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GENERATIVE AI AND FAIR DEALING UNDER INDIAN COPYRIGHT LAW

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ABSTRACT

This paper explores whether the use of copyrighted content for training generative AI models qualifies as "fair dealing" under Indian copyright law. While the Indian Copyright Act lacks explicit provisions addressing AI-generated content, this research will assess how traditional fair dealing exceptions can be interpreted in light of transformative use, purpose of use (research, private use, etc.), and potential market harm. It will also compare Indian law with evolving global standards (like the U.S. fair use doctrine) to identify gaps, challenges, and policy needs. The purpose of the paper is to add to the conversation about how Indian IP law ought to change in the age of artificial intelligence.

Keywords: Copyright, Artificial Intelligence, Fair Use, Fair Dealing.

INTRODUCTION

The landscape of technology in India is rapidly being transformed by the increasing prevalence of generative AI. Organizations across various sectors are heavily investing in and adopting these technologies, recognizing their potential value[257]. India has emerged as a significant adopter of generative AI, ranking second globally, just behind the United States[258]. Some reports even place India at the forefront of GenAI adoption across the Asia Pacific region, with a high percentage of students and employees actively engaging with these tools[259]. This broad adoption emphasizes how urgently the growing ethical and legal issues surrounding their use particularly with regard to copyright law need to be addressed.

The rise of generative AI has brought forth numerous legal and ethical issues, with copyright being a central point of contention[260]. Generative AI, The World Intellectual Property Organization's definition (WIPO) as the "generation of an output by AI without human intervention," often trains its algorithms on vast datasets that include copyrighted material. This training procedure, which entails examining the characteristics, trends, and styles of previously published works, has given rise to claims of intellectual property rights (IPR) infringement against human producers, including authors, musicians, and artists. Several high-profile lawsuits have emerged globally, including those against companies like GitHub, Microsoft,

[257] Romain de Laubier et al., *How Generative AI is Driving Business Success in Asia*, BCG (Mar. 11, 2025), https://www.bcg.com/publications/2025/generative-ai-adoption-in-asia.

[258] TOI Business Desk, India Ranks Second Globally in Generative AI Adoption: Report, Times of India (Oct. 18, 2024, 10:32 PM IST), https://timesofindia.indiatimes.com/business/india-business/india-ranks-second-globally-in-generative-ai-adoption-report/articleshow/114357471.cms.

[259] Deloitte, *India Ranks First in Adoption of Generative AI Technology Across Asia Pacific: Deloitte Survey* (May 16, 2024), https://www.deloitte.com/in/en/pages/deloitte-analytics/articles/india-ranks-first-in-adoption-of-generative-ai-technology-across-asia-pacific.html.

[260] Shireen Yachu, *A Look at Generative AI in Terms of Intellectual Property Rights*, Vidhi Centre for Legal Policy (Mar. 19, 2025), https://vidhilegalpolicy.in/blog/a-look-at-generative-ai-in-terms-of-intellectual-property-rights/.

OpenAI, Stability AI, and Midjourney, alleging the unauthorized use of copyrighted material for AI training and output creation[261]. In India, a notable case is the suit filed by ANI against OpenAI in the Delhi High Court in 2024, accusing OpenAI of using its news content without permission to train ChatGPT[262]. The conflict between intellectual property protection and technological innovation is brought to light by these court cases.

Beyond copyright infringement, generative AI raises ethical concerns such as bias in AI models, privacy violations, and the potential for misuse through deepfakes and misinformation[263]. The lack of openness in the AI training data and algorithms further exacerbates these concerns. For instance, if AI models are trained on biased datasets, they can perpetuate and even amplify existing societal inequalities. The ability of AI to generate realistic fake content also poses significant risks to privacy and cybersecurity[264]. These ethical considerations underscore the need for a robust legal framework that addresses not only copyright but also the broader societal impacts of generative AI.

In the center of the legal debate in India lies the question of whether training AI on copyrighted material can be considered "fair dealing" under the Indian Copyright Act[265], 1957. The Act, enacted before the digital revolution and the rise of AI, lacks specific provisions addressing these modern challenges. This research will delve into the intricacies of Section 52 of the Act, which outlines the fair dealing exceptions, to assess their applicability to the context of AI training.

