BEFORE THE
DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE
MINISTRY OF COMMERCE & INDUSTRY OF THE GOVERNMENT OF INDIA

Generative Artificial Intelligence and Copyright: Working Paper Part 1

06 February 2026

The Copyright Alliance appreciates the opportunity to submit comments to the Department of Promotion of Industry and Internal Trade of India ("DPIIT") in response to the Working Paper on Generative AI and Copyright: Part 1 ("Working Paper"), prepared by the committee examining the intersection of Generative Artificial Intelligence and Copyright ("Committee"), focusing on issues related to the use of copyright-protected works for training of AI systems.[1]

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines.[2] We are dedicated to advocating for policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators who rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy. While we represent the interests of copyright stakeholders in the United States,

[1] Dep't for Promotion of Indus. & Internal Trade, *One Nation One License One Payment: Balancing AI Innovation and Copyright* (Ministry of Com. & Indus. of the Gov't of India, Working Paper on Generative AI and Copyright: Part 1, 2025), https://www.dpiit.gov.in/static/uploads/2025/12/ff266bbeed10c48e3479c941484f3525.pdf [hereinafter "Working Paper"].

[2] A full list of Copyright Alliance organizational members is available online. *See Who We Represent*, COPYRIGHT ALL., https://copyrightalliance.org/about/who-we-represent/ (last visited Jan. 27, 2026).

many of our members have made direct and indirect economic investments in India's vibrant creative ecosystem. We therefore wish to see a framework that addresses the tensions between AI and copyright in a manner that does not increase barriers to sustaining and increasing such investments. We are fully mindful and supportive of the massive advantages that AI stands to imbue on society, and the need to address the unprecedented and ongoing unauthorized exploitation of creators' works by AI companies to build and operationalize those tools. This is a challenge facing creators worldwide, and we appreciate India's attempts to address this challenge.

We submit these comments to voice significant concerns with and to oppose the Committee's recommendation of "a mandatory blanket license in favor of AI Developers for the use of all lawfully accessed copyright-protected works in the training of AI Systems, accompanied by a statutory remuneration right for the copyright holders . . . [without an option for the rightsholder] to withhold their works from use in the training of AI Systems." ("Recommendation"). While we agree with and appreciate the Committee's clarifying statement that copyright owners are entitled to remuneration arising from the use of their works by AI developers and for AI systems, we oppose the Recommendation and are especially concerned with the proposal for a blanket licensing system. Among other concerns, the Recommendation, if enacted, would risk India failing to meet intellectual property standards and norms agreed to under the three-step test set forth by the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention") and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").[3] We urge the Committee to reject the Recommendation and instead acknowledge the rapidly evolving voluntary licensing marketplace in which scalable licensing solutions are emerging, and recommend voluntary licensing as the solution that best addresses the needs and issues of both AI companies and copyright owners.

[3] *See generally* Berne Convention for the Protection of Literary and Artistic Works art. 9(2), Sep. 9, 1886, 102 Stat. 2853, 828 U.N.T.S. 221, https://www.wipo.int/wipolex/en/text/283698 [hereinafter Berne Convention]; Agreement on Trade-Related Aspects of Intellectual Property Rights, Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, Annex 1C pt. 2, § 1, art. 13, 33 I.L.M. 1167, 1867 U.N.T.S. 299, https://www.wto.org/english/docs_e/legal_e/31bis_trips_04_e.htm#1 [hereinafter TRIPS Agreement].

The Recommendation is an Unwarranted Government Intervention That Will Undermine the AI Licensing Market

The Indian government is one of many governments considering whether legal or policy changes are necessary or appropriate to foster AI innovation. We are grateful that the Committee (like many other governments) rejected the idea of introducing a text-and-data mining (TDM) exception in India's copyright law. While fostering AI innovation is a worthy goal which we also support, achieving that goal should not be accomplished at the expense of India's and other countries' creative communities. Unfortunately, the Recommendation does just that by subjecting Indian and other countries' creators and copyright owners to a blanket license requirement, causing them to essentially subsidize wealthy AI companies who can easily afford to and should directly license the works they need from creators and copyright owners. The Committee is correct to acknowledge in the Working Paper that large-scale unlicensed uses of creative works threaten the necessary incentives for sustained investment in the creation of new works.[4] This problem must be considered with appropriate acknowledgement of emerging marketplace licensing solutions, which are still nascent but show great promise. Unfortunately, the Committee does not appear to have fully canvassed the market but has proposed a "one-size-fits-all" approach which leans heavily towards favoring the interests of AI companies over those of creators and copyright owners.

