

Intellectual Property Corporation of Malaysia (MyIPO)
Ministry of Domestic Trade and Cost of Living
Menara MyIPO, Tower B
Unit 1-7, Aras Bawah dan Tingkat 1-15
No. 25, Persiaran Perdana, Presint 2
62050 Putrajaya, Malaysia

**RE: Comments of the Association for Competitive Technology (ACT) on the
Public Consultation on Proposed Amendments to the Copyright Act 1987
(Act 332)**

The Association for Competitive Technology (ACT) appreciates the opportunity to comment on the Public Consultation on Proposed Amendments to the Copyright Act 1987 (Act 332) (the ‘Consultation’), issued by the Intellectual Property Corporation of Malaysia (MyIPO) under the Ministry of Domestic Trade and Cost of Living.¹ Our comments focus on the proposal to add an exception that would allow the text and data mining (‘TDM’) of copyrighted works for artificial intelligence (‘AI’) purposes, based on the approach taken in either Japan or Singapore (the ‘Proposed TDM Exception’).

I. Statement of interest

ACT represents small business software developers and connected device companies in Malaysia and around the world. Our members build software, mobile applications, and connected products for nearly every part of the economy, and they compete on the strength of the original code, content, and designs they create. They are both users and owners of copyrighted works. Together they drive a global app economy worth more than USD 5.7 trillion, and that economy keeps growing.

Our members see this issue from an unusual position. They are creators and copyright owners, because the software and content they make are protected as literary and artistic works under the Copyright Act 1987.² They are also innovators who build AI features into their products and who use AI tools in a responsible way. Because our members sit on both sides of this debate, we do not speak for any

¹ Intell. Prop. Corp. of Malay., *Public Consultation on Proposed Amendments to the Copyright Act 1987 (Act 332)* (June 3, 2026), <https://upc.mpc.gov.my/main/user/view-consultations/258> [hereinafter “Consultation”].

² Copyright Act 1987 (Act 332) (Malay.), § 13(2). Computer programs are protected as literary works under the Act. See *id.* § 3 (definition of “literary work”).

single industry. We speak for small firms that need two things at the same time, which are strong and predictable protection for the works they create and a stable legal environment in which to build new technology. We value both of these goals, and that is exactly why we ask MyIPO to move carefully here.

ACT and its members support the responsible, ethical, and lawful development of AI. That development is best served, not held back, by strong copyright protection and by the licensing markets that copyright makes possible.

ACT also notes that text and data mining supports many valuable activities that have little to do with generative AI, including scientific research, cybersecurity, fraud detection, accessibility, search, and machine learning more generally. ACT supports those uses, and it supports responsible AI innovation. The concern is narrower. A broad or AI-specific exception that is not carefully defined could let commercial AI development draw on protected works without permission. Because text and data mining covers so many different uses, Malaysia should define any exception narrowly and attach clear safeguards rather than create a broad, open-ended right.

II. ACT recommends keeping the current framework and not adopting the Proposed TDM Exception

Initially, ACT emphasises that a problem meriting changes to Malaysia's copyright law has not been demonstrated. The evidence so far does not establish a market failure that would justify replacing ordinary copyright rules with a broad statutory exception. ACT does not oppose narrow, well-defined exceptions as a category. Our concern is with adopting a broad, open-ended, or AI-specific exception where no need has been shown and where a functioning licensing market would otherwise operate.

A voluntary market for licensing copyrighted works to train AI has grown quickly over the past two years and continues to expand. Copyright owners across many creative and technical fields have signed or offered thousands of licenses for AI development.³ These deals were reached without any government action, and they show a working market built on consent, payment, and control. Smaller AI companies and startups, not just the largest developers, have taken part in many of

³ These agreements include arrangements between the National Music Publishers' Association and Udio, Universal Music Group and NVIDIA, The New York Times and Amazon, many news publishers and OpenAI, and Getty Images and various AI developers, as well as offerings from the Copyright Clearance Center and other intermediaries. See AI LICENSING FOR CREATIVE WORKS, Copyright Alliance, <https://copyrightalliance.org/artificial-intelligence-copyright/licensing/>.

these deals and have built models from properly licensed data. Voluntary licensing markets are emerging across several sectors and should be allowed to continue developing. At the same time, licensing fees, reporting obligations, and administrative costs can disproportionately burden small and medium-sized enterprises (SMEs), particularly where licensing is mandatory, centralised, or subject to government-set remuneration. Malaysia should therefore preserve voluntary, market-based licensing rather than create compulsory or centralised payment mechanisms.

A working licensing market is also what lets a small developer license the inputs it needs on fair terms, and it is what lets that same developer be paid when its own works are used by others. An exception that could displace emerging licensing markets and reduce incentives for voluntary licensing would cut that market short before it has a chance to mature. It would take away both the chance for small creators to be paid and the orderly, contract-based system that small AI developers are coming to rely on.

