

# Artificial Intelligence and IP

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Artificial intelligence is rapidly transforming societies, economies as well as legal systems worldwide. While AI promises unprecedented innovation and efficiency, it also raises complex ethical, legal, and social challenges. In this article, we look at what AI and generative AI are, examine key legal issues particular in intellectual property (IP) law under Hong Kong's framework and discuss the evolving debate on AI's legal status as an author or inventor.

## What is Artificial Intelligence?

Artificial Intelligence refers broadly to technologies that enable machines and computer programs to mimic human cognitive functions such as problem solving, decision making, speech recognition and learning. To do so, these functions use algorithms, data models and sometimes machine learning to perform tasks traditionally requiring human intelligence.

Generative AI refers to AI systems capable of creating updated content, whether images, text, music, or code, based on the data on which they are trained. These systems generate novel outputs rather than simply recognizing patterns or analysing data. Examples include ChatGPT, which can produce human like text or art.

## Intellectual Property in Hong Kong and AI

Under Hong Kong law and most jurisdictions, copyright protection requires a human author. Currently, AI-generated works without human creativity do not qualify for copyright, as copyright laws protect the expression of human intellect and creativity. Hong Kong's Intellectual Property Department is considering implications of generative AI for copyright but has not extended to non-human creators yet.

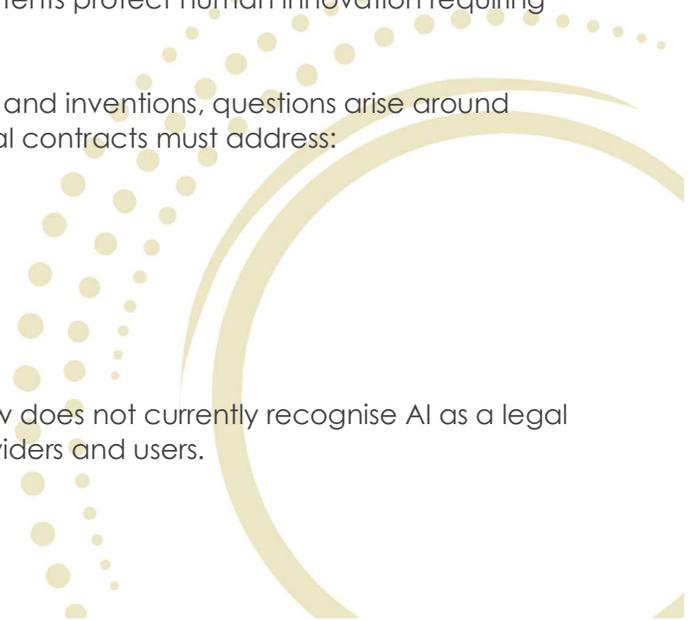
Similarly, patent law in Hong Kong requires inventors to be natural persons. Globally, courts have resisted recognising AI as an inventor, holding that patents protect human innovation requiring intellectual contribution.

As AI systems continue to generate updated content and inventions, questions arise around protecting human rights and investments. Commercial contracts must address:

- Data ownership and licensing
- Attribution and moral rights
- Exploitation prevention

## Should AI have Legal Personality or Liability?

Liability for AI remains a complex issue. Hong Kong law does not currently recognise AI as a legal person. Liability for AI actions falls on developers, providers and users.





Contract law plays a critical role in allocating risk and responsibility among parties engaging with AI technologies, including warranty clauses and indemnity provisions to manage liability for AI failure.

In Hong Kong, contract law is paramount in allocating AI-related risks. Lawyers can assist clients in drafting agreements that include warranty clauses and indemnity provisions, designed to manage liability for AI failures, inaccurate outputs or harm to third parties.

## Hong Kong and Landmark Court Decisions

Hong Kong's IP and commercial legal frameworks currently:

- Require human authorship/inventorship for IP rights.
- Emphasise liability allocation among humans behind AI operation.
- Lack specific statutes on AI authorship or legal personality.

Internationally, the UK Court of Appeal in *Stephen Thaler v Comptroller General of Patents* (2023) held that AI cannot be an inventor under patent law thus reinforcing the necessity of human creativity and responsibility.

## AI and Data Privacy Concerns in Hong Kong

The extensive use of data by AI systems, particularly personal data raises significant concerns under Hong Kong's Personal Data (privacy) Ordinance. Clients may need guidance on ensuring compliance with the principles of data collection, storage, use and security when deploying AI.

## Infringement of Author's Rights and Moral Rights by AI

Generative AI poses new risks of copyright infringement. This is due to AI systems, which are trained on protected works may replicate, adapt or remix content without authorisation. This threatens human creators' copyright and moral rights, especially if AI outputs misrepresent or damage the integrity of original works.

## Summary

While AI offers Hong Kong's legal and commercial sectors unprecedented tools for innovation and growth, there are challenges relating to established legal principles on authorship, inventorship and liability.

Please [reach out to us](#) if you have any questions.