Government mandated licensing regimes and government rate setting processes—such as the one being recommended by the Committee—attempt to impose a one-size-fits-all solution to a range of infringing activities that impact different sectors differently. Compulsory licensing regimes like the one proposed in the Working Paper are problematic for many reasons. First, compulsory licenses severely devalue copyrighted works. Despite what a buyer may pay for in a free market for the true value of a work, compulsory licenses defy market realities by deeming that all copyrighted works are worth exactly the same, in spite of differences in value, labor, quality, craftmanship, and other factors.

[4] *See* Working Paper, *supra* note 1, at 55.

Second, compulsory licenses strip copyright owners of their fundamental ability and right under copyright law to decide whether their copyrighted works can be used and by whom and, if so, the circumstances under which those works can be used.

Third, compulsory licenses destroy a growing AI licensing market and overly burden both licensees and licensors (not to mention the Indian Government and its taxpayers) with costly, lengthy, and contentious administrative processes. Particularly, under the compulsory license system envisioned in the Working Paper, creators and copyright owners would be disproportionately burdened as they would shoulder the costs and burdens of creating new royalty collecting organizations, establishing administrative workflows, and maintaining such structures for a new compulsory licensing scheme. Compulsory licenses are extremely harmful to creators and copyright owners, and it is critical that where a copyright owner voluntarily offers licenses for uses relating to the training of AI systems, such licenses be respected by India's copyright and AI legal regime.

Particularly in the AI context, a compulsory licensing scheme such as the one that the Committee has recommended fails to address the complex, myriad circumstances under which copyrighted works are affected by and used to train AI models. Many AI models have been trained on and are widely used to displace the use of original human-created works—sometimes in the form of outputs which mirror or regurgitate those works, thereby eroding and diluting the market for original offerings. This is happening across different sectors—from music, to motion pictures, to news and magazine media, to photography, and other visual arts. Each sector of the copyright and creative industries creates, distributes, and monetizes creative works differently—whether through subscriptions, advertising, or direct sales—sometimes as part of a time-limited offerings or series of windowed distributions. As previously described, this is one major reason why compulsory licenses are harmful, and why licensing on a voluntary basis is necessary.

Voluntary licensing embraces these differences and enables each sector to define terms on which it makes works available for third-party uses in ways that address their legitimate needs which are tied to the specific characteristics of the particular market. A compulsory license is wholly unsuitable to address such varied needs. Furthermore, the use of content by AI systems at various

points in the life cycle of an AI model will likely have different implications on the interests of rightsholders. For example, it does not appear that the Committee has directly addressed the impact of its Recommendation on uses of copyrighted works that take place after a model has already been trained, such as the scraping and summarization of content from the internet, to create outputs which substitute for the original material.[5]

Demonstrated Voluntary Licensing Activities Show that Access is Not the Main Issue Hindering AI Development

We oppose the Recommendation and urge the Committee to continue embracing India's commitment to voluntary licensing instead. Government intervention on AI copyright licensing in the name of "increasing access" for AI companies is not necessary—particularly in light of overwhelming evidence that voluntary licensing for AI uses is working and has led to numerous partnerships and collaborations between the AI and creative industries.

The market for voluntary licenses for AI training is booming. Over the past two years, the Copyright Alliance has tracked over 200 voluntary licenses directly entered into or offered by copyright owners in connection to AI development—and this does not even cover confidential licensing agreements that do not receive media coverage.[6] There are numerous examples of AI companies that are directly entering into licensing agreements with (and thereby compensating) copyright owners for the ingestion of their works. An explosion of licensing deals, agreements, and other constructive partnerships and developments were announced in a span of just a few months at the end of 2025—underscoring the viability and vibrancy of the voluntary AI licensing market supported by a robust copyright law framework. Recent examples of free-market

