Elphinstone Research Group

Legal Research

Case Analysis Report

Training on the News: ANI Media v OpenAI and Fair Dealing in India

India Legal Research Branch | Publication 1 | First edition

October 2026

Editor's Note



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This is the first publication from ERG's India Legal Research Branch. It looks at one of the most closely watched copyright disputes in India: ANI Media v OpenAI, in which a news agency says that OpenAI copied its articles to train ChatGPT, and that ChatGPT's answers reproduced its work.

On 24 July 2026 the Delhi High Court refused ANI an interim injunction, taking the provisional view that storing ANI's works for training fell within fair dealing for research. That view is now on appeal. Our student teams asked what the ruling decides, what it leaves open and what India might do next.

This is a first edition. It brings together the work of two teams on fair dealing, market harm, licensing and comparative reform, and a further section on copyright in news reporting may follow. Several contributors worked through exams and a difficult period at their universities, and I am grateful to every one of them.

This is educational research, not legal advice, and it takes no side in the litigation. The case status was checked to 23 October 2026.



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How the research was organised

Two workstreams fed into this first edition. Their work was edited and joined into three sections, with a short background on the case and ERG's summary and conclusions around them.

SECTION 01	**Fair Dealing: Research, Commercial Use and the Fairness Factors**	How the Court read section 52(1)(a), why commercial purpose did not defeat the defence, and how purpose, character and alternatives weigh.
SECTION 02	**Market Harm, Public Interest and Licensing**	Amount, outputs and memorisation, the evidence on market substitution, the Berne three-step test, public interest and the licensing models under debate.
SECTION 03	**Comparative Law and Reform Options for India**	What US cases and the UK's 2026 options can and cannot teach India, four reform options and a provisional view.

SCOPE AND METHOD

This is a focused desk review of the 24 July 2026 interim order, the Copyright Act 1957, the DPIIT Working Paper on Generative AI and Copyright (Part I, December 2025) and comparative US and UK material. It is not legal advice and takes no position on the merits of either party's case. The case status was checked to 23 October 2026. The report is independent ERG work and is not endorsed by any party, court or government body.

Contents

Executive Summary 6
The Case So Far 7
01 Fair Dealing: Research, Commercial Use and the Fairness Factors 9
02 Market Harm, Public Interest and Licensing 12
03 Comparative Law and Reform Options for India 15
04 ERG Conclusions 20
05 Sources and Contributor Credits 22

ERG's position at a glance

The interim ruling is narrower than the headlines. It gives a provisional answer on training, leaves outputs and harm to trial, and is now before a Division Bench.

01

WHAT THE COURT DECIDED

Storing ANI's works for training engaged the reproduction right but, prima facie, fell within fair dealing for "private or personal use, including research" under section 52(1)(a). Commercial purpose alone did not defeat the defence.

02

WHAT IT LEFT OPEN

Memorisation and regurgitation, market harm on a full record, pirated or paywalled sources, ownership questions and the appeal listed for 8 December 2026. The findings serve the interim application only.

03

WHAT INDIA COULD DO

Keep the present position while the appeal runs and build transparency duties now. If fair dealing narrows, compare an opt-out exception with a licensing scheme on reach to small creators, cost to start-ups and enforceability abroad.

A provisional answer to a hard question

ERG's summary of the first edition

ANI Media Pvt Ltd v OpenAI OpCo LLC is a suit in the Delhi High Court. ANI says that OpenAI copied and stored its articles to train the models behind ChatGPT, and that ChatGPT's answers reproduced its work. On 24 July 2026 Amit Bansal J refused ANI an interim injunction. The Court held that storing the works for training engaged the reproduction right but, prima facie, fell within section 52(1)(a) of the Copyright Act 1957, and that the outputs before it were not a substantial reproduction. It stressed that these findings serve the interim application only (Section 01).

The Court read "research" broadly, on an updating construction, and held that commercial purpose alone does not defeat the defence, because Parliament wrote a non-commercial limit into other clauses but not this one. It also read "private" as reaching a company. Tested against three of the CCH Canadian fairness factors, OpenAI is stronger on purpose, and ANI on character and alternatives, which the Court did not examine directly (Section 01).

The evidence on harm is still thin on both sides. Licensing deals between publishers and developers show that a market exists, but not that the law requires a licence. Technical studies show that models can memorise text, while the Court found no substantial reproduction in the outputs before it. The DPIIT's proposed blanket licence with a right to remuneration is a consultation proposal, not current law (Section 02).

Comparison helps but cannot be copied. US courts apply fair use, not fair dealing, and two district judges reached the same result on training by different routes. The UK has set out four options without choosing one. On present evidence the authors suggest keeping the current position while the appeal runs and developing transparency duties now, which help creators, publishers and users whatever the outcome (Section 03).

Key fact	Position as at 23 October 2026
Case	ANI Media Pvt Ltd v OpenAI OpCo LLC, CS(COMM) 1028/2024, Delhi High Court
Interim order	24 July 2026, Amit Bansal J: interim injunction refused
Key provision	Copyright Act 1957, s 52(1)(a): fair dealing for private or personal use, including research
Prima facie view	Storage for training is reproduction but falls within s 52(1)(a); outputs before the Court not a substantial reproduction
Appeal	Division Bench issued notice on 15 September 2026; listed for 8 December 2026
Policy	DPIIT Working Paper Part I (December 2025) proposes a hybrid blanket licence; consultation only

BACKGROUND

The Case So Far

Prepared by the ERG editorial team

Where the case stands The Delhi High Court has refused ANI an interim injunction, on a provisional view that training fell within fair dealing for research. That order is on appeal before a Division Bench, and the suit itself has not yet been tried. Nothing in this report predicts the outcome or takes either side.