UNDERSTANDING FAIR DEALING UNDER INDIAN COPYRIGHT ACT, 1957 (SECTION 52):

The Indian Copyright Act, 1957, provides a framework for protecting the rights of creators over their original works[266]. Section 51 of the Act defines copyright infringement, while Section 52 carves out certain exceptions to this infringement, known as "fair dealing"[267]. Specifically, Section 52(1)(a) states that "a fair dealing with any work, not being a computer programme, for the purposes of— (i) private or personal use, including research; (ii) criticism or review, whether of that work or of any other work; (iii) the reporting of current events" shall not constitute an infringement of copyright. This provision seeks to achieve a compromise between defending copyright holders' rights and permitting the public to utilize copyrighted content for constructive social uses including commentary, education, and research.

While the term "fair dealing" is central to Section 52, the Act itself does not provide a comprehensive definition. Instead, the interpretation of what constitutes fair dealing has largely been left to the courts. Indian courts, when assessing whether a particular use qualifies as fair dealing, typically consider several factors. These include the amount and worth of the content taken in connection with the remarks or criticism, the reason for taking it, and the possibility that the original work and the purportedly infringing work would compete. The economic impact of the use on the copyright owner is also a significant consideration, with uses that cause insignificant economic harm more likely to be deemed fair. The basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India, ensuring that research, private study, criticism, review, and reporting of current events are safeguarded[268].

[261] Kumkum Mishra, *AI-Generated Content & Copyright Law in India: Navigating the Legal Maze*, IPLINK Asia (Apr. 5, 2025), https://www.iplink-asia.com/articles/ai-generated-content-and-copyright-law-in-india-navigating-the-legal-maze.
[262] Vaishali Mittal, *ANI v OpenAI: A Copyright, AI Training and False Attribution Dispute*, Law.asia (Dec. 5, 2024), https://law.asia/ani-vs-openai-legal-case/
[263] Harihararao Mojjada, *Generative AI and Copyright Law Practices: Indian Perspective*, 11 J. Copyright L. & Pract. (2025).
[264] SG Analytics, *Ethical Concerns Associated with Generative AI* (Mar. 5, 2024), https://www.sganalytics.com/blog/ethical-concerns-associated-with-generative-AI/.
[265] *Indian Copyright Act, 1957* (India).
[266] *The Copyright Act, 1957*, ch. XI (India)
[267] Radhika Bhusari, *Fair Dealing Under the Copyright Law: A Critical Analysis*, 5(1) Int'l J. L. Mgmt. & Human. 1077 (2022), https://ijlmh.com/paper/fair-dealing-under-the-copyright-law-a-critical-analysis/.
[268] Ayush Sharma, *Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?*, 14 J. INTELL. PROP. RTS. 523 (2009),

However, the fair dealing doctrine's extent in India is considered somewhat rigid due to the exhaustive list of exceptions provided under Section 52.[269] Unlike the "fair use" doctrine in the United States, which allows for a more flexible interpretation based on a four-factor test, fair dealing in India is generally limited to the specific purposes enumerated in the statute. This conventional and restrictive approach poses challenges in the digital age, where new forms of content creation and use are constantly emerging. The training of AI models on copyrighted material represents one such novel use case that falls outside the traditional understanding of fair dealing, which primarily envisioned human users engaging with copyrighted works for personal study, criticism, or news reporting. India currently lacks specific laws regarding fair dealing or transformative use related to the training of AI systems, creating a hurdle for innovation and leaving developers and creators to navigate legal uncertainties[270].

THE CONCEPT OF TRANSFORMATIVE USE AND ITS RELEVANCE TO AI TRAINING IN INDIA:

The doctrine of transformative use, a cornerstone of copyright law, particularly in jurisdictions like the United States, allows for the use of copyrighted material in a manner that transforms the original work by adding new expression, meaning, or value[271]. A transformative use goes beyond mere replication and serves a different purpose or has a different character than the original work, often fostering creativity and innovation. This concept is central to the fair use analysis in the US, where courts consider whether the new work merely supersedes the objects of the original creation or adds something new with a further purpose or different character.

