
INTERIM IN NAME, FINAL IN EFFECT: A CRITIQUE OF THE DELHI HIGH COURT'S ORDER IN ANI MEDIA V. OPENAI

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ABSTRACT

On 24 July 2026, the Delhi High Court refused Asian News International's application for an interim injunction against OpenAI, holding at a prima facie stage that the use of ANI's copyrighted news content to train the large language models underlying ChatGPT falls within the fair dealing exception in Section 52(1)(a) of the Copyright Act, 1957. Celebrated in some quarters as a victory for innovation, the 135-page order is, on closer examination, a case study in procedural overreach and interpretive strain. This essay argues that the Court resolved contested questions of fact without the benefit of trial, misapplied the statutory concept of an "infringing copy," stretched the "private use" and "research" limbs of Section 52(1)(a) beyond their ordinary meaning through the misuse of the doctrine of updating construction, applied a fairness test that ignored the phenomenon of market dilution recognised in contemporaneous American jurisprudence, and constructed a text-and-data-mining opt-out regime that finds no basis in the statute. Read together, these features suggest that the order, however narrow its formal effect has already begun to perform the work of legislation.

Keywords: Fair dealing; Copyright Act, 1957; artificial intelligence; large language models; text and data mining; ANI Media v. OpenAI.

On 24 July 2026, a Single Judge of the Delhi High Court dismissed the application of ANI Media Private Limited for an interim injunction against OpenAI.¹ The Court held, on a prima facie basis, that the storage of ANI's copyrighted news content to train the large language models ("LLMs") underlying ChatGPT is protected fair dealing under Section 52(1)(a) of the Copyright Act, 1957,² and that ChatGPT's outputs neither memorise nor substantially reproduce ANI's works.³ The order, running to 135 pages and following thirty-two hearings spread over some twenty months,⁴ is India's first detailed judicial engagement with the copyright implications of AI training, and early commentary has tended to frame it as a victory for technological innovation and a check on expansive rights claims.⁵ That reception, this essay contends, is premature. Read closely, the order is less a model of judicial restraint than a demonstration of how not to decide a hard case at the interim stage: it resolves contested facts that only a trial could settle, commits an elementary error in construing the statutory concept of an "infringing copy," stretches a personal-use exception into something resembling an industrial licence through the misapplication of an interpretive doctrine, and constructs a policy regime of an opt-out system for text-and-data-mining which Parliament has never enacted. Whatever view one takes of AI policy, the order performs a legislative function under the guise of interim relief.

I. An Interim Order That Decided What Only a Trial Could

The defining vice of the order is procedural rather than substantive. The Court itself accepted that several disputes of fact i.e. how OpenAI obtained and stored ANI's works, whether the process amounted to a transformative exercise in text-and-data-mining or something closer to wholesale reproduction, and what economic consequences, if any, flowed for ANI could

¹ANI Media (P) Ltd. v. Open AI OpCo LLC, CS(COMM) 1028 of 2024 (Delhi HC, order dated 24 July 2026, Bansal J.); see also S.S. Rana & Co., "Copy, Right? ANI Media Pvt. Ltd. v. Open AI OpCo LLC" (July 2026), available at <https://ssrana.in/articles/copy-right-ani-media-pvt-ltd-v-open-ai-opco-llc/> (last visited 13 August 2026).

²The Copyright Act, 1957 (Act No. 14 of 1957), s. 52(1)(a).

³LiveLaw News Network, "'OpenAI's Act Of Storing ANI's Works Does Not Amount To Copyright Infringement': Delhi High Court While Refusing Interim Injunction", *LiveLaw* (24 July 2026), available at <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-openai-ani-copyright-infringement-interim-relief-chatgpt-542746> (last visited 13 August 2026).

⁴The New Publishing Standard, "Delhi High Court Rules for OpenAI: The Third Major Fair-Use Verdict in 13 Months" (27 July 2026), available at <https://thenewpublishingstandard.com/2026/07/27/delhi-high-court-openai-ani-fair-dealing-ruling/> (last visited 13 August 2026).

