

SUBMISSION TO THE INTELLECTUAL PROPERTY CORPORATION OF MALAYSIA (MyIPO)

Public Consultation on the Proposed Amendments to the Copyright Act 1987 (Act 332)

Response of Edwin Lee & Partners: Artificial Intelligence, Copyright and Personal Data

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Summary of Recommendations

We make eleven recommendations, confined to the ground where artificial intelligence, copyright and personal data meet. Each is developed in full in the Parts that follow.

No.	Subject	Recommendation in brief
1	TDM model	Adopt a hybrid TDM exception for computational data analysis including AI training
2	Access gate	Condition the exception on lawful access to the works used
3	Contract	Make the exception non-excludable by contract
4	Market harm	Exclude uses conflicting with normal exploitation or unreasonably prejudicing owners' legitimate interests, including output substitution and licensing-market displacement
5	Transparency	Require source records and published training-data summaries, at guideline level
6	PDPA interface	Provide expressly that the exception is without prejudice to Act 709
7	Joint guidance	MyIPO and JPDP to issue joint or aligned guidance on AI training across both regimes
8	Subsistence	Codify a human-authorship threshold in sections 3 and 7
9	No deeming	Do not adopt a UK s.9(3)-style computer-generated works provision
10	CVN	Require AI-assistance declarations in CVN notifications; enhanced evidentiary status to remain a rebuttable presumption
11	Foreign developers	Attach transparency obligations to deployment in Malaysia; open a channel for foreign developer input

Part 1: Who We Are and Why We Are Writing

1.1 Edwin Lee & Partners is a corporate, commercial and technology law firm in Kuala Lumpur. Our principal work is data protection and technology law: the Personal Data Protection Act 2010 (Act 709), its 2024 amendments, and the governance of artificial intelligence. On 31 July 2026 we filed a submission on the proposed AI Governance Bill with the National AI Office. This submission continues that work.

1.2 **What this submission covers, and what it does not.** We are not an intellectual property practice, and we do not pretend expertise across the whole consultation. We confine ourselves to the ground we know: where artificial intelligence, copyright and personal data meet. That means five topics:

(a) the design of a text and data mining (TDM) exception for AI training, the one policy question the Consultation Document expressly poses; (b) how any TDM exception interacts with the Personal Data Protection Act 2010; (c) whether copyright subsists in AI-generated and AI-assisted content; (d) how AI-assisted works should be treated in the Copyright Voluntary Notification (CVN) system; and (e) how the framework reaches foreign AI developers.

We say nothing about the remaining proposals, including the treaty accessions, enforcement measures, economic value creation and governance clusters. Our silence is not support and it is not objection. It is scope discipline.

1.3 **A word of acknowledgement.** The Consultation Document's treatment of the AI questions is careful work. The two-filter explanation of Japan's Article 30-4, the lawful-access framing of Singapore's approach, and the framing of the AI-generated content question (sufficient human creativity as the threshold, subsistence before ownership) are all accurate and clearly presented. Our recommendations build on that foundation. They do not depart from it.

Part 2: The TDM Exception for AI Training

Issue

2.1 The Consultation Document asks one direct question: should Malaysia adopt a purpose-based model like Japan's, a lawful-access model like Singapore's, or a hybrid?

Applicable law

2.2 Act 332 has no TDM exception. Fair dealing under paragraph 13(2)(a), weighed against the factors in subsection 13(2A), was written for humans quoting and studying works, not for machines ingesting millions of them. Nobody knows how a Malaysian court would apply it to AI training, because no Malaysian court has been asked. Subsection 7(2A) tells us that ideas, procedures and methods are free for all; the statistical patterns a model extracts sit closer to that unprotected territory than to protected expression. But assembling and processing a training corpus involves copying, and copying is a restricted act under subsection 13(1). The result is uncertainty, and uncertainty serves nobody: not rights holders, not developers, not the courts.

