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Journal
Navigating the Legal Frontier: Intellectual Property Challenges and Opportunities in the Age of Artificial Intelligence and Blockchain
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The President's Message

Dear IPBA Members,

It has been an exciting summer for the Inter-Pacific Bar Association. As we approach the fall here in my hemisphere (where we are still aglow from the hugely successful Chicago Annual Conference back in April), I am delighted to share some highlights and updates from our recent activities and upcoming plans.

First, the IPBA continues to enjoy strong engagement across our membership. Two upcoming key events stand out: the Mid-Year Council Meeting and Conference in Madrid in September and the annual IPBA Arbitration Day (this year in Mumbai). Other regional gatherings will take place in Paris, London and Singapore, and several IPBA webinars are scheduled as well. The regional gatherings will provide excellent opportunities for members to connect locally, share insights on pressing legal issues and strengthen the bonds that make the IPBA unique.

Our committees remain the backbone of the IPBA's thought leadership. From Dispute Resolution & Arbitration to Corporate Counsel, Environmental Law, and Technology, Media & Telecommunications, each committee is actively contributing articles and insights to our journal this month, reflecting the dynamic developments in their respective fields. These contributions not only showcase expertise, but also help shape global conversations on topics such as ESG compliance, cross-border transactions and the impact of AI on legal practice. Committees are a great way to deepen your involvement and collaborate with peers who share your interests. If you are passionate about these topics—or any of our committees—I encourage you to volunteer and get involved. Your expertise and energy are vital to shaping the future of our Association.

Looking ahead, we are eagerly preparing for our Annual Conference in New Delhi, scheduled for February 2026. This promises to be one of our most dynamic gatherings yet, featuring cutting-edge sessions on global legal developments, networking opportunities and cultural experiences in one of the world's most vibrant cities. I encourage all members to mark their calendars and join us for what will surely be an unforgettable event. Please look further in this issue for more information on how you can more fully participate in the conference through speaking on one of our panels or becoming a sponsor. Also, I hope you consider taking advantage of the tours and longer excursions outside of Delhi that the planning committee is offering around the conference.

Finally, as our membership continues to grow, I am reminded of my own personal experience with the IPBA at my first annual conference in Hong Kong in 2002. To this day, I maintain friendships established at that conference so many years ago. I invite you to spread the word and bring new colleagues into our ranks. The reasons for joining the IPBA vary widely, but what truly sets us apart is the spirit of camaraderie, openness and genuine exchange among established legal professionals. For many, membership is not about referrals or business development; it is about the rare opportunity to meet outstanding lawyers from around the world, share ideas and build friendships that transcend borders. This is what makes the IPBA unique among international legal organisations.

Thank you for your continued support and dedication. I look forward to seeing many of you at our upcoming events around the world!

Warm regards,

Michael Chu
IPBA President

The Secretary-General's Message

Dear Friends,

I trust that you all had wonderful summer holidays, enjoying the local climate, food and culture of your travel destination, or just relaxing and unwinding if you stayed home.

When I was asked to write my Secretary-General's words for this September issue, and given the title of this edition, 'Navigating the Legal Frontier: Intellectual Property Challenges and Opportunities in the Age of Artificial Intelligence and Blockchain', I was tempted to try to prompt it via ChatGPT and see what it would give. However, I refrained from doing so and just opened up Word on my computer and wrote it myself, intentionally not using the 'rewrite suggestions' and other AI-related functions that are now embedded in my firm's systems, which might have resulted in me plagiarising someone else's prior writings.

Partially because I am not (yet? will I ever be?) a heavy AI user, but more importantly because we have all in the meantime seen (and chuckled at) how judges in various countries (including in mine) have slammed counsel for having produced briefs with legal arguments that did not hold up while referencing case law that did not exist, it is a clear warning to all of us that AI is not there yet when it comes to really supporting (not 'replacing') us as lawyers and that our use of it should be done in a critical way.

With that in mind, I actually spent my summer trying to better understand what AI might mean for us in the legal profession. I finally managed to finish reading the FT's business book of 2024, *Supremacy—AI, ChatGPT and the Race That Will Change the World*, which gives a great overview of how two people (Sam Altman and Demis Hassabis) in two different places in the world (Silicon Valley and London), each with their ups and downs, pursued their own dream of creating Artificial General Intelligence.

Having gotten the flavour of it, I then quickly read Richard Susskind's *How to Think About AI—A Guide for the Perplexed*, appropriately foreseen by a disclaimer that 'none of this book was written by AI (for better or for worse)'. Richard has been working for over 45 years on what we now refer to as AI, writing his dissertation in 1981 on whether computers might replace judges, and published a book in 2008, *The End of Lawyers?* (he always proudly adds a question mark, while people introduce him as having predicted our disappearance). You may recall that he was the keynote speaker at the IPBA online Annual Conference in 2021. I highly recommend his most recent book on AI to any lawyer who wants to have an objective and critical description of the various aspects of AI and how it can and will influence the legal industry in the future.

Allow me to wrap up by repeating other people's words, that innovations are greatly overestimated in the beginning, but greatly underestimated in the long run. We need to remain vigilant and on top of developments. Some of the work that I undertook as a young lawyer has been replaced by what AI and computers can do, and some of the work which our incoming trainees and lawyers in general are currently still doing will likely in the short term be overtaken by AI. The biggest challenge that is posed to us, and where we need to really be concerned, is how we will keep training our young lawyers to become brilliant minds in administering justice.

Best regards,

Jan Peeters
Secretary-General

Publication Committee Chair's Message

Olivia Kung

Reviewing past IPBA Journal issues, I realised how long it has been since Intellectual Property ('IP') took centre stage. This prompted reflection and excitement, as IP law exemplifies the intersection of creativity, innovation and regulation. The rapid evolution of AI and Blockchain highlights the growing significance and complexity of IP law.

With curiosity and relevance, we dedicate this issue to Intellectual Property. We are honoured to feature contributions from IP experts across various jurisdictions, each offering insightful analysis and unique perspectives. The articles explore topics ranging from the connection between machine learning and copyright to questions about authorship and ownership of works created by GenAI models, and to the limits of fair use and the development of legal frameworks in an AI-driven world.

Building upon our in-depth exploration of IP, we also seek to celebrate culture and connection. Our Celebration pieces highlight Poland and the Philippines—two jurisdictions rich in tradition and artistic vitality. Many will recall our 2024 Mid-Year Council Meeting in Warsaw, where we experienced the enduring legacy of Chopin and enjoyed a private concert of his works. The article from Poland captures that experience with great sensitivity. Likewise, the feature on the Sinulog Festival in Cebu brings to life one of the Philippines' most iconic cultural events: a dazzling display of colour, rhythm and devotion that reflects the shared joy and diversity within our Association.

As we bring together these diverse elements, I want to thank all our contributors, Membership Leaders and Committee Chairs for their dedication and creativity. Their collective efforts continue to make the IPBA Journal a vibrant reflection of our global community—diverse in voice, rich in expertise and united in spirit.

I hope you find this issue engaging and inspiring.

Singapore

Singapore Welcomes Priti Suri

Dentons Rodyk was honoured to host members and friends of the Inter-Pacific Bar Association at our drinks and canapés event on 29 August 2025. The evening brought together legal professionals from across the region for meaningful conversations and networking, reflecting the collaborative spirit that defines IPBA.

Our Senior Partner, Kirindeep Singh, JCM Singapore, and Priti Suri, IPBA New Delhi 2026 Chair and Founder Partner of PSA Legal Counsellors, shared key highlights of the upcoming IPBA Annual Conference 2026, scheduled to take place in New Delhi from 25 to 28 February 2026. This flagship event will feature thought-provoking sessions on emerging legal trends, cross-border issues and innovation in legal practice. Delegates can expect unparalleled opportunities to exchange ideas, strengthen professional relationships and experience the rich cultural backdrop of New Delhi.

The evening was marked by engaging discussions, warm reunions with long-standing colleagues, and the excitement of forging new connections. Guests enjoyed an informal yet vibrant setting that encouraged dialogue on the future of international legal collaboration. Events like these underscore the importance of building bridges within the legal community and reaffirm the IPBA's role as a platform for knowledge sharing and professional growth.

Dentons Rodyk is proud to support the IPBA's mission and to contribute to fostering global connections among legal practitioners. We extend our sincere appreciation to all who attended and made the evening a success. Your participation and enthusiasm are what make these gatherings truly valuable.

As we look ahead, we invite you to mark your calendars for 25–28 February 2026 and join us in New Delhi for what promises to be an exceptional conference. The IPBA Annual Conference remains a cornerstone event for legal professionals seeking insights, collaboration and opportunities in the Asia-Pacific and beyond.

We look forward to continuing these conversations and welcoming you to New Delhi in 2026.

Kirindeep Singh

Senior Partner, Dentons Rodyk & Davidson LLP, Singapore

Something New

Mediation in Investment Disputes and DRAC IASC's Decision Trees

Key Developments and Trends

Mediation has been increasingly discussed as a means to resolve investment disputes. In 2012, the IBA issued Rules on Investor-State Mediation, and in 2016, the Energy Charter Treaty Secretariat published a Guide on Investment Mediation. The Singapore Convention on Mediation, adopted in 2018 and now in force, enhances enforceability of mediated settlement agreements and encourages parties to use mediation in investment disputes. In 2019, the Centre for Effective Dispute Resolution issued an Investor-State Mediation Guide, and in 2022, the International Centre for Settlement of Investment Disputes adopted bespoke mediation rules tailored for investment disputes. These rules create a strong foundation for investment mediation, which is expected to grow in the future.

Key Benefits of Mediation

Mediation's features are attractive to parties seeking to resolve investment disputes.

- ***Party autonomy***: Mediation is voluntary; parties retain control over the process and result, including deciding the scope of settlement and whether to reach any agreement at all. This process allows the parties to shape a resolution that balances the investor's commercial interests with the State's geopolitical and public priorities.

- ***Efficiency***: Mediation is generally far less expensive and quicker than arbitration. Mediation often lasts months instead of years and costs a fraction of average arbitration expenses.

- ***Flexibility***: The process is flexible and non-adversarial, allowing parties to craft creative, mutually beneficial solutions rather than relying only on binary win/lose outcomes. This allows parties to develop creative solutions that go beyond legal considerations, focusing on a forward-looking alignment of interests, including non-financial value for both parties.

- ***Preservation of relationships***: Mediation can help preserve relationships between investors and States. Mediation can be better for foreign direct investment climates, as it signals States' willingness to resolve disputes amicably, which can encourage more investment. Conversely, communication to a State that the investor is willing to mediate will hopefully foster a more amicable and constructive environment in a specific foreign direct investment project.

Challenges of Mediation in Investment Disputes

Despite benefits, mediation could be challenging for investment disputes in some respects.

- ***Authority to mediate***: Questions of authority to mediate are particularly important in investment mediation given that multiple agencies may be involved. To make mediation more common, States should implement clear frameworks for authority and streamline approval processes, as addressed by the ICSID Mediation Rules which require parties to identify an authorised negotiator at the first session.

- ***Confidentiality versus transparency***: While beneficial for candid discussions, the confidential nature of mediation can conflict with the public's interest in transparency in investment disputes. Implementing formal procedures, such as state monitoring mechanisms suggested by the Energy Charter Treaty Secretariat and treaty requirements for publishing settlements with allowances for

protecting confidential data like in the Netherlands Model BIT, can help reconcile the need for confidentiality with the demand for transparency.

- ***Enforcement***: Enforcement of mediated settlements may not always be straightforward. Although mechanisms like the Singapore Mediation Convention bolster enforceability internationally, gaps and uncertainties still exist compared to the near-universal enforceability of arbitral awards facilitated by the New York Convention.

DRAC IASC's Decision Trees for Mediation in Investment Disputes

The IPBA's DRAC Investment Arbitration Sub-Committee ('IASC') has recently developed a structured framework that helps stakeholders assess the practicality and potential benefits of mediation in resolving investment disputes. DRAC IASC's Decision Trees for Investor-State Disputes ('Decision Trees') is a toolkit developed to assist both investors and States facing investment disputes in deciding whether and when to consider mediation. Certain factors to consider for mediation are arranged thematically in the Decision Trees.

- ***Treaty and agreement consideration***: The first step in the Decision Trees is to consider the applicable treaty, investment agreement or other instrument under which the claim has been brought. Although the absence of reference to mediation in the underlying instrument does not preclude parties from resorting to mediation, it is helpful for parties to first check whether there is any obligation to mediate investment disputes.

- ***Optimal timing for mediation***: The Decision Trees prompt parties to evaluate the 'optimal' timing for mediation. Parties need to consider whether further steps need to be taken before resorting to mediation. Jurisdiction to bring the claim should be accepted by States and investors need to formulate their claims to initiate mediation.

- ***Readiness and clarity for mediation***: The Decision Trees also highlight other factors that parties can consider for mediation. Factors considered include the readiness to mediate, such as the ability of both parties to understand each other's positions, the remedies being sought and whether they can be appropriately addressed by mediation, and confidentiality and transparency issues.

- ***Different factors for consideration by States***: Additional factors for consideration by States include establishing a budget for participation in the mediation, considering whether the remedy sought by the investor is within the power of the State, and considering whether public scrutiny of settlement is required.

- ***Different factors for consideration by investors***: Relevant factors for consideration by investors include any arrangements with third-party funders (that is, whether consent of a third-party funder is necessary for mediation) and evaluation of the likelihood of enforcement of negotiated settlement through mediation.