⁵See, e.g., *Civildaily*, "Delhi High Court's ANI v OpenAI Ruling Offers a Better Path on Copyright and AI than a Training Licensing Regime" (August 2026), available at <https://www.civildaily.com/news/delhi-high-courts-ani-v-openai-ruling-offers-a-better-path-on-copyright-and-ai-than-a-training-licensing-regime/> (last visited 13 August 2026).

properly be resolved only at trial.⁶ Having said so, the Court proceeded to answer them regardless, under the rubric of a “prima facie opinion.” A prima facie view formed in the teeth of unresolved, outcome-determinative facts is not adjudication so much as informed speculation, and the distinction between data-mining and full reproduction viz. the fulcrum of the entire infringement analysis is precisely the kind of question the Court guessed at.

The guesswork, moreover, ran in one direction, effectively reversing the burden that fair dealing, as a defence, places on the party invoking it.⁷ The Court repeatedly faulted ANI for failing to place “material on record” demonstrating a loss of subscribers, syndication revenue or market share⁸ wevidence that, in the ordinary course, lies substantially within OpenAI’s possession and could only emerge through discovery. The contrast with the parallel American litigation is instructive: in the consolidated proceedings brought by the New York Times and other publishers, a United States Magistrate Judge directed OpenAI to preserve and, eventually, produce a sample of twenty million de-identified ChatGPT logs precisely so that the question of reproduction could be tested on an adequate evidentiary record.⁹ ANI, by contrast, was denied interim protection on the basis of an evidentiary vacuum that the Delhi High Court declined to fill through discovery of its own. An interim order is conventionally expected to preserve the status quo where the facts remain genuinely contested; this one converted the contest itself into a reason to rule for the defendant.

II. The Paywall Fallacy, and an Internal Contradiction

The Court held that OpenAI could not be said to have obtained an “infringing copy” of ANI’s works because the content was freely available on ANI’s website, unprotected by a paywall.¹⁰

⁶Supra note 1; see also Digital Applied, “Delhi High Court Calls AI Training Fair Dealing, For Now” (2026), available at <https://www.digitalapplied.com/blog/delhi-high-court-openai-ani-fair-dealing-ai-training-ip> (last visited 13 August 2026) (noting that the order is “expressly qualified as prima facie” and stated not to bind the final adjudication of the suit).

⁷The Indian Evidence Act, 1872, ss. 101–103 (general burden of proof); the Copyright Act, 1957, s. 52 structures fair dealing as an exception to the exclusive rights conferred by s. 14.

⁸K&S Partners, “OpenAI Successfully Defends ANI’s Interim Injunction Application for Copyright Infringement before the Delhi High Court” (2026), available at <https://kandspartners.com/openai-successfully-defends-anis-interim-injunction-application-copyright-infringement-before-the-delhi-high-court/> (last visited 13 August 2026).

⁹In re: OpenAI, Inc., Copyright Infringement Litigation (S.D.N.Y.) (consolidating sixteen copyright actions against OpenAI, including suits brought by The New York Times Co. and the Chicago Tribune Co.), order of Wang, M.J. (7 November 2025) directing production of twenty million de-identified ChatGPT logs, aff’d Stein, J.; “OpenAI Must Turn Over 20 Million ChatGPT Logs, Judge Affirms”, *Bloomberg Law* (5 January 2026), available at <https://news.bloomberglaw.com/ip-law/openai-must-turn-over-20-million-chatgpt-logs-judge-affirms> (last visited 13 August 2026).