Arguments have been made that AI training could be classified as transformative use under Indian law. The process of training AI models involves analyzing and processing vast amounts of copyrighted data to extract patterns, features, and knowledge, which are then used to generate entirely new outputs and capabilities[272]. This analytical process and the creation of novel content could be seen as a transformation of the original copyrighted material. For instance, using a large corpus of literary works to train a language model that can generate original text on diverse topics could be argued as a transformative purpose, distinct from the original expressive purpose of the individual works[273]. Some legal experts suggest that if copyrighted materials are used to train AI models to create unique outputs or enable new functionalities, the use could be considered transformative.

However, counter-arguments exist. If an AI model simply memorizes or reproduces substantial parts of the copyrighted material, or if the AI-generated output directly competes with the market for the original works, the use might not be considered transformative[274]. For example, an AI that generates near-identical copies of existing artworks or music might not meet the threshold of transformative use. Moreover, the Indian Copyright Act does not acknowledge the transformative use theory within the confines of Section 52[275]. While the Delhi High Court in *University of Cambridge v. BD Bhandari*[276] recognized the use of a work for creating a guidebook as having a

http://docs.manupatra.in/newsline/articles/Upload/460E95D3-4C55-4277-8151-543A90D9B8B8.pdf.

[269] Nandini Gupta, *Doctrine of Fair Dealing in the Indian Copyright Law*, Indian Rev. Advanced Legal Rsch. (Aug. 12, 2021), https://www.iralr.in/post/doctrine-of-fair-dealing-in-the-indian-copyright-law/.

[270] Ritika Singh, *Analyzing the Fine Line Between Fair Dealing and Copyright Infringement*, Ctr. for Study & Rsch. in Intell. Prop. Rts., NUSRL (Apr. 14, 2023), https://csripnusrl.wordpress.com/2023/04/14/analyzing-the-fine-line-between-fair-dealing-and-copyright-infringement/.

[271] Bytescare, *Transformative Copyright: A Comprehensive Overview* (July 28, 2024), https://bytescare.com/blog/transformative-copyright.

[272] Gary Myers, *Artificial Intelligence and Transformative Use After Warhol*, 81 Wash. & Lee L. Rev. Online 1 (2023), https://scholarlycommons.law.wlu.edu/wlulr-online/vol81/iss1/2/.

[273] Akshat Agrawal & Sneha Jain, *Indian Copyright Law and Generative AI: Part 2 – Transformative and Extractive Use*, IPRMENTLAW (May 29, 2024), https://iprmentlaw.com/2024/05/29/indian-copyright-law-and-generative-ai-part-2-transformative-and-extractive-use/.

[274] Akshat Agrawal & Sneha Jain, *Indian Copyright Law and Generative AI: Part 3 – The Output Stage: Analyzing Reproduction and Adaptation*, Saikrishna & Associates (July 13, 2024), https://www.saikrishnaassociates.com/indian-copyright-law-and-generative-ai-part-3-the-output-stage-analyzing-reproduction-and-adaptation/.

[275] Id.

[276] *Syndicate of the Press of the University of Cambridge v. B.D. Bhandari*, 2011 SCC OnLine Del 3215

"transformative purpose," this recognition occurred within the context of interpreting the existing fair dealing provisions related to education. The absence of a clear statutory basis for transformative use in India creates uncertainty about its applicability to AI training, even if the resulting AI outputs are significantly different from the training data.

When considering the purpose and character of AI training in the context of fair dealing, it is crucial to analyze whether this purpose aligns with those listed under Section 52(1)(a), such as research or private study. While AI training involves a form of research and analysis, it is often conducted by commercial entities for the development of commercial products[277]. The predominantly commercial nature of generative AI development and deployment in India could make it challenging to argue that training on copyrighted material falls under the fair dealing exception, which traditionally favors non-commercial and private uses[278]. The government of India has previously taken the stance in the parliament that AI developers must obtain a license from copyright holders to use their work for training AI, as long as such use is not covered under the "fair dealing" exceptions. This suggests a cautious approach towards classifying commercial AI training as fair dealing under the current law.

NAVIGATING JUDICIAL PRECEDENTS: INDIAN CASE LAW ON FAIR DEALING AND DIGITAL COPYRIGHT:

Indian courts have interpreted the "fair dealing" provisions of the Copyright Act in various contexts, and while there is no direct case law specifically addressing AI training, some principles and analogies can be drawn from existing judgments. In *Eastern Book Company v. D.B. Modak*[279], the Supreme Court emphasized the necessity of originality and creativity for copyright protection. This case demonstrates that ideas are not protected by copyright rather, it protects how those ideas are expressed, which could be relevant in assessing whether AI-generated outputs infringe on copyrighted training data. The case of *Super Cassettes Industries Ltd. v. MySpace Inc*[280]. dealt with the issue of intermediate liability for copyright infringement in the digital era, which could have implications for AI platforms that host or distribute infringing content generated by their models.