[5] While not generally understood to be "training," activities like scraping and summarization have also not been specifically excluded from scope. Working Paper, *supra* note 1, at 10. The Working Paper simply says in footnote 22—"Any reference to 'AI training'/ 'AI Training' shall mean training of such AI Systems"—but training is not defined, and the references to training throughout the document appear to contemplate the use of works at scale to create contextually relevant outputs which mirror or mimic original works. *Id.* at 10 n.22. The Committee does not directly address that the ingestion and exploitation of copyright works by AI companies is limited to the stage of early development. While intended focus of the concern is on "training," the Committee does not appear to have specifically excluded inference-time uses or other kinds of AI uses from its Recommendation.

[6] *See AI Licensing by Copyright Owners*, COPYRIGHT ALL., https://copyrightalliance.org/artificial-intelligence-copyright/licensing/copyright-owners/ (last visited Jan. 27, 2026).

licensing and partnership agreements include the ones between Universal Music Group and NVIDIA, Disney and OpenAI, The New York Times and Amazon, various news publishers and OpenAI, Universal Music Group and Udio, Universal Music Group and Stability AI, Getty Images and Perplexity, Universal Music Group, Sony Music Group, and Warner Music Group and Klay, Warner Music Group and Stability AI, and Warner Music Group and Suno.

We acknowledge the Committee's questions about how to ensure that direct deals include smaller players and address transaction costs. We strongly urge the Committee to consider that licensing for AI training has begun an important evolution which embraces scalable, efficient solutions which offer access to a marketplace on terms that can be adapted to the needs of each sector and each individual creator. In the last half of 2025, AI startups, AI companies, and rightsholder groups have proposed or launched products and technical solutions which seek to facilitate licensing at scale in ways that could massively expand options for all sizes of rightsholders.[7] This growing universe of deals between AI companies and copyright owners, which have been reached without any government intervention, proves the existence of a working market that is built on compensation, consent, control, and even collaboration. To ensure the vibrancy of this market, traditional, direct, and voluntary licensing enabled by copyright law (including, where desired, on a collective basis) should always be the default approach.

In fact, the current AI licensing market proves that voluntary licensing has been accessible and achieved by both big and small AI companies. The Committee favors a statutory licensing regime because it would "help startups and small players to gain easy access to content for training of AI Systems at pre-determined rates."[8] But, as the AI licensing market has shown, it is often the smaller AI companies and startups like Bria.ai, Moonvalley, ProRata, KLAY Vision, and others who have pioneered striking licensing deals and developed ethical AI models with copyright owners, proving that voluntary licensing copyrighted works is not a hindrance to AI

[7] *See AI Licenses Offered by Organizations*, COPYRIGHT ALL., https://copyrightalliance.org/artificial-intelligence-copyright/licensing/organizations/ (last visited Jan. 27, 2026).

[8] Working Paper, *supra* note 1, at 58.

innovation, an "access" issue, or a market entry barrier for smaller AI companies. More new license agreements are being reached all the time. That is welcome and expected progress.

The voluntary licensing of works for AI use benefits AI companies and creators and copyright owners alike. It provides creators and copyright owners with the compensation they are entitled to, allows appropriate bespoke terms and protections to be applied which are agreeable to both parties and necessary for the contemplated use, and insulates AI companies from the risk of expensive and time-consuming litigation. Not only do these deals erase a major risk of liability for AI companies, but importantly, they also provide them with high-quality original works that helps ensure that their model outputs are safe and less prone to hallucination. By contrast, compulsory licensing regimes fail AI companies and creators and copyright owners alike. Compulsory licensing denies creators and copyright owners the fair compensation they are entitled to, forces all parties to inflexible and rigid terms that insufficiently address the concerns arising in the transaction, and invites significant administrative burdens and costs associated with complicated rate-setting proceedings—burdens and costs which would have to be borne mostly by creators and copyright owners, but also AI companies and the Indian Government and its taxpayers.