¹⁰Conventus Law, “India – Delhi High Court Examines Fair Dealing In Generative AI Training And Copyright Protection” (August 2026), available at <https://conventuslaw.com/report/india-delhi-high-court-examines-fair->

This is a fundamental error of copyright doctrine. Under Section 2(m) of the Copyright Act, a copy is “infringing” where its reproduction is made without the licence of the copyright owner;¹¹ the statutory test turns on authorisation, not on accessibility. A book displayed openly in a shop window does not thereby become free to photocopy. Indeed, the order contradicts itself on this very point: elsewhere, while examining the question of ownership, the Court correctly held that the mere fact that a work is freely and publicly accessible does not deprive it of copyright protection.¹² If public availability does not diminish the right, it cannot simultaneously operate to launder an unauthorised reproduction into a non-infringing copy. The two propositions cannot coexist, and the order nowhere reconciles them.

III. Stretching Section 52(1)(a) Beyond Recognition

The most consequential move in the order is its holding that OpenAI’s industrial-scale scraping and storage of copyrighted news content amounts to “private or personal use, including research” within the meaning of Section 52(1)(a).¹³ Three interpretive choices carry this conclusion, and each is vulnerable to challenge.

First, the Court treated “private” use as capable of being exercised by a juristic entity, reasoning that OpenAI’s training corpus was held in a closed environment accessible only internally.¹⁴ This conflates secrecy with privacy. “Private,” as used in Section 52(1)(a), qualifies the nature of the use, not the confidentiality of the user’s internal processes; a commercial entity’s core production process i.e the manufacture of its principal product for sale to the public, is close to the antithesis of personal use, whatever access controls surround the underlying data.

Second, the Court invoked the doctrine of updating construction, drawing on the Supreme Court’s decision in *State v. S.J. Choudhary*¹⁵, to hold that the word “research” extends to machine learning. In *S.J. Choudhary*, the Supreme Court read the word “handwriting” in Section 45 of the Indian Evidence Act, 1872 to include typewriting, applying Francis Bennion’s account of statutes as “always speaking” instruments that must be read in light of developments

dealing-in-generative-ai-training-and-copyright-protection/ (last visited 13 August 2026).

¹¹The Copyright Act, 1957, s. 2(m).

¹²Supra note 1; see also Mondaq, “ANI Media v. OpenAI: The Delhi High Court Weighs In” (August 2026), available at <https://www.mondaq.com/india/copyright/1829582/ani-media-v-openai-the-delhi-high-court-weighs-in> (last visited 13 August 2026).

¹³The Copyright Act, 1957, s. 52(1)(a)(i); supra note 1.

¹⁴Conventus Law, supra note 10.

¹⁵*State v. S.J. Choudhary*, (1996) 2 SCC 428.

their framers could not have foreseen.¹⁶ The Indian Evidence Act, 1872 has been repealed but the Bharatiya Sakshya Adhiniyam, 2023 has kept the provision in section 39¹⁷ and has expanded the scope of Expert Opinion to include any other field which was not present before. Updating construction of this kind accommodates new technological means of pursuing an existing purpose; it does not license the transfer of a statutory benefit from one class of beneficiary i.e. human researchers, to an entirely different class, namely commercial model developers. Requiring OpenAI to negotiate a licence, the consequence of a more literal reading, is hardly the “patently absurd” result that alone would justify resort to purposive or updating construction. Licensing markets for training data plainly exist: ANI itself offered OpenAI a licence to its content for USD 7.5 million by letter dated 3 October 2024,¹⁸ and comparable news-bargaining regimes in Australia and Canada demonstrate that platforms can and do pay for access to journalistic content at scale.¹⁹ An outcome that is routine market practice elsewhere cannot easily be characterised as legally absurd.

Third, the Court held that commerciality is irrelevant to the Section 52(1)(a) inquiry because Parliament, while imposing a non-commercial limitation elsewhere in Section 52, omitted one here.²⁰ The textual observation is accurate, but the conclusion does not follow from it. Even under the considerably more open-ended fair-use regime in the United States, commerciality remains a live factor: the Supreme Court in *Campbell v. Acuff-Rose Music, Inc.* treated a transformative purpose as diminishing, rather than eliminating, the significance of commercial character.²¹ The Delhi High Court thus arrived, through interpretation alone, at a research exception more permissive than American fair use, embedded within a fair-dealing statute that is universally regarded as the narrower instrument of the two. That is an outcome Parliament might legitimately reach by amendment, as Japan did through Article 30-4 of its Copyright Act, which permits certain non-expressive machine-learning uses subject to express statutory safeguards²². However, it is not one that a court should reach at an interim stage through

¹⁶Francis Bennion, *Statutory Interpretation: A Code* (2nd edn, Butterworths 1992); see also *CIT v. Podar Cement (P) Ltd.*, (1997) 5 SCC 482 (approving the principle of updating construction).