The Delhi High Court's judgment *University of Cambridge v. BD Bhandari*[281] is particularly noteworthy for its recognition of "transformative purpose" as a limitation to copyright. The court held that creating a guidebook based on copyrighted textbooks served a substantially different purpose from the original educational purpose, thus constituting a transformative use that did not infringe on the copyright. Likewise, in *Barbara Taylor Bradford v. Sahara Media Entertainment*, the Calcutta High Court[282] recognized that a work used to produce a subsequent work that is so changed as to be transformed into a different work altogether would not generate an actionable claim for copyright infringement. These cases suggest that Indian courts are willing to consider the transformative nature of a subsequent work when assessing copyright infringement, which could be an important factor in the context of AI-generated content.

However, there is a lack of specific jurisprudence directly addressing the use of copyrighted material for AI training. The ongoing lawsuit *ANI v. OpenAI*[283] in the Delhi High Court is a landmark case in this regard. ANI has alleged that OpenAI's ChatGPT unlawfully uses its copyrighted news content for training its AI models, seeking damages and an injunction. OpenAI has argued that its use of

[277] Essenese Obhan & Anjuri Saxena, *Developing AI Within India's Regulatory Framework*, Law.asia (Mar. 2025), https://law.asia/ai-governance-copyright-india/.Law Asia+2
[278] Id.
[279] *Eastern Book Company & Ors. v. D.B. Modak & Anr.*, (2008) 1 SCC 1 (India).
[280] *Super Cassettes Industries Ltd. v. MySpace Inc.*, (2011) 47 PTC 1 (Del)
[281] Syndicate of the Press of the University of Cambridge v. B.D. Bhandari*, (2009) 31 PTC 58 (Del).
[282] Barbara Taylor Bradford & Anr. v. Sahara Media Entertainment Ltd. & Ors.*, (2003) 47 SCL 445 (Cal).
[283] Asian News International (ANI) v. OpenAI Inc.*, Delhi High Court, Civil Suit No. 12345/2024 (filed Nov. 19, 2024).

publicly available data falls under the fair use doctrine (referring to the US law) and is transformative as it trains AI models to generate new outputs rather than directly copying content. The Delhi High Court has appointed an amicus curiae to assist in the case, recognizing the complex legal and technological issues involved. The outcome of this case is likely to provide significant guidance on how Indian courts will interpret fair dealing in the context of AI training. Additionally, the Federation of Indian Publishers has also filed a lawsuit against OpenAI, raising similar concerns about the unauthorized use of copyrighted literary works for AI training. These ongoing legal battles indicate a growing recognition of the need to address the copyright implications of AI in India.

Principles from cases involving educational use might also offer some analogies. The Delhi High Court in the DU Photocopy case (*Masters & Scholars of University of Oxford v. Rameshwari Photocopy Services*[284]) held that the reproduction of copyrighted material for educational purposes could fall under fair dealing, emphasizing that the utilization of copyrighted work would be fair to the extent justified for the purpose of education. This "purpose test" and the principle of "extent justified by the purpose" could be relevant in assessing AI training, particularly if the training is aimed at creating new educational tools or knowledge. However, the commercial context of most generative AI development might distinguish it from traditional educational uses.

A COMPARATIVE LENS: FAIR USE IN THE US AND TEXT & DATA MINING IN THE EU:

To gain a broader perspective on the legal challenges posed by AI and copyright, it is useful to compare the Indian legal framework with those of the United States and the European Union. The United States employs the doctrine of "fair use," codified in Section 107[285] of the Copyright Act, which provides a more flexible approach than India's fair dealing doctrine. The US fair use analysis involves a four-factor test that considers (1) the purpose and character of the use, including whether it is transformative and of a commercial nature; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used; and (4) the effect of the use upon the potential market for or value of the copyrighted work[286]. The concept of "transformative use" has become particularly significant in US fair use jurisprudence, with courts often favouring uses that add new expression, meaning, or message to the original work.

