August 19, 2025

Himani Pande
Additional Secretary
Department For Promotion of Industry and Internal Trade (DPIIT)
Shastri Bhawan, New Delhi – 110001

By Email: **Ashp.dpiit@gov.in**

Dear Ms Pande,

Re: Artificial Intelligence (AI) and its implications on Copyright Law

The Asia Video Industry Association (AVIA) is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leading the fight against video piracy, as well as publishing reports and hosting industry conferences. It aims to support a vibrant video industry for the benefit of all stakeholders. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly-expanding consumer demands and investing in India's communications and creative industries.

In reference to the stakeholder consultation held on June 20, 2025 and the subsequent questions proposed, AVIA welcomes the opportunity to share views from our members regarding the Department for Promotion of Industry and Internal Trade's ongoing consideration of the issue of Artificial Intelligence and the implications for Copyright Law. AVIA would therefore like to offer the following responses to the DPIIT and the Committee on the aforesaid subject below:

1.   **Do you see the use of copyrighted materials in the AI training, as infringement? If yes, how?**

Any use of copyright material, including through AI training, without the permission of the copyright owner and in the absence of an existing exception or limitation, may infringe upon that copyright. AVIA notes that the Copyright Act 1957 grants exclusive rights to a copyright owner to reproduce and store a cinematograph film in any medium by electronic or other means.[1]

The process and purpose behind AI training plays a key role in assessing whether such use constitutes infringement. For instance, if a tool is trained specifically to generate infringing outputs, that training should be considered infringing.

The question of whether AI training infringes copyright is therefore nuanced and context-dependent. There is no one-size-fits-all answer. Each case should be evaluated on its own merits, taking into account the nature and purpose of the use. This is why direct contracts and the courts, rather than blanket rules, are best placed to make these determinations. Legislation that attempts to draw binary lines between permitted and infringing uses risks overlooking the complexities of real-world applications and may unintentionally stifle innovation or legitimate use.

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[1] Indian Copyright Act (1957), S.14 (d)(i)(B).

2. **If it is infringement, how should the policy strike the right balance between protecting copyrighted content and enabling its use for AI training? - In your view, where does this balance lie?**

India's copyright law promotes voluntary and direct licensing which is conducive to an environment that enables training while protecting copyright. Voluntary and direct licensing creates a mutually beneficial outcome for all parties. AVIA recommends that policy development should therefore focus on responsible AI development which ensures AI's ability to learn from copyrighted works but does not infringe on creators' rights.

Fostering a well-functioning voluntary licensing market is key to striking the right balance between protecting the rights of copyright holders and enabling responsible innovation. When clear, efficient licensing mechanisms are in place, AI developers can obtain the necessary permissions to use creative works in ways that respect ownership while unlocking new possibilities.

Such voluntary licensing provides AI developers with the opportunity to negotiate with copyright owners for the right to access uncorrupted datasets which may not be easily accessible online, which would be necessary to avoid the risk of having the AI models collapse from training using recursively generated data, which will become gradually more pervasive in the online environment as time goes by.

Large global AI developers have begun entering into licensing agreements with publishers, studios, and stock media companies to access datasets for training while ensuring creators are compensated. These deals demonstrate that licensing can serve as a practical and scalable alternative to litigation, offering legal certainty for innovators while ensuring fair value flows back to the creative sector.

3. **Why should a blanket TDM exception for AI training (for commercial purposes) not be introduced in India, in order to help India take a lead in AI innovation? Would it hurt the content industry? If yes, how?**

As briefly mentioned above, the question of training requires a nuanced analysis as it's very context dependent. A blanket TDM exception for commercial purposes could undermine the incentive to create new works and erode copyright protection in India. A broad commercial TDM exception will interfere in the copyright owners' control on how their works are used, which could lead to unauthorised derivative/infringing works, negatively impact on their ability to monetize their works and potentially stifle the economic incentive for creativity. It would also undermine government efforts to cultivate and foster the creative economy and community.