Copyright authorities that have looked closely at this question have taken a similar and careful view. After a detailed review of AI training, ingestion, and licensing, the U.S. Copyright Office concluded that, given the growth of voluntary licensing, government intervention would be premature at this time, while recognizing that targeted measures could be considered where genuine market gaps remain. It also observed that ‘effective licensing options can ensure that innovation continues to advance without undermining intellectual property rights’.⁴

III. The Japan and Singapore models create uncertainty for small firms and would not fit Malaysia’s copyright law

Small firms cannot absorb the cost of litigating where the edges of an unclear exception lie, and investors are cautious about businesses whose core inputs or outputs rest on unsettled law. Adopting either of the models named in the Consultation would create exactly this kind of uncertainty in Malaysia.

The Japan-style approach allows text and data mining where the purpose is not to enjoy, or to let others enjoy, the expression in a work, and where the use does not unreasonably prejudice the interests of the copyright owner. The provision expressly covers data analysis. The approach calls for case-by-case judgments

⁴ U.S. COPYRIGHT OFFICE, Copyright and Artificial Intelligence, Part 3: Generative AI Training (Pre-Publication Version) (May 2025), <https://www.copyright.gov/ai/> [hereinafter USCO Report].

about whether a given use involves enjoyment of the expression and whether it would unreasonably prejudice the owner's interests. Those judgments can be hard for a small firm to make ahead of time, especially where an AI system combines analytical uses with the production of expressive outputs. For a small developer trying to know in advance whether a given activity is allowed, that uncertainty is a real cost.

The Singapore-style approach is more detailed than a simple carve-out. Its computational data analysis exception applies only where the purpose is computational data analysis, and it comes with conditions, including a lawful access requirement, limits on making any other use of the copy, and restrictions on supplying the copy to others. The statute also makes clear that some conduct, such as getting around a paywall, does not count as lawful access, and that breaching database terms can defeat lawful access in certain cases. Even with these conditions, the Singapore model is broader than Malaysia's existing purpose-specific exceptions, and its reliance on lawful access and use restrictions leaves important questions, such as the treatment of commercially valuable works, contractual restrictions, and downstream uses, to be worked out through interpretation. Those are exactly the kinds of open questions that a small firm cannot easily judge in advance, which is the opposite of the certainty that a clear rule should provide.

Both models would also be a sharp change from the way Malaysia's own Copyright Act is built. Section 13(2) reflects a careful choice by Parliament, namely a closed and well-defined list of specific, purpose-based limits, such as fair dealing for research, private study, criticism, review, and news reporting, along with rules for incidental and temporary electronic copies and for certain educational and library uses.⁵ Adding a broad, open-ended TDM exception to that structure would weaken the clarity and predictability that the current framework provides, and it would lack the careful tailoring that has long marked Malaysian copyright exceptions.

IV. A TDM exception would fall hardest on small creators and small developers

Generative AI systems can produce outputs that compete with, substitute for, or otherwise affect the markets for works represented in their training data. Where that happens, a TDM exception could, in practical terms, shift economic costs toward rightsholders, including small creators, without a demonstrated need for doing so.

⁵ Copyright Act 1987, *supra* note 2, § 13(2).

That burden would fall hardest on the smallest rightsholders, including the independent developers and creators ACT represents, who are least able to negotiate protective terms on their own or to absorb the loss of licensing income.

Opt-out mechanisms do not solve these problems. Rights-reservation mechanisms may play a constructive role if they are standardised, machine-readable, interoperable, and readily accessible to SMEs. At the same time, MyIPO should ensure that any such mechanism does not impose disproportionate monitoring, technical, or compliance burdens on small rightsholders or developers. An opt-out system shifts the practical burden from users who want permission to individual copyright owners, and it raises the question whether meaningful protection should depend on constant monitoring, registration, or machine-readable reservations. That concern sits alongside the Berne Convention's principle that the enjoyment and exercise of copyright should not be made subject to formalities.⁶ In practice, opt-out signals are honoured inconsistently, are often defeated when a work is copied from another source, and do little to remove a work that has already been used to train a model. For a small developer that cannot afford to watch the entire internet for misuse, an opt-out system offers little practical protection. If Malaysia does move forward with any exception, it should make clear that the exception does not authorize getting around technological protection measures and does not override separate obligations that protect confidential business information or personal data. A copyright exception should not become a way around those distinct legal regimes.