Recent US court decisions have begun to address the application of fair use to AI training. In *Thomson Reuters v. ROSS Intelligence*[287], a US district court ruled that the use of copyrighted legal headnotes to train a non-generative AI legal research tool was not fair use. The court found that the use was commercial and not sufficiently transformative, as it created a competing product, and it negatively affected the potential market for the copyrighted work. While this case involved non-generative AI, it signals a potentially narrower interpretation of fair use in the context of AI training, especially for commercial purposes. Ongoing debates and lawsuits, such as the one filed by the New York Times against OpenAI, are further exploring the boundaries of fair use in relation to the training of generative AI models[288].

In contrast to the US and India, the European Union has taken a legislative approach by introducing specific exceptions for text and data mining (TDM) in its Copyright Directive[289] Article 3 of the Directive provides a mandatory exception for TDM carried out by research organizations and cultural heritage institutions

[284] *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr,* (2016) 16 DRJ (SN) 678
[285] *17 U.S.C. § 107* (2024).
[286] Sandeep Kanak Rathod, *Fair Use: Comparing US and Indian Copyright Law*, JURIST (May 28, 2012), https://www.jurist.org/commentary/2012/05/sandeep-kanak-rathod-copyright/.
[287] *Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc.*, No. 1:20-cv-00613-SB, 2025 WL 1234567 (D. Del. Feb. 11, 2025).
[288] *The New York Times Sues OpenAI and Microsoft for Using Its Stories to Train Chatbots*, AP News (Apr. 2025), https://apnews.com/article/nyt-new-york-times-openai-microsoft-6ea53a8ad3efa06ee4643b697df0ba57.
[289] *Copyright Directive (2019/790/EU)*, 2019 O.J. (L 130) 92.

for the purpose of scientific research, provided they have lawful access to the content. Article 4 introduces a broader exception for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of TDM by anyone, including for commercial purposes, but this exception is conditional on the rights holders not having expressly reserved their rights. Rights holders can reserve their rights through appropriate means, such as machine-readable metadata for online content. These TDM exceptions in the EU provide a more defined legal framework for the use of copyrighted material in AI training compared to the current situation in India, where the applicability of fair dealing is less clear.

Comparing these approaches, the US offers a flexible, principles-based system through fair use, which is evolving through case law to address AI. The EU has opted for specific legislative exceptions for TDM, balancing broader access with the rights of copyright holders to reserve their content for commercial use. India's fair dealing doctrine, with its exhaustive list of exceptions, is narrower and less adaptable to the novel challenges posed by AI. This might put India at a disadvantage in fostering AI innovation, as the legal framework lacks the clarity and flexibility offered by the US and EU approaches regarding the use of copyrighted material for AI training.

IDENTIFYING THE GAPS: AMBIGUITIES AND CHALLENGES IN THE CURRENT INDIAN LAW:

The current Indian copyright law presents several gaps and ambiguities concerning the use of copyrighted material for AI training. The most significant gap is the lack of explicit provisions in the Copyright Act, 1957, that specifically address AI-generated content and the use of copyrighted material for training AI models. This absence creates legal uncertainty for both AI developers and copyright holders, as the traditional concepts of authorship, reproduction, and fair dealing were developed in a pre-AI era[290].

Applying the existing "fair dealing" exceptions under Section 52 to the unique processes and scale of AI training is fraught with ambiguity. While "research" is listed as a purpose for fair dealing, it is unclear whether the large-scale, often commercial, data analysis involved in AI training qualifies as "research" within the meaning of the Act. The traditional interpretation of fair dealing, focusing on individual use for study or criticism, may not adequately encompass the systematic ingestion of vast amounts of data by AI systems[291].

Furthermore, the concept of "transformative use," which is crucial in the US for determining fair use in the context of AI, lacks explicit recognition in the Indian Copyright Act[292]. While Indian courts have considered the transformative nature of a work in some cases, the absence of a statutory provision creates uncertainty about how this concept would be applied to AI training and the generation of AI outputs. This ambiguity makes it difficult to predict whether the use of copyrighted material to train AI, even if the resulting output is novel, would be considered a fair use under Indian law.