Date	Step in the case
October 2024	OpenAI says it placed ANI's website on its training blocklist from this point.[1]
19 November 2024	ANI's suit, CS(COMM) 1028/2024, comes before the Delhi High Court with an application for an interim injunction.[1] [2]
2025	The Court appoints two amici curiae and admits interveners on both sides, limited to legal issues.[1]
27 March 2026	Judgment on the injunction application reserved after 32 hearings.[1]
24 July 2026	Amit Bansal J refuses the interim injunction.[2]
September 2026	ANI appeals; the Division Bench issues notice on 15 September and lists the appeal for 8 December 2026.[3][4]

The parties and what ANI claims

ANI Media Pvt Ltd is an Indian news agency. It says that OpenAI copied and stored its published articles to train the large language models behind ChatGPT, and that ChatGPT's answers reproduced its work, sometimes attributing invented statements to it. It asked the Court to stop OpenAI from storing, using or reproducing its content while the suit is decided.[2]

OpenAI's response

OpenAI contested both infringement and jurisdiction. It said that no model training takes place in India and that it does not own the servers that hold the training data, so Indian courts should not hear the claim, and that it had blocked ANI's website from further training since October 2024. On the merits it relied on fair dealing under section 52 of the Copyright Act 1957.[1]

How the Court approached it

Because the case raised new questions, the Court appointed two amici curiae to assist it: Adarsh Ramanujan, an intellectual property practitioner, and Professor Arul George Scaria of the National Law School of India University. It also allowed interveners to make legal arguments. The Digital News Publishers Association, the Federation of Indian Publishers and the Indian Music Industry supported ANI, while the Broadband India Forum, Flux Labs and the Indian Governance and Policy Project supported OpenAI.[1]

The Court identified four questions: whether storing ANI's content for training infringes copyright; whether using it to generate answers for users infringes; whether OpenAI's use is fair dealing under section 52; and whether Indian courts have jurisdiction.[1]

What the interim order decided

On 24 July 2026 Amit Bansal J refused the injunction. Prima facie, the Court held that it had territorial jurisdiction, that storing ANI's works for training engaged the reproduction right but fell within fair dealing for "private or personal use, including research" under section 52(1)(a)(i), and that the outputs placed before it were not a substantial reproduction of ANI's works.[2] The Court stressed that these are provisional findings

BACKGROUND continued

The Case So Far

for the injunction application only. They do not decide the suit, and questions of memorisation, market harm, unlawfully sourced material and ownership remain for a fuller record. Sections 01 and 02 examine that reasoning in detail.

What happens next

ANI has appealed the refusal. A Division Bench of Avneesh Jhingan J and Manmeet Pritam Singh Arora J issued notice on 15 September 2026 and listed the appeal for 8 December 2026.[3][4] The main suit continues in parallel. The appeal may confirm, narrow or reverse the interim reading of "research" and "private", which is why this report treats the order as a provisional answer rather than settled law.

SECTION 01

Fair Dealing: Research, Commercial Use and the Fairness Factors

Contributors: Workstream 5, a combined team effort by Garima Sandu (team contact), Rutu Muppidi, Chandni Garg and Ojas Aher

How the Court framed section 52(1)(a)

ANI's suit in the Delhi High Court alleges that OpenAI copied and stored ANI's articles to train the models behind ChatGPT, and that ChatGPT's responses reproduced ANI's works. On 24 July 2026 Amit Bansal J refused ANI an interim injunction, observing that storing ANI's works for training falls within section 52(1)(a) of the Copyright Act 1957 (the Act) and that the outputs before him were not a substantial reproduction. The Court stated that these findings serve the interim application only and do not bear on the final outcome.[5]

This section examines the exception at the centre of that order. Section 52(1)(a) protects "a fair dealing" with a work for "private or personal use, including research",[6] and the DPIIT committee describes it as "narrowly defined and purpose-specific".[7] Almost everything in the order turns on how far that wording can stretch. The way the Court framed the inquiry therefore matters as much as the conclusions it reached, because the framing decides which questions are asked at all and which are left for later.

The Court applied a two-step test. It asked, first, whether the storage served one of the purposes the clause names and, second, whether the dealing was fair.[8] Finding no uniform Indian test of fairness, it framed three questions of its own: whether the use was confined to training, whether it prejudiced ANI's legitimate interests through economic competition, and whether ChatGPT serves the public interest.[9] The first question goes to how the copies were handled, the second to market harm and the third to wider benefit. The second and third questions are taken up in Section 02. The order of the two steps also matters. A use that fails the purpose step never reaches fairness, while a use that passes it is judged on fairness alone, so much depends on how generously the purpose step is read.

Because the Court built its own fairness questions, there is room to test its reasoning against a more developed framework. This section uses three of the six fairness factors in CCH Canadian, namely the purpose of the dealing, its character and the alternatives to it,[10] as comparative reasoning rather than Indian law. The amount of the dealing and its effect on the work are discussed in Section 02. The Court itself relied on CCH Canadian for the meaning of "research" but not for its fairness factors.[11] The exercise below asks what that decision would add if its reasoning were carried through from the first step to the second.

