL Logistics
Centre Hong
Kong Limited

We visited Berth 3, Kwai Chung Container Terminal, Kwai Chung, Hong Kong also known as Container Terminal 3 (CT3), operated by our client ATL Logistics Centre Hong Kong Limited (“ATL”), on 14 August 2024.



From left to right: our Partner David Choi, Mr Dennis Ng of ATL, our Senior Partner Raymond Chan, Mr Simon Chow (General Manager) and Ms Carroll Wang of ATL, and our Partner Hannah Chow

Conferences

Our members will be attending the following conferences and will be delighted to make arrangements in advance for meeting with clients and associates.

MARQUES Annual Conference	Stockholm, Sweden, 24 – 27 September 2024
AIPPI World Congress	Hangzhou, China, 19 – 22 October 2024
INTA Leadership Meeting	New Orleans, USA, 12 – 15 November 2024
APAA Council Meeting	Metro Manila, The Philippines, 18 – 21 November 2024

Hong Kong SAR

Judiciary guidelines on use of AI

With the current paradigm of increasing use of generative artificial intelligence (“AI”), this practice has seeped into the judicial world. The compatibility of this emerging technology with the immutable nature of the legal field is arguable, but the possible advantages it will bring to the workforce are evident. In 2024, the Hong Kong Judiciary released its first set of guidelines for the use of AI, in the hope of harnessing the benefits that AI is expected to bring and minimizing the dangers of it.



Ivan Chu

Summary of guiding principles

The issued guidelines are targeted at Judges, Judicial Officers, and Judiciary’s support staff; and cover the guiding principles on responsible use of AI and the potential grounds of usage in the judiciary sector. The guiding principles can be divided into two veins, namely caution towards the input into and output of AI.

As to the input of information into AI, the Judiciary places particular emphasis on its view that AI should only be used to assist with tedious jobs and has no place in replacing higher-functioning judicial tasks like making judicial decisions. It also reminds users to exercise caution with regards to information security as most AI tools store information fed into it in the public domain.

Concerning the output of AI, responses may often be inaccurate or biased due to incomplete source information and its inability to fact-check. This phenomenon is called AI hallucination, which some lawyers have fallen prey to. A famous example is the 2023 New York case of *Mata v Avianca*, where the counsel cited fictional and nonexistent cases made up by an AI chatbot and were sanctioned by the Court for their “bad faith” conduct and abandoning their responsibilities to check their work, revealing the importance of verifying outputs AI tools present us. Copyright and intellectual property laws also need to be observed when using original works to generate AI outputs.

Overall, this set of guidelines officially permits the use of AI in Court subject to the principles of judicial independence, impartiality, and accountability. Protecting foundational principles of legal systems to uphold the prestige of the judiciary and to preserve public confidence in the Court.

Uses for AI in the legal industry

The judiciary guidelines set out a list of suggested areas of use of AI: summarizing information, speech or presentation writing, legal translation, and administrative tasks. Assigning these tasks to AI will ensure higher levels of accuracy and leave more time for professionals to focus on tasks that require more intellectual power.

On the summary of information, The Law Society of Hong Kong elaborates that AI tools can summarize different legal materials to facilitate legal research. They can also be used to review documents heavy on information, like contracts and due diligence reviews.

Utilizing AI to assist work in legal departments will enhance their productivity and competitiveness, providing better quality services to their clients at an increased pace. It would also benefit the judicial system, as the fastened pace of processing cases and the help that AI offers to unrepresented litigants will reduce judicial backlog, hence expanding access to justice.

How will it affect different legal entities

The structure of law firms will need to be reorganized with the addition of new roles to oversee this new technology and transfer of duties from lawyers to AI. Educational programs will also need to be put in place providing guidelines to lawyers on using AI responsibly.

The AI industry is fast progressing, leading to the production of AI legal assistant software to automate drafting of documents and to expedite tasks such as research and document review.

However, it is still highly unlikely that lawyers will become obsolete, as they are required to conduct legal analysis and to build client relationships. For legal analysis, the judiciary guidelines highlighted that AI, owing to the lack of true understanding of texts, would be unsuited to do such tasks. As for building client relationships, empathy and humanity cannot be imitated by computers, hence this crucial sector of the work of lawyers is irreplaceable.