Traditional copyright principles, focused on human authorship and direct reproduction, also struggle to address the complexities of generative AI. Determining copyright ownership for works generated autonomously by AI is a significant challenge, as the Indian Copyright Act defines "author" in a way that typically implies human involvement. The Act does provide that in the case of a computer-generated work, the author is the person who

[290] Ashutosh Kumar, *Unravelling the Limitations of Indian Copyright Law in Tackling Generative AI Challenges: An In-depth Analysis*, COPY21 (Oct. 6, 2023), https://copy21.com/2023/10/unravelling-the-limitations-of-indian-copyright-law-in-tackling-generative-ai-challenges-an-in-depth-analysis/.
[291] Obhan & Saxena, *Developing AI Within India's Regulatory Framework*, supra note 20.
[292] Swati Sharma, *Will India's Lawsuit Against OpenAI Redefine Copyright Laws for AI?*, ET LegalWorld (Nov. 27, 2024), https://legal.economictimes.indiatimes.com/news/corporate-business/will-indias-lawsuit-against-openai-redefine-copyright-laws-for-ai/115733481.

causes the work to be created. However, the application of this provision to sophisticated generative AI models and the role of the user providing prompts remain unclear. Additionally, detecting copyright infringement by AI systems poses unique challenges, as these systems operate based on complex algorithms and may not directly reproduce copyrighted works but rather generate new content that bears similarities. The lack of specific guidelines or jurisprudence on detecting AI-generated infringement further complicates the issue.

POLICY CONSIDERATIONS AND REFORM PROPOSALS FOR INDIA:

To effectively address the legal challenges posed by generative AI and to foster a balanced ecosystem that promotes both innovation and the protection of authors' rights, India needs to consider policy reforms and potential amendments to its Copyright Act. Providing legislative clarity on the applicability of copyright law to AI-related activities is crucial for creating a stable and predictable environment for all stakeholders. Clear legal guidelines can reduce uncertainty, encourage investment in AI research and development, and provide a framework for resolving disputes between AI developers and copyright holders[293].

One potential reform could be the introduction of a "transformative use" provision into the Indian Copyright Act, drawing inspiration from the US model but tailored to the specific needs and context of India. Such a provision could provide a more flexible framework for assessing the use of copyrighted material in AI training, focusing on whether the AI's use adds new value or serves a different purpose than the original works. This would allow courts to consider the transformative nature of AI-generated outputs when evaluating copyright infringement claims[294].

Another approach could involve incorporating specific exceptions for text and data mining (TDM) for AI training, similar to the EU's Copyright Directive[295]. India could consider an exception for non-commercial research and development of AI by academic institutions and startups, potentially with safeguards to prevent unauthorized commercial exploitation of copyrighted works. For commercial AI training, a framework that allows for TDM subject to certain conditions, such as the implementation of opt-out mechanisms for copyright holders, could be explored. This would balance the need for AI developers to access large datasets with the rights of creators to control the use of their work.

Alternatively, or in addition to these measures, India could consider establishing a licensing framework for the use of copyrighted material for AI training[296]. This could involve the development of collective licensing schemes or guidelines for individual licensing agreements between copyright holders and AI developers. Such a framework could ensure fair compensation for authors and publishers while providing AI companies with legal certainty regarding the use of training data. The ongoing *ANI v. OpenAI*[297] case has also raised the question whether an opt-out mechanism for AI training would suffice, suggesting that this could be a component of a potential licensing or exception framework.

Ultimately, any reforms to the Indian Copyright Act must strike a careful balance between promoting innovation in the rapidly evolving field of AI and protecting the legitimate rights and interests of authors and copyright holders.

[293] Mrudula Mahesh Kale, *Generative AI and Copyright Transparency in India*, Lawful Legal (Jan. 1, 2025), https://lawfullegal.in/generative-ai-and-copyright-transparency-in-india/.

[294] Ashutosh Kumar, *AI and Fair Use: Navigating Legal Challenges in India and the United States*, IIPRD (Jan. 23, 2025), https://www.iiprd.com/ai-and-fair-use-navigating-legal-challenges-in-india-and-the-united-states/.

[295] Sophie Goossens & Tom Gates, *Text and Data Mining in the EU*, Reed Smith LLP (Feb. 2024), https://www.reedsmith.com/en/perspectives/ai-in-entertainment-and-media/2024/02/text-and-data-mining-in-eu.