We note that the Government of India recently announced a USD 1 billion fund to boost India's creative economy[2], to empower digital content creators through skill development, global market integration and access to cutting-edge technology to boost production quality. India's creative industries are also AI innovators and have embraced the opportunities of AI. These same sectors are using AI to enhance their commercial and creative processes and indeed are pursuing new licensing markets for locally produced creative works with AI developers. Through these actions and such initiatives as the recent World Audio Visual Entertainment Summit, India has demonstrated appreciation and investment in the cultural and

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[2] https://economictimes.indiatimes.com/news/india/india-announces-1-bn-fund-for-creators-economy-ahead-of-waves-summit/articleshow/118986322.cms?from=mdr#google_vignette

economic importance of the creative economy. Developments at the intersection of creative economy and AI should proceed in the same spirit to maintain respect and protection of IP.

Content creators rely on licensing their copyright protected works to generate revenue. Creating exceptions in the current Copyright Act, to allow AI to train on copyright-protected works, would undermine these licensing opportunities and frustrate an emerging fair and well-functioning licensing marketplace and disincentivize licensing of high-quality material. Streaming Services alone are expected to contribute over 280,000 jobs by 2028[3] and disrupting the value of creators detracts from these jobs and the millions of jobs across the creative economy. In addition to other harmful impacts; they may also expose original creators to serious reputational damage when their work is mimicked, misrepresented, or used to generate harmful content in their style.

Further, such an exception, if introduced for commercial purposes without effective, non-burdensome protections for rightsholders to exclude their works, is not likely to be three-step test compliant. Such an exception would represent an unwarranted intervention into licensing markets and potentially enable AI models to train on Indian content to produce competing products, thereby diluting the market for original Indian content.

Over the last three years, it is worthwhile noting that even jurisdictions that formed the first wave of countries that are attempting to legislate new TDM exceptions to the benefit of AI companies have either a) (in the case of the UK) paused their work for further consultation, or b) (in the case of the EU) discovered that technical complexity makes the operationalization of a rights holder opt-out practically impossible at this time. Such challenges that have stalled the introduction of a TDM exception should be taken into consideration.

4. **How do you view a text and data mining (TDM) model with an opt-out mechanism? Does this model adequately address the concerns of content owners' rights? If not, why?**

While a TDM model with an opt-out mechanism is presented as a measure to balance innovation with copyright owners' concerns in addition to inconsistency with owners' rights, it presents a number of challenges for copyright owners in its practical operation. It could place an impossible burden on content creators to police the entire digital ecosystem in addition to include technical challenges, for example limitations with techniques such as robot.txt (especially for works such as AV content which is typically available across large numbers of sites and services) and uncertainty with what constitutes a machine readable format; administrative challenges such as inconsistent implementation of opt-out mechanisms by AI providers and transparency issues (i.e. which works are being used for TDM); and places the onus on copyright owners to actively opt-out, which can be interpreted as a formality under the Berne Convention. In parallel, an opt-out mechanism similarly presents challenges for AI providers in terms of knowing whether an opt-out has been exercised.

We would also draw attention to several recent reports from other key markets on the issue of TDM exceptions. Indeed, the European Union's Intellectual Property Office (EUIPO) on May 9 released its report, *The Development of Generative Artificial Intelligence from a Copyright Perspective*, which notes some major challenges around implementing the EU's one-size-fits-all "rights reservation" approach, such as complexities in identifying correct IP holders when copyrighted works involve overlapping

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[3] AVIA and Media Partners Asia https://avia.org/indias-creative-economy-set-to-soar-with-premium-online-video-fuelling-50-of-new-revenue-growth-reveals-new-report-by-media-partners-asia/

rights.[4] Furthermore, the US Copyright Office (USCO) on May 9 also released a pre-publication version of its report on copyright and AI, which notes "that requiring copyright owners to opt out is inconsistent with the basic principle that consent is required for uses within the scope of their statutory rights" and even if it were to be considered, "significant concerns… about the effectiveness and availability of opt-outs… would need to be addressed."[5]

A TDM exception for AI training, with an opt-out or reservation of rights does not provide any clarity and only adds more hurdles to future AI and content industry investments, reduce development of high-quality local content and jeopardises the future success of India's creative industries. At present there is no evidence to suggest any direct correlation between a TDM exception with an opt-out and the development of successful AI markets. As noted earlier, the TDM exception question is being actively considered in other international markets and we would urge the government to avoid the introduction of an unevidenced and unwarranted commercial TDM exception with an opt-out while also observing the outcome of these developments. In conclusion, given the above, AVIA does not support an approach using a TDM model with an opt-out mechanism.