Thus, AI will likely stay a technology that enhances the work of lawyers, rather than replace them. Incorporating AI into the legal field will undoubtedly lead to shifts in the frame of work dealt with by professionals, but the analytical works of lawyers and the role of judges remain areas that cannot be replaced, at least, in the near future.

Recent development on the law of the compulsory sale of land for redevelopment

1. Reforming Land Compulsory Sale Law

The Land (Compulsory Sale for Redevelopment) (Amendment) Bill 2023 (the “**Amendment Bill**”) was passed on 18 July 2024. The amendments shall update the existing land compulsory sale regime under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545 of the Laws of Hong Kong) (“**Cap 545**”) which has been brought into force since 7 June 1999.

The amendments are broadly categorized into four main directions:-

Direction (1) – Lowering the application thresholds

In view of the pressing redevelopment needs in some aged districts, the minimum ownership of undivided shares in a lot required for an application is generally lowered under the updated regime:-

Building Type	Age	Existing Thresholds	New Thresholds	
			Designated Areas	Non-designated Areas
Private Buildings	< 50 years	90%	90%	
	≥ 50 years but < 60 years	80%	70%	80%
	≥ 60 years but < 70 years	80%	65%	70%
	≥ 70 years	80%	65%	
Industrial Buildings	≥ 30 years	80%	70%	



David Choi



Yoyo Ng

There are 7 designated areas which include Cheung Sha Wan, Ma Tau Kok, Mong Kok, Sai Ying Pun and Sheung Wan, Tsuen Wan, Wan Chai and Yau Ma Tei.

Direction (2) – Facilitating multiple adjoining-lot applications

Under the existing regime, an applicant should fulfil the application threshold for each of the lots under a multiple-lot application, unless the subject buildings are connected by a common staircase and the average of the acquired undivided shares in the lots meets the application threshold.

The Government recognises the difficulty in adjoined lots redevelopment under the existing regime which often results in redevelopment of “pencil-like” building and arrests holistic urban renewal planning. In hope of providing incentive for merged-lots redevelopment, the updated regime introduces additional methods to adjoin lots and determine the acquired undivided shares. All lots covered by the same application should be redeveloped jointly and the reserve price for auction must take into account the joint redevelopment potential of the merged lots.

Direction (3) – Streamlining the legal process of compulsory sale regime

An applicant shall be dispensed with the requirement to submit expert reports to justify redevelopment need if (i) all buildings on the lot are aged 50 years or above and (ii) all minority owners have been identified and have given a Notice of No Objection.

Direction (4) – Enhancing support for affected minority owners

To allow the minority owners to have adequate time to relocate, the updated regime allows an owner-occupier of any affected property to continue occupying the property for a period not exceeding 6 months after the sale of the lot.

The Development Bureau intends to set up a dedicated office to provide one-stop enhanced support to the affected minority owners at different stages of the proceedings which include, without limitation, preliminary advisory service, independent property valuation, relocation support. The Bureau also proposes setting up a dedicated loan scheme with government guarantee to provide eligible minority owners with access to loan for handling the compulsory sale litigation.

The amendments are targeted to take effect in December 2024 at the earliest.

2. *Re Haven Court: Lands Tribunal is not to “re-fix” reserved price*

This is a recent worth-noting case on compulsory sale auction.

In the Land Compulsory Sale Application No 23000 of 2019, an order for sale (the “**Order**”) of Section C of Inland Lot No 2147 (the “**Lot**”) on which stands Haven Court, Nos 2-30 Haven Street & Nos 128-138 Leighton Road, was granted on 29 February 2024 subject to a reserve price of HK\$2,425,000,000 (the “**Reserve Price**”). A public auction was arranged on 17 April 2024 but no bid was received from the applicants or any other parties.

Section 5(4) of Cap 545 provides that if a lot is not sold within the 3 months immediately following the date of the order for sale or within a further period of 3 months as the Tribunal grants on an extension application, the order shall immediately be deemed to be of no effect as if it had been cancelled by the Tribunal.