Analysis

2.3 Our view, pending regulatory clarification, is that neither model works in unmodified form. The right answer takes one element from each and adds a third.

2.4 **Japan alone is too loose on sourcing.** Article 30-4 has no lawful-access requirement. A purpose-based exception without an access condition permits training on scraped and pirated material, and that sits badly next to the rest of this amendment package, which strengthens technological protection measures, rights management information and service provider accountability. An amendment Act should not strengthen the lock with one hand and excuse picking it with the other. Japan itself has felt this gap: its Agency for Cultural Affairs has had to address sourcing through administrative guidance on the Article 30-4 proviso, including its position that developers who knowingly train on pirated sources face liability. The access condition proved necessary enough to retrofit.¹ Malaysia can build it in from the start.

2.5 **Singapore alone has no market-harm backstop.** The lawful-access condition in sections 243 and 244 of Singapore's Copyright Act 2021 is the right gate, and the fact that it cannot be contracted away is a design feature worth copying.² But once access is lawful, Singapore applies no further test. Courts get no tool for the hard cases: outputs that substantially reproduce the works they were trained on, or training that bypasses a licensing market rights holders have actually built.

2.6 **The hybrid fixes both, and it is the only option that passes the Government's own test.** The Consultation Document names five policy considerations: legal certainty, innovation, creator protection, investment confidence, and a balanced framework. Requiring permission for all training fails on innovation and investment. Japan unmodified fails creator protection on sourcing. Singapore unmodified fails creator protection on market harm. The hybrid, a lawful-access gate plus an unreasonable-prejudice safety valve, passes all five.

2.7 **The creative sector deserves a straight answer.** The Consultation Document records that MMRA, RIM, MPA, MACP, PPM, RPM, NMPA and Media Malaysia have pressed for licensing-based solutions, opt-in consent for training datasets, compensation and transparency. We take these concerns seriously. We also think a statutory opt-in rule would protect creators less than its supporters expect, and we want to explain why rather than simply assert it.

2.8 An opt-in rule binds only the developers who ask. Those are the careful ones, the ones least likely to cause harm. Training that takes place outside Malaysia sits beyond the rule's practical reach, and a Malaysian rights holder has no realistic way to enforce a consent requirement across borders. The hybrid does better on each of the three things the creative sector actually wants. On consent and compensation: the unreasonable-prejudice limb protects the licensing markets the sector wants to build, because once a real licensing market for training exists, training that bypasses it displaces that market, and displacement is unreasonable prejudice. The exception shrinks as licensing grows. That is the outcome the sector's own preference for licensing points toward. On transparency: the disclosure obligation we recommend below gives rights holders the visibility to detect use of their works and enforce, which an opt-in rule by itself never supplies. In substance, the hybrid delivers consent, compensation and transparency through machinery that can reach foreign developers. Opt-in cannot reach them at all.

2.9 We take no position on remuneration mechanics, whether levies, statutory licensing or collective bargaining for training uses. Those are questions of economic design, and others are better placed to answer them.

Recommendations

Recommendation 1. Malaysia should adopt a hybrid TDM exception permitting the reproduction and communication of copyright works for computational data analysis, including the training of machine learning and AI systems, subject to the conditions in Recommendations 2 to 4.

Recommendation 2. The exception should apply only where the person carrying out the analysis has lawful access to the work. Lawful access should be defined to include works lawfully purchased, licensed, subscribed to or made available under open access terms, and to exclude works obtained from infringing sources known to the user or which the user ought reasonably to have known were infringing.

Recommendation 3. The exception should not be excludable or restrictable by contract. A contractual term purporting to exclude or restrict the exception should be void to that extent, following the Singaporean approach.

Recommendation 4. The exception should not apply where the use conflicts with a normal exploitation of the work or unreasonably prejudices the legitimate interests of the copyright owner. The amendment or its explanatory materials should make clear that unreasonable prejudice includes (a) uses producing outputs that substantially reproduce the expressive content of the works used, and (b) uses that displace an existing or demonstrably emerging licensing market for computational analysis of the works.

