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EXPANDING THE EXCEPTION: GENERATIVE AI TRAINING AND THE ARCHITECTURE OF INDIAN COPYRIGHT LAW

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Abstract

On 24 July 2026 the Delhi High Court, in *ANI Media v OpenAI*, declined to restrain the use of a news agency's reports in training large language models, holding prima facie that such use falls within section 52(1)(a)(i) of the Copyright Act, 1957. This article contends that, although the refusal of interim relief was defensible on the record before the Court, the interpretive route by which it was reached sits uneasily with the closed-list architecture of Indian fair dealing. The Court's reading rests on three propositions: that 'private' use extends to a closed corporate environment, that machine training is 'research', and that commerciality is immaterial at the threshold. Taken together, these propositions risk converting a purpose-bound exception into something approaching open-ended fair use without legislative sanction. Drawing on developments in the European Union, the United States, the United Kingdom, Japan, Singapore and Australia, the article demonstrates that every jurisdiction which has permitted commercial training at scale has done so through a conditioned statutory text-and-data-mining provision rather than by enlarging a private-use exception. It concludes by proposing a tiered legislative framework that distinguishes non-commercial research, remunerated commercial training and retrieval-time reuse of news, with particular regard to the position of Indian-language publishers.

Keywords: fair dealing; section 52(1)(a); text and data mining; generative artificial intelligence; news publishers; Indian languages.

I. Introduction

Indian copyright law now has its first judicial answer to the question of generative ingestion, and that answer favours the developer. In *ANI Media v OpenAI*, Bansal J refused an interim injunction, holding prima facie that the storage of ANI's news reports for the purpose of training the models underlying ChatGPT fell within section 52(1)(a)(i) of the Copyright Act, 1957.¹ The order is interlocutory and is expressly stated to be without prejudice to the final adjudication of the suit. It is, nonetheless, the only Indian authority on the point, and it has already begun to inform licensing negotiations between publishers and developers while ANI's appeal awaits determination by a Division Bench.²

The ruling arrives at a moment of evident divergence within the Indian state. Some seven months earlier, a committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT) had concluded that fair dealing is too narrow and too uncertain to sustain AI training, and had recommended a mandatory blanket licence coupled with a statutory right of remuneration.³ The judiciary and the executive have thus proceeded from opposing premises: the former treats the existing exception as already sufficient, while the latter regards it as structurally incapable of the task and proposes new institutional machinery in its place.

This article addresses three questions. First, can a purpose-bound fair-dealing provision, drafted with individual users and scholars in view, lawfully accommodate industrial-scale commercial ingestion? Secondly, what did the Delhi High Court's reasoning secure, and what did it concede, in answering that question affirmatively? Thirdly, what may India learn from jurisdictions that have legislated specifically for text and data mining, and from the litigation now testing those provisions? It is argued that the Court reached a pragmatic outcome by an interpretive route that India's closed-list design does not comfortably support, and that the allocation of value generated by news and Indian-language corpora is properly a matter for Parliament rather than for an expansive reading of section 52(1)(a).

The argument proceeds as follows. Part II sets out the statutory framework and the Indian jurisprudence on fairness. Part III tests commercial ingestion against the purpose and fairness limbs of section 52(1)(a). Part IV examines *ANI Media v OpenAI* and its subsequent appellate history. Part V undertakes a comparative analysis of six jurisdictions. Part VI considers the particular position of news and Indian-language material, and Part VII advances a tiered proposal for reform. Part VIII concludes.

II. The Statutory Framework

A. The Right Engaged

Ingestion engages the reproduction right before any question of exception arises. Section 14(a)(i) confers upon the owner of a literary work the exclusive right to reproduce it in any material form, a formulation that expressly includes storage in any medium by electronic means.⁴ The ordinary sequence of dataset construction, in which a website is crawled, its text extracted and cleaned, duplicates removed and the resulting material retained in a training corpus, produces stored copies at each stage. The statute draws no distinction between transient and enduring storage, and under section 51 the defendant's motive is immaterial to the question whether infringement has occurred.