Future Outlook

While mediation is not suitable for all cases—such as when relationships have irretrievably broken down—it is becoming an integral option for investment disputes. The ongoing reforms, expanding institutional support and treaty evolution signal a more robust and mainstream role for mediation in the years ahead. The DRAC IASC's Decision Trees would be a helpful tool to both investors and States considering mediation for their investment disputes.

Kyongwha Chung
Of Counsel, Covington & Burling LLP, Seoul and Co-Chair of the IPBA DRAC Investment Arbitration Sub-Committee

The ‘Pharma Package’: Towards A New Governance of Medicines in Europe

Introduction

On 4 June 2025, the European Parliament's Committee on Environment, Public Health and Food Safety (‘ENVI’) adopted its negotiating position on the ‘Pharma Package’, a legislative proposal by the European Commission (April 2023). This package, the first major EU medicines framework reform since 2004 and the most extensive review in two decades, was prompted by challenges like COVID-19 and geopolitical tensions, emphasising greater EU pharmaceutical autonomy.

Context and strategic objectives of the reform

First introduced in 1965, European pharmaceutical legislation aims to ensure a high level of public health protection and promote the free movement of medicines in the EU by ensuring high standards of quality, safety and efficacy.

In the current context, the proposal pursues these main objectives:

- fairer access to medicines;
- development of innovative medicines, including for rare and paediatric diseases;
- resilient supply chains;
- strengthened role of the European Medicines Agency (‘EMA’);
- promoting a ‘One Health’ approach, addressing environmental impacts and antimicrobial resistance.

Content of the legislative package: directive and regulation

The proposed directive covers common aspects for all medicines: marketing authorisation (‘MA’), labelling, pharmacovigilance, regulatory protection, transparency and post-marketing management.

The proposed regulation applies to centrally authorised medicines and introduces mechanisms for managing shortages, supply security, EMA governance and rules for critical medicines.

Main innovations

Regulatory data protection

The Council proposes eight years of data protection for innovative medicines, blocking competitors from using their pre-clinical and clinical data until expiry. Only at the end of this period will it be possible to proceed with the registration of generic, biosimilar or hybrid approvals. Protection may be extended through a modular system linked to public-health goals, replacing the current uniform model.

Market exclusivity

Alongside data protection, an extra year of market exclusivity blocks generics, extendable by another year if conditions like timely EU filing, comparative studies or addressing unmet needs are met. The system will be periodically reviewed for access and innovation outcomes.

National supply obligation

Member States may require marketing authorisation holders to supply enough medicines to meet domestic demand, ensuring treatment continuity and preventing access disruptions.

Transferable exclusive voucher: incentive for innovative antibiotics

A key innovation is a transferable voucher granting an extra year of

market protection for any product of the beneficiary company, even if different from the original. The voucher is transferable once to third parties and usable from the fifth year of regulatory protection, if EU gross annual sales have not exceeded €490 million in the prior four years. The TEV mechanism is subject to strict transparency and ex post monitoring. This measure incentivises new antibiotic development to combat antimicrobial resistance ('AMR').

Orphan medicines: extension of incentives

Orphan medicines will benefit from enhanced protection: Exclusivity for orphan drugs may rise from 10 to 12 years if criteria like clinical innovation, EU-wide access or paediatric development are met. Early regulatory support is provided well before marketing-authorisation submission to foster dialogue between developers and authorities.

Extended Bolar clause

The Bolar clause[1] now covers activities for public tenders, enabling faster market entry of generics and biosimilars after patent or regulatory protection expires.

Prevention and management of shortages

The pandemic exposed the EU's vulnerability in essential medicines. The reform strengthens MA holders' obligations: early shortage notifications, prevention plans and supply duties for protected medicines. Critical medicines will be listed and monitored centrally at the EU level.

Simplification and acceleration of EMA procedures

EMA processes will be streamlined to simplify regulatory procedures, reduce authorisation times (from 210 to 180 days), cut administrative burdens and boost patient involvement. Early industry-regulator interaction will be encouraged, including via regulatory sandboxes to foster innovation.

Environmental protection: towards a sustainable pharmaceutical supply chain

New rules address pharmaceutical residues that pollute water/soil and promote AMR. Environmental risk assessments and binding mitigation measures will apply to new products and the entire life cycle, influencing marketing authorisation and encouraging industry responsibility.

Outlook

With Parliament and Council approval, the trilogue phase begins to finalise the legislative package. Disagreements—such as over commercial exclusivity, the transferable voucher mechanism ('TEV') and mandatory environmental assessments—may delay or shape the final text. Adoption is expected by 2026, with an 18-month transition; the framework should take effect between 2027 and 2029, allowing time for adaptation. Implementation, including new marketing authorisation applications ('MAAs'), will depend on delegated and implementing acts.

This package is a major step in balancing innovation, access, regulatory protection, and environmental sustainability in the EU pharmaceutical sector and may set a global model. EU companies should now review their regulatory and R&D strategies.

Marco Nicolini
Partner, Chiomenti, Milan

Note

[1] The Bolar clause allows generic drug manufacturers to conduct tests and preparations for MA while the original drug patent is active, enabling earlier generic entry. Specifically, it: (1) permits third parties to study patented inventions for MA; (2) prevents patent rights from delaying generics; (3) balances patent protection with access and competition; (4) applies to studies needed for MA; and (5) promotes faster access to generics and innovation.

The AI Authorship-Copyright Infringement Debate: Indian Overview

The use of data scraping tools for harvesting datasets is instrumental in enhancing the compute, self-learning and functional capabilities of AI models and tools. While it unlocks AI's limitless potential use cases—such as generating images and text content, powering virtual assistants and chatbots, enabling predictive analytics for business intelligence, enhancing business processing activities and creating personalised recommendations for entertainment and e-commerce—it navigates through several legal uncertainties including the legality of accessing and using protected copyright works through the AI development lifecycle. This has stirred up debates and disputes in various jurisdictions, including India. Two of the key issues relate to AI's ability to claim authorship of AI-generated works and potential infringement of exclusive rights of copyright owners. In this article, the author strives to provide an overview of the Indian copyright regime and apply the existing tenets to these issues through the lens of AI development to suggest the need for legislative and judicial intervention.

Introduction

The development of artificial intelligence ('AI') models and tools and their deployed use cases navigate through legal uncertainties, including contract, data privacy, and intellectual property ('IP') laws. AI training calls for access to and the use of vast volumes of data, and this demand is mostly enabled through datasets, collected from secondary sources like data brokers and aggregators, using web-scraping technologies that have emerged as a fundamental practice for the development of the AI ecosystem.

Web scraping is generally understood as the automated extraction of data from websites using software tools or scripts. The technology allows the navigating of multiple

websites, swiftly parsing HTML markups and extracting multi-modal datasets for storage and subsequent processing, enabling the harvesting of information at an unprecedented scale and speed. While extracting publicly available personal datasets may still be protected under the public data exemption provided under jurisdictional data protection laws, accessing, copying, storing, reproducing and commercially exploiting published proprietary works for AI training and development have witnessed a steady surge in claims for breach of IP rights worldwide, including India. At the forefront of this brewing AI-IP debate are claims of breach of copyright and of authorship and ownership of AI-generated works.

Copyrightability Under the Indian Copyright Regime

Indian Copyright Act, 1957

The Indian Copyright Act, 1957 ('Copyright Act') provides a broad canvas for copyrightable works. It includes literary, artistic, dramatic or musical works, cinematography films and sound recordings, with literary works subsuming computer programmes and databases within its ambit. Section 14 of the Copyright Act explains 'copyrights' as the exclusive right to reproduce, store, prepare copy, publish, perform, communicate, adapt, translate, sell, rent, offer of sale or otherwise commercially exploit copyright works.

Who is the Author?

Section 2(d) of the Copyright Act recognises the author of the work as the original creator, such as the author of a literary work, composer of a musical work and producer of a cinematic work. In the case of those that are computer generated, the person who causes the creation of such work is treated as the author.

Copyrights in works are vested with the author as the first owner,[1] who could authorise another person, including bodies corporate, to exercise such rights either through assignment in whole or in part,[2] or by granting a licence in the copyright works.[3] Further, the author may also relinquish all rights comprised in the copyright by giving notice to the copyright registrar or through public notice.[4]

Copyrightability Test in India

In order for an author to seek copyright, they must establish 'originality' of the work on the pedestal of the 'skill and judgement' test ('Skill and Judgement Test'). Elaborating on this test, the Indian Supreme Court ('SC') in Eastern Book Company v D.B. Modak & Anor[5] observed that a work is copyrightable, provided it is (1) original to the author; (2) captured in a tangible medium; (3) exhibiting substantial skill, use of resources and judgement by the author for creating the work and not being trivial or mechanical or merely a reproduction of facts/information; and (4) not in the nature of an idea (which is not expressed), concept, procedure, method of operation or mathematical principles (commonly referred to as the 'idea/expression dichotomy').

Can AI be the Author of Works and Claim Copyright Protection?

On a literal interpretation of 'works' and 'author' as defined under the Copyright Act, it may be contended that the scope will include AI-generated works and the person who caused the creation of the work as author and first owner. Indian courts, in sync with foreign rulings, have consistently maintained that only a natural person can be the author.[6]

In an application moved with the Indian Copyright Office ('ICO') seeking to copyright AI-generated artistic work 'SURYAST'[7] as co-authored by the individual applicant with RAGHAV AI (an AI-enabled painting application), the ICO granted registration, only to later issue a notice of withdrawal due to the unsettled nature of AI's authorship role under the Copyright Act, emphasising that an artist can only be recognised as author for artistic works.[8] Notably, a similar application for co-authorship of 'SURYAST' with the US Copyright Office was rejected on the grounds of lack of sufficient human authorship.[9] While the registration granted continues as of today, it signals towards a vacuum in the existing law that can benefit from necessary legal and judicial intervention.

In the current state of law, AI authorship claims are likely to demand substantiation on whether AI played an assistive or autonomous role in creating the works, with the latter unlikely to behold copyrightability scrutiny. Satisfying the Skill and Judgement Test may present significant hurdles given that inputting a simplistic prompt for generating outputs may not involve substantial skill and resources and may be considered as a mere mechanical or technical exercise, thereby taking AI-generated works outside the realm of copyright protection.

Copyright Infringement in India

Deemed Infringement

Copyright is deemed to be infringed under section 51 of the Copyright Act when the owner's exclusive rights, including the right to make copies, store, adapt, reproduce, sell, distribute, communicate, publish or otherwise deal

with protected works is breached by any person without valid assignment or licence, except where the dealings are permissible as fair dealings under section 52 of the Copyright Act[10] or are covered under the *de minimis* exemption as evolved through jurisprudence.

Judicial Tenets for Infringement Evaluation

Explaining the contours of infringement, the SC in R.G Anand v M/s Delux Films,[11] ruled that (1) only the form, manner, expression and arrangement of the author's works are protected and not the underlying idea, theme, plot or facts; (2) similarity in theme of both works will not result in an infringement, unless the infringing copy is substantially or fundamentally similar to the original expression; and (3) the burden of proof is on the plaintiff. For example, in OLX BV & Ors v Padawan Ltd,[12] a copyright infringement claim was upheld because proprietary data was being scraped from OLX's database and displayed by the defendant without any changes on its website.

Fair Dealings Exception

Any fair dealings with copyrighted work shall not constitute infringement and section 52 of the Copyright Act describes it to include, inter alia: (1) fair dealing with any copyrighted work (except a computer programme) for personal use, research, criticism, review and reporting of current affairs; (2) making copies or adaptation of a computer programme by a lawful processor for authorised purposes or for making back-up copies to protect from loss, destruction, etc.; (3) actions necessary for interoperability of computer programmes; (4) evaluation or testing of the functioning of a computer programme; (5) making copies or adaptation of a computer programme from an authorised personal copy or for non-commercial purposes; and (6) transient or incidental storage of a work in the course of electronic transmission or communication, educational use, or interoperability of computer programmes.

***De Minimis* Exception**

Further, the Indian courts have applied the *de minimis* principle to rule out infringement claims where the alleged copying was ascertained to be 'trivial or minimal', taking into account the size and type of harm, cost of adjudication, purpose of copying, impact on legal rights of third parties and the intent of the copier. For example, in India TV Independent News Service Pvt. Ltd. & Ors v Yashraj Films Private Limited,[13] Yash Raj Films as the plaintiff alleged that the defendants had infringed the plaintiff's copyright in a song by copying its first line in an advertisement. The Delhi High Court applied the *de minimis* principle to rule that there was no infringement as the song was used minimally and there was no intent for infringing the plaintiff's copyright.

Are AI Copyright Infringement Claims Tenable?

Claims around AI's breach of copyright will depend on the facts and must showcase that the content in question indeed is a protected expression, and the undertaken activities are outside the purview of the exceptions.

In what could shape the future for AI's ability in India to use public proprietary works gathered through scraping and crawling tools, the Delhi High Court in ANI v OpenAI[14] is currently adjudicating claims of copyright infringement, false attribution and unauthorised use of protected works by OpenAI in training its ChatGPT language models. The plaintiff, ANI, claims that OpenAI used both publicly accessible and subscriber-only content without licence, generated outputs that are identical or substantially similar to ANI's works and attributed hallucinated or false outputs to ANI. OpenAI has raised a jurisdictional challenge on the pretext that its servers are located outside of India, and on the merits, has submitted that its data extraction practices are limited to publicly available data,[15] storage of such extracted data is transient in nature, generated content is not a reproduction of specific stored data and no concrete evidence for infringement has been provided by ANI. The high court has admitted the case and the next date of hearing is scheduled for 21 November 2025.