The Recommendation Fails to Pass Berne Three-Step Test

The Recommendation also threatens India's ability to comply with international copyright treaty obligations and norms set out by the three-step test detailed in the Berne Convention, to which India is a signatory.[9] Enshrined in Article 9(2) of the Berne Convention and Article 13 of the TRIPS Agreement, and traditionally broken down into three components, the test provides that member countries may permit the reproduction of copyrighted works in (1) "certain special cases," (2) "provided that such reproduction does not conflict with a normal exploitation of the

[9] *Treaties Collection*, WORLD INTELL. PROP. ORG., https://www.wipo.int/wipolex/en/treaties/parties/remarks/IN/15 (last visited Jan. 27, 2026) (outlining India's history as a Berne Convention signatory).

work," and which (3) "does not unreasonably prejudice the legitimate interests of the author."[10] The Recommendation fails all three steps of the test.[11]

1. The Recommendation fails under the very first step of the test because it is too broad in its applicability and scope and thus cannot be considered as a "special case." This step of the three-step test generally requires that the scope of an exception be narrow and well-defined.[12] As previously noted, use of copyrighted works for AI training purposes can encompass a wide variety of AI uses, but the Committee does not delineate the particular use the proposed compulsory licensing scheme is designed for. Additionally, while the Committee stresses that access for AI companies, particularly *small* AI companies, was a major concern that justified the Recommendation, the Recommendation would provide a blanket exemption for *all* AI companies. The Committee's suggested safeguard of "lawful access," while well-meaning, further fails to narrow the Recommendation in any way that would qualify it as a "special case" as it only compounds the issues arising from failing to specify the particular use in case (as described further below). The Recommendation fails to be narrow in many respects, including its application and scope, and cannot be considered a "special case," thus failing to pass the first step of the Berne Convention's three-step test.

2. The Recommendation also fails the second step of the test because it would directly undermine the growing voluntary AI licensing market and thus conflict with the normal exploitation of copyrighted works. Under the second step, "normal" exploitation can be both actual and potential ways that a copyrighted work is exploited.[13] As noted above and throughout this submission, creators and copyright owners are currently licensing content to AI developers, and thus the Recommendation would hurt creators and copyright

[10] Berne Convention, *supra* note 3, art. 9(2); TRIPS Agreement, *supra* note 3, pt. 2, § 1, art. 13.

[11] Berne Convention, *supra* note 3, art. 9(2).

[12] *See* Jane C. Ginsburg, *Toward Supranational Copyright Law? The WTO Panel Decision and the "Three-Step Test" for Copyright Exceptions* 5 (Columbia L. & Econ. Working Paper, Paper No. 181; Pub. L. & Legal Theory Research Paper, Paper No. 19, 2001), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2236&context=faculty_scholarship.

[13] *Id.* at 6.

owners' current licensing market. Moreover, the current trajectory of this voluntary AI licensing market indicates that this market is not just of theoretical importance to creators and copyright owners, but that it is a form of exploitation of copyrights that is bound to be of considerable economic or practical importance in the future. Particularly given the substitutive and diluting effects of generative AI output on the markets for copyrighted works, the voluntary market for AI licensing is of critical importance to creators and copyright owners. Because the Recommendation would undermine the voluntary licensing market and directly conflict with the actual and potential exploitation for the works, it fails the second step of the Berne three-step test.

3. Finally, the Recommendation would also fail the third step of the test as it prejudices authors' legitimate interests in their works by denying them the ability to reap proper value in a market that is of growing economic significance by merely serving the business interests of AI companies. Under the third step, such legitimate interests encompass significant economic interests of creators and copyright owners. Though a compulsory license offers a level of remuneration, it pales in comparison to a more accurate level of remuneration that is gained through a voluntary AI licensing market, whose exponential growth has proven that this source of income will be important to many in the creative industries. Moreover, authors' legitimate interests are severely prejudiced where the outputs of an AI model trained in reliance on a compulsory license act as a substitute for and compete against the copyrighted work that has been copied. An output does not need to be identical to be a plausible substitute. The output quality of generative AI models already available on the marketplace can make it hard to distinguish between human-created works and AI generated output, leading to significant displacement of human-created works. It is prejudicial to authors' legitimate interests to be compelled to hand over their copyrighted works at below market prices to be used to train AI models that can generate output that can displace the ingested works. The longer-term displacement potential of the Recommendation is obvious and affects the legitimate interests of authors. Because the Recommendation would adversely affect all copyright owners in a demonstrated market that is of growing importance to their incomes, the

potential harms from the compulsory licensing scheme would be "unreasonable" and thus also fail the third step of the test.