¹⁷ See Bharatiya Sakshya Adhiniyam, s.39(1)- When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

¹⁸S.S. Rana & Co., supra note 1 (letter dated 3 October 2024 offering a licence of ANI’s content to OpenAI for USD 7.5 million).

¹⁹News Media and Digital Platforms Mandatory Bargaining Code 2021 (Cth) (Australia); Online News Act, S.C. 2023, c. 23 (Canada).

²⁰Mondaq, supra note 12; LiveLaw, supra note 3.

²¹*Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 584–85 (1994).

²²Copyright Act (Japan), Act No. 48 of 1970, as amended, art. 30-4.

statutory interpretation alone.

IV. A Fairness Test Blind to the Real Harm

The Court's threefold fairness inquiry asked whether the use was confined to training, whether it caused market substitution, and whether it served the public interest. It is in the application of the second and third limbs that the Court's reasoning thins into assertion.

On harm, the Court reasoned that ChatGPT's functions are "fundamentally different" from news syndication and that its responses do not substitute for ANI's articles. This framing is some distance behind the technology and behind contemporaneous foreign jurisprudence. Two days after Judge Alsup's ruling on fair use in *Bartz v. Anthropic*²³, Judge Chhabria's opinion in *Kadrey v. Meta Platforms, Inc.* identified the more precise mechanism of injury: market dilution, whereby a model trained on human expression can flood the market with an effectively unlimited supply of competing content, destroying the market for the original even where no individual output resembles any individual input.²⁴ Wire agencies such as ANI are acutely exposed to this dynamic: their business is the licensing of verified facts, and an LLM that answers a factual query strips away the sourcing and verification that the agency supplies, diverting readers from the publisher's own platform without attribution. The Delhi High Court's order does not engage with market dilution at all. More strikingly, it treated ANI's USD 7.5 million licence offer as evidence that no injunction was required because any loss was "quantifiable" in monetary terms,²⁵ without registering that the offer proves the opposite of what the Court took it to prove: it demonstrates a functioning licensing market for precisely the use in question, a market that uncompensated large-scale scraping tends to undermine. To hold that a copyright owner's willingness to sell a licence disqualifies it from objecting to unauthorised taking is to invert the ordinary logic of property.

On public interest, the Court catalogued the benefits of LLMs, ranging from education, research, accessibility to the dissemination of knowledge and found that these considerations

²³*Bartz v. Anthropic PBC*, No. 3:24-cv-05417 (N.D. Cal.), order on fair use (23 June 2025) (Alsup, J.).

²⁴*Kadrey v. Meta Platforms, Inc.*, No. 3:23-cv-03417-VC (N.D. Cal.), order of 25 June 2025 (Chhabria, J.); see also Authors Guild, "AG on Meta AI Ruling: Meta Gets a Technical Win, but the Law Favors Authors" (2025), available at <https://authorsguild.org/news/meta-ai-ruling-meta-gets-technical-win-but-law-favors-authors/> (last visited 13 August 2026).