B. The Available Exceptions

Section 52(1)(a) permits fair dealing with any work other than a computer programme for three enumerated purposes: private or personal use, including research; criticism or review; and the reporting of current events and current affairs. An Explanation inserted in 2012 provides that the storage of a work in any electronic medium for those purposes does not constitute infringement.⁵ Clauses (b) and (c), introduced by the same amendment, exempt transient or incidental storage in the technical process of electronic transmission, or for the purpose of providing links, access or integration.⁶ These latter provisions were evidently framed with intermediaries and caching in contemplation. A curated corpus retained over the months that a training run may require is neither transient nor incidental in any ordinary sense, with the consequence that clause (a) must bear the entire weight of any defence.

Two structural features of the provision merit emphasis. India follows the closed-list model inherited from the United Kingdom, under which a dealing must first be brought within an enumerated purpose before its fairness falls to be assessed. Further, the Act contains no text-and-data-mining exception, notwithstanding that the 2012 amendments presented a natural occasion on which one might have been considered.

C. The Judicial Approach to Fairness

Indian courts have converged upon a limited set of considerations in assessing fairness. In *Civic Chandran v Ammini Amma*, the Kerala High Court examined the quantity and value of the matter taken, the purpose of the taking, and whether the later work was liable to compete with the original.⁷ The Delhi High Court in *Super Cassettes v Hamar Television* accepted that

commercial use does not of itself defeat a plea of fair dealing, while treating the commercial character of the use as a weighty consideration.⁸ The Division Bench in the *Rameshwari Photocopy* litigation subsequently construed the educational exception by reference to its purpose rather than the profit motive of the defendant.⁹ Underlying each of these decisions is the three-step test of the Berne Convention, which confines exceptions to certain special cases that neither conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author.¹⁰

The jurisprudence thus displays a consistent orientation. Indian courts ask what the user was in fact doing, and whether the result competes with the work. Neither inquiry was formulated with a machine reader in contemplation, and it is to that difficulty that the article now turns.

III. Commercial Ingestion and the Limits of Fair Dealing

A. The Purpose Limb

It is at the threshold of purpose that commercial training is most vulnerable. The phrase 'private or personal use' sits naturally with an individual who copies for study, or with a small circle not addressed to the public, and the conjunction of the two adjectives suggests that the clause is concerned with the sphere in which a work is enjoyed. A developer's servers are, admittedly, private in the sense of being closed to outsiders. The purpose of the copying, however, is the construction of a product offered to the public at very considerable scale. To treat the privacy of the process as though it were the privacy of the use is, it is submitted, to conflate the location of the copy with the end it serves.

The term 'research' offers developers firmer ground. Unlike section 29(1) of the United Kingdom's Copyright, Designs and Patents Act 1988, the Indian provision does not confine research to non-commercial ends.¹¹ A court adopting an updating construction may therefore characterise statistical learning as a species of inquiry. The difficulty lies in the breadth of that characterisation. If the development of a commercial model constitutes research, then so does almost every product-development activity that involves reading, and the exception ceases to be purpose-bound in any meaningful sense.

B. Commerciality and Extent

The textual argument that commerciality is not disqualifying is a strong one. Where Parliament intended to exclude commercial use it did so expressly, as in clause (ad), which permits the copying of computer programmes only for non-commercial personal use.¹² It does not follow,

however, that commerciality is irrelevant; it is simply relocated to the fairness inquiry, where it weighs heavily. So too does the extent of the taking. Training reproduces whole works, and frequently whole archives, rather than extracts. The customary response is that the use is non-expressive, in that the model extracts statistical regularities rather than the expression that readers value. That argument carries genuine force as a description of what training produces, but it describes the output of the process rather than the act of reproduction which the statute in fact regulates.

C. The Market-Harm Paradox

The most revealing difficulty concerns market harm. An unlicensed use is less likely to be fair where a market exists for licensing it, and such a market plainly now exists: news publishers are concluding arrangements with AI developers, and ANI itself quoted OpenAI a licence fee of USD 7.5 million in October 2024.¹³ At the interlocutory stage that quotation assisted OpenAI, since it indicated that ANI's loss was capable of being compensated in damages. At the fairness stage, however, the same fact ought logically to operate in the opposite direction, for it evidences a market that unlicensed ingestion displaces. A mode of analysis that permits a single item of evidence to defeat the claimant twice over merits close scrutiny on appeal.

IV. ANI Media v OpenAI: A Case Study

A. The Dispute

ANI instituted proceedings in November 2024, alleging two distinct wrongs: first, that OpenAI had trained its models on ANI's reports without a licence; and secondly, that ChatGPT reproduced ANI's content and attributed to it statements that ANI had never published.¹⁴ Judgment on the application for interim relief was reserved on 27 March 2026 and pronounced on 24 July 2026.