V. A broad exception raises questions under Malaysia's treaty commitments, and international practice is divided

Malaysia should also be mindful of its commitments in key treaties as it moves forward. The Berne Convention, in Article 9(2), allows exceptions to the reproduction right only in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. TRIPS, in Article 13, applies a similar three-step test to limitations and exceptions to exclusive rights more generally.⁷ A broad TDM exception would raise serious questions under this test, particularly if it reaches commercial AI

⁶ BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS art. 5(2), Sept. 9, 1886, as revised at Stockholm July 14, 1967, 828 U.N.T.S. 221 (providing that the enjoyment and exercise of rights shall not be subject to any formality).

⁷ BERNE CONVENTION art. 9(2); AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS art. 13, Apr. 15, 1994, 1869 U.N.T.S. 299. Malaysia is a party to both instruments.

development without meaningful safeguards against interference with existing or reasonably foreseeable licensing markets.

International practice on this question is divided, and there is no clear consensus that Malaysia needs a broad new exception. As MyIPO notes, some jurisdictions have adopted TDM exceptions. Other governments have, however, kept more general copyright frameworks, or have considered broader AI-specific exceptions and decided not to adopt them, including the United States, the United Kingdom, Australia, and Hong Kong.⁸ Their divergence is a reason not to assume that any single foreign model should be dropped into Malaysia's law. ACT has taken part in several of these proceedings and has consistently urged a balanced approach that keeps copyright strong and encourages voluntary licensing.⁹ A broad exception would also sit awkwardly against the Malaysian Government's own goal of creating a leading digital creative economy, which by the Government's own figures already earns tens of billions of ringgit in revenue, exports, and investment and supports thousands of skilled jobs.¹⁰

VI. ACT recommendations on MyIPO's path forward

If MyIPO wishes to support AI development while protecting creators, ACT recommends the following:

- **Keep and build on the current framework.** Malaysia's Section 13(2) exceptions already give tailored room for genuine research and other uses. That careful structure should be kept rather than replaced by a broad carve-out.
- **Support and encourage voluntary, market-based licensing.** The most durable path is direct, voluntary licensing between AI developers and rightsholders, on terms the parties set for themselves. Where rightsholders

⁸ See DEP'T FOR SCI., INNOVATION & TECH. (U.K.), Report on Copyright and Artificial Intelligence (2025); see also Hon. Michelle Rowland MP, *Albanese Government to Ensure Australia is Prepared for Future Copyright Challenges Emerging from AI*, Att'y-Gen.'s Dep't (Austl.) (Oct. 26, 2025). On the divided international picture, compare Copyright Act (Act No. 48 of 1970) art. 30-4 (Japan), and Copyright Act 2021, § 244 (Sing.), and Directive (EU) 2019/790 arts. 3-4, with the frameworks retained in the United States, the United Kingdom, Australia, and Hong Kong.

⁹ See, e.g. ASSOCIATION FOR COMPETITIVE TECHNOLOGY, Response to the UK IPO/DSIT/DCMS Consultation on Copyright and Artificial Intelligence (Feb. 2025); Association for Competitive Technology, Comments on the DPIIT Committee's Working Paper on Generative AI and Copyright (Feb. 2026) (urging voluntary, market-based licensing rather than compulsory or government-mandated licensing).

¹⁰ See *Advancing Malaysia's Digital Creative Industry Towards AI Nation 2030*, Ministry of Digital (Jan. 20, 2026), <https://www.digital.gov.my/> (reporting RM92.5 billion in revenue, RM12.1 billion in exports, over 11,000 high-value jobs, and RM85.7 billion in investments).

choose to license collectively, that too should be voluntary. ACT does not support government-mandated rates or compulsory licensing schemes, which take bargaining power away from creators and small firms and tend to favour the largest incumbents.

- **Promote transparency, recordkeeping, and data provenance.** If MyIPO decides to act, it should favour measures that support proportionate and technically feasible transparency and data-provenance practices, including appropriate recordkeeping where reasonably practicable, while protecting confidential business information and trade secrets and avoiding exhaustive work-by-work disclosure requirements.
- **Invest in education.** Malaysia should support education on the ethical development and use of AI, including on copyright and on the importance of getting permission before using protected works.

VII. Conclusion

ACT shares the Malaysian Government's goal of encouraging responsible AI and building a strong digital creative economy. The best way to reach that goal is to preserve a balanced copyright framework that protects creators while supporting responsible AI innovation. The evidence does not yet show a market failure that would justify a broad TDM exception. Such an exception would create the very legal uncertainty that small firms can least afford, would place the heaviest cost on small creators and small developers, and would raise real questions under Malaysia's treaty commitments at a time when international practice is divided.¹¹

For these reasons, ACT respectfully asks MyIPO not to adopt the Proposed TDM Exception. We would welcome the chance to serve as a resource to MyIPO and the Ministry as this important work goes forward, and we thank you for considering these comments.

Respectfully submitted,

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¹¹ Consultation, *supra* note 1.