How the Court read "research" and commercial use

The Court's first ruling was that storing a literary work electronically is reproduction under section 14(a)(i) of the Act, so OpenAI needed an exception to escape liability.[12] Having found the reproduction right engaged, the Court turned to whether section 52(1)(a) applied. It traced the clause through three versions: "research or private study" in 1957, "private use, including research" in 1994, and "private or personal use, including research", with an Explanation on electronic storage, in 2012. It treated that steady widening as significant.[13] On this reading, each amendment moved the clause further from a protection for individual study and closer to one that can accommodate new forms of use, including storage in electronic form.

The Court adopted the ordinary meaning of "research" as careful study or investigation. It then applied the principle of updating construction, under which an "always speaking" statute can reach machine learning that its drafters could not foresee.[14] It reasoned that research is no longer exclusively human and, by analogy with the teaching exception in section 52(1)(i), called it regressive to deny an AI system what a human teacher could claim.[15] The analogy is central to the reasoning. It treats the model as doing something comparable to what a person does when studying a body of text, rather than as a copying machine, and it is this premise that allows training to be described as research at all. It also drew on CCH Canadian, where the Supreme Court of Canada read "research" broadly and not only as non-commercial work.[16] The Court itself noted that foreign decisions arise under different statutes,[17] which limits how much weight the Canadian authority can carry when the question is the meaning of Indian legislation.

SECTION 01 continued

Fair Dealing: Research, Commercial Use and the Fairness Factors

On commercial use, ANI argued that a commercial AI service cannot claim "private or personal use". The Court held that commercial purpose alone does not defeat the defence, for two textual reasons. Section 52(1)(a)(i) contains no non-commercial limit, although Parliament wrote one into other clauses. The neighbouring clauses on criticism, review and reporting current events cover activity often done for profit.[18] Read together, these points suggested to the Court that Parliament knew how to exclude commercial activity and chose not to do so in the research limb, and that a profit motive sits comfortably alongside fair dealing elsewhere in the same provision.

The Court distinguished Rupendra Kashyap v Jiwan Publishing House, where the defendant relied on its customers' use, because OpenAI's training was its own internal activity.[19] The distinction matters because a defendant cannot normally rely on a purpose that belongs to someone else. By locating the research inside OpenAI, rather than with the users of ChatGPT, the Court kept the dealing within OpenAI's own purpose. It also held that "private" is not limited to individuals. Reading it as a synonym for "personal" would make it redundant, so it extends to a private company, and the stored data was reachable only by the models.[20] Taken together, these holdings place a large commercial developer inside a clause whose earliest version spoke of "research or private study".

These findings are open to challenge. They lean on persuasive foreign authority and on a wide reading of "private", and extending that word to a company of OpenAI's scale is a considerable step. Commercial purpose therefore does not end the inquiry. It stays relevant to fairness and to market effect, which the factor analysis below and Section 02 assess.

What the ruling settles and what an appeal or trial could change

The interim ruling settles less than headlines suggest. The Court held that the admitted storage engaged the reproduction right and, prima facie, fell within section 52(1)(a). It did not hold that all AI training is lawful in India, or that anything online may be copied. It also confined its findings to the interim application, so they do not decide the suit and should be read as a provisional view on the material then before the Court.[21]

Five matters could change the outcome. First, market evidence: a fuller record on substitution could alter the fairness analysis, a point developed in Section 02. Second, the Court left memorisation and regurgitation to trial, and ANI had not pleaded that outputs produced through retrieval-augmented generation infringe.[22] Evidence on either point could change the assessment of outputs, which at the interim stage was confined to the examples before the Court. Third, the defence succeeded on freely available material, and pirated or paywalled sources were not decided.[23] A developer that trains on such sources cannot assume that the order covers it. Fourth, questions of ownership, including ownership of individual works and of quoted interviewee speech, may still be contested at trial. Fifth, ANI has appealed. A Division Bench (Avneesh Jhingan and Manmeet Pritam Singh Arora JJ) issued notice to OpenAI on 15 September 2026 and listed the appeal for 8 December 2026,[24] so the Court's reading of "research" and "private" may be reviewed before trial. Until the Division Bench rules, the order is best treated as the first word on these questions in India rather than the last.

Purpose, character and alternatives

Purpose of the dealing

The Court treated training as "research" on an updating construction and held that a commercial purpose is no bar, since Parliament excluded commercial use expressly where it so intended.[25] For OpenAI, CCH Canadian confirms that research "is not limited to non-commercial or private contexts."[26] For ANI, the same judgment requires an "objective assessment of the user/defendant's real purpose or motive" and accepts that commercial research "may not be as fair" as charitable research.[27] Viewed objectively, OpenAI's purpose is a subscription product. The training may be private, but the use is not. An objective test looks past the internal character of the copying to the end it serves, and on that test the commercial product is hard to set

SECTION 01 continued

Fair Dealing: Research, Commercial Use and the Fairness Factors

aside.

The Court's reliance on the United States decisions in Bartz and Kadrey[28] also sits uneasily with Rameshwari Photocopy, in which the Delhi High Court denied persuasive value to decisions applying the United States four-factor test of fair use.[29] That tension matters because fair use and fair dealing are different doctrines, and the Indian provision lists its purposes rather than leaving them open. Under CCH Canadian, commerciality returns as a matter of weight at the fairness stage. The Court settled it at the purpose stage and did not revisit it. A commercial purpose thus neither ends the inquiry nor drops out of it: it should count, with whatever weight the evidence supports, when fairness is assessed.

Character of the dealing

CCH Canadian favours a single copy used for a specific purpose and then destroyed, and disfavours wide distribution.[30] For OpenAI, the copies were never released and were used only for training.[31] On that view the dealing looks closer to the private copy that the Canadian court treated as fair than to the wide circulation it treated as unfair.