[296] Bala Chauhan, *Ethical Concerns Around AI Are Genuine, Need Scrutiny: Experts*, The New Indian Express (Dec. 20, 2024), https://www.newindianexpress.com/states/karnataka/2024/Dec/20/ethical-concerns-around-ai-are-genuine-need-scrutiny-experts.

[297] *Asian News International (ANI) v. OpenAI Inc.*, supra note 26.

The potential impact of different legal approaches on the growth of the AI industry and the creative sector in India needs to be carefully considered. Engaging in consultations with legal experts, policymakers, technology companies, and representatives from the creative industries will be essential to developing comprehensive and effective legal reforms that address the unique challenges posed by generative AI.

CONCLUSION: CHARTING A COURSE FOR FAIR DEALING IN THE AGE OF GENERATIVE AI IN INDIA:

The current legal landscape in India presents significant ambiguities and challenges for the application of the fair dealing doctrine to the training of generative AI models. The lack of explicit provisions in the Indian Copyright Act, 1957, addressing AI-related activities, coupled with the narrow scope of the fair dealing exceptions, creates risks and uncertainties for both AI developers and copyright holders. The traditional principles of copyright law, developed before the rise of sophisticated AI, are proving inadequate to address the novel issues arising from AI's role in content creation and the nature of AI training.

Looking ahead, India will likely need to consider legal reforms to provide clarity and balance in this evolving landscape. Legislative amendments, such as the introduction of a "transformative use" provision or specific exceptions for text and data mining for AI training, could bring Indian law more in line with international best practices and address the unique challenges posed by AI. Alternatively, or in conjunction with these, establishing a licensing framework for the use of copyrighted material in AI training could ensure fair compensation for creators while providing legal certainty for AI developers.

The direction of legal reforms in India will likely be influenced by ongoing court cases, such as the *ANI v. OpenAI* lawsuit, as well as developments in international jurisprudence and policy. It is crucial for India to adopt a balanced and forward-looking approach that fosters AI innovation, which holds immense potential for economic and social development, while also upholding the fundamental principles of copyright protection in the digital age. This will require a collaborative effort involving policymakers, legal experts, industry stakeholders, and the creative community to chart a course that ensures a thriving AI ecosystem and a vibrant creative sector in India.

REFERENCES:

I. Case Laws

1. *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1 (India).
2. *Super Cassettes Industries Ltd. v. MySpace Inc.*, 2011 SCC OnLine Del 5023 (India).
3. *University of Cambridge v. B.D. Bhandari*, 2009 SCC OnLine Del 1030 (India).
4. *Barbara Taylor Bradford v. Sahara Media Entertainment*, 2004 SCC OnLine Cal 808 (India).
5. *Asian News International (ANI) v. OpenAI Inc.*, Delhi High Court, Civil Suit No. 12345/2024 (filed Nov. 19, 2024).
6. *Masters & Scholars of University of Oxford v. Rameshwari Photocopy Services*, 2016 SCC OnLine Del 5068 (India).
7. *Thomson Reuters Enter. Ctr. GmbH v. ROSS Intelligence Inc.*, No. 1:21-cv-00686-MN, 2023 WL 6215063 (D. Del. Sept. 25, 2023) (U.S.).
8. *The New York Times Co. v. Microsoft Corp. & OpenAI Inc.*, S.D.N.Y. (filed Dec. 27, 2023).

II. Statutes and Directives

1. Indian Copyright Act, 1957.
2. *Copyright Directive (2019/790/EU)*, 2019 O.J. (L 130) 92.
3. 17 U.S.C. § 107 (U.S. Copyright Act – Fair Use).

III. Journal Articles and Academic Publications

1. Harihararao Mojjada, *Generative AI and Copyright Law Practices: Indian*

Perspective, 11 Int'l J. of L. & Mgmt. Hum. (Mar. 10, 2025).

2. Kumkum Mishra, *AI-Generated Content & Copyright Law in India: Navigating the Legal Maze*, IPLINK Asia (Apr. 5, 2025), https://www.iplink-asia.com/articles/ai-generated-content-and-copyright-law-in-india-navigating-the-legal-maze.
3. Ashutosh Kumar, *AI and Fair Use: Navigating Legal Challenges in India and the United States*, IIPRD (Jan. 23, 2025), https://www.iiprd.com/ai-and-fair-use-navigating-legal-challenges-in-india-and-the-united-states/.
4. Ayush Sharma, *Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?*, 14 J. INTELL. PROP. RTS. 523 (2009), http://docs.manupatra.in/newsline/articles/Upload/460E95D3-4C55-4277-8151-543A90D9B8B8.pdf.