²⁵Storyboard18, "OpenAI vs ANI: Delhi HC says ChatGPT injunction could hurt Indian AI development" (July 2026), available at <https://www.storyboard18.com/digital/openai-vs-ani-delhi-hc-says-chatgpt-injunction-could-hurt-indian-ai-development-105513.htm> (last visited 13 August 2026).

resonate with the broader constitutional and statutory commitment to advancing knowledge. The balance sheet, however, was one-sided. A financially viable press is itself a constitutional and democratic good; if the economics of newsgathering deteriorate because the product of that newsgathering is harvested by machines without compensation, the information ecosystem that the order celebrates will eventually have less of substance to draw upon. Nor did the order engage with the question of market concentration viz. a small number of firms now control both the leading models and the data pipelines that feed them, having drawn on what is, in practice, a public informational common while retaining the resulting commercial upside for themselves. Invoking the “public interest” to subsidise the data costs of a company valued in the hundreds of billions of dollars, at the expense of the content producers whose work supplies the underlying training material, risks becoming public-interest reasoning in name only.

V. A Judge-Made Opt-Out Regime

The Court repeatedly emphasised that ANI could have used technical means to block OpenAI’s web crawlers and had not done so.²⁶ This is, in substance, the European Union’s approach to text-and-data-mining: use is permitted by default, subject to a right-holder’s ability to opt out.²⁷ That model exists in Europe because the Directive on Copyright in the Digital Single Market enacted it, subject to an express opt-out mechanism for right-holders and now reinforced by the transparency obligations imposed on providers of general-purpose AI models under the EU AI Act.²⁸ India has no equivalent statute. By treating the absence of a technical opt-out as close to dispositive, the Court imported the policy outcome of a foreign legislative compromise while discarding the compromise itself, and in doing so reversed copyright’s ordinary default rule: copyright is a right to exclude, and an owner is not ordinarily required to fence its property in order to retain the benefit of that right. Shifting the burden onto every publisher to opt out of every crawler operated by every AI company, in perpetuity, describes a regulatory scheme that no court is institutionally equipped to design or to supervise. Even commentary broadly sympathetic to the outcome notes that the order itself records the need for Parliament to address the resulting legislative gaps.²⁹ Where such gaps exist, the appropriate judicial task at an interim stage is to apply the statute as it stands, not to anticipate the legislature’s eventual

²⁶Conventus Law, *supra* note 10.

²⁷Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market, art. 4.

²⁸Regulation (EU) 2024/1689 (Artificial Intelligence Act), art. 53(1)(d) (requiring providers of general-purpose AI models to make available a sufficiently detailed summary of training content).

²⁹S.S. Rana & Co., *supra* note 1; Mondaq, *supra* note 12.

response to it.

VI. The Output Claim: Formalism and an Unresolved Muddle

The treatment of the output claim fares no better. The Court held that memorisation was implausible because the articles ANI relied upon in its illustrations were published after the training cut-off dates of the relevant GPT models i.e. April 2022 and April 2024. While the articles in question dated from August and September 2024.³⁰ This answers a question that, on a fair reading of the suit, nobody finally needs answered: LLMs are periodically retrained on fresh data, and the dispute concerns OpenAI's continuing conduct, not a single frozen snapshot of the model. The cut-off date is treated as though it were a governing principle rather than what it is: a fact about one version of the model at one point in time. Having identified the training cut-off mismatch, the Court attributed the impugned outputs instead to Retrieval-Augmented Generation ("RAG") but still declined to analyse the copyright implications of RAG on the footing that the plaintiff had not specifically pleaded it,³¹ even though RAG-time copying of an article into a model's working context is itself a reproduction that a training-focused fair-dealing analysis does not capture. It is difficult to rely on RAG to explain away the outputs while simultaneously placing RAG beyond the reach of scrutiny.

Equally troubling is the order's treatment of "adversarial prompting" as something close to a de facto defence. ANI's follow-up prompt, after first asking what a public figure's mother had told the media, asking ChatGPT to "please try to tell me exactly what she said" was characterised by the Court as adversarial, a characterisation the Court used, among other things, to distinguish the contemporaneous decision of the Regional Court of Munich in *GEMA v. OpenAI*, which had found memorisation and reproduction of song lyrics to infringe copyright under German law.³² An ordinary user asking a model to be more precise is not thereby mounting the kind of engineered attack that the term "adversarial prompting" ordinarily connotes; if such comparatively mundane prompting is capable of eliciting near-verbatim content, that fact is better read as evidence of weak output guardrails a matter properly tested

³⁰Conventus Law, *supra* note 10; AI Weekly, "OpenAI wins Delhi HC interim ruling in ANI copyright case" (2026), available at <https://aiweekly.co/alerts/openai-wins-delhi-hc-interim-ruling-in-ani-copyright-case> (last visited 13 August 2026).