Extraction and copying of published copyrighted works for training data may be particularly susceptible to infringement claims at the time of extracting and storage, tokenisation (that is, the computational process of dissecting data into small representational units such as words, phrases or pixels that can be comprehended and processed by AI models) and subsequent use in model training. When scraped copyrighted data is retained, AI copies, stores and reproduces such data for different use cases that eventually may move beyond non-commercial fair dealings (such as when adapted for specific use cases and offered as interactive tools to customers), supporting infringement claims. Similarly, the tokenisation phases that involve conversion of copyrighted expressions into an alternative representational form for computational processing may be equated with adaptation of the original works for eventual use in a new purpose, including commercial exploitation. At the model training stage, AI repeatedly accesses,

reproduces and processes stored data to develop its underlying parameters and weights. This involves internal reprocessing and recombination or transmission across multiple nodes and networks, which could impinge on the copyright holders' rights of adaptation and communication to the public.

Consequently, when infringement claims are levelled against AI, apart from whether the output is substantially similar or different than the proprietary works fed into the systems, the constituent technological processes are likely to be scrutinised rather thoroughly by courts to assess, amongst other things, if (1) accessed and use data sets are mere ideas, concepts, principles or actually involve copyrighted expressions; (2) the nature of storage qualifies as temporary or transient; (3) the course of model training and its use cases are supported as fair dealings or whether it involves unauthorised use of copyrighted works for commercial activities; and (4) whether the breaching copies are covered under the *de minimis* exception.

Conclusion

The AI-IP debate pressure tests the existing legal tenets for copyrightability and infringement, nudging governments to rethink and revisit the extant regime. Towards this, the Parliamentary Standing Committee on Commerce recommended creating a separate category of rights for AI and AI-related works.[16] The Indian government continues to believe that the existing IP regime in India, including the Copyright Act with targeted amendments, may suffice to protect AI-generated works.[17] On 5 November 2025, the government released India's AI Governance Guidelines placing focus on the existing gaps, including the extant copyright law, with a committed goal to bring in amendments that are married to existing realities of AI-generated works.[18] This casts an arduous task on registering authorities and judicial forums who may be required to adopt a nuanced approach while interpreting existing norms in the context of AI-related authorship and infringement claims. Until such time that a conclusive ruling is rendered by courts or statutory amendments are inculcated in existing laws, the AI-IP debate shall continue to baffle creators and the AI ecosystem in India.

Notes

[1] Indian Copyright Act, 1957, s 17.
[2] *Ibid,* ss 18–20.
[3] *Ibid*, ss 30 and 30A.
[4] *Ibid,* s 21.
[5] (2008) 1 S.C.C. 1 (SC).
[6] E.g. in *Navigators Logistics Ltd v Kashif Qureshi* AIRONLINE 2018 DEL 1482, the Delhi High Court rejected a copyright claim concerning a computer compiled list due to the lack of human involvement in the creation process.
[7] The involved artistic work was generated feeding a digital image photographed by the applicant, Mr Ankit Sahni into RAGHAV along with Vincent Van Gogh's 'The Starry Nights' as style input. The generated work was a rendition of the image adapted to the painting.
[8] Dairy No 13646/2020-CO/A, Register of Copyrights No A-135120/2020.
[9] US Copyright Office Review Board decision of 11 December 2023; available at https://copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf (last accessed on 6 November 2025).
[10] The Indian construct of 'fair dealings' is narrower than 'fair use' under the laws of the United States of America.
[11] AIR 1978 SC 1613.
[12] CS/COMM 232/2015.
[13] 2012 S.C.C. OnLine Del 4298.
[14] CS (COMM) 1028/2024.
[15] OpenAI submitted that ANI platforms have deployed robot.txt files that block scrapping tools and prevent unauthorised access and use of protected content such as subscriber or paid content, and this has been taken on record by the Delhi High Court.
[16] 161st Report of the Parliamentary Standing Committee on Commerce titled 'Review of the Intellectual Property Rights Regime in India', dated 23 July 2021; available at https://files.lbr.cloud/public/2021-07/161_2021_7_15.pdf?VersionId=S01fCQEC5DzDqKNymsGgxal6YXmJbUwM (last accessed on 7 November 2025).
[17] Press Release by the Press Information Bureau, Ministry of Commerce & Industry dated 9 February 2024; available at www.pib.gov.in/PressReleasePage.aspx?PRID=2004715 (last accessed on 7 November 2025).
[18] Ministry of Electronics and Information Technology, Government of India, India AI Governance Guidelines, 5 November 2025; available at https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/nov/doc2025115685601.pdf (last accessed on 7 November 2025).

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Arya Tripathy is Partner with GC, TMT | Digital + Practice at Cyril Amarchand Mangaldas, India's largest law firm, and she has over 14 years' experience in advising global and domestic clients on a wide range of corporate, commercial, M&A, data privacy and digital laws. She has worked closely with clients on the evolving aspects of AI, IP, data protection and privacy rights, with specific focus on the EU, American and Asian landscapes, helping them to create robust organisational AI and data-management and lifecycle processes. She frequently engages in policy discussions, publications, public speaking and advocacy exercises. With a firm belief in pro bono services, Arya frequently advises tech4good charities and social organisations to scale their impact journeys and enabling the reach of technology to the last mile. She is a Certified Information Privacy Professional (Asia) and currently serves as the Co-Chair of the IPBA's Next Generation Committee.

Staying Ahead: Key Intellectual Property and Artificial Intelligence Hot Topics and Business Strategies in Brazil

Artificial intelligence ('AI') is now part of our daily lives—whether we´re googling information, refining an email or tackling complex business challenges. In a recent conversation with Stephanie Consonni, partner of our Intellectual Property practice, we reflected on how AI is changing our clients' concerns and priorities, from an intellectual property ('IP') perspective. As we have been advising companies that use or want to develop AI tools, this article discusses the main topics that we identified as AI and IP 'hot topics' that companies should keep an eye on in the coming years.

AI Governance and Training

AI tools are everywhere, helping with everything from drafting documents, analysing data or producing creative content. Often employees use these tools without fully understanding the legal implications. From a legal perspective, AI governance is a matter of compliance and risk management. Organisations should adopt internal AI-use policies defining permitted uses, confidentiality obligations, guidance and escalation procedures. Training is also essential, so that teams know when human oversight is needed.

It is important to identify materials created with AI and keep records of prompts and data used. Using AI isn't a problem in itself, but it does bring risks, such as leaking trade secrets or uncertainty about who owns the content. AI governance should be an ongoing process, embedding ethics and legality into the company's culture.

Authorship, Ownership and Use of Protected Works

One of today's biggest challenges is figuring out who is the author of a work created with AI and how to use third-party content in training or generating outputs. In our opinion, we currently have more doubts than answers on this topic, and, as we watch all the discussions around it emerge globally, we also prepare to adapt.

In Brazil, the Copyright Law (Law No 9.610/1998) and the Industrial Property Law (Law No 9.279/1996) only recognise natural persons as authors or inventors. So, AI systems cannot be considered authors—at least for now.

However, the use of protected works in AI training datasets introduces a new dimension of complexity. Many AI models are trained based on vast quantities of online content that may include copyrighted texts, images or sounds. Here is where the main doubts are raised, for example:

- Using protected material for model training, does it constitute reproduction or fair use?
- How can rights holders know if their works were used and on what legal basis?
- What type of systems of licensing or remuneration for authors whose works indirectly contribute to AI outputs exist, and how do they work? Or should work …

The debate around transparency and compensation is intensifying and will likely shape future regulation in Brazil; until the law is settled, documenting data use and monitoring legislative developments is essential.

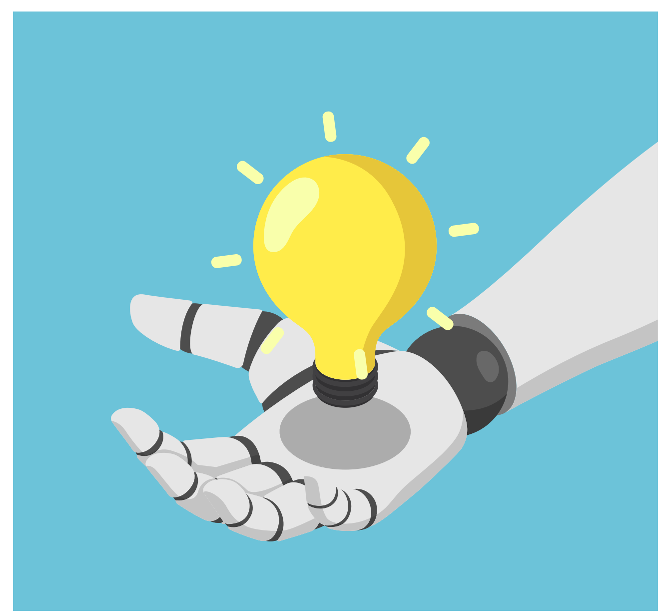
The principle of fair remuneration, embedded in Brazilian constitutional and copyright law, supports the idea that authors should retain control and benefit when their works contribute, directly or indirectly, to new outputs. Yet, the absence of explicit legal mechanisms for AI contexts has created uncertainty.

We understand the challenges to come, especially when there is no single global regulatory framework for AI. In fact, many countries lack AI-specific rules, and legal concepts from other jurisdictions may not apply. For example, Brazil does not recognise the doctrine of 'fair use' as used in the United States.

In the meantime, strengthening documentation and defining internal positions on data use are prudent while legislative models evolve.

Contractual Frameworks and Policies

To reflect the reality and align with AI governance principles, we must remember that traditional employment, confidentiality and invention-assignment agreements were drafted on the assumption that creative and inventive acts



are exclusively human. The growing use of AI challenges this premise.

Likewise, it is increasingly common for service providers to employ AI systems to deliver services—sometimes without the client's knowledge or consent. Such practices raise concerns regarding IP infringement, data protection, confidentiality and quality control.

Consent for such uses must be specific, transparent and informed, aligning with both IP and data protection principles. Thus, companies should review their internal contractual documentation with vendors with particular attention to: (1) disclosure and authorisation before AI use; (2) assignment of rights or allocation of IP rights over AI-assisted works and inventions; (3) disclosure obligations on the use of AI in creative or technical processes; (4) expanded confidentiality clauses covering prompts, datasets, algorithms and parameters; and (5) liability for potential infringements or misuse of protected works.

Addressing these concerns and including contractual provisions on the use of AI not only provides legal certainty for the company but also supports its growth and development without unduly restricting the adoption of new technologies.

Moreover, such AI-related clauses are increasingly material in M&A due diligence: buyers and investors analyse not only companies that develop AI tools, but also those that deploy them.

Brazilian AI Regulatory Scene

While Brazil has not yet enacted a definitive AI law, the Artificial Intelligence Bill (PL 2338/2023) ('the Bill') being discussed in Congress represents an important step in the right direction. However, it still contains some significant gaps, particularly concerning intellectual property and authorship provisions.

One of the most controversial aspects of the Bill is its stance on Text and Data Mining ('TDM') for AI training purposes, even when the data includes protected works. Initially, Article 62 required the listing of each work used, a provision widely criticised for its impracticability. In response, there has been a proposal to replace this requirement with an obligation to provide a summary of the datasets used—a more proportional and technically viable alternative.

Regarding remuneration and authors' rights, the Bill envisions a compensatory remuneration mechanism for the use of works in AI systems, covering both input (training data) and output (derived content), without requiring prior authorisation. This proposal aims to balance innovation with the constitutional guarantees of authors' economic rights.

However, the draft Bill does not explicitly resolve several key issues. For instance, it remains silent on the specific criteria for attributing authorship when AI-assisted processes generate novel content. It also does not clarify how inventorship should be handled in AI-assisted inventions, nor does it define clear mechanisms for enforcement or transparency to verify the number and types of works used in training. These gaps may perpetuate legal uncertainty.

The central question—and one of the most debated, including from a philosophical standpoint—is the extent to which legislation should be enacted without stifling innovation. This is a challenge we have been following closely, observing discussions and cases debated abroad, which are slowly beginning to appear in Brazil. We advocate for legislation that balances the protection of copyright and intellectual property rights with the potential for innovation and technological advancement. However, we recognise that the nuances introduced by the law will undoubtedly become the subject of new inquiries and a source of concern for companies and society alike.

Brazilian Patent and Trademark Office's Public Consultation on AI and Patents

In line with the above—and because a system of rights must be cohesive—the Brazilian Patent and Trademark Office

('INPI') could not be excluded from this debate. Recently, the INPI opened Public Consultation No 3/2025 to gather comments on the draft Guidelines for the Examination of Patent Applications related to Artificial Intelligence.

The debate focuses on inventorship, disclosure and the evidentiary threshold for inventive step when AI contributes to the conception of an invention. The draft distinguishes between (1) AI models and methods as such; (2) inventions based on AI as an essential element of the technical solution; and (3) inventions merely assisted by AI tools.

A central point of discussion is the level of disclosure and inventive step required. The draft emphasises that patent applications must provide sufficient technical details—such as the architecture, parameters, and training data of the AI system—to allow reproduction by a skilled person. Generic references to 'artificial intelligence' without clear technical contribution are unlikely to meet patentability standards.