Recommendation 5. Developers relying on the exception should be required to keep records of the sources of training data sufficient to demonstrate lawful access, and to publish a summary of the categories of data used in training, at a level of generality that protects trade secrets. This obligation is better placed in subsidiary legislation or guidelines than in the Act itself, and aligns with the transparency and disclosure component the Consultation Document already identifies within Pillar 1.

Part 3: The TDM Exception and the Personal Data Protection Act 2010

Issue

3.1 Training data at scale almost always contains personal data: names, faces, opinions about identifiable people, user-generated content. A copyright exception says nothing about whether processing that data is lawful. These are two separate gates. Clearing one does not open the other.

Applicable law

3.2 Subsection 6(1)(a) of Act 709 requires consent before a data controller processes personal data, subject to the exceptions in subsection 6(2): necessity for a contract with the data subject, legal obligation, vital interests, the administration of justice, or functions conferred by law. Act 709 has no general legitimate-

interests basis of the kind found elsewhere. Consent from everyone represented in a web-scale corpus is impossible in practice, and none of the subsection 6(2) exceptions plausibly covers commercial model training. Whether AI training on personal data is lawful under existing Malaysian law is a serious open question. We raised it in our AI Governance Bill submission, and we raise it again here.

3.3 The stakes have gone up. Since the Personal Data Protection (Amendment) Act 2024 (Act A1727), contravening the data protection principles carries a fine of up to RM1,000,000, imprisonment up to three years, or both.

Analysis

3.4 The danger is predictable. A TDM exception gets enacted, and developers or their advisers read it as a general clearance for AI training. It is not. A developer can satisfy every condition of the copyright exception and still contravene Act 709. The reverse is also true: a solid PDPA position supplies no copyright basis. If the amendment legislates the copyright gate and stays silent on the interface, it invites exactly the fragmented framework Malaysia's wider AI governance effort is trying to avoid. The fix is cheap: say expressly that the two regimes run in parallel, and have the two regulators speak with one voice.

Recommendations

Recommendation 6. The TDM exception should contain an express provision that nothing in the exception affects the operation of the Personal Data Protection Act 2010, and that the processing of personal data in the course of computational data analysis remains subject to Act 709 as amended.

Recommendation 7. MyIPO and the Personal Data Protection Department (JPDP) should issue joint or aligned guidance on AI training that engages both regimes, addressing in particular (a) the copyright conditions under the new exception, (b) the lawful basis analysis under section 6 of Act 709 for personal data within training corpora, and (c) how the record-keeping obligation in Recommendation 5 can serve compliance evidence purposes under both regimes, so that a single set of records satisfies both regulators.

Part 4: Copyright in AI-Generated and AI-Assisted Works

Issue

4.1 The Consultation Document asks the right question first: not who owns AI-generated output, but whether it qualifies for protection at all where human creative contribution is limited or absent.

Applicable law

4.2 Act 332 answers neither part expressly. Every limb of the definition of "author" in section 3 assumes a human being: the writer, the composer, the artist, the person who made the arrangements, and, as the catch-all, the person by whom the work was made. Subsection 7(3)(a) requires sufficient effort to make the work original in character, and section 26 vests copyright in the author at creation. The Act has no computer-

generated works provision of the kind found in section 9(3) of the UK Copyright, Designs and Patents Act 1988, which deems the author of a computer-generated work to be the person who made the arrangements for its creation.³

Analysis

4.3 On the current text, we think the position is this: a work generated by an AI system without meaningful human creative contribution has no author within section 3, does not satisfy subsection 7(3)(a), and attracts no copyright. A work created by a human using AI as a tool, where the human's selection, arrangement, refinement and creative choices show in the output, qualifies in the ordinary way. That matches the Consultation Document's framing. But it rests on inference from human-shaped definitions, not on express words, and the inference will be tested soon and often.