B. The Reasoning of the Single Judge

The Court's reasoning may be traced through five stages. On jurisdiction, storage on servers located in the United States was treated as the terminal link in a chain of acts commencing in India, with the result that offshore training did not oust the Court's jurisdiction. On the right engaged, electronic storage during training was held to constitute reproduction under section 14(a)(i), irrespective of whether the copies were subsequently deleted. On purpose, the Court held that section 52(1)(a) requires two distinct inquiries, one as to purpose and one as to

fairness; it read 'private' as extending beyond individuals to a closed group or company, read 'research' as encompassing machine learning, and held that commerciality alone did not disqualify the defence. On fairness, the Court found that the use was confined to training, that no economic loss had been demonstrated, and that the public benefits of language models were considerable. Finally, on the output claim, ANI's examples post-dated the models' training cut-off dates, bore the hallmarks of retrieval at the time of the query rather than memorisation, and were not substantially similar to ANI's expression.¹⁵ In assessing the balance of convenience, the Court further observed that ANI had never blocked OpenAI's crawlers and that its own licence quotation demonstrated that any harm was compensable.

C. The Durable Contributions of the Judgment

Three aspects of the judgment are likely to endure. The chain-of-acts approach to jurisdiction forecloses the possibility of evading Indian law simply by locating servers abroad. The insistence that storage amounts to reproduction preserves the analytical integrity of the inquiry, declining the invitation to treat training as though it involved no copying at all. And the separation of training claims from claims founded on retrieval-based outputs reflects a discipline that courts in other jurisdictions have found difficult to maintain.

D. Points of Vulnerability

The judgment is, however, open to criticism on three grounds. As regards purpose, the construction placed upon 'private' and 'research' performs work that the closed list in section 52 was designed to prevent, for the reasons developed in Part III. As regards the equities, the significance attached to ANI's failure to block crawlers imports, by implication, an opt-out regime that Parliament has never enacted. Copyright in India, consistently with the Berne Convention, subsists without formalities.¹⁶ A rule under which silence is treated as consent transfers the burden to every publisher, including smaller publishers who may be unaware of the technical means by which crawlers are excluded. Finally, the observation that training would be economically unviable if licences were required is, in substance, a judgment of policy. It may well be correct, but it is precisely the concern to which the DPIIT committee responded by proposing a statutory licence rather than an enlarged exception.

E. Subsequent Developments

ANI has appealed. After the matter could not be taken up on 8 September 2026, a Division Bench comprising Jhingan and Arora JJ issued notice to OpenAI in mid-September and listed

the appeal for hearing on 5 December 2026.¹⁷ ANI's reported grounds are that Indian law adopts fair dealing rather than fair use, and that the private-use clause cannot authorise commercial exploitation at scale. The Broadband India Forum has applied to intervene in support of the order under appeal.¹⁸ Whatever the outcome, the Division Bench will be deciding an interlocutory question on a limited evidential record, a circumstance that itself strengthens the case for legislative clarity.

V. The Comparative Landscape

None of the jurisdictions examined in this Part has permitted commercial training by enlarging a private-use or research exception. Those that permit it have done so by statute and subject to conditions; those that resist it are moving, with varying degrees of urgency, towards licensing. The position described is that obtaining in September 2026.

A. The European Union

The European Union draws a deliberate distinction between research and commerce. Article 3 of the Directive on Copyright in the Digital Single Market permits text and data mining by research organisations and cultural heritage institutions without any possibility of opt-out, whereas article 4 permits mining by any person unless the rightsholder has reserved its rights in an appropriate, machine-readable manner.¹⁹ The Artificial Intelligence Act now requires providers of general-purpose models to observe such reservations.²⁰ German courts have tested both limbs. The Hanseatic Higher Regional Court in *Kneschke v LAION* upheld a non-profit dataset under the research exception and treated a natural-language notice on a website as an ineffective reservation.²¹ The Munich Regional Court in *GEMA v OpenAI* reached the opposite conclusion in respect of memorised song lyrics, holding that the mining exceptions cover acts of analysis but not the retention of works within a model.²² The first reference to the Court of Justice concerning generative AI, *Like Company v Google*, asks whether training constitutes reproduction and, if so, whether article 4 applies; the Grand Chamber heard argument in March 2026.²³