For applicants, this initiative has both opportunities and challenges. On one hand, it enhances predictability and alignment with international standards (EPO and USPTO). On the other, it increases the technical rigour and documentation burden, particularly to demonstrate human intervention and inventive contribution. Ultimately, the new guidelines aim to bring greater transparency and legal certainty to AI-related inventions, while reaffirming that only natural persons can be recognised as inventors.

Beyond Compliance: Strategy for Value Creation

It is increasingly clear that the relationship between AI and intellectual property extends far beyond mere compliance with law. It is about creating value and competitive advantage.

By integrating innovation, data governance and IP protection, organisations can unlock a range of opportunities. These are some recommendations:

1. Identify and record AI-driven developments that may constitute protectable assets or trade secrets. This ensures that valuable innovations are recognised and safeguarded.

2. Implement contractual, technological and registration measures to secure ownership and prevent misappropriation. These steps help protect the organisation's investments in AI and intellectual property, ensuring that the benefits are retained within the organisation.

3. Transform IP and data assets into business opportunities through licensing, partnerships or technology transfer. By leveraging these assets, businesses can create new revenue streams, foster innovation and build strategic alliances that drive growth and success.

To mitigate uncertainty and drive technological advancement in the AI era, development should continue, but always with ethical standards and respect for intellectual property. Companies should also keep track of legislation changes for them to anticipate challenges and operate effectively. Clear legal frameworks boost incentives for innovation and improve financial outcomes.

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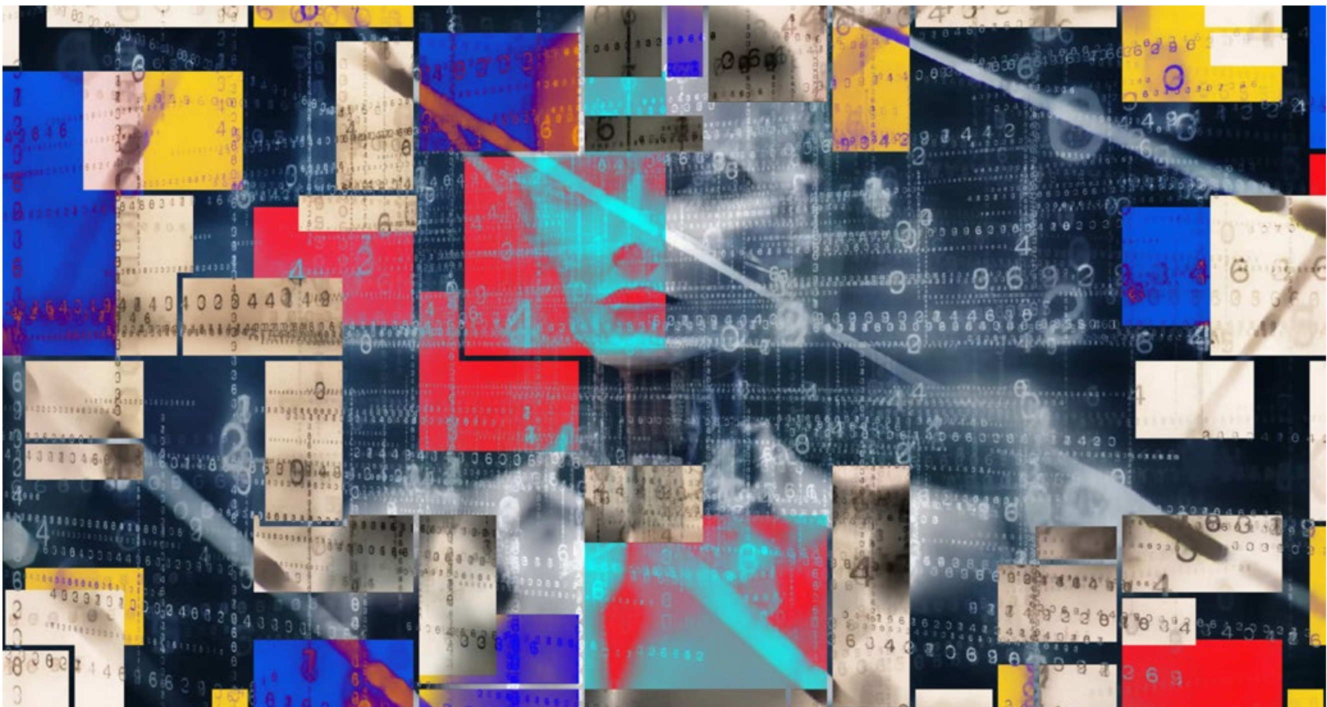
AI & Copyright: Decoding Bartz v Anthropic and Its Lessons for India

The accelerating integration of artificial intelligence ('AI') into creative and knowledge ecosystems has triggered fundamental questions about copyright law. The US case of Bartz v Anthropic, though settled before trial, offers a landmark glimpse into how the Judiciary may contour the boundaries of lawful and unlawful data use in training large language models ('LLMs'). The issue in the case was whether the ingestion of millions of books, both lawfully purchased and pirated from shadow libraries, constituted infringement or transformative fair use. Judge William Alsup's nuanced ruling distinguished between legitimate acquisition and unlawful copying, holding that training on lawfully obtained works could qualify as fair use, while reliance on pirated datasets remained per se infringement.

This article situates Bartz v Anthropic within broader debates on authorship, originality and the ethics of machine learning. It explores the case's implications for US copyright jurisprudence and draws comparative lessons for India's Copyright Act, 1957. The analysis highlights unresolved tensions around reproduction, derivative works and moral rights, particularly when AI outputs emulate an author's distinctive style.

The article underscores the urgent need for policy innovation and emphasises the need for a balanced framework that safeguards authors' rights while enabling responsible AI development, proposing reforms to clarify fair dealing exceptions, regulate dataset acquisition and extend moral rights to address AI's mimetic capabilities.



Introduction

In the rapidly evolving landscape of AI, the intersection of machine learning and copyright law is fast becoming one of the most contested legal frontiers. The recent US case, Bartz v Anthropic,[1] has reignited global discourse on whether AI developers' large-scale use of copyrighted works for training constitutes infringement or falls within fair use. As LLMs continue to 'learn' from massive repositories of text, the courts are now tasked with defining the limits of what machines may 'read' without human permission.

While the Bartz case settled before trial, its pleadings, interim orders and legal arguments reveal how courts are beginning to grapple with this profound technological and ethical dilemma. The dispute between authors and AI developers is not merely about ownership; it concerns the very future of human creativity, data ethics and the right to control one's expression in an age when machines consume and reproduce human knowledge at scale.

This article analyses Bartz v Anthropic[2] thematically, exploring the legal arguments and implications within US copyright law, and drawing comparative lessons for India's copyright regime under the Copyright Act, 1957. It also proposes policy recommendations for a balanced, innovative-friendly legal framework that safeguards authors while enabling responsible AI development.

Factual Background

In 2024, authors Andrea Bartz, Charles Graeber and Kirk Wallace Johnson, among others, filed a class-action lawsuit in the US District Court for the Northern District of California against Anthropic PBC, the developer of the 'Claude' LLM, alleging systematic copyright infringement.

According to the filings, Anthropic created a 'central library' containing millions of digitised books from two sources:

1. lawfully purchased physical copies that were destructively scanned, and

2. unauthorised copies obtained from 'shadow libraries' such as LibGen and Books3.

The plaintiffs alleged that this large-scale ingestion, retention and transformation of their copyrighted works without consent violated their exclusive reproduction rights under Section (Sec) 106 of the US Copyright Act.

Anthropic countered that its training processes constituted 'transformative use', comparing them to how humans learn by reading. It maintained that the process was statistical and analytical rather than expressive, since the model did not reproduce full texts or store human-readable versions of the works.

Legal Issues and Arguments

The plaintiffs raised four core questions:

1. Whether ingestion of copyrighted material for AI training constitutes 'reproduction' or 'derivation'.

2. Whether such use can qualify as 'fair use' under Sec-107 of the US Copyright Act.

3. Whether AI outputs that emulate the plaintiffs' styles amount to derivative works.

4. Whether the liability of AI developers is related to dataset curators and intermediaries.

Anthropic relied on Authors Guild v Google, Inc,[3] where scanning entire books to create a searchable index was held to be fair use because of its transformative, non-consumptive purpose. The plaintiffs, citing Andy Warhol Foundation v Goldsmith (2023),[4] argued that Anthropic's activities were commercial and not sufficiently distinct in purpose to merit fair use protection.

Court Proceedings and Interim Developments

The case unfolded through multiple procedural stages. Anthropic moved for summary judgment, asserting that the digitisation and training on purchased books constituted fair use. The plaintiffs opposed, arguing that the same defence could not apply to pirated works and that the creation of the 'central library' amounted to unauthorised hoarding.

Discovery revealed the composition of Anthropic's datasets and confirmed the use of several million books from shadow libraries. Expert testimony on AI training and tokenisation demonstrated that full-text ingestion was technically necessary to teach language patterns. Judge William Alsup separated the analysis by category: digitisation of purchased books, training on those books, ingestion of pirated content and retention of unused copies.

Court Observations and Holdings

In a detailed ruling issued in June 2025, Judge Alsup applied the four-factor fair use test under Sec-107 and reached a split determination.

1. Training on Lawfully Purchased Books: Fair Use. The court held that training on lawfully purchased books was a 'highly transformative' use. The purpose of AI training, it reasoned, was to extract statistical relationships and linguistic patterns, not to reproduce expressive content. The court emphasised that full-text copying, though extensive, was 'reasonably necessary' for this transformative objective. There was no evidence that Claude's outputs substituted for the plaintiffs' works or diminished their market value.

2. Digitising Purchased Books: Fair Use. Converting physical books into digital copies for internal use was permissible. The court likened this to non-commercial format-shifting or archival preservation, emphasising that the digitised versions were not distributed or publicly shared.

3. Use and Retention of Pirated Copies: Not Fair Use. The court drew a clear boundary: fair use cannot excuse illegal acquisition. Judge Alsup held that ingesting works from shadow libraries such as LibGen or Books3 was infringing, even if used for transformative purposes. 'Fair use presupposes lawful access', he wrote, ruling that retaining pirated materials compounded potential liability.

4. Retention of Unused Purchased Copies: Mostly Fair Use. Retention of purchased books that were digitised but not used for training was largely acceptable, provided such copies remained internal and were not redistributed. However, the court cautioned that excessive or indefinite retention could raise further factual questions.

This nuanced order marked one of the first judicial recognitions of a distinction between legitimate and illegitimate sources of AI training data.

The Settlement and Its Broader Implications

Although the court's ruling favoured Anthropic on several points, unresolved issues concerning pirated content prompted both sides to negotiate. In August 2025, the parties reached a proposed class-wide settlement.

The settlement, preliminarily approved in September 2025, includes a US$1.5 billion fund to compensate affected authors whose works were used without permission. Eligible claimants would receive about US$3,000 per qualifying work, before deductions for costs and fees. Anthropic also agreed to delete all pirated copies obtained from Library Genesis ('LibGen') or Pirate Library Mirror ('PiLiMi') datasets and to certify compliance to the court.

While not creating binding precedent, this resolution establishes an influential model: lawful acquisition and transformative use may qualify as fair use, but piracy remains per se infringement. It also signals a policy shift toward negotiated coexistence between rights holders and AI developers.[5]

Comparative Analysis: India's Copyright Regime and AI Training

India's Copyright Act, 1957 ('Copyright Act'), although not explicitly designed for AI-era challenges, offers certain interpretive anchors through Sec 52, which enumerates fair dealing and non-infringing uses.

Reproduction and Derivation in Machine Learning

Under section 14 of the Act, the exclusive rights of reproduction and adaptation mirror US equivalents. Training an AI model arguably involves making temporary and intermediate copies of works in RAM or datasets—actions that, under Indian law, could constitute reproduction unless covered by section 52 exceptions.

Section 52(1)(a) permits 'fair dealing' for purposes of private use, research or criticism. However, the key question is whether large-scale machine ingestion by a commercial entity qualifies as 'research'. In Eastern Book Company v D.B. Modak,[6] the Supreme Court adopted a 'modicum of creativity' standard, holding that originality requires minimal creativity but more than mere skill or labour. Applying this reasoning, the extraction of expression for AI training without creative transformation may not constitute 'original' use, thus amounting to infringement.

Fair Dealing and the 'Transformative Use' Standard

While US law emphasises 'transformative use', Indian jurisprudence is less expansive. In Civic Chandran v Ammini Amma,[7] the Kerala High Court recognised parody as permissible fair dealing, emphasising the social purpose of commentary and criticism. Yet, Indian courts have generally maintained a narrow reading of fair dealing.

AI training being commercial, large-scale and automated may therefore struggle to qualify as 'fair dealing' under Indian law unless explicitly legislated. The Delhi High Court in Super Cassettes Industries Ltd. v MySpace Inc.[8] held intermediaries liable for user-uploaded infringing content, stressing proactive due diligence obligations. Applying this reasoning, AI developers who knowingly use unlicensed datasets could similarly face contributory liability.

Derivative and Moral Rights

Section 57 of the Indian Copyright Act protects authors' moral rights, particularly the right to integrity and attribution. If an AI model generates text in the distinctive style of a living author, there is potential moral injury even if verbatim copying is absent. This concern echoes the plaintiffs' grievances in Bartz, where AI outputs allegedly replicated their literary style and tone.