For ANI, the Court accepted that deletion "would not alter the position that temporary storage occurred in the first place",[32] and OpenAI's own submission that United States law obliges it to preserve its training data[33] undercuts any claim of transience. A dealing that is retained rather than destroyed, and retained at the scale of a training corpus, is not the single and short-lived copy that CCH Canadian treats as favourable. The Court's "limited use" question captures the confinement of the dealing, but not its scale or duration. Those two features are where ANI's case on character is strongest, and the Court did not examine them directly.

Alternatives to the dealing

CCH Canadian asks whether the dealing was "reasonably necessary to achieve the ultimate purpose."[34] The Court did not address this factor. For ANI, a licence was on offer at USD 7.5 million,[35] and OpenAI's own de minimis argument, that ANI's works form a minute share of its data,[36] suggests that the copying was not necessary. If the model could have been built without ANI's works, a non-infringing alternative was available. On that argument, the alternatives factor weighs against OpenAI precisely because the Court did not ask the question that CCH Canadian treats as part of fairness.

For OpenAI, "[t]he availability of a licence is not relevant to deciding whether a dealing has been fair",[37] and the Court accepted that licensing from multiple sources would make LLM development "economically unviable."[38] On this view, the existence of an offered licence says nothing about whether the dealing was fair, and a requirement to license every source would defeat the research purpose the Court had already accepted. The de minimis point also cuts both ways: works that are dispensable to the model are unlikely to cause substantial market harm, a question taken further in Section 02.

Weighing the factors

On the interim record, OpenAI is stronger on purpose and market effect, and ANI on character and alternatives, the two factors the Court did not examine directly. Trial evidence on retention, memorisation and the news-licensing market could shift that balance without any change in the law. The comparison with CCH Canadian does not show that the Court was wrong. It shows that the Court reached its result through questions that left two relevant factors largely unexamined, and that a fuller fairness analysis would have had more to weigh on ANI's side. None of this displaces the Court's conclusion at the interim stage, but it shows where that conclusion is most exposed on appeal or at trial. The present finding remains prima facie.[39]

SECTION 02

Market Harm, Public Interest and Licensing

Contributors: Workstream 5, a combined team effort by Garima Sandu (team contact), Rutu Muppidi, Chandni Garg and Ojas Aher

Amount, outputs and memorisation

Section 52(1)(a) of the Copyright Act 1957 (the Act) does not itself say how much of a work may be taken in a fair dealing. The amount is usually weighed both quantitatively and qualitatively, so that the original expression is not unfairly exploited, and the case law asks whether the extent of the copying is justified by the purpose behind it.[40] Large language model (LLM) development puts this approach under strain. To identify statistical correlations, a developer needs to ingest and store a publisher's entire dataset, so on a purely quantitative view the amount taken is always the whole. The real question is whether copying on that scale can be justified by its purpose. Reproduction for computational pattern recognition differs from traditional consumptive reproduction, because analysis of the full text is a prerequisite for calculating the weights of the model rather than a way of reading or enjoying the work. At the interim stage, the Delhi High Court found that storage for training was prima facie fair dealing for research.[41] That finding concerns ingestion only, and it is not a final ruling on the amount factor. It also leaves the amount factor closely tied to purpose: the more the copying is confined to training and kept away from users, the easier it is to justify taking the whole work, and the more it surfaces in outputs, the harder that justification becomes.

The harder problem is not ingestion but output, where the output can be shown to repeat or replace something the model has ingested. Technical evidence suggests that models can store and retrieve exact training data, especially where particular sequences appear repeatedly in the training set.[42] If an AI system routinely regurgitates substantial protectable expression, the amount taken weighs heavily against fair dealing, because the output then works as a direct market alternative to the original. If the output merely reflects statistical learning and the extraction of facts, which copyright does not protect, the risk of market substitution is much lower. The Court left memorisation and regurgitation to be examined at trial,[43] so this distinction remains open on the evidence. A commercial element in model development does not end the fair dealing inquiry either. The key question is whether the secondary use displaces the owner's primary market (see Section 01 on commercial use and the fairness factors).

What licensing deals show

Recent partnerships between news publishers and AI developers show a clear divide in how each side understands the purpose of licensing.

For publishers such as News Corp, these agreements are presented as an important new revenue stream that lets them monetise their investment in their archives.[44] Publishers also want their names to appear prominently in AI-generated answers, so that users are directed back to paid content. Publishers argue that training without a licence weakens the incentive to invest in journalism. That is the publishers' position, and it is not a finding of any court.

For developers such as OpenAI, the same agreements are presented as partnerships that give access to high-quality, structured and current data pipelines, which can improve model reliability and the accuracy of retrieval-augmented generation (RAG).[45] The agreements may also help developers limit their exposure to litigation and avoid copyright disputes, without conceding that a licence is legally required for pre-training. The two accounts are not necessarily inconsistent. A deal can be valuable to both sides without settling whether the law demands one. This matters for section 52(1)(a), because the existence of a voluntary market is easily mistaken for proof of a legal obligation to pay. The deals are evidence that a market for news content exists. They are not, without more, evidence of what the law requires, and the market evidence below should be read with that distinction in mind.

Market evidence on substitution

The table sets out the main market claims, their sources, the strongest counterevidence and the limits of each.