5. **Given the scale, direct licensing has some challenges. What alternative licensing framework would be most appropriate for India's AI ecosystem? - Are there global models India could adapt effectively?**

In the audiovisual sector, rights are not fragmented; all rights in an audiovisual work are unified and vests in the producer. This legal structure enables the producer to fully commercialise the title. As a result, AI developers face no ambiguity when seeking permissions and voluntary, direct licensing offers an effective path. It provides flexibility and encourages collaboration while upholding copyright protection. The model has been successful in India as it allows licensors and licensees to utilize copyrighted works through mutually agreed-upon terms. This ensures that there is no market failure and contractual certainty is preserved.

The global AI training dataset market (licensing market) reached a value of nearly USD 2.62 billion in 2024 having grown at a CAGR of 21.97% since 2019 and is set to reach a value of USD 18.5 billion in 2034 at a CAGR of 20.38 %.[6]

AI developers in these markets are increasingly turning to copyright licensing over unauthorized use, to solve two problems/challenges i.e. firstly to mitigate potential liability and secondly, to obtain access to content that is either not freely available on the public internet or of a higher quality. The growth in these markets is exemplary of the value of copyright work in these datasets and the willingness of parties to mutually agree on a price. Access to proprietary datasets is rapidly becoming a means to compete in the AI developments space.

Therefore, we do not see any challenges in direct licensing which prompts the need for any other licensing model. Introducing alternative models such as extended collective licensing or compulsory licensing will create uncertainty at a time when the licensing of copyright works by AI developers is

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[4] EUIPO *The Development of Generative Artificial Intelligence from a Copyright Perspective*, Section 3.6.

[5] USCO *Copyright and Artificial Intelligence, Part 3: Generative AI Training*, pg 73.

[6] https://www.globenewswire.com/news-release/2025/05/12/3078933/28124/en/AI-Training-Dataset-%20Market-Report-2025-Market-to-Reach-18-47-Billion-by-2034-from-2-62-Billion-in-2024-E-Commerce-%20Expansion-and-LLM-Adoption-Despite-Talent-Shortage-Risks.html

evolving in India and discourage negotiated agreements for mutual benefit including those of creators and copyright owners. Moreover, there are significant issues regarding collective licensing for AI use, particularly with respect to the "black box" problem which complicates how much to pay identified beneficiaries, and this is particularly true in India and in every other jurisdiction with respect to audiovisual works.

6. **What are your concerns, if any, with introducing a statutory licensing model for AI training purposes? - How might these concerns be mitigated through legal or technical safeguards?**

In addition to the comments above, AVIA strongly opposes the introduction of a statutory licensing model for AI training particularly with respect to audiovisual works, where statutory licensing risks devaluing rightsholders' exclusive rights in licensing markets which are already functioning and growing, as noted above.

7. **What is your view on the copyrightability of AI generated works?**

India already protects AI generated outputs as computer generated works, in line with the UK, Hong Kong and New Zealand. This protection in these markets deems human authorship and originality where there would have been none otherwise. Technology, including AI and machine learning technology, has long been used in the production of films and audiovisual content and this has not raised issues for originality, human authorship and copyright subsistence. In this regard, it is important to recognise a distinction the Hong Kong Government has made between "AI-assisted works", which will receive full copyright protection and "AI-generated works" which will be protected as computer generated works.

8. **What is your view on authorship of AI generated works? Who should be copyright owner of AI generated works? What should be the liability structure?**

Under the Copyright Act, 1957, for computer generated works, which may protect generative AI outputs, "authorship" is deemed and the first copyright owner is the "person who made the arrangements to create the work".[7] This could be the AI user or another person depending on the facts. A clear legal guideline defining ownership of AI-generated works is necessary considering the roles of AI developers, users and the AI itself.

In conclusion, we urge the Ministry to maintain the current copyright regime which encourages the growth of voluntarily licensed markets to promote AI development. AVIA would welcome the opportunity to engage in future discussions, if that would be helpful.

Yours sincerely,

Clare Bloomfield
Chief Policy Officer

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[7] Indian Copyright Act (1957), S.2(d)(vi).