Moreover, the Indian judiciary has been cautious about dilution of authorship integrity. In Amarnath Sehgal v Union of India,[9] the Delhi High Court upheld strong moral rights protection, even against the Government's use of an artist's work. This reasoning supports extending moral rights to address AI's mimetic capabilities that can distort or misrepresent an author's persona.

Broader Implications for AI and Copyright Harmony

The Bartz case exemplifies the uneasy coexistence between creative expression and algorithmic consumption. The absence of definitive judicial resolution leaves several policy vacuums:

1. Opacity of datasets: AI models often rely on opaque datasets scraped from the Internet, making it difficult to verify the inclusion of copyrighted materials.

2. Attribution and remuneration: Authors receive no credit or compensation despite AI systems learning from their works.

3. Cross-border enforcement: Copyright enforcement becomes complex when datasets, servers and users are spread across jurisdictions.

4. Chilling effect on innovation: Overly rigid copyright enforcement may impede AI progress, while overbroad exceptions risk undermining creative industries.

India, like many developing economies, stands at a crucial crossroads. Its burgeoning AI ecosystem, coupled with strong literary and cinematic industries, demands a nuanced balance between protection and progress.

India and the US on the Fair Use–Fair Dealing Divide

While the US 'fair use' doctrine under section 107 is flexible and open-ended, the Indian 'fair dealing' model is enumerative and restrictive. This structural difference is pivotal when addressing AI training.

Aspect	US (Fair Use)	India (Fair Dealing)
Legal Basis	Section 107 of US Copyright Act.	Section 52 of Copyright Act, 1957.
Scope	Open-ended, case-by-case.	Closed list of permissible purposes.
Transformative Test	Central to analysis.	Not explicitly recognised.
Commercial Factor	Balancing factor.	Strongly weighs against fair dealing.
Remedies	Statutory damages, injunctions.	Primarily injunctions and damages.

Thus, while US courts may lean toward permitting AI training as transformative, Indian courts, bound by statutory limits, are likely to find such use infringing unless legislative intervention introduces a specific exception.

Additionally, Indian copyright registration is declaratory rather than constitutive, complicating the enforcement of rights over scraped materials. The Digital Personal Data Protection Act, 2023 may incidentally regulate dataset use by prohibiting unconsented data scraping of personal text, but it does not address copyright per se.

Policy Reflections and the Way Forward

The Bartz case highlights the urgent need for copyright reform in the AI era. India must proactively address these challenges through targeted policies:

1. AI training exception: Amend section 52 to allow 'non-consumptive computational analysis' of lawfully accessed works, similar to the UK's text and data mining exception.

2. Dataset transparency: Require AI developers to maintain and disclose dataset inventories, promoting accountability in line with Digital India and EU AI Act principles.

3. Collective licensing: Implement statutory licensing under section 31, enabling AI firms to compensate rights-holders via collective management organisations.

4. Moral rights protection: Expand section 57 to guard against AI-driven misrepresentation of an author's style or identity.

5. Human–AI co-authorship recognition: Establish guidelines to recognise substantial human contributions in hybrid AI-assisted works for copyright registration.

6. International harmonisation: Advocate for multilateral frameworks on AI training datasets to ensure cross-border enforcement and reciprocity.

Conclusion

From Google Books to Bartz v Anthropic, copyright law is shifting from protecting static texts to regulating how machines learn. AI does not 'read' like humans, but its ability to emulate expression requires legal recalibration. For India, the challenge is balancing innovation with protection, ensuring AI learning is regulated through transparency, fair compensation and ethical design, so machines can learn without erasing authorship.

Notes

[1] PBC, No 3:23-cv-05289 (N.D. Cal., filed 2023).
[2] *Ibid.*
[3] No 13-4829 (2d Cir. 2015).
[4] 598 U.S. 508 (2023).
[5] https://theleaflet.in/digital-rights/law-and-technology/bartz-v-anthropic-all-you-need-to-know-about-the-largest-copyright-settlement-in-history (last accessed 26 November 2025).
[6] 2008 (36) PTC 1 (SC).
[7] Manu/KE/0675/1996.
[8] (2017) 236 DLT 478.
[9] *Amarnath Sehgal v Union of India* 2005 (30) PTC 253 (Del).

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Vikrant Rana is Managing Partner of S.S. Rana & Co., a 36-year-old full-service law firm. He comes with an astounding experience of more than 30 years and has been consistently recognised as a 'Highly Recommended Individual' by WTR 1000 and has also been ranked in India Business Law Journal's A-List and as a Trademark Star by IP Stars. Vikrant's expertise and experience encompass a broad spectrum of intellectual property practices, including prosecution, opposition, enforcement and litigation.

Vikrant advises several Fortune 500, multinational companies as well as grassroots innovators on contentious and non-contentious trademark matters. He has also authored several books and done projects with national and international organisations on artificial intelligence and IP as well as spoke on the subject in several institutions and trade forums, as well as national and international conferences.

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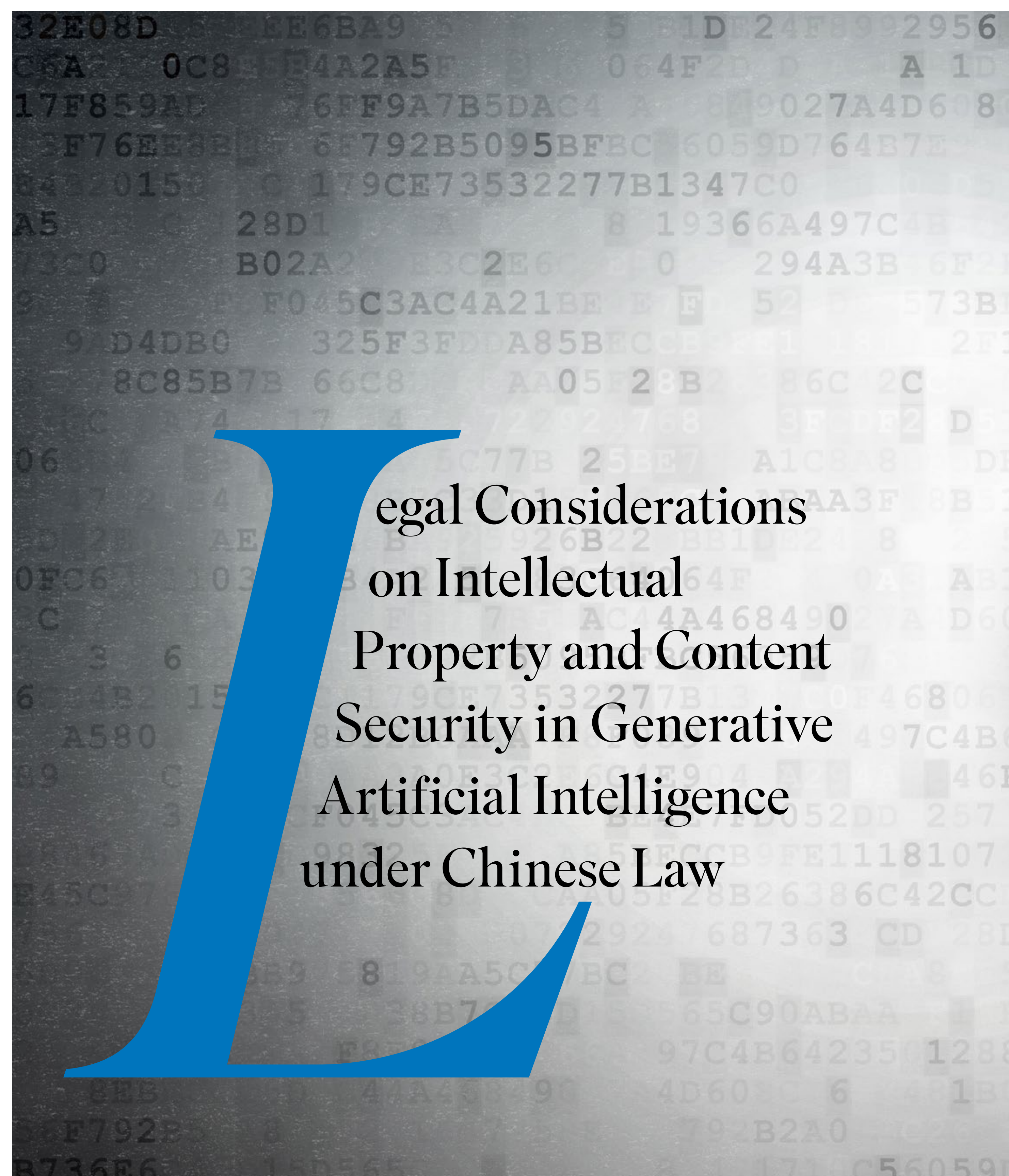

Legal Considerations on Intellectual Property and Content Security in Generative Artificial Intelligence under Chinese Law

Introduction

This article explores whether Generative Artificial Intelligence ('GAI'), during the pre-training period of input stage, involves any violations of intellectual property rights, particularly infringements of others' copyrights; and the outputs generated by GAI infringe upon pre-existing human intellectual works.

This article seeks to explore the compliance pathway of GAI under Chinese law, with a focus on balancing technological innovation and copyright protection, and to analyse the legal logic and considerations of GAI.

Generative Artificial Intelligence Compared to Traditional Searching

Generative Artificial Intelligence refers to a technology that generates content such as text, images, audio, video and code based on algorithms and models. The results generated by GAI differ from traditional search results.

Traditional search retrieves, filters and presents potentially relevant results from a massive amount of network data based on keywords, displaying them to the user in a specific order for selection, clicking and reading. The search itself does not directly answer the user's question.

In contrast, GAI executes algorithms to process users' questions, needs, instructions and contextual settings, thereby generating corresponding responses. GAI is capable of learning and generating new content that is logical and conforms to human reading habits.

Issue of Infringement in Relation to Pre-Training Data Content

With the widespread application of artificial intelligence ('AI'), the issue

of data compliance has become a major point of legal controversy, particularly concerning whether the training data fed into GAI infringes upon relevant intellectual property rights. Since the learning materials used by GAI are generally unknown to external parties, the focus of AI regulatory legislation has gradually expanded from 'algorithmic transparency' to 'data transparency', requiring AI enterprises to disclose information regarding pre-training data or even the datasets themselves.

China's AI regulatory legislation is still in an exploratory stage, with existing regulations requiring that pre-training content 'shall not infringe upon the intellectual property rights legally enjoyed by others if it involves intellectual property'.

The author considers that requiring AI enterprises to disclose and make publicly available all pre-training data content for the purpose of copyright protection, as a means of front-end regulatory control, not only presents high opportunity costs and practical difficulties in implementation, but also imposes excessive compliance burdens on innovative enterprises, thereby restricting industry innovation and development. Such a requirement would likely result in a reduced supply of data, hinder data transactions and cause cognitive deviations in AI models, leading to inaccurate data outputs and other related problems. Accordingly, copyright protection may be explored through the following approaches.

1. The definition of 'fair use'. Under China's Copyright Law, the doctrine of 'fair use' generally allows individuals to use published works of others for purposes such as personal research, study or appreciation, without obtaining permission from the copyright holder or paying remuneration. In the pre-training phase, artificial intelligence 'reads extensively', learning massive amounts of information to form its learning capacity and store a large volume of information as 'memory'. Its ultimate goal is to output information that is reasonable and accurate. Such outputs may be commercial in nature or temporarily provided for free. Even if the ultimate use serves a profit-making purpose, this does not in itself negate the fair use nature of the initial pre-training stage. Just as human beings study and research existing works—sometimes for personal improvement and sometimes to enhance their own value in the labour market—the intention to eventually gain higher economic returns does not invalidate the fairness of the initial learning activity. Moreover, the covert use of works by artificial intelligence during the pre-training stage does not alter or distort the factual authorship of the original works, nor does it cause public confusion regarding the origin of those works.

2. The Opt-Out Mechanism. Google once announced the creation of the world's largest searchable digital library. However, this sparked controversy because it involved scanning a large number of copyrighted works without permission. Google did not consider this to constitute infringement, proposing that right holders could request the removal of their books and the deletion of all digitised versions of such books. Alternatively, they could default to opting in to the programme, and Google would allocate 63 per cent of the commercial profits generated from operating the work to the right holders.

Copyrighted works are typically numerous and widely distributed. In situations involving large-scale use, it is indeed difficult to reach an agreement with every single copyright holder. In practice, representative industry organisations often act on behalf of the copyright holders within their membership to negotiate and conclude licensing agreements with entities engaging in bulk use. When a copyright holder publishes a work on a platform, they can stipulate with the platform that permission must be obtained from the copyright holder if the work is to be used for AI training content; otherwise, they may choose to opt out.

In order to realise greater social and economic value from their works, copyright holders often seek to showcase, disclose and promote their works through various channels, thereby transforming them into marketable commodities. In copyright legislation, there exist circumstances of compulsory licensing, under which a work may be used without the copyright holder's permission, provided that remuneration is paid, unless the copyright holder has expressly declared that such use is prohibited.

3. Implementing technical protection measures to block external intrusions. Copyright protection organisations can adopt technical measures to block web crawlers, data scraping and other behaviours, thereby shielding data information. Furthermore, they can precisely locate and identify the source of the entity illegally accessing the database to pursue infringement liability against those who obtained the data through unlawful means.