SECTION 02 continued

Market Harm, Public Interest and Licensing

Claim	Source	Counterevidence	Limitation
Publishers argue that unlicensed training undermines the licensing market for news content and the investment in journalism.	News Corp and OpenAI partnership announcement (n 5); publisher submissions.	Developers argue that training on public content is transformative statistical learning, not market substitution.	A voluntary partnership for data access does not prove that a licence is legally required under s 52(1)(a).
AI outputs divert traffic and subscription revenue from publishers.	Publishers' claim; no traffic study was before the Court at the interim stage.	At the interim stage the Court did not accept that the outputs before it substantially reproduced ANI's works, and left regurgitation to trial (n 4).	Any fall in traffic must be linked to outputs that substitute for protectable expression, not unprotected facts.
Models memorise exact journalistic expression and can act as substitute databases.	Carlini and others (n 3).	Developers' position: memorisation is the exception rather than the norm, and model weights are not raw databases.	The study shows limited extraction under specific prompting; it cannot be generalised to all RAG systems or ordinary queries.

Taken together, the evidence is thin on both sides. The strongest material for substitution is technical rather than economic, and the strongest material against it is the interim finding on the particular outputs placed before the Court. A fuller trial record on traffic, subscriptions and memorisation could shift the analysis in either direction.

The Berne three-step test

Article 9(2) of the Berne Convention allows countries to permit reproduction "in certain special cases", provided that it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. The WIPO Guide treats the three conditions as cumulative and takes them in order, so an exception that fails any one of them fails the test, although some scholars contest that cumulative reading.[46] The test is addressed to legislators, and it does not itself fix the scope of section 52(1)(a).

OpenAI admitted storing ANI's works during training. The question for the Court was therefore whether section 52(1)(a) protected that storage, and it held, prima facie, that it did.[47] Article 9(2) is a useful lens for assessing whether the statutory exception, read this widely, remains within India's treaty obligations. In particular, the second step, conflict with a normal exploitation of the work, overlaps with the licensing debate above. If training data can be licensed in a working market, a broad exception may be said to conflict with that exploitation; if no such market can work at the scale of LLM training, the conflict is harder to show. It does not, however, decide by itself whether OpenAI is covered. That depends on Indian law and on the evidence at trial.

Public interest

The Court treated public interest as one of three fairness questions under section 52(1)(a), asking whether ChatGPT's functions served the wider public. It referred to benefits in education, scientific research, access to information, translation and assistance for persons with disabilities.[48] Public interest also featured when the Court refused the injunction. The Court said that such an order could affect AI development in India and millions of ChatGPT users, many of whom are not paying subscribers. It also observed that requiring licences from every data source could make building a large language model too expensive.[49]

These were prima facie views, and the public interest can be argued from both sides. ANI argues that publicly accessible content cannot simply be copied for commercial AI training.[50] The DPIIT working paper, for its part, treats the creation of human-made works as part of the wider public good.[51] On that view, the public interest includes sustaining the journalism on which models draw, and not only access to the tools built from it. The Court's concern for users and for AI development in India, and the competing concern for the creators whose work supplies the training data, are both legitimate. How they are balanced will depend on the evidence of harm, which is still limited at this stage. ANI has appealed. A Division Bench issued notice to

SECTION 02 continued

Market Harm, Public Interest and Licensing

OpenAI on 15 September 2026 and listed the appeal for 8 December 2026, so the interim findings on public interest remain open to challenge.[52]

The DPIIT hybrid licence: a proposal, not current law

In December 2025 the Department for Promotion of Industry and Internal Trade (DPIIT) published Part I of its Working Paper on Generative AI and Copyright for consultation. It assessed voluntary licensing, collective and extended collective licensing, and text-and-data mining exceptions with and without an opt-out. A majority of the committee found each of these unsuitable in its traditional form.[53]

The majority instead proposed a hybrid model: a mandatory blanket licence allowing AI developers to train on lawfully accessed works, combined with a statutory right to remuneration for rights holders. Rights holders could not withhold their works. Royalties would be payable on commercialisation, at rates fixed by a government-appointed committee, and would be collected by a central non-profit body, the Copyright Royalties Collective for AI Training.[54] NASSCOM dissented, supporting a text-and-data mining exception with a machine-readable opt-out for rights holders.[55]

This is a consultation proposal, not enacted law, and it does not show that a licence is currently required. Comments closed on 6 February 2026, no revised Part I has been published, and Part II, on AI outputs, is still pending.[56] Reports on the judgment state that the Court referred to the proposal but reasoned differently from it.[57] The proposal is best read as a signal of one possible direction of reform (see Section 03), not as a statement of the present law.

Licensing models

Under voluntary licensing, the developer negotiates scope and price with each rights holder. The rights holder can refuse permission or attach conditions, but negotiating across large and varied datasets can be costly, a burden the DPIIT considered especially difficult for startups.[58] ANI pointed to OpenAI's licences with other news organisations. The existence of such arrangements, however, does not mean that a licence was legally required.[59]

Under a blanket or compulsory model, training can take place on lawfully accessed works within a defined category without separate negotiation with each rights holder, in return for payment through a statutory or collective system. This gives developers more certainty and lowers transaction costs, but rights holders lose control over whether their works are used. The DPIIT hybrid model follows this approach.[60]

An opt-out model allows training by default and lets rights holders reserve their works. It gives authors some control, but the DPIIT majority considered that small creators could remain largely unprotected, since they may not know how to opt out or may be unable to tell when their work is being scraped.[61] India currently has no opt-out rule, and the Act contains no specific exception for text-and-data mining. The technical ability to block crawlers does not, on its own, give a rights holder a legal right to exclude its works.[62] When weighing the balance of convenience, the Court noted that ANI could still block access to its website, but it treated this as a fact relevant at the interim stage, not as a general rule.[63]

Each model allocates control and cost differently, and none of them is the present law of India. Whether a licence was needed in ANI Media depends on the Act and on the Court's reasoning, not on the existence of a licensing model or a market for licences. Until the appeal and the trial are decided, the interim findings are the only judicial guidance, and they remain prima facie.