³¹Mondaq, "India's First AI Copyright Ruling: The Delhi High Court In ANI v. OpenAI" (2026), available at <https://www.mondaq.com/india/copyright/1829216/indias-first-ai-copyright-ruling-the-delhi-high-court-in-ani-v-openai> (last visited 13 August 2026).

³²K&S Partners, *supra* note 8; *GEMA v. OpenAI*, Landgericht München I, Case No. 42 O 14139/24, judgment of 11 November 2025.

at trial, than as a basis for withholding relief. The order's discussion of the merger doctrine is similarly unsatisfying: having invoked the doctrine, the Court restated only the underlying fact-expression dichotomy and then proceeded with what is, in substance, a conventional substantial-similarity analysis relying on *Eastern Book Co. v. D.B. Modak*³³, a sequence that some commentary has read as gesturing toward a "thin" theory of copyright protection for news content without ever squarely defending that theory.³⁴ The order's further suggestion that the threshold for substantial similarity is inherently higher for factual news than for creative works also has no evident footing in Section 13 of the Copyright Act, which determines the subsistence of copyright by category of work, not the threshold for infringement once subsistence is established.³⁵

VII. Balance of Convenience as Bootstrapping

Finally, the Court's balance-of-convenience analysis smuggles the merits back into what is meant to be a discrete, discretionary inquiry. The findings that requiring licences would render LLM development "economically unviable" and that an injunction would harm "millions of ChatGPT users in India"³⁶ were reached without an evidentiary record to support them that licensing arrangements between AI developers and publishers exist in multiple jurisdictions, and relief confined to ANI's own content would not have disabled ChatGPT for anyone else. The observation that deleting the relevant training data might conflict with OpenAI's preservation obligations in the American litigation is stranger still: a foreign discovery duty owed to a different court, in a different proceeding, cannot dilute the content of an Indian statutory right. And the Court's "quantifiable injury" reasoning punishes candour in a way that is difficult to defend as a matter of principle, a rights-holder who names a price for its content loses the prospect of an injunction, while one who declines to negotiate at all retains it.

Conclusion

Interim orders exert an influence that extends well beyond their formal precedential status; a 135-page prima facie ruling of this kind will shape litigation strategy, licensing negotiations and legislative debate for years, whatever the eventual outcome at trial. That is precisely why

³³*Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1.

³⁴See generally P4SC4L, "The Delhi High Court Refused ANI's Interim Injunction..." (2026), available at <https://p4sc4l.substack.com/p/the-delhi-high-court-refused-anis> (last visited 13 August 2026).

³⁵The Copyright Act, 1957, s. 13.

³⁶K&S Partners, *supra* note 8; Storyboard18, *supra* note 25.

the occasion called for judicial restraint: to frame the issues, order discovery, and allow the facts to be tried. Instead, the order resolved disputed facts by inference, read an established exception well beyond its ordinary meaning, and sketched the outline of a regulatory framework of a one to the substantial benefit of one of the most valuable companies in the world. Some judgments are the product of the law as enacted; others are, in substance, the product of judicial preference operating within the law's interstices. On the questions of fair dealing, evidentiary burden, and the constitutional division of labour between court and Parliament, the Delhi High Court's order in *ANI Media v. OpenAI* belongs, on balance, to the latter category a conclusion that the pending appeal, and the trial still to come, will have the opportunity to test.³⁷

³⁷The Commercial Courts Act, 2015, s. 13(1A); Code of Civil Procedure, 1908, Order XLIII, r. 1(r) (providing an appeal from an order refusing a temporary injunction).