B. The United States

American courts, applying the open-ended fair-use standard in 17 USC § 107, have tended to divide along the line between the manner in which data was acquired and the use to which it was put. In *Bartz v Anthropic*, training on lawfully purchased books was held to be fair use,

whereas the assembly of a library from pirated copies was not; the litigation subsequently settled for USD 1.5 billion.²⁴ In *Kadrey v Meta*, the defendant prevailed because the plaintiffs had failed to establish market harm, although the Court cautioned that market dilution might defeat fair use in other circumstances.²⁵ *Thomson Reuters v Ross*, the only decision to reject fair use outright, concerned a non-generative competing product and is now before the Third Circuit, which heard argument in June 2026.²⁶ The case most directly concerned with news is *New York Times v Microsoft and OpenAI*, in which motions for summary judgment remain pending.²⁷

C. The United Kingdom

The United Kingdom's text-and-data-mining exception is confined to non-commercial research.²⁸ In December 2024 the government proposed a commercial exception subject to an opt-out, but its statutory report of 18 March 2026 abandoned that preference in favour of a more cautious, evidence-gathering posture. In the meantime, *Getty Images v Stability AI* held that model weights which do not store the training images are not infringing copies, and that training conducted abroad fell outside the reach of the English court.²⁹ The consequence is a rule that is stringent in principle at home but difficult to enforce against models trained elsewhere.

D. Japan and Singapore

Japan and Singapore have adopted permissive statutory solutions. Article 30-4 of the Japanese Copyright Act permits the exploitation of works for purposes that do not involve the enjoyment of their expression, subject to a proviso excluding uses that unreasonably prejudice the interests of the copyright owner.³⁰ Official guidance treats training directed at reproducing a work's expression as falling outside the provision, and major newspaper publishers have sued Perplexity in respect of retrieval-based answers rather than training alone.³¹ Singapore's section 244 permits copying for the purpose of computational data analysis where the user has lawful access to the material, and the Act renders void any contractual term purporting to exclude that permission.³²

E. Australia

Australia has moved furthest in the opposite direction. The Attorney-General formally ruled out a text-and-data-mining exception in October 2025, and on 15 July 2026 the Prime Minister announced that the use of Australian works for AI training would remain subject to creators'

control, with implementing legislation anticipated in early 2027.³³ Statutory, collective and voluntary licensing models remain under consultation.

F. Lessons for India

Three lessons emerge from this survey. First, permission for commercial training has everywhere been a legislative choice, and it has invariably been accompanied by conditions, whether lawful access, a reservation mechanism or a test of non-enjoyment. Secondly, courts are converging upon a distinction between training, memorisation and retrieval. Thirdly, provenance matters: copies obtained from pirated or access-controlled sources fare poorly in almost every jurisdiction. The Delhi judgment is consistent with the second and third of these lessons, but not with the first.

VI. News and Indian-Language Material

A. The Distinctive Character of News

News presents the weakest case for publishers at the stage of training and the strongest at the stage of retrieval. Copyright protects expression, not the facts that a reporter gathers. A model that learns from thousands of wire reports concerning an election absorbs facts and patterns of phrasing, and seldom retains any single report. The more serious commercial threat materialises later, when a conversational system retrieves the day's reporting at the moment of the query and answers the reader's question in full. The Delhi High Court was alive to this distinction, observing that the outputs before it resembled live retrieval rather than memorised text.³⁴ It follows that Indian law should treat training and retrieval as distinct activities, since the risk of substitution is concentrated in the latter.

B. The Particular Stakes for Indian Languages

Regional-language journalism presents a more acute difficulty still. Digitised text in most of the twenty-two languages listed in the Eighth Schedule to the Constitution is scarce in comparison with English. Scarcity enhances the value of each article to a developer seeking capability in Odia, Maithili or Bhojpuri, while the publishers who produce that text are, for the most part, small and modestly resourced. Three consequences follow. The first is that any opt-out burden falls unevenly: a rule that treats an unblocked crawler as consent protects large English-language publishers with technical staff while exposing district-level newspapers that have none. The second is that the translation right is engaged, since section 14(a)(iv) reserves

to the owner the right to make any translation of a literary work.³⁵ A system that ingests a Tamil report and conveys its substance in English, or the converse, may implicate that right in ways that a largely English-centred debate has overlooked. The third is that remuneration may fail to reach those who generate the material. The DPIIT model pays only in respect of registered works and distributes through collecting societies,³⁶ yet many regional publishers belong to no such society, with the result that unclaimed royalties would pass to a welfare fund rather than to those whose text built the capability in question.