On 29 April 2024, the applicants applied for (i) the period for sale to be extended for 3 months ie until 29 August 2024 and (ii) leave to re-fix the Reserve Price as the redevelopment potential of the Lot was noticeably lower than the Reserve Price. Owing to the contracting and uncertain market, the applicants submitted that the failed auction *per se* justifies that the Reserve Price was fixed unacceptably high.

In rebuttal, the Respondents argued that a compulsory sale auction is different from a normal public auction to the extent that the applicant is normally the only bidder in an auction. A failed compulsory sale auction does not necessarily suggest that the reserve price was fixed too high, or it would tempt applicants to stage failed auctions to seek the Tribunal’s reduction of the reserve price to their advantage.

The Tribunal granted an extension of time of the Order for one 3-month period but not any further to avoid opening a flood gate for applicants to cherry-pick the most opportune time to set the auction price. The Tribunal also ruled that it should not reset the Reserve Price until the Lot is sold to avoid manipulation on the part of the applicants.



Leo Leung

New measure in post-2047 lease extension

Tens of thousands of government leases in Hong Kong are due to expire in 2047, as Hong Kong draws near to the end of the first 50 years of its return to Chinese sovereignty. In a move welcomed by local and international investors, the Hong Kong SAR Government (“**Hong Kong Government**”) introduced a new mechanism to streamline the procedures for the extension of those government leases, clearing the clouds on how they would be extended beyond 2047.

Traditional mechanism

All land in Hong Kong (except a small piece of land on which St John’s Cathedral now stands) is generally held by the Hong Kong Government and leased to individual landowners by way of leasehold grant for a term of fixed years.

Traditionally, extension of individual government leases is dealt with on a case-by-case basis, with each lease to be negotiated between the individual owner and the Lands Department as if it were a private contract. Prior to the signing of each new government lease, the owner must consider (and at times negotiate) conditions of the new lease and produce proof of title for verification by the Lands Department. Such process is known to be cumbersome, time-consuming and costly.

Such traditional mechanism impacts investor confidence and poses huge practical difficulty as the number of expiring government leases is expected to soar in the coming years. The Hong Kong Government estimates that about 2,400 leases will expire during the period from June 2025 to 29 June 2047, and around 30,000 leases will expire simultaneously on 30 June 2047.

New mechanism

In order to cope with these issues, the Extension of Government Leases Ordinance (Cap 648) (“**the Ordinance**”) was enacted to provide a new statutory mechanism to streamline the procedures for the extension of government leases. The Ordinance came into operation on 5 July 2024.

The new mechanism under the Ordinance applies to general purpose government leases expiring on or after 5 July 2024 without a right of renewal (“**Applicable Leases**”) but excludes any short-term tenancies and Special Purpose Leases. The Applicable Leases cover most government leases designated for general commercial, residential or industrial purposes.

Under sections 7 and 8 of the Ordinance, an “Extension Notice” together with a “Non-extension List” will be published by the Lands Department in the Gazette at least 6 years before the expiry of the Applicable Leases.

Each “Extension Notice” will specify a specific expiry period and all Applicable Leases (except those specified in the “Non-extension List”) that are due to expire within such period will be extended for a term of 50 years from their respective expiry dates, without the need of separately executing any new leases.

No additional premium will be payable for any lease extension pursuant to the Ordinance, but an annual government rent equivalent to 3% of the prevailing rateable value of the land at the time of assessment would still be payable.

An individual owner may also opt out from the new lease extension pursuant to the Ordinance by registering an Opt-out Memorandum in the prescribed form with the Land Registry within the prescribed period.

First Extension Notice and the way forward

The first "Extension Notice" was published in the Gazette on 5 July 2024 – this covers all Applicable Leases expiring between the period between 5 July 2024 and 31 December 2030. The first batch of extension involves 376 lots, including 309 lots situated in Kowloon mainly in Yau Tsim Mong district and 67 lots on the Hong Kong Island.

By providing a statutory framework for extension of government leases in a more effective way, the Ordinance brings greater certainty, stability and efficiency to the city's land tenure system, underscoring the importance of a fair and transparent land administration framework for all stakeholders.