4.4 The threshold should also be neutral as to instrument. What matters is whether human creative choices are traceable in the expression, not whether they were made with a pen, a camera or a prompt. Creative direction through iterative refinement can amount to meaningful contribution where it is evidenced and reflected in the output; a bare instruction to a machine cannot. The comparative experience supports drawing the line this way. The United States Copyright Office concluded in January 2025 that prompts alone do not confer authorship, while confirming case-by-case protection for the human layers of AI-assisted works: expressive inputs perceptible in the output, creative selection and arrangement, and creative modifications.⁴ Courts in the People's Republic of China have recognised copyright in AI-assisted images where iterative prompting and parameter choices showed real intellectual investment,⁵ and in 2025 refused protection where claimants could not produce records of their creative process.⁶ Korea's copyright authorities now register AI-assisted works to the extent of the demonstrated human contribution, under guidelines issued in June 2025.⁷ Japan and Singapore have codified nothing on outputs at all; their reforms answer the training question, not this one. The jurisdictions are converging on the same three elements: a human-creativity threshold, case-by-case assessment, and evidence of the contribution. None has yet put all three into statute.

4.5 Malaysia should codify the threshold rather than leave it to the courts, for two reasons. The first is the Consultation Document's own first policy consideration, legal certainty: the comparative divergence means Malaysian courts would have no settled consensus to follow, and litigants would import whichever line suits them. India shows what the alternative looks like in practice: its registry accepted an AI system as co-author of a registered work, then spent years unable to cleanly undo it.⁸ The second reason is to foreclose a section 9(3)-style deeming provision arriving later by default. We recommend against any such provision, and we note that the argument is no longer merely academic: the UK Government's report of March 2026 concluded that section 9(3) should be removed, on the footing that copyright should protect human creativity and that the provision was uncertain, little used, and found in no other jurisdiction.⁹ The model's own home has decided to abandon it. Malaysia should not adopt what the UK is discarding.

Recommendations

Recommendation 8. Act 332 should be amended to codify a human-authorship threshold: a work qualifies for copyright only where it is the product of human creative effort, and a work generated by a computer program or AI system without meaningful human creative contribution does not satisfy subsection 7(3)(a). The amendment may take the form of a clarifying provision in section 7 together with a definitional confirmation in section 3, and should expressly preserve protection for works created by humans using AI as a tool where the human contribution supplies the originality.

Recommendation 9. Malaysia should not adopt a computer-generated works deeming provision on the model of section 9(3) of the UK Copyright, Designs and Patents Act 1988.

Part 5: AI-Assisted Works and the CVN System

Issue

5.1 The Consultation Document proposes amending section 42 so that CVN certificates and certified extracts of the Register are admissible in evidence, reducing reliance on affidavits and statutory declarations. We support the direction. But the proposal meets Part 4 at an awkward angle: as AI-assisted works are notified in growing numbers, the Register will fill with works whose protection depends on the degree of human contribution, and the notification process does not currently ask.

Analysis

5.2 If certificates gain evidentiary weight while notifications stay silent on how the work was made, the system will quietly convert uncertain works into presumptively valid ones. A notifier of a wholly AI-generated work would hold a certificate carrying weight in court for a work in which, on the analysis above, copyright may not subsist at all. That corrodes the Register's reliability and undermines the enforcement and financing uses the amendments elsewhere intend for it. The fix is a disclosure step, and it is not untested: Korea's registration guidelines have operated on exactly this basis, registration scoped to the declared human contribution, since mid-2025.⁷

Recommendation

Recommendation 10. The CVN framework should require notifiers to declare whether the work was created with the assistance of an AI system and, where it was, to describe briefly the human creative contribution. The enhanced evidentiary status of CVN certificates under the amended section 42 should be understood, and if necessary expressed, as a rebuttable presumption that does not extend to conclusive proof of subsistence, so that the human-authorship threshold in Recommendation 8 remains examinable in proceedings.