SECTION 03

Comparative Law and Reform Options for India

Contributors: Workstream 7, Sanidhya Vaidya and Karthika B Surendran

Why comparison helps, and its limits

Indian law currently rests on an interim, prima facie view that storing news copy to train a language model is fair dealing under section 52(1)(a) of the Copyright Act 1957.[64] That view does not bind the trial court and is under appeal: a Division Bench issued notice to OpenAI on 15 September 2026 and listed the appeal for 8 December 2026.[65] Comparison helps because two other systems have worked through the same question with fuller material. The United States has tested a flexible standard against training in litigation, and the United Kingdom has set out four options for legislating on the point in its 2026 Impact Assessment (Options 0 to 3).[66] The aim is to test which foreign arrangements could stabilise, replace or supplement the Delhi reading in India.

The limits matter as much as the lessons. The US material all concerns fair use under 17 USC § 107, which weighs purpose, the nature of the work, the amount taken and market effect.[67] That is not Indian fair dealing, which works through the permitted acts in section 52 of the Act.[68] The UK material is mostly policy, not enacted law. Neither system can be adopted wholesale. Each supplies evidence and design choices that would have to be adapted to the Act.

The two comparisons do different work. The US cases show how judges reason about training, acquisition and market harm when the statute leaves the answer to a flexible standard, and they show how unstable that reasoning still is. The UK options show what a legislature can choose between when it decides to settle the question directly, and what each choice costs. This section takes the US material first, then the UK options, then sets India beside the UK in a comparison matrix. It closes with the reform options open to India and a provisional view. The fuller analysis of fair dealing is in Section 01, and market harm and licensing are treated in Section 02.

The United States: fair use and AI training

The US material shows how a flexible standard behaves when applied to training, and how much turns on where the data came from. Four sources matter most.

US Copyright Office, Part 3: Generative AI Training

Part 3 is an agency report on 17 USC §§ 106 and 107, released as a pre-publication version on 9 May 2025.[69] It binds no court. The Register of Copyrights was removed the day after its release and that removal is still in litigation, so the report's standing is unsettled, although it has not been withdrawn.[70] The report treats copying for training as prima facie reproduction. Fair use then turns on transformativeness, provenance and market effect, including market dilution, and the report leans towards voluntary licensing.[71] It is a general policy analysis, not a decision, and it is not specific to news. Its value for India is that it supplies factors (provenance, market dilution and the availability of licensing) that Indian courts can test against evidence without adopting fair use.

Bartz v Anthropic

In a summary judgment order of 23 June 2025, a district court analysed three separate uses.[72] Training on books was fair use and "exceedingly transformative". Scanning purchased print copies was also fair use. Keeping pirated copies in a central library was not, and damages were left for trial.[73] The class action later settled, with final approval granted on 21 July 2026, so no appeal tested the reasoning.[74] The facts differ from ANI's case. The works were books, not news, and there was no claim that outputs infringed; the weakness lay in acquisition. ANI, by contrast, pleaded training and output claims, and only the interim stage has been decided. *Bartz* is useful for India because it shows that acquisition can be analysed separately from use, although *Kadrey* disagreed.

SECTION 03 continued

Comparative Law and Reform Options for India

Kadrey v Meta

Two days later, in a summary judgment order of 25 June 2025, Judge Chhabria found for the developer on training, but only on the record of thirteen authors.[75] The court said that market dilution (competing outputs that copy nothing) will often defeat fair use where it is proved. It criticised *Bartz* on market harm, rejected treating pirate downloads as separate from training, and singled out news as more exposed than novels.[76] The works were again books.

Kadrey matters for India because it is the US authority already inside the Indian judgment. The Delhi correction order of 27 July 2026 says that paragraph 80 should cite *Kadrey*, not *Bartz*. Paragraph 80 uses it for regurgitation evidence (no model produced more than 50 tokens of the plaintiffs' books), not for market dilution.[77] *Kadrey* therefore supplies the fullest market-dilution reasoning available, and paragraph 80 does not use it.

New York Times v Microsoft and OpenAI

This claim sits before Judge Stein in the Southern District of New York, within the OpenAI multidistrict litigation. It alleges reproduction and regurgitation, and a fair use defence is anticipated. Rulings of 26 March and 4 April 2025 let the core claims proceed, and cross-motions for summary judgment were filed on 4 September 2026, but there is no fair use ruling yet.[78] Because it covers training and outputs and is brought by a news publisher alleging regurgitation, it is the closest match to ANI's case. There is not yet a decision to transplant, however, so it should be tracked, not cited. If a fair use ruling arrives, it will be the first US decision on facts close to ANI's, and it will deserve careful reading alongside *Kadrey*'s remarks on news.