Public consultation on copyright and artificial intelligence launched

The Hong Kong SAR Government (“**Hong Kong Government**”) launched a two-month public consultation focusing on enhancing the Copyright Ordinance (Cap 528) (“**CO**”) to address copyright issues arising from artificial intelligence (“**AI**”). The consultation ended on 8 September 2024.



Florence Lam

The consultation paper covers four main topics, including copyright protection of AI-generated works, copyright infringement liability arising from AI-generated works, specific copyright exceptions for text and data mining (“**TDM Exception**”) and other issues such as deepfakes and transparency of AI systems. The review of the existing copyright regime aims at encouraging creation and investment in creativity while supporting innovation and follows the enactment of the Copyright (Amendment) Ordinance 2022 which strengthened copyright protection in the context of digital space. This is in line with the Hong Kong Government's strategy to enhance Hong Kong's role as a regional intellectual property (“**IP**”) trading centre under the National 14th Five-Year Plan.

Copyright protection of AI-generated works

The emergence of generative AI systems capable of generating literature, visual arts and music composition has disrupted the fundamental concept of authorship in creative works. Despite this new landscape, the CO in its current form affords copyright protection to original “computer-generated works” in literary, dramatic, musical and artistic works (“**LDMA works**”), albeit to a lesser extent than LDMA work created by a human author.

Based on a plain and literal reading of the provisions deeming the author of computer-generated LDMA to be the “necessary arranger”, AI-generated LDMA works with no human authors in the traditional sense will fall within this broad scope and can be covered by the CO. As to non-LDMA works, as there is no originality requirement, the protection afforded to non-LDMA marks applies equally to human or computer created works. Therefore, it was concluded that the existing provisions in the CO are in theory sufficient to provide copyright protection to AI-generated works.

In practice, however, there may be issues when determining whether AI-generated works satisfy the originality requirement for LDMA works to qualify for protection. Originality is traditionally understood as human-centric, requiring input of human skill, labour and/or judgment in creation of the work. These categories of input are not immediately applicable to AI-generated works. In this regard, the Hong Kong Government is of the view that it is more appropriate for the courts to formulate the legal principles through case law development as this allows room for the law to be more flexible and dynamic in adapting to advancements in technology.

The issue of authorship and ownership of computer-generated works also arises when it comes to usage of AI. While the CO provides that the author is taken to be the person by whom the arrangements necessary for the creation of the work are undertaken, in the context of generative AI, this person could be the developer/programmer/trainer of the AI model, AI system service provider or operator, or the end-user who inputs prompts to create the work. There is no definite answer and ultimately has to be determined on a case-by-case basis. The Hong Kong Government is of the view that contractual arrangements, rather than statutory provisions, are better placed to solve this issue.

Given the observation above, the Hong Kong Government does not consider it justifiable to propose any substantive legislative amendments concerning copyright protection for AI-generated works.

Copyright infringement liability arising from the creation and use of AI-generated works

The basic legal principles on copyright infringement are generally applicable to infringements arising from the creation and use of AI-generated works. Similar to the issue discussed above on authorship of AI-generated works, there is also no simple definite answer as to who is liable when the creation or use of an AI-generated work constitutes copyright infringement.

Consistent with the current approach for non-AI-related infringement, the Hong Kong Government considers this issue to be fact sensitive to be determined on a case-by-case basis with regards to proximate cause of the infringing act done. This position is shared by other jurisdictions notwithstanding comprehensive AI-specific rules and regulations are in place in these jurisdictions. In any event, the Hong Kong Government believes the market practice of having contractual arrangements in place between AI system owners and end-users is a practical approach to address liability issues.

As such, the Hong Kong Government is of the view that the existing broad and general provisions on liability are sufficient, while it would be arbitrary and unfair if the statutes lay down rigid rules that assign infringement liability to any party. Therefore, no legislative amendments to the existing provisions applicable to copyright infringement arising from AI-generated works are proposed.

TDM Exception

The consultation paper explores the introduction of a specific exception to allow the reasonable use of copyright works in computational data analysis and processing. Text and data mining refers to the automatic extraction and analysis of text, images, data and/or other types of information to generate insights, patterns, trends and correlations. This process is particularly instrumental in the development, training and enhancement of generative AI models.

