One Nation, One Licence, One Cartel?

The Competition Case Against India's AI Training Levy

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Two Regulators, Two Answers

On 8 December 2025, a committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT) released Part I of its Working Paper on Generative Artificial Intelligence (AI) and Copyright, subtitled "One Nation One License One Payment". Its central recommendation is a mandatory blanket licence permitting AI developers to train on all lawfully accessed copyright-protected works, paired with a statutory remuneration right. Royalties computed as a percentage of revenue from commercialised AI systems would be collected by a single non-profit body designated by the Central Government. This would be the Copyright Royalties Collective for AI Training (CRCAT), constituted by existing copyright societies and collective management organisations (CMOs), one for each class of works. The committee was unambiguous that *"the rights holders will not have the option to withhold their works for use in the training of AI Systems"*.

Seven months later, on 24 July 2026, the Delhi High Court decided *ANI Media Pvt. Ltd. v. OpenAI OpCo LLC*. Justice Amit Bansal held, prima facie, that storing ANI's works to train a large language model (LLM) falls within the fair dealing exception in section 52(1)(a)(i) of the Copyright Act, 1957. The court observed that Section 52, *"independently defines the rights/privileges of a user in respect of copyrighted works and must not be interpreted in a restrictive manner"*. Commerciality was held irrelevant to that clause, and lawful access was held not to be a precondition.

There has been substantial critical response to the Working Paper, however this engagement has been almost entirely on copyright terms. This includes questions like whether training engages section 14 at all, whether copyright is the right instrument for labour displacement, and whether the royalties would ever meaningfully reach individual creators. The competition dimension and implications have gone largely unexamined. It is argued that CRCAT is not only a copyright design, instead, it is a competition law object as well.

A Safe Harbour That Does Not Reach

The instinctive answer seems to be that none of this is the Competition Commission of India's (CCI) business, because section 3(5) of the Competition Act, 2002 carves intellectual property out of the prohibition on anti-competitive agreements. That answer does not survive the text.

Section 3(5)(i) provides that nothing in section 3 shall restrict *"the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under"* the enactments listed, the first of which is the Copyright Act, 1957. The carve-out is conditional. It protects the restraint of infringement and it protects conditions that are both reasonable and necessary for protecting a conferred right. In *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India*, the Delhi High Court rejected the contention that remedies under the Patents Act, 1970 ousted the CCI, and proceeded on the footing that the sub-

section shelters only what is reasonable and necessary. This textual limitation is not contestable, i.e., a condition that protects no right cannot be necessary to protect one.

If we apply that to CRCAT after the *ANI* judgement, on the Court's prima facie view, training an LLM on lawfully accessed works infringes nothing. This means that there is no infringement for the collective to restrain. Nor is a levy on the revenue of every commercialised AI system, payable irrespective of which works a given developer actually trained their models on which is a condition *necessary for protecting* any particular right. Revenue mechanisms are not immunised by being described in the vocabulary of copyright. The safe harbour, on its own terms, does not reach the design.

What The Design Actually Does

Stripped of the exemption, three features require justification which the Working Paper does not supply.

Rate-Setting Across Competing Rightsholders

Section 3(3)(a) presumes an appreciable adverse effect on competition where a decision taken by an association of enterprises directly or indirectly determines purchase or sale prices. CRCAT is, by the committee's own description, a body constituted by rightsholders that fixes a single national price for the licensing of their works. The State designates the entity while the competitors populate and administer it. The statutory garb alters who authorises the conduct, not what the conduct is.

A Single Collective, With No Exit

The stipulation of one member organisation for each class of works forecloses the emergence of competing collectives. Simultaneously, the removal of any right to withhold works forecloses individual licensing. Rightsholders may neither leave nor bargain, and AI developers have no alternative counterparty. Both sides of the market are captive by design. That is not a reduction in transaction costs, instead, it is the elimination of the market in which they are incurred.

Foreclosure On The Demand Side

A royalty pegged to revenue from commercialised AI systems is, in substance, a proportional cost of entry into the Indian market. Well-capitalised incumbents may well be able to absorb it; the start-ups and micro, small and medium enterprises (MSMEs) that the Working Paper expressly seeks to assist cannot. Where CRCAT is the sole gateway to lawful training inputs, its terms are capable of denying market access within the meaning of section 4(2)(c), its dominance being, by construction, assured.

The European Solution

Collective licensing is not objectionable in itself. The European experience is instructive because it concluded so, and then imposed conditions.

In its decision of 16 July 2008 in *CISAC*, the European Commission found that the membership and exclusivity clauses in the reciprocal representation agreements between twenty-four collecting societies infringed Article 101(1) of the Treaty on the Functioning of the European Union, because they restricted rightsholders' freedom to choose their society and prevented licensing outside home territories. The General Court annulled the concerted practice finding in 2013, but the findings on the clauses stood.

The legislative sequel was Directive 2014/26/EU. Article 5 requires that a rightsholder's consent be given specifically for each right or category of rights and evidenced in documentary form, and confers a right to withdraw rights of their choice, for territories of their choice, on notice not exceeding six months. A CMO may not condition withdrawal on the rights being entrusted to another CMO.

Europe permitted collective management on the express condition of open membership, granular consent, and a genuine right of exit. The Working Paper proposes collective management while removing all three.

India Has Its Own Warning

The domestic record is no better. In *HT Media Ltd. v. Super Cassettes Industries Ltd.*, the CCI held on 1 October 2014 that a dominant licensor of Bollywood music to private FM radio stations had abused its position by imposing minimum commitment charges payable irrespective of actual broadcast. This was held to contravene section 4(2)(a)(i), and a penalty was imposed. The conduct condemned there was a blanket charge decoupled from actual use. This is structurally close to a levy on revenue decoupled from the works actually trained upon.

Further, a Division Bench of the Delhi High Court held on 13 July 2023 that the Patents Act, 1970, as the special enactment, prevails over the Competition Act in this field. The Supreme Court, in *Competition Commission of India v. Monsanto Holdings Pvt. Ltd.*, declined on 2 September 2025 to interfere, but did so on the peculiar facts, and expressly kept the questions of law open. The National Company Law Appellate Tribunal then applied the ouster in *Swapan Dey v. Competition Commission of India*. On 2 February 2026, however, the Supreme Court stayed paragraphs 8 to 10 of that ruling and confined the appeal to jurisdiction. The position is therefore unsettled in principle and, for now, in practice. If a CRCAT created under an amended Copyright Act attracts the ouster reasoning, the competition concerns do not disappear. It is simply that no regulator is left to hear them, notwithstanding section 62 of the Competition Act, which declares that Act to be in addition to and not in derogation of any other law.

Conclusion

Part II of the Working Paper, and any amendment to the Copyright Act that follows it, should not proceed on the assumption that a statutory licence is a competition-neutral instrument. Three safeguards are the minimum. First, an express saving of the CCI's jurisdiction over CRCAT's conduct. This is needed so that rate-setting and distribution remain reviewable by the regulator equipped to assess them. Second, a right of individual withdrawal on the model of Article 5, which restores the counterfactual against which any collective tariff can be measured. Third, permission for competing collectives within a class of works, in place of the single designated member.

A regime built to compensate creators should not be constructed so that only the largest aggregators of content and the largest developers of models can operate within it. After *ANI*, the case for the levy is weaker than it was in December 2025. Meanwhile, the case for subjecting it to competition scrutiny has never been stronger.

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