Overall, as discussed earlier, the Recommendation would stunt growth in the AI licensing market and prejudice creators and copyright owners' fundamental rights and ability to license and be compensated for their copyrighted works. Undermining such a fundamental pillar of copyright law at the detriment of creators and copyright owners and solely in favor of a new technology is precisely the kind of scenario the three-step test protects against, and that Berne Convention and TRIPS Agreement signatories have agreed to avoid.

Lawful Access Does Not Adequately Address Copyright Owners' Concerns

Lastly, we'd like to raise some concerns regarding the Committee's discussion about the lawful access requirement. The Working Paper proposes a requirement that those seeking to use the blanket license must have "lawful access" to the copyrighted works they use for AI training. But this "safeguard" introduces uncertainty as to its legal interpretation and practicality.

Under copyright law, rightsholders may control the circumstances under which their works are made available to others. Rightsholders provide legal access to creative works through licensing terms that specify allowable uses of the works. Under a license, a licensee may be granted legal access for certain uses but not others. If the licensee makes use of a work that is not within the scope of a license, that is considered to be an unauthorized use. Therefore, permitting the use of copyrighted works for AI training without authorization of the rightsholder, as proposed in this Working Paper, is inherently unlawful access. The mere fact that copyrighted works can be *accessed* from lawful services does not also mean that such works can be *used* for the training of AI models without authorization from the rightsholder. The term "lawful access" is misleading in that it suggests that lawful access confers lawful use, which is incorrect.

Simply making a work available online should not allow an AI developer or anyone else to copy and make use of that work as they fit. To conclude otherwise would obliterate well-established tenets of copyright law. In response to the lawful access condition, creators and rightsholders

may be forced to restrict access (such as by placing copyrighted works behind a paywall), considerably reducing the availability of high-quality content to the public. Inasmuch as the Committee has acknowledged the asymmetry that exists between creators and AI companies and large platforms, the solution it proposes instead exacerbates that asymmetry by prejudicing the interests of creators whose works are made publicly available. This may have the unintended effect of incentivizing distributors and publishers to favor paywalls that restrict access. Restricting access to works that are presently widely accessible is not in anyone's interest.[14]

We are also concerned that the Working Paper overlooks the necessity of transparency and data provenance—the ability to trace the origin and history of the data used to train AI, including copyright protected works. Without provenance and transparency measures, a copyright owner cannot verify critical information necessary for enforcing and protecting their rights such as whether a model was trained on legitimate works or pirated copies and whether copyrights are being infringed during the training process. Much like standard financial audit trails, records that reveal the provenance of AI data can provide a transparent map of whether and how copyrighted works are used. Prioritizing data provenance and transparency serves to protect creators and ensure that AI developers and deployers are meeting legal and regulatory requirements.

Conclusion

Competitive markets result in better products and services, as well as increased choices for consumers. But undue government interference with these markets has the opposite effect. Markets cannot remain competitive and efficient when governments interfere in ways that unfairly or otherwise inappropriately favor certain types of business models, products, services, and providers over others, as the Recommendation proposes to do. Such interference discourages copyright owners from developing innovative business models and creates significant obstacles

[14] This concern is particularly palpable for news media publishers whose content is reconstituted by AI models (including dominant search platforms) which, in various ways, that material diminish traffic to news media publishers' websites and undermine their viability. While remuneration for such currently compensated uses may be welcome, there is no evidence that royalty payments alone would adequately compensate rightsholders for the substitutive uses being made of their content. In short, the solution would entrench and amplify existing imbalances between large platforms, emerging AI players and rightsholders such that AI companies will become gatekeepers of content and information, as long as they pay the "toll." Rightsholders may find that their works are being used in myriad ways that pose risks to safety and dissemination of truthful information.

in their abilities to do so, which leads to fewer options for the public to access new and quality copyrighted works as products and services in the marketplace.

Based on the reasons and evidence presented above, we urge the Committee to withdraw the Recommendation and instead champion India's current voluntary licensing regime, one that is driven by the free market and by strong copyright laws.

Respectfully Submitted,

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