A regime appropriate to Indian conditions must therefore do more than transplant a foreign text-and-data-mining clause. It must take account of linguistic scarcity, of uneven technical capacity and of the translation right.

VII. Redefining Fair Dealing: A Tiered Framework

It is submitted that Parliament should confine section 52(1)(a) to the function for which it was designed and legislate separately for machine ingestion. The framework proposed below distinguishes three activities that the present debate tends to conflate.

A. Non-Commercial Research Mining

A new clause should be inserted in section 52(1) permitting reproduction for the purposes of text and data mining by universities, research institutions and cultural heritage bodies, where undertaken for non-commercial research. The permission should be conditioned on lawful access, should admit of no opt-out, and should be protected against contractual override. Such a provision would mirror article 3 of the Digital Single Market Directive and section 29A of the United Kingdom statute.³⁷

B. Commercial Training on Lawfully Accessed Works

Commercial training should be authorised by statute, rather than by an extended reading of 'private use', and it should be remunerated. The DPIIT committee's proposal of a statutory licence with a right to remuneration supplies an appropriate foundation,³⁸ but three refinements would render it more equitable. First, rather than relying on crawler directives, rightsholders should be able to reserve their works, without charge, through a publicly maintained register; reservation would convert the statutory licence into an obligation to negotiate, an arrangement suited to large news archives that does not burden smaller publishers. Secondly, a fixed proportion of collected royalties should be ring-fenced for works in Eighth Schedule languages

other than English, to be distributed through publishers' associations where no collecting society exists. Thirdly, the licence should not extend to copies obtained by circumventing paywalls or technological protection measures in contravention of section 65A, or to copies derived from known pirate sources.³⁹

C. Retrieval and Output

The retrieval of current news at the time of a query should fall outside the training licence altogether. A conversational system that fetches and summarises the day's reports functions more as a news aggregator than as a learner. It should be free to reproduce very short extracts with attribution and a link, consistently with the reporting limb in section 52(1)(a)(iii), while fuller summaries should require a licence.⁴⁰ Outputs that reproduce a substantial part of a work should, in any event, remain infringing irrespective of the regime governing inputs.

D. Transparency

None of these measures can operate effectively without disclosure. Developers placing models on the Indian market should be required to file a sufficiently detailed summary of their training sources, as both the DPIIT committee and the EU Artificial Intelligence Act contemplate.⁴¹

E. The Interim Judicial Approach

Pending legislative intervention, courts should construe section 52(1)(a)(i) narrowly, treat evidence of a licensing market as relevant to the assessment of fairness, and decline to infer consent from the absence of a crawler block. The Division Bench hearing ANI's appeal has an opportunity to articulate precisely these principles.

VIII. Conclusion

The Delhi High Court has shown that section 52(1)(a) can be made to accommodate commercial generative ingestion. The more pressing question is whether it ought to be. The refusal of interim relief was defensible on a limited record: there was no proof that ANI's pleaded articles formed part of the training corpus, no evidence of lost subscribers, and a claimant that had never excluded the crawler. The reasoning, however, carries consequences that extend well beyond the dispute. To read 'private' as including a corporate server, and 'research' as including product development, is to move Indian law towards an open-ended fair-use standard without Parliament having resolved to do so.

The comparative record points in the other direction. Those jurisdictions that permit commercial mining have done so by statute and subject to conditions, while those that have declined to do so are turning to licensing.

India should make this choice deliberately. A tiered statute that frees non-commercial research, subjects commercial training to a remunerated licence, and treats the retrieval of current news as a distinct market would afford developers the certainty they seek while securing for publishers, and especially for those writing in Indian languages, a share of the value that their work creates. Fair dealing could then return to its original office: the protection of the student, the critic and the reporter.

Notes

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5. *ibid* s 52(1)(a) and Explanation, inserted by the Copyright (Amendment) Act 2012.
6. *ibid* s 52(1)(b)–(c).
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9. *Chancellor, Masters and Scholars of the University of Oxford v Rameshwari Photocopy Services* 2016 SCC OnLine Del 6229 (DB).
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 20. Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence [2024] OJ L 2024/1689, art 53(1)(c).
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