Part 6: Foreign Developers

Issue

6.1 The most capable AI models used in Malaysia are trained abroad, by developers who did not take part in this consultation. Any Malaysian TDM exception, transparency rule or subsistence test will be applied first, and most often, to their systems.

Analysis

6.2 We made this point to the National AI Office in July: a framework designed without input from foreign developers risks producing rules they find difficult to engage with in practice. Copyright sharpens it. Copyright is territorial, so training performed wholly abroad may sit outside Act 332 altogether, while the resulting models serve Malaysian users every day. The realistic point of contact is deployment. Obligations that attach when a model is made available in Malaysia reach the developer wherever the training happened, and this is not a novel technique: the PRC's Interim Measures for generative AI services impose lawful-source requirements on training data as a condition of providing the service, and extend to services supplied into China from abroad.¹⁰ This is one more reason the hybrid with a transparency limb outperforms an opt-in consent rule, which has no purchase on offshore training at all.

6.3 We have not left Recommendation 11 as theory. Annexure C to this submission carries the perspective of Global Law Office, Beijing, advisers to Chinese AI companies on their operations abroad, answering questions we put to them for this consultation. It is offered as a modest working example of the input Recommendation 11 contemplates.

Recommendation

Recommendation 11. Transparency and record-keeping obligations connected to the TDM exception should attach to the making available of AI systems in Malaysia, and not solely to acts of training within Malaysia, so that the framework reaches models trained abroad but deployed to Malaysian users. MyIPO should also afford foreign developers a channel for input before the amendment Bill is finalised, consistent with the multi-stakeholder engagement the Consultation Document itself endorses.

Annexures

- **Annexure A:** Response matrix keyed to the AI-relevant sections of the Consultation Document.
 - **Annexure B:** Statutory cross-reference: Copyright Act 1987 (Act 332) and Personal Data Protection Act 2010 (Act 709) as amended by Act A1727.
 - **Annexure C:** The perspective of advisers to foreign AI developers: questions answered by Global Law Office, Beijing.
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Sources

1. Copyright Act of Japan, Article 30-4; Agency for Cultural Affairs (Japan), administrative guidance on AI and copyright, including its Checklist and Guidance on AI and Copyright (2025). [↵](#)
2. Copyright Act 2021 (Singapore), sections 243 and 244; the exception cannot be excluded or restricted by contract (section 187). [↵](#)
3. Copyright, Designs and Patents Act 1988 (United Kingdom), section 9(3); "computer-generated" is defined in section 178. [↵](#)
4. United States Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (29 January 2025), [copyright.gov/ai](#). [↵](#)
5. Li v Liu, Beijing Internet Court, 27 November 2023; see also the Changshu People's Court decision to similar effect (2025). [↵](#)
6. Beijing Internet Court, decision publicised 16 September 2025 (claim failed for want of generation records); Zhangjiagang People's Court, Jiangsu, 19 March 2025, final on appeal (prompts characterised as unprotectable ideas). [↵](#)
7. Ministry of Culture, Sports and Tourism and Korea Copyright Commission, Guidelines on Copyright Registration for Works Utilizing Generative AI (30 June 2025). [↵↵](#)
8. Copyright Office of India, registration (2020) of an artistic work naming an AI painting application as co-author; withdrawal notice issued November 2021; the registration remained on the register as of mid-2025. [↵](#)
9. United Kingdom Government, Report on Copyright and Artificial Intelligence (18 March 2026), published under sections 135 to 137 of the Data (Use and Access) Act 2025. [↵](#)
10. Interim Measures for the Administration of Generative Artificial Intelligence Services (People's Republic of China, effective 15 August 2023), Articles 7 and 20. [↵](#)