What cannot safely be transplanted

Three features of the US position do not travel. First, the test itself: a US finding that training is transformative answers a question that section 52 frames differently. Second, remedies. Statutory damages of up to USD 150,000 per work for wilful infringement, combined with class procedure, created heavy settlement pressure in *Bartz*,[79] so the settlement reflects US remedies rather than the strength of the claim. India has no equivalent statutory damages scheme, and representative suits under Order I Rule 8 CPC differ from class actions. Third, none of this is final law. A search on 28 September 2026 found no US appellate ruling on whether training a generative model is fair use. The Third Circuit heard *Thomson Reuters v Ross*, a non-generative case, on 11 June 2026 and has not ruled.[80]

The US therefore offers evidence for India's options, not an option of its own, because Congress has not legislated. Two judges in one court, days apart, reached the same result on training by different reasoning, split on acquisition and market dilution, and neither ruling has been tested on appeal. That is the strongest US argument against relying on current fair dealing alone. Part 3's licensing preference bears on collective licensing, but the US has no collective scheme to copy.

The United Kingdom: the 2026 options

The UK starting point (Option 0) is narrower than the Delhi reading. Section 29A of the Copyright, Designs and Patents Act 1988 permits text and data analysis for non-commercial research only,[81] so a licence is usually needed for commercial training.[82] Lawful access to material is no defence, and licensing and crawler blocking are both growing.[83] There is no transparency duty, although UK right holders gain some indirect benefit from EU rules.[84] The leading case, *Getty Images v Stability AI*, held that model weights are not infringing copies; the training claim was dropped because training took place abroad. It is a first-instance decision, and permission to appeal has been granted.[85]

The Impact Assessment then sets out three alternatives. Option 1 would require a licence in all cases, extended to imported models through market access,[86] with detailed input disclosure, output labelling and possibly a regulator.[87] Option 2 would create a broad exception permitting training on lawfully accessed works, with no right to reserve and minimal transparency.[88] Option 3 would create an exception with reservation: training is permitted unless rights are reserved by machine-readable means,[89] with EU-aligned

SECTION 03 continued

Comparative Law and Reform Options for India

input and output duties that may reach foreign models.[90] All three remain consultation proposals. The Assessment prefers no option,[91] and it monetises none.[92]

Four UK features cannot safely be imported. First, the section 29A limit to non-commercial research contradicts the Delhi reading, which treats commerciality as no bar and reads research broadly. Second, Option 1 assumes developers will accept licensing costs to keep a market. The Assessment itself records a withdrawal risk, citing Meta's 2024 EU decision, and the Court weighed the interests of millions of Indian users in the public interest, so the assumption is unproven.[93] Third, the Option 3 opt-out presupposes machine-readable standards and, on the Assessment's own account, risks over-blocking and burdens small businesses. India has no such standard, although the Court already treats ANI's failure to block crawlers as relevant.[94] Fourth, *Getty* left training unadjudicated because it occurred abroad, whereas the Delhi High Court took prima facie jurisdiction, so UK territorial reasoning cannot be borrowed. Each feature therefore needs adaptation, not adoption, and any transplant must satisfy the three-step test.[95]

Read against India, the UK options are useful less as models than as a record of the choices any legislature faces. Option 0 shows a system that keeps commercial training inside licensing by confining the exception to non-commercial research, which is the opposite of the prima facie Delhi position. Options 2 and 3 show how far an exception can go, and what must be added (lawful access, reservation, transparency) to make it acceptable to right holders. Option 1 shows the price of full remuneration: it only works if developers stay in the market and if the scheme can reach models trained elsewhere. Each of these points reappears in the reform options for India below.

Comparison matrix

The matrix sets the Indian position under the 24 July 2026 order beside the UK status quo and the three UK options. The Indian column records interim, prima facie findings only, not settled law.

Category	India (ANI order)	UK Option 0: status quo	UK Option 1: licence in all cases	UK Option 2: broad exception	UK Option 3: exception with reservation
Non-commercial research	Within section 52(1)(a); commerciality alone no bar[96]	Section 29A, non-commercial only	Unchanged	Subsumed	Subsumed; reservation can switch off
Commercial training	Prima facie fair dealing if confined to training[97]	Licence usually needed	Licence needed, incl. imported models	Permitted with lawful access	Permitted unless reserved
Transparency	No statutory duty; DPIIT proposes a disclosure form[98]	None; indirect EU benefit	Input disclosure, labelling, possible regulator	Minimal	EU-aligned input and output duties
Acquisition	Freely available pages not infringing; pirated sources distinguished[99]	Lawful access no defence	Licences for all use	Lawful access required	Lawful access; reserved works need permission
Outputs and reach	No similarity or memorisation shown; jurisdiction as outputs reach Delhi[100]	*Getty*: weights not copies; training abroad	Market access reaches imports	Output liability unaddressed	No rule for foreign-trained models
Authority	Interim order; appeal pending	Statute; *Getty* first instance	Proposal only	Proposal only	Proposal only

Three contrasts stand out. On commercial training, the prima facie Indian position is closer to UK Option 2 than to the UK status quo, but without the conditions that Option 2 and Option 3 attach to it. On transparency, India has no statutory duty, and the only Indian proposal is DPIIT's disclosure form, whereas every UK option except Option 2 would impose some duty. On reach, the Delhi High Court has asserted jurisdiction because outputs reach Delhi, while the UK has no settled rule for models trained abroad. The weakest row for every

SECTION 03 continued

Comparative Law and Reform Options for India

system is authority: nothing in either column is yet final.

Reform options for India

Four options follow from the comparison. They are not mutually exclusive: transparency (Option D) can sit alongside any of the others.