Given the vast amount of data used, copyright works may be involved in the process of text and data mining through the copying for extraction, collection, re-utilisation, digitalisation, formatting and storage. Under the current CO, this would constitute copyright infringement unless a licence is obtained or a statutory exception applies. The statutory exceptions are confined to special situations or purposes and there is currently no specific TDM Exception under the CO.

Without a statutory TDM Exception, the current market practice is for AI developers to contract privately with copyright owners to obtain licences for copyright works to be fed into AI models. Some AI developers also provide opt-out options for copyright owners. This significantly increases the time and costs of developing new algorithms as developers have to identify copyright work, locate and negotiate with copyright owners.

TDM Exceptions are therefore helpful in promoting AI development, facilitating research, providing legal certainty and balancing interests between copyright protection and reasonable use. Given that multiple jurisdictions have already introduced specific copyright exceptions for data analysis activities, introducing TDM Exceptions in the CO will also align Hong Kong's copyright regime with other jurisdictions and maintains Hong Kong's attractiveness for AI industry.

On the flip side, TDM Exceptions may risk prejudicing copyright owners' legitimate interests in exploiting their works, disrupting market practices of licensing schemes and being too rigid for changing technology. It is therefore proposed that the statutory TDM Exception will be subject to contract and expressly preserve the position of opt-out options. Further communication, distribution or dealing of the copy made under the TDM Exception will also be prohibited.

The review of the copyright regime is certainly welcomed to cope with the novel copyright issues brought by the increased use of AI. However, specific questions on originality and authorship of AI-generated works call for further deliberation. It remains to be seen whether a proper balance between the protection of copyright and reasonable use of copyright works by AI can be achieved through the proposed TDM Exception.

Valuable inputs from industries and relevant stakeholders will help formulate the Hong Kong Government's way forward in keeping the Hong Kong copyright regime robust and on par with developments of other major jurisdictions.

China



Annie Tsoi

New guidelines on livestreaming e-commerce in Beijing

On August 8, 2024, the Beijing Municipal Administration for Market Regulation issued the "Guidelines for Compliance of Livestreaming E-Commerce in the Beijing Municipality" (No 64, 2024) <北京市直播帶貨合規指引> (“**Guidelines**”).

These Guidelines aim at supervising and guiding the operations of livestreaming e-commerce within the Beijing Municipality, regulating the conduct of relevant industry parties, protecting consumer interests, and fostering healthy competition and innovation.

The Guidelines are divided into four parts namely (1) general rules, (2) platform operator compliance, (3) live streamer compliance, and (4) supplemental rules.

To address the use of livestreams as marketing and sales channels that infringe on intellectual property rights, the Guidelines impose compliance obligations on both live streamers and platform operators.

On live streamers:-

Article 16 explicitly prohibits live streamers from offering or promoting goods or services that infringe on intellectual property rights.

Article 19 mandates that when marketed goods feature trademarks or patents, livestream operators, live streamers, and marketing agencies must verify the relevant materials to determine whether the goods are genuine or counterfeit.

On platform operators:-

Platform operators are responsible for supervising individual streamers' compliance.

Article 5 stipulates that livestream e-commerce platform operators must establish rules of conduct for livestreaming activities, detailing the rights and obligations related to intellectual property protection for all participants.

Article 6 provides that platform operators are required to maintain a blacklist of prohibited goods and services, including those that infringe on intellectual property rights. Compliance with this blacklist will be enforced through livestream patrols, and any non-compliant activities by livestream operators must be reported.

As part of their supervisory duties, platform operators must record livestreams and store them for three years, as specified in Article 9.

To further protect the rights of consumers and intellectual property holders, platforms must implement review mechanisms and disclose penalties imposed on non-compliant streamers. E-commerce agencies and livestream operators are also expected to provide mechanisms for complaints, reporting, and dispute resolution for consumers.

Notice: This newsletter is intended for general information only and should not be taken as legal advice of Wilkinson & Grist. For any enquiries, please contact Ms Anita Kwan at anitakwan@wilgrist.com.

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