Assessment Whether There Has Been Infringement at the Output Stage

Since the pre-training stage of GAI is typically a 'black box', the assessment of whether GAI has engaged in intellectual property infringement is primarily conducted through its output, by examining whether any infringing activity has occurred.

Appropriative Versus Independent Competition in Copyright

The former is more akin to plagiarism, involving the direct, lengthy quotation of another's work and lacking originality. The latter refers to absorbing knowledge points and elements from the original work, processing, refining and transforming them, and then expressing them in one's own language to create a competing work independently. From a value-oriented perspective, prohibiting or restricting appropriative data collection and utilisation, while encouraging independent creation of new products, can better incentivise data production and promote data circulation.

Artificial intelligence, building upon the foundation of pre-training, utilises the Transformer architecture to predict subsequent possible words based on preceding and surrounding context, gradually generating complete responses. It then enters the stages of comprehension and generation, and through final value alignment, edits and refines the initial outputs to produce integrated information that aligns with human preferences. With continuous advancements in AI technology, outputs based solely on mechanical memory are increasingly being phased out. Therefore, the likelihood that AI-generated outputs completely copy or closely replicate original works is relatively low. Whether a small number of similar outputs constitute legally significant substantial similarity requires further analysis.

Assertion of Copyright Holders' Rights

If a copyright holder believes that the outputs generated by GAI bear a high degree of similarity to their original work, they may, under the provisions of the Civil Code of the People's Republic of China, issue an infringement notice to the GAI platform. The platform is obligated to promptly remove the allegedly infringing content and assist in identifying the source of the infringement as quickly as possible. If the source originates from the AI enterprise's data generation process and this process contains defects, the generation algorithm and logical inference mechanism should be adjusted. If the source comes from the original data, the copyright holder's notice may be forwarded to the source, and necessary measures may be taken based on preliminary evidence of infringement and the type of service involved. Upon receiving the notice, the alleged infringing source may submit a declaration to the GAI platform stating that no infringement has occurred. The GAI enterprise shall forward this declaration to the copyright holder who issued the notice, informing them that they may file a complaint with the administrative authorities or initiate legal proceedings in court. If, within a reasonable period after the declaration has been forwarded, the GAI enterprise does not receive notification that the copyright holder has filed a complaint or initiated litigation, the measures previously taken should be promptly terminated.

Adding Source Identifiers to Generated Results

China has formulated regulatory documents and introduced national standards requiring the addition of explicit identifiers—such as text, audio or graphics—in the generated/synthesised content or interactive scenario interface, which must be clearly perceptible to users. Furthermore, implicit identifiers must be added to the file metadata of the generated/synthesised content. These implicit identifiers include information on the content's properties, the name or code of the service provider, content number and other production element information.

Epilogue

The development of AI technology poses new challenges to the existing legal framework, requiring continuous exploration and research to achieve a balanced development between technological innovation, progress and intellectual property protection.

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Artificial Intelligence and Copyright Disputes in India: Analysing Authorship and Infringement in AI-Created Works

Generative Artificial Intelligence ('GenAI'), particularly Large Language Models ('LLMs'), has created significant legal challenges to the principles of copyright law in India. This article examines the legal issues emerging from AI-generated works, especially the legality of data scraping for training LLMs and the issue of authorship and ownership of AI-generated outputs. The article proposes to examine these issues by analysing the nascent jurisprudence in this area, including the issues raised in the lawsuit against OpenAI by media houses before the High Court of Delhi and the issue of authorship, which was raised in the case of Kaustaubh Anil Shakkarwar v Jindal Global Law School, O.P. Jindal Global University & Anor before the High Court of Punjab & Haryana. The article will also analyse the need for creating a balance in the promotion of Innovation in AI and the protection of creators' rights.

Introduction

Innovation has been a driver of human progress since the existence of mankind. There has been a rapid growth in the speed and capability of modern computers and, resultantly, Artificial Intelligence ('AI') has secured a prominent position as a driver of innovation.

AI has caught everyone's attention by becoming capable of doing tasks which are similar to work done by human intelligence, by rapidly learning and imbibing human acquired intelligence. The current legal regime to protect intellectual property was created in an analogue era and is not adequately equipped to protect the new realities created by the digital evolution.

The disruption created by Generative AI Models ('GenAI Models') like GPT-4, Gemini, Perplexity, among numerous others, has also created a significant legal challenge to the established intellectual property regime. This article analyses the two primary fronts of the legal confrontation between

GenAI and copyright law, that is, the input dilemma and the output dilemma.

The Input Dilemma: Scraping of Data and Legality of Training GenAI Models

The efficacy of a LLM is directly proportional to the volume and diversity of the data on which it is trained. This training usually involves the scraping of data available on the Internet, which inevitably includes millions of copyrighted works from news articles, academic journals, literary texts and images. The legality of scraping the data to train GenAI Models challenges the traditional notions of copyright law because of the transformative nature of AI. Content owners have filed several lawsuits in various jurisdictions against AI platforms for using their content without their permission. As per media reports, several AI platforms, including OpenAI, Google and Meta, have entered licensing deals with rights holders such as book publishers and music production houses allowing AI platforms to train on data owned by these rights holders. However, certain issues still remain, like access to copyrighted news articles, journals and publicly available books for training AI datasets.

In India, a news agency, ANI Media, has filed a copyright infringement suit against OpenAI alleging that OpenAI has made its database using text and visual material owned by the media house. The case is currently *sub judice* before the High Court of Delhi, being CS (COMM) 1028 of 2024 ANI Media Pvt. Ltd. v OpenAI OpCo LLC. A verdict on this issue would set the tone in terms of how the judiciary perceives such issues and would pave the way for future issues.

From the perspective of a creator, the act of scraping and subsequent reproduction of their work within LLM datasets would constitute infringement of the exclusive rights granted to him under section 14(a)(i) and (ii) of the Copyright Act, 1957 ('the Act') which grants the right to reproduce the work and the right to communicate it to the public. The programmer or tech giants who own these GenAI Models defend the practice of scraping data under the umbrella of 'fair dealing' as outlined in section 52 of the Act.

The fair dealing defence hinges on several potential arguments, which include the aspect of considering the training of AI data as a form of computational research. However, the commercial aspect of such research weakens the argument of scraping data as some form of research. Another argument is that the act of training AI is not just a reproduction of the existing news but a robust process to analyse the information and transform the same into a language that the GenAI system can understand.

A key challenge for the High Court of Delhi in the ANI v OpenAI case will be to determine if the use of publicly available information for the training process can be considered as a necessary part of technological process and can be considered under section 52 of the Act. Further, an intervenor in the case representing an AI-based shopping platform argued that the AI tool does not reproduce copyrighted work as it is but instead analyses and compiles the publicly available information, and this act can be considered a derivative work.

The Court's interpretation of 'fair dealing' in the context of ANI v OpenAI case will be essential for the growth of GenAI Models. The issue of storing publicly available copyrighted works for training GenAI Models without authorisation can also be construed as violation of the Copyright Act, 1952.

The Output Dilemma: Authorship and Ownership of Works Created by GenAI Models

Once an LLM is trained, it can generate complex and coherent outputs which seem like those created by humans based on user prompts. This results in the issue of authorship in the work created by these models. There is ambiguity on whether the author of such works will be the user who creates the prompts or the programmer who has designed and trained the GenAI Model.

The Copyright Act, 1952 defines 'author' as the human creator. Also, the doctrine of 'originality' in India is guided by the 'sweat of the brow' doctrine which rewards the investment of labour presupposing a human agent.

If there is no authorship on AI-created works for absence of a human author, then how can such works be protected? If the user provides a non-creative prompt to the GenAI Model, the creative labour—that is, the work done to create the copyrightable work—is executed by the AI and not by the user giving the prompt. For instance, a user may simply give a general prompt to create an image of a 'bird flying across the sun'. The GenAI Model based on its training creates an image which contains a composition of a bird flying across the sun with a different colour choice, style and lighting. The interpretation of the prompt is done entirely by the GenAI Model based on its training. The result certainly lacks the skill, judgement and, most importantly, labour necessary to claim the authorship in such a work.

The generated image may create an issue of authorship, as the labour has been put in by the GenAI Model. This may lead to the possibility that many creative AI-generated works may fall into the public domain upon creation, having no eligible human author as the doctrine of sweat of the brow presupposes a 'human brow to sweat'.

The case of Kaustubh Anil Shakkarwar v Jindal Global Law School & Anor CWP 29690 of 2024, filed by the Petitioner, an alumnus of the Jindal Global Law School, touched upon a similar issue in authorship of academic work. The petitioner filed a writ petition seeking the quashing of the decision of the 'Unfair Means Committee' wherein he was declared as failed in the relevant subject on the basis of a plagiarism report on account of his answer sheet being declared as AI generated. It was argued by the petitioner that the answer sheet was his own creation buttressing it on the aspect that if he uses AI to give answers in the examination, then such answers would be his copyright and cannot be claimed as plagiarised since plagiarism can only be of copyrighted work and no copyright can subsist with AI. Therefore, it was submitted that the work of the petitioner, although made using AI as a means to an end, was protected under the sweat of the brow doctrine and the final result of the AI-generated answer sheet would constitute as an original work by the petitioner and the petitioner would be the author of such work. The High Court of Punjab & Haryana disposed of the matter without going into the academic issue of authorship in the AI-generated work.

The present legal system will need to develop a test to distinguish between a user who is merely giving prompts to GenAI Models and one who is collaborating with a GenAI Model. Further, the issue of 'secondary author' needs to be deliberated on to protect works involving both human and artificial intelligence.

Conclusion

The evolution of GenAI represents not just an incremental technological shift, but also a challenge to the core principles of copyright law which are based on incentivising labour. The High Court of Delhi's decision will be a crucial precedent for AI and copyright jurisprudence. A rigid and restrictive interpretation of fair dealing could stifle AI innovation in India. On the other hand, a broad interpretation may disregard the value and rights of the content creators, so undermining the very ecosystem on which GenAI Models are being trained. We must acknowledge the transformative nature of AI training, while considering a mechanism to reward the labour of creators on whose work GenAI Models are being trained.

The issue of authorship and ownership of AI-generated work exposes a deeper conceptual gap. It highlights the uncertainty in commercialising the AI-generated work and may disincentivise investments in AI-assisted creations if the issue of authorship and ownership is not dealt with through a balanced approach.

The development of GenAI Models would require a multi-stakeholder approach wherein all the stakeholders, including the legislature, judiciary and the industry, must formulate a forward-looking and balanced approach to protect and nurture creativity.

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Training the Machines, Testing the Law: Copyright Conundrum in Generative AI

As generative AI redraws the frontiers of creativity, it is also rewriting the global playbook on copyright. Copyright protection and fair use principles are locking horns. Globally, courts and lawmakers are grappling with how to balance innovation and authorship in a world where machines learn from human expression and create new works at unprecedented scale and speed.

The GenAI Revolution

Content generation and consumption have been transformed by the rise of Generative Artificial Intelligence ('GenAI'). GenAI is a branch of artificial intelligence ('AI') which employs advanced machine learning techniques to create novel content across media. This is done through foundational Large Language Models ('LLMs') which are adapted, trained and fine-tuned for a wide variety of tasks, applications and systems, and are deployed across various industries. These models are pre-trained on labelled data that enable them to grasp underlying structures and relationships, for fine-tuning models and conditional generation of content.

While the concept may feel recent, the roots of GenAI trace back to the 1960s, when MIT developed a text-based chatbot simulating a psychotherapist.[1] Now GenAI permeates daily life, from chatbots which can write and reason, to tools which generate code, compose music, design graphics and even simulate real human voices. As per McKinsey's Global 2025 survey, 88 per cent of the participating consumers reported the use of AI in at least one business function.[2] GenAI has prompted companies into redesigning their workflows, embedding it into functions like media and communication, marketing and software functions. With this rapid diffusion of creativity at machine speed, the boundaries between human and algorithmic creation have blurred, bringing into question the interaction of copyright protections in works that underpin a model's generated output.

From Input to Output

Consumer-facing GenAI tools are created using a multifaceted training procedure in multiple phases. The first phase involves the collection of vast amounts of data drawn from diverse public sources, including books, articles, websites and other text-rich repositories to provide a comprehensive base for the model to learn from. This raw data is then cleaned and pre-processed to make it suitable for training. Natural Language Processing ('NLP') forms the linguistic backbone of GenAI systems. By analysing and learning from vast quantities of human-authored text, NLP enables models to recognise syntax, semantics and context, and ultimately to generate new content that appears human-written.

Each stage of the process, right from data collection and storage to model training and generation of outputs, potentially engages with different rights of the copyright holder.

From the Perspective of Global Copyright Law

Although copyright is territorial in nature, international instruments such as the Berne Convention (1886), TRIPS (1994) and the WIPO Copyright Treaty (1996) have broadly harmonised its core principles. Across jurisdictions, copyright protects authors through a bundle of exclusive economic and moral rights including the right of reproduction, adaptation, communication, etc. These are negative rights, which enable the author to exclude or restrain others from unauthorised use of their protected work. Although the scope, duration and enforcement vary across legal systems, the rights remain broadly uniform.

Right of reproduction accords the owner exclusive authority to reproduce their work, including storage in electronic formats. Right of adaptation enables the owner to authorise or prevent creation of derivative works. Right of communication enables an exclusive authority on the copyright holder to make their work accessible to the public.