Option	Legal fit	Benefits	Costs	Risks
A. Retain fair dealing (cf UK Option 0)	No amendment; section 52(1)(a) as read prima facie[101]	Certainty and free access for developers, start-ups and users	Creators and publishers receive nothing and cannot reserve	Reversal on appeal; enforcement hard without transparency[102]
B. Exception with reservation (UK Option 3)	Amendment needed; Berne scrutiny	Publishers regain leverage; developers keep unreserved data	Reservation and monitoring costs for small creators and start-ups	No Indian standard; over-blocking; weak against foreign training[103]
C. Licensing in all cases (UK Option 1; DPIIT blanket licence as variant)	New statutory scheme; DPIIT model is a working paper only[104]	Remuneration for creators and publishers	Higher costs for developers, start-ups and users; large right holders gain most	Model withdrawal; disputes over collective governance[105]
D. Transparency overlay	New statutory duty; compatible with A, B or C	Creators and publishers can evidence use; users gain trust	Disclosure burden on start-ups; regulator needed	Delayed launches; trade secrets; limits on granularity[106]

The table shows a trade-off rather than a clear winner. Options A and B leave most data available to developers but differ on whether publishers can withhold it. Option C is the only route to direct remuneration, but its costs fall on developers, start-ups and users, and its gains go mostly to large right holders. Option D does not settle the underlying question, but it makes every other option easier to enforce.

Option A needs no legislation and gives developers, start-ups and users the most certainty in the short term. Its weakness is that it depends entirely on an interim reading that the Division Bench may reverse, and that creators and publishers have no way to reserve their work or to show that it was used. Option B would restore some leverage to publishers, but it imports the UK difficulties directly: India has no machine-readable reservation standard, small creators would bear the cost of reserving and monitoring, and a reservation does little against training carried out abroad. Option C is the only option that pays creators, and DPIIT's blanket licence shows that the idea is already under discussion in India. It is also the option most exposed to the withdrawal risk the UK Assessment records, and to disputes over how a collective scheme would be governed and how money would be distributed. Option D would require a new statutory duty and probably a regulator, and it raises concerns about trade secrets and delayed launches, but it is the only option that helps every group whichever way the appeal goes.

ERG section view: recommendation and decision framework

No option should be adopted on present evidence. The Division Bench may move the baseline when it hears the appeal on 8 December 2026,[107] and the UK Assessment monetises no option and prefers none.[108] The provisional view of this section is to hold Option A pending the appeal while developing Option D, since transparency serves creators, publishers and users under every outcome.

If the appeal narrows fair dealing, Options B and C should be compared on three tests:

1. how far remuneration reaches unorganised creators;
2. the cost to start-ups; and
3. enforceability against training carried out abroad.

SECTION 03 continued

Comparative Law and Reform Options for India

Each test answers a weakness identified above. The first matters because a scheme that pays only large, organised right holders would not meet the concern for creators that drives reform. The second reflects the costs that reservation, licensing and disclosure would all place on smaller developers. The third reflects the territorial problem that left training unadjudicated in *Getty* and that Option 3 does not solve.

That view rests on uncertain premises: that no reservation standard will mature domestically, that collective distribution can reach small creators, and that developers would stay under licensing. Users gain most from Options A and D, whereas publishers gain most from Options B and C. Evidence on Indian licensing volumes and crawler-blocking rates would reduce the uncertainty most. The US experience points the same way: until an appellate court rules, the safest course is to build the evidence and disclosure base on which any later choice will depend.

What the interim ruling means, and what to watch

On the evidence reviewed, ERG draws the following conclusions:

01 **Read the order as interim.**

The findings are prima facie and serve the injunction application only. They do not decide the suit or make all AI training lawful in India.

02 **Watch the reading of "research" and "private".**

The broad, updating reading carries most of the weight, and it is the part most open to review on appeal.

03 **Fairness will turn on evidence.**

Proof on memorisation, regurgitation and lost revenue could change the balance without any change in the law.

04 **Do not treat a market as a duty.**

Licensing deals show what developers will pay for, not that the Act requires a licence.

05 **Separate proposals from law.**

The DPIIT blanket licence is a consultation proposal; until Parliament acts, section 52 and the courts set the rules.

06 **Build transparency first.**

Disclosure of training sources helps creators, publishers and users under every outcome and makes any later option easier to enforce.

What happens next

The interim order gives India its first judicial answer on whether training an AI model on news content can be fair dealing. The answer is provisional. The Court read "research" and "private" broadly and found no substantial reproduction in the outputs before it, but it left memorisation, market harm, unlawfully sourced material and ownership to a fuller record.

The appeal listed for 8 December 2026 may confirm or narrow that reading. Whatever the Division Bench decides, the policy question will remain: how to balance access to data for developers and users against fair reward for the journalists and publishers whose work trains these systems. The DPIIT's proposal and the UK's options show the range of answers, and none is cost-free.

So we see this report as a starting point rather than a final word. ERG will follow the appeal, the trial and the DPIIT process, and we hope to add the section on copyright in news reporting in a later edition.

Thank you to every student who worked on this report, and to everyone who kept their workstream going through a demanding term.

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ADDITIONAL SUPPORT AND THANKS
Nishita (NLU Delhi), for source checking and an additional scoping note; Kanishka Ajwani, Shrishti Sehrawat and Shreya Paramane, for work trial research; and Vadym and Daniel (ERG), for supporting the project throughout.

PUBLICATION DETAILS
Case status checked to 23 October 2026. First edition: a further section on copyright in news reporting may be added in a later edition. Suggested citation: Elphinstone Research Group, Training on the News: ANI Media v OpenAI and Fair Dealing in India (2026).

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