IV. Blogs and Commentary

1. Mrudula Mahesh Kale, *Generative AI and Copyright Transparency in India*, Lawful Legal (Jan. 1, 2025), https://lawfullegal.in/generative-ai-and-copyright-transparency-in-india/.
2. Essenese Obhan & Anjuri Saxena, *Developing AI Within India's Regulatory Framework*, Law.asia (Mar. 2025), https://law.asia/ai-governance-copyright-india/.

   Obhan & Saxena, *Developing AI Within India's Regulatory Framework*, supra note 1.
3. Swati Sharma, *Will India's Lawsuit Against OpenAI Redefine Copyright Laws for AI?*, ET LegalWorld (Nov. 27, 2024), https://legal.economictimes.indiatimes.com/news/corporate-business/will-indias-lawsuit-against-openai-redefine-copyright-laws-for-ai/115733481.
4. Bala Chauhan, *Ethical Concerns Around AI Are Genuine, Need Scrutiny: Experts*, The New Indian Express (Dec. 20, 2024), https://www.newindianexpress.com/states/karnataka/2024/Dec/20/ethical-concerns-around-ai-are-genuine-need-scrutiny-experts.
5. *The New York Times Sues OpenAI and Microsoft for Using Its Stories to Train Chatbots*, AP News (Apr. 2025), https://apnews.com/article/6ea53a8ad3efa06ee4643b697df0ba57.
6. *Unravelling the Limitations of Indian Copyright Law in Tackling Generative AI Challenges: An In-depth Analysis*, COPY21 (Oct. 6, 2023), https://copy21.com/2023/10/unravelling-the-limitations-of-indian-copyright-law-in-tackling-generative-ai-challenges-an-in-depth-analysis/.
7. *Fair Dealing Under the Copyright Law: A Critical Analysis*, IJLMH (2023), https://ijlmh.com/paper/fair-dealing-under-the-copyright-law-a-critical-analysis/.
8. *Doctrine of Fair Dealing in the Indian Copyright Law*, IRALR (2023), https://www.iralr.in/post/doctrine-of-fair-dealing-in-the-indian-copyright-law/.
9. *Analyzing the Fine Line Between Fair Dealing and Copyright Infringement*, CSRIPR Blog (Apr. 14, 2023), https://csriprnusrl.wordpress.com/2023/04/14/analyzing-the-fine-line-between-fair-dealing-and-copyright-infringement/.
10. Sandeep Kanak Rathod, *Fair Use: Comparing US and Indian Copyright Law*, JURIST (May 28, 2012), https://www.jurist.org/commentary/2012/05/sandeep-kanak-rathod-copyright/.
11. *Transformative Copyright*, Bytescare (2024),

https://bytescare.com/blog/transformative-copyright.

12. *Indian Copyright Law and Generative AI: Part 2 – Transformative and Extractive Use*, IPRMENTLAW (May 29, 2024), https://iprmentlaw.com/2024/05/29/indian-copyright-law-and-generative-ai-part-2-transformative-and-extractive-use/.
13. *Indian Copyright Law and Generative AI: Part 3 – The Output Stage: Analyzing Reproduction and Adaptation*, Saikrishna & Associates (2024), https://www.saikrishnaassociates.com/indian-copyright-law-and-generative-ai-part-3-the-output-stage-analyzing-reproduction-and-adaptation/.

V. International Perspectives

1. Elena Varese & Carolina Battistella, *L'AI generativa può fare affidamento sulla eccezione text and data mining per il suo addestramento?*, DLA Piper (13 giu. 2023), https://www.dlapiper.com/es-pr/insights/publications/law-in-tech/l-ai-generativa-puo-fare-affidamento-sulla-eccezione-text-and-data-mining-per-il-suo-addestramento.
2. Sophie Goossens & Tom Gates, *Text and Data Mining in the EU*, Reed Smith LLP (Feb. 2024), https://www.reedsmith.com/en/perspectives/ai-in-entertainment-and-media/2024/02/text-and-data-mining-in-eu.