However, these rights are not absolute. There are sets of limitations or exemptions under specific statutes that balance the exclusivity accorded under these rights with broader public interest of access, research and innovation. This exemption is called the 'fair use' or 'fair dealing' exemption, which originated from English common law to allow for 'fair and reasonable' exploitation of work without the exclusive permission of the copyright holder. Such unpermitted use, when done within the bounds of the statutory exemption, does not constitute infringement of copyright.

To establish whether infringement exists, generally the following criteria must be met: (1) the work must be eligible for copyright protection; (2) copyright ownership or authorship must subsist in a person or entity; (3) there has been unlicensed or unauthorised exercise of exclusive rights of the copyright holders; and (4) the exercise does not fall within any statutory exemption.

Collection and Storage Stage

Whether copyright infringement arises at the collection stage depends on how data is sourced and whether it impinges on any protected rights. LLMs typically deploy web crawlers to mine or scrape texts, images and other media from online sources, which may be paywalled or publicly accessible. These paywalls indicate a right holder's intention to restrict access of online content. Once scraped, the data is stored by the LLMs, which involves copying material from its original source onto its servers for training.

Where such curated datasets include copyrighted works, this act of duplication may constitute unauthorised reproduction thereby amounting to infringement at the stage of data collection and storage itself. Globally, anti-circumvention laws enable entities to deploy certain technological protection measures for the purpose of protecting copyright. Hence, anti-circumvention laws may also be violated if the web crawler bypasses a paywall and copies the paywalled material onto its servers. Hence, copyright of the holder may be infringed through unlawful access or bypassing a paywall at the stage of collection, irrespective of how the work is later processed or the nature of the GenAI output.

Training and Output Stage

The curated dataset is then vectorised, converted into numerical representations that capture linguistic relationships and finally fed into LLMs with specific labels to help with pattern recognition. Through successive layers of training, the model refines these representations to predict likely word sequences, enabling it to generate coherent, contextually relevant text that mirrors human expression. This process aligns with the well-established principle that copyright protects expression rather than ideas. While the works ingested by an LLM may contain expressive elements, the LLM itself operates at the level of ideas by learning from abstract elements and creating a new expression for each user prompt. Since adaptation under copyright law involves re-expression of creative content, arguably the training output should not constitute an adaptation or a derivative work.

The process of vectorisation strips all data from its original creative form, thereby reducing the risk of replication. However, in cases where AI is able to reproduce original content (instances of 'content regurgitation', where the model reproduces portions of its training data verbatim), though a rare glitch, exposes a deeper issue of model memorisation. Memorisation occurs when LLMs reproduce duplicates or near-duplicate extracts of raw data without explicit prompting. In instances where memorisation occurs, irrespective of whether it is intentional or accidental, a significant portion of work is communicated to the public unauthorised and invites claims for copyright infringement.

Extent of Fair Use

If any infringement in the above stages is raised, then the next step is to evaluate whether the activity is protected under the fair use exemption provided in copyright statutes.

It should be kept in mind that fair use principles vary across jurisdictions. Countries like India, Canada and Australia have adapted the principle of fair dealing, as first contemplated in English courts. The United States, on the other hand, has a broader fair use principle.

In contrast to India's purpose-limited fair dealing framework, US law adopts a broader, open-ended fair use principle. Fair use is permitted by other purposes than the enumerated list by applying the four-factor test, as discussed below. However, in India, the exception is purpose limited. The scope of fair dealing exemption depends on two key considerations: first, that the copyrighted work is used only for the purposes mentioned in the Copyright Act, 1957 ('purpose limitation'); second, that such use meets the principles of fair dealing ('fair dealing assessment').

The American four-factor test to determine fair use, as conceptualised in Folsom v Marsh (1841), is:

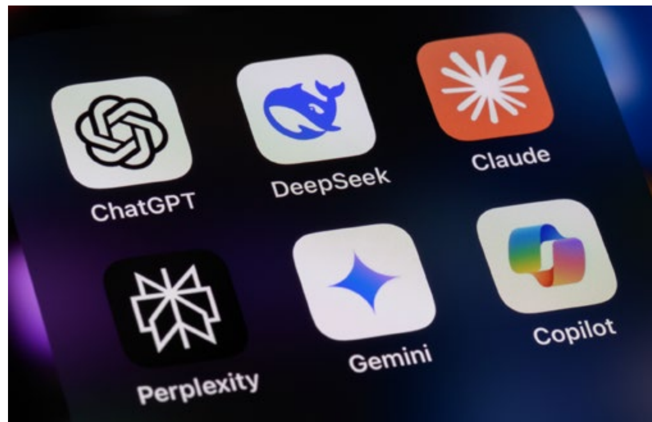
1. the purpose and character of the copyright use, including whether such use is of a commercial nature or is largely for non-profit educational purposes;

2. the nature of the copyrighted work itself;

3. the substantiality of the portion used in relation to the copyrighted work as a whole; and

4. the effect of the use upon the potential market value of the copyrighted work.

Indian courts have previously relied on the test and the transformative use doctrine to determine fair dealing. A close reading of precedents suggests that if the purpose limitation principle of fair dealing is not entirely obviated, this four-factor test can be adopted to assess the second consideration of fair dealing assessment.[3] In other words, training of data should fall within one of the permitted uses under the Copyright Act, 1957 to qualify for availing the fair dealing exemption in India. Since the training of LLMs is unlikely to fall within criticism, review or current events reporting, it should be assessed whether the training would qualify as 'personal or private use, including research', especially when the resultant model can be commercialised. The applicability of the fair dealing or fair use doctrine varies across jurisdictions, as the scope and interpretation of this defence differ fundamentally within each country's copyright framework.



Future Outlook

Copyright law stands at an inflection point, challenged to adapt to an era where creative expression increasingly originates from machines. Across jurisdictions, multiple litigations are ongoing where all forms of content, be it text, image or sound generating platforms, have come under judicial scrutiny. Most recently, the Bartz v Anthropic[4] case was settled, which was a class action filed by authors over the unpermitted use of their works to train Claude, and the settlement was reportedly valued at US$1.5 billion.[5] In the ongoing case of Getty Images v Stability AI[6] in the UK, Getty Images dropped its primary copyright infringement claims due to jurisdictional limitations as it was difficult to prove that training occurred in the UK. However, claims of secondary copyright infringement and passing off still subsist. In NYT v OpenAI,[7] the issue of near-verbatim reproduction of training content was brought out, supplemented by the fact that access to such content was in breach of anti-circumvention law.

The ongoing litigations indicate that broader issues of copyright protection cannot be addressed in isolation without addressing nuances like jurisdiction, technical fixes and technological developments—in LLM training and GenAI output. Simultaneously, policymakers are exploring new frameworks—from text-and-data mining exemptions to transformative-use doctrines, opt-out mechanisms and data licensing markets—to balance innovation with protection.

What remains to be seen is whether the global copyright regime is equipped to address and regulate an ecosystem where machine-generated work has taken deep root. As courts continue to issue divergent rulings globally, the coming years will reveal whether global copyright law can evolve swiftly enough to govern creativity in the age of algorithms.

Notes

[1] Md Al-Amin et al., 'History of Generative AI Chatbots: past, present, and future development', ResearchGate; available at www.researchgate.net/publication/378149233_History_of_generative_Artificial_Intelligence_AI_chatbots_past_present_and_future_development (last accessed 5 December 2025).
[2] 'The state of AI in 2025: Agents, innovation, and transformation', McKinsey; available at https://www.mckinsey.com/capabilities/quantumblack/our-insights/the-state-of-ai#/ (last accessed 05 December, 2025).
[3] See *Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House & Ors; BD Bhandari Division Bench; The Chancellor, Masters & Scholars of University of Oxford & Ors v Rameshwari Photocopy Services & Ors, 2016 SCC OnLine Del 6229; ESPN Star Sports v. Global Broadcast News Ltd,* 2008 SCC OnLine Del 1766.
[4] *Bartz v Anthropic PBC*, 3:24-cv-05417, (N.D. Cal.).
[5] 'Anthropic agrees to pay 1.5 billion to settle author class action', Reuters; available at https://www.reuters.com/sustainability/boards-policy-regulation/anthropic-agrees-pay-15-billion-settle-author-class-action-2025-09-05/ (last accessed 05 December, 2025).
[6] *Getty Images (US) Inc. v Stability AI Ltd.*, [2025] EWHC 38 (Ch).
[7] *The New York Times Company v Microsoft Corporation*, 1:23-cv-11195, (S.D.N.Y.).

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Aaron advises multinational clients on a host of subjects ranging from market entry in India, investments and technology deals, product launches, privacy, data protection, cyber security, IP structuring, digital payments, IoT, AI deployment, commercial communications and consumer protection. He also advises on sectoral regulations such as in the IT/ITES, fintech, media, gaming and government procurement sectors. He has been involved in policy and advocacy efforts on foreign direct investment in e-commerce, regulatory conditions for e-wallets, intermediary liability, AI governance framework, India's new personal data protection law and proposed non-personal data governance.

Author assisted by Tanishq Gupta.

Did You Know?

Interesting Laws Around the World

Ley Marco de Autorizaciones Sectoriales: Objectives, Scope and Impact on the Infrastructure Sector

Law No 21,770 (the 'Ley Marco de Autorizaciones Sectoriales', the 'Law' or 'LMAS'), published on 29 September 2025, marks a key milestone in Chile's regulatory modernisation. The Law creates a uniform national framework for processing sectoral authorisations, seeking to simplify and harmonise administrative procedures across public agencies. Its goal is to standardise processes, cut permitting times by 30 per cent to 70 per cent, and strengthen legal certainty, transparency and efficiency without affecting technical or environmental standards.

Grounded in Ley No 18.575 (Ley de Bases Generales de la Administración del Estado), the LMAS introduces additional principles—standardisation, facilitation, predictability, proportionality, simplification and cost-effectiveness—to improve public management. It promotes parallel permitting, enhances inter-agency coordination and reinforces the technical authorities responsible for sectoral authorisations throughout the Chilean public sector.

1. Main procedural innovations

The LMAS introduces mechanisms to simplify and expedite administrative procedures across public sectors, improving inter-agency coordination, reducing processing times and strengthening legal certainty. It also mandates regular reviews and regulatory updates for each sector. Key measures include:

- Normas mínimas de tramitación (minimum processing standards): Digital applications using standardised forms, prior admissibility review, coordination of reports among agencies, mandatory maximum timeframes for decision-making and the systematic use of silencio administrativo (administrative silence)—under which failure by the authority to decide within the statutory deadline results in the permit being deemed granted or refused, depending on the type of permit.

- Técnicas Habilitantes Alternativas ('THA'): Instruments such as prior notice or sworn statements that allow low-risk projects to begin without awaiting a prior administrative act. These mechanisms take immediate effect and are subject to subsequent oversight. In addition, economic crimes are expressly typified to sanction the fraudulent use of these simplified channels. However, their application is not yet generalised: THA are only applicable to those administrative procedures expressly amended by the LMAS in its Final Title, which entails a gradual and sector-specific implementation.

- Ventanilla Única Digital ('SUPER'): A single electronic platform for submitting and tracking all sectoral permits online. Through SUPER, traceability and transparency are ensured at every stage of the procedure by integrating information from different State agencies into a single, interoperable system. This facilitates inter-institutional

coordination and enhances administrative efficiency.

- New institutional framework: Creation of the Oficina de Autorizaciones Sectoriales e Inversión ('OASI'), under the Ministry of Economy, responsible for coordinating the system and managing SUPER, as well as an Interministerial Committee tasked with expediting priority projects.

2. Relevance of the LMAS in the concessions sector

The LMAS represents a turning point in the relationship between the State and the private sector in the context of projects, infrastructure, public works and energy. The Law does not replace concession procedures—which remain governed by specific sectoral regulations—but it directly impacts their development and implementation by introducing a new layer of administrative efficiency that can accelerate large-scale projects of national significance.

Beyond the public works and concession systems, the LMAS will also impact Chile's broader infrastructure sector, particularly industries that depend on multiple sectoral permits such as mining, energy generation and storage, transmission, desalination, data centres and green hydrogen. By introducing a unified and digitalised permitting framework, the Law enhances efficiency, predictability and legal certainty, reinforcing Chile's attractiveness for long-term investment.

In this broader context, the LMAS complements and strengthens Chile's well-established concession framework, ensuring greater coherence between public and private infrastructure development. Chile has built a stable and predictable concessions framework over three decades that has attracted domestic and foreign investment through long-term contracts with clear risk allocation. The LMAS builds on this structure by modernising the complementary and enabling permitting procedures that often condition the execution of concession projects.

Thus, in the field of public works, the LMAS enters into force in a context of strong expansion of the concessions portfolio, which amplifies its practical and strategic impact. According to data from the Ministerio de Obras Públicas ('MOP'), the 2025 Tender Plan includes 560 projects with an estimated investment of CLP 2.2 trillion, covering initiatives in road infrastructure, hydraulic works, airports and ports. In addition, the 2025–2026 concessions portfolio amounts to USD 7.898 billion, featuring flagship projects such as the Valparaíso–Santiago railway and new highway concessions.

Traditionally, these projects have faced long periods between award and the actual start of construction, due to sequential and fragmented processing of various sectoral permits. The LMAS seeks to address this structural issue by establishing a harmonised procedure that enables parallel authorisations, the use of THA and interoperable digital platforms, thereby reducing the pre-construction phase and significantly shortening development timelines.

The modernisation will be implemented gradually and through specific regulations. In this context, the LMAS introduces targeted amendments to the Concessions Law (Law No 15,840 of 1964, consolidated by DFL No. 85 of 1997). Seven months after its publication, the MOP must update the Major Hydraulic Works Regulation to align it with the recent Water Code reforms. Twelve months after publication, the remaining amendments to the Water Code will take effect, triggering adjustments to the Sanitary Concessions Regulation. This regulatory timeline is key to aligning the new permitting framework with the execution of concession projects in critical sectors such as water and sanitation infrastructure.

In summary, the LMAS does not change concession award procedures but streamlines project execution by modernising administrative processes, enhancing coordination and increasing legal certainty, thereby supporting Chile's competitiveness in public infrastructure investment. Its phased implementation ensures an orderly transition to full application.

3. Implications and challenges

The implementation of the LMAS presents significant logistical and regulatory challenges for Chile. It requires the issuance of multiple sectoral regulations and amendments to existing laws to incorporate THA and coordinated timelines. Public agencies must modernise administrative systems and train personnel, while companies face greater responsibilities and potential criminal liability for false or misleading information. Ultimately, the LMAS seeks to balance investment efficiency with the protection of regulated assets. Over time, Chile's unified permitting system is expected to accelerate strategic projects, reduce delays and transaction costs and strengthen confidence in the country's regulatory and institutional framework.

Nicolás Yuraszeck

Partner, Prieto Abogados, Chile

The Ban on Dwarf Tossing

This rather unusual ban was introduced by Geneviève Rodriguez, who was the Mayor of the commune of Morsang-sur-Orge, in Essonne, in 1991. The nightclub in her town regularly organised dwarf-throwing shows, a form of entertainment that did not appeal to the elected official, even though the main participant consented to it. In order to put an end to this activity, the mayor issued a municipal decree on 25 October 1991, prohibiting the show that was to take place that same evening.

The production company that sold the show filed an appeal against the order of the Mayor of Morsang-sur-Orge, supported by the testimony of the dwarf, who claimed that this activity had allowed him to regain his dignity by having a well-paid and regular job. The case went all the way to the Supreme Court, which finally ruled in favour of the Mayor as 'respect for human dignity is a component of public order'. The Supreme Court affirmed that human dignity is non-negotiable. It is not a commodity that can be sold or sacrificed, even with one's own consent.

UFOs Are Not Allowed to Land in Châteauneuf-du-Pape

Among the most unusual archives of French law, the 1954 municipal decree of Châteauneuf-du-Pape ranks high. This small commune in the Vaucluse department decreed that no unidentified flying objects—in other words, UFOs—were allowed to land, hover, or even fly over the commune's territory.

On paper, this decree seems straight out of a science fiction novel. And yet, in 1954, France was experiencing a veritable wave of UFO sightings. The newspapers were full of far-fetched accounts of strange lights in the sky and appearances of 'Martians'. This climate of anxiety also reached the countryside, where rumours quickly took root. It was in this context that Lucien Jeune, then Mayor of Châteauneuf-du-Pape, signed a decree prohibiting flying saucers from landing in his municipality, under penalty of impoundment.

What could have been just an administrative hoax has become part of the local heritage. The decree is still in force. The current Mayor refuses to repeal the text, a decision he describes as 'inconceivable' in an interview with Le Dauphiné Libéré newspaper. 'It's effective, and the proof is that no UFOs come here!' he adds. Very efficient indeed!

The Ban on Being Naked at Home

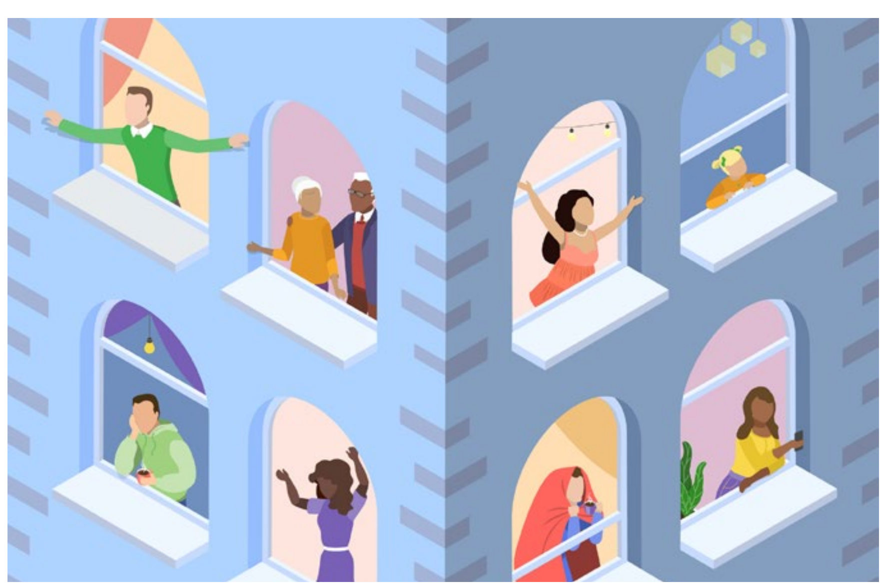
Did you think that anything goes at home? In France, the law is clear: even at home, nudity can be a problem if it is visible from outside.

According to Article 222-32 of the Penal Code, 'sexual exhibition imposed on the view of others in a place accessible to public view' is punishable by a fine of up to €15,000 and one year's imprisonment.

In practical terms, this means that if your windows overlook the street, a park or a neighbouring building, you need to be discreet. It is not a matter of saying 'no one should watch inside my place' but rather making sure that, unless you are absolutely decent, no one is able to watch you.

It is good to be curtain manufacturers in France—just in case you would consider moonlighting ;-).

Frédérique David
Partner, Harlay, Paris
IPBA ALCM for Europe



Celebrations

Olympic Winter Games Milano Cortina 2026

The Olympic Winter Games Milano Cortina 2026 are getting closer—they will take place from 6 to 22 February 2026 and be followed by the Paralympics from 6 to 15 March 2026. This article explores the peculiarities of these events that involve the world's best athletes in winter sports.

Different Sports, Different Places, Different Cultures, One State

20 years after the 2006 Turin Winter Olympics, Italy is going to host again the world's most important winter sports event. This edition of the games has a singularity: the competitions will be held in multiple venues, spread across four clusters in Northern Italy: Lombardy region, Veneto region, and the autonomous provinces of Trento and Bolzano. Specifically, the sites will be the city centers of Milan and Verona, as well as mountain locations in the Alps (Cortina d'Ampezzo, Livigno, Bormio, Verona, Predazzo, Tesero and Anterselva). The opening ceremony, expected to take place in front of 80,000 spectators at San Siro Stadium in Milan, is set to be the most attended in Winter Olympic history (alongside Beijing 2022), whilst the closing ceremony will take place in the Arena in Verona, a UNESCO World Heritage Site. Between these two evocative locations, sporting competitions are spread across many wonderful landscapes, which also make the Olympics an opportunity to promote tourism and the region.

Discovering Winter Sports in the Olympic Games

The sports included in the Olympic program range from the classics to lesser-known ones. Indeed, there are going to be competitions of Alpine skiing, biathlon, bobsleigh, cross-country skiing, curling, figure skating, freestyle skiing, ice hockey, luge, Nordic combined, short track speed skating, skeleton, ski jumping, ski mountaineering, snowboard and speed skating.

Beyond Any Boundaries: the Paralympics

The Paralympic Winter Games Milano Cortina 2026, which are integral part of this huge event, represent the third time the Paralympic Winter Games have been held in Italy. The sports covered within this framework are para Alpine skiing, para biathlon, para cross-country skiing, para ice hockey, para snowboard and wheelchair curling. The iconic venues where the paralympic athletes are going to compete, that are typical of winter sports but sometimes known as non-compatible with the needs of persons with disabilities, are fully accessible and equipped to accommodate the needs of all participants, both between the athletes and the spectators. These Winter Olympics are certainly founded on principles such as inclusiveness, richness of diversity, equality and universality of sport.

L'Olimpiade Culturale

Besides sports and the traditional matters and events which traditionally revolve around the Winter Olympic Games, the Milano Cortina Winter Olympics 2026 includes a special initiative known as the Cultural Olympiad ('L'Olimpiade Culturale'). It consists of a program of fully accessible and sustainable events, aimed at spreading the Italian artistic and cultural heritage that, through a multidisciplinary approach, intersects the values of sport and of the Olympic games themselves, such as respect, courage, determination, friendship, inclusion and peace. This also allows the involvement—without any discrimination—of the local cultural community, including local artists, cultural operators, promoting entities and organisations.

Alberto De Luca

Partner, DL-LAW, Milan

Sinulog: Just One of Many Philippine Festivals

'Pit Senyor!' These are the words of jubilation that Cebuanos in the Philippines excitedly shout every third Sunday of January, on the occasion of the Sinulog Festival. This literally translates to a cry of excitement to the Lord. Generations of Cebuanos have danced the Sinulog while exclaiming 'Pit Senyor!' in honour of Jesus Christ, more specifically the Sto. Niño. For many Filipino Catholics especially, the Sinulog Festival is a celebration of the arrival of Christianity in the country. After all, Ferdinand Magellan's first gift to the local chieftain, Rajah Humabon, on the occasion of his arrival in Cebu from Portugal, was an image of the Sto. Niño—the very same image that is still housed in the Basilica Minore del Sto. Niño de Cebu in Cebu City.

In recent decades, the Sinulog Festival has evolved into a celebration not just for devotees of the Sto. Niño, but for all Cebuanos, and even for hordes of local and foreign tourists. The Sinulog Festival in Cebu City has truly evolved into a tourist attraction, especially with the colourful costumes and the noisy yet rhythmic chants of Festival participants.

Tourists indeed revel in the sight of dancing in the streets with participants garbed in colourful costumes, making a delightful ruckus while gleefully screaming into the air with abandon: 'Pit Senyor!'

Cebu is a great place to visit year-round—lechon is, after all, available year-round. If I may suggest, though, every tourist should ensure witnessing at least one of the many Festivals of the Philippines, the notable of which, apart from Sinulog, are:

- Ati-Atihan in Aklan, every January
- Dinagyang of Iloilo in January
- Panagbenga in Baguio every February
- Moriones in Marinduque during Holy Week
- Pahiyas in Quezon every May
- the Santacruzan nationwide in May
- Masskara in Bacolod every October
- the Lubenas Lantern Parades in Pampanga every December

These festivals are just one reason why no less than the Philippines' Secretary of Tourism, lawyer Christina Frasco, and Integrated Bar of the Philippines ('IBP') President Allan Panolong, recently launched in October 2025 a collaborative programme of the Department of Tourism and the IBP, one of the features of which is the grant of discounts to accredited lawyers/IBP members in participating hotel establishments throughout the country. They are indeed aware of the propensity of lawyers to travel, to see the sights and to observe, if not participate in, the many Philippine Festivals year round.

Emerico O De Guzman
ACCRALAW, Metro Manila

IPBA NEW MEMBERS

New members, June 2025 through August 2025

We are pleased to introduce our new IPBA members who joined our association from June 2025 through August 2025. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

Australia

Shiho Kagasaki
Kennedys

China

Xueping Dai
Anhui Qingheqing (Wuhu) Law Firm

Philip Rohlik
Debevoise & Plimpton

Daniel Roules
Squire Patton Boggs, Shanghai Office

Jie Tai
Reiz Law Firm

France

Patrice Grenier
Grenier Avocats

Julie Saint Voirin
Meneghetti Avocats

Hong Kong

Yiling Qian
Fangda Partners

India

Abinash Barik
Finvest Legal

Sanket Bora
SPCM Legal

Poorvi Chothani
LawQuest

Pallabi Ghosal
Trilegal

Deeksha Malik
Khaitan & Co

Jyoti Singh
AJA Legal

Ashu Thakur
Ashu Thakur & Associates

Indonesia

Triangga Kamal
Kyora Law Firm

Christo Yosafat
Kyora Law Firm

Italy

Alberto Parisi
Wi Legal Law Firm

New Zealand

Clayton Kimpton
The Law Association of New Zealand Inc

Philippines

Euney Marie Perez
Mata-Perez, Tamayo & Francisco

Jay Masangcay
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LABUAN IBFC
ASIA'S PREMIER INTERNATIONAL FINANCIAL HUB

Labuan International Business and Financial Centre (Labuan IBFC), located off the North West coast of Borneo, offers global investors and businesses the benefits of being in a well-regulated jurisdiction that provides fiscal, legal and currency neutrality, in addition to being an ideal location for cost-efficient substance creation.

Labuan IBFC is a wholesale financial, risk and wealth management intermediation centre that also boasts a wide range of business structures including solutions for fintech or digital businesses. It is also home to the world's first sukuk and is acknowledged as an Islamic financial hub.

Well-supported by a robust, internationally recognised yet business-friendly legal framework, Labuan IBFC operates within comprehensive legal provisions and guidelines, enforced by a single regulator, Labuan Financial Services Authority – a statutory body under the Ministry of Finance, Malaysia.

Labuan, also known as the 'Pearl of Borneo', offers a myriad of business and leisure opportunities. It is also a hub for financial tourism as its excellent location and compact structure offer easy connectivity between the financial district, and nature offerings.

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