
BEYOND FAIR DEALING: HOW THE ANI v. OPENAI SUIT EXPOSES THE FRAGILITY OF EULAS IN THE AGE OF AI TRAINING

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ABSTRACT

The ANI Media Pvt. Ltd. v. OpenAI litigation has been primarily viewed through the lens of copyright infringement and Section 52 fair dealing exception. However, beneath the statutory copyright debate lies a more systematic vulnerability: the fragility of digital contracts. This article asserts that automated AI web scraping renders traditional End-User License Agreements (EULAs) and website terms of service functionally unenforceable against AI developers due to a fundamental lack of privity and manifest assent. By analysing the Delhi High Court's emphasis on Technological controls over conventional contractual authorization, the piece exposes the licensing vacuum in the AI industry. It further calls for a reassessment of the contractual architecture, advocating for AI-specific drafting, technological reinforcement of terms, and legislative licensing mechanisms for safeguarding digital creators.

Key Words: - ANI v. OpenAI, Fair Dealing Exception, End-User License Agreements (EULAs), contractual architecture, AI-specific drafting.

INTRODUCTION

In November 2024, ANI Media Pvt. Ltd. approached the Delhi High Court with a groundbreaking suit against OpenAI OpCo LLC (CS(COMM) 1028/2024). At the heart of the grievance was a simple concern: OpenAI had digitally harvested ANI's copyrighted news articles without a licensing agreement to train its large language models (LLMs), and ChatGPT subsequently generated outputs containing that content when prompted by users. Although the suit's dismissal on jurisdictional grounds prevented the Court from conclusively ruling on OpenAI's defence of 'fair dealing' under Section 52(1)(a) of the Copyright Act, 1957¹, the pleadings expose a broader structural weakness in the existing legal framework- one that has nothing to do with copyright infringement and everything to do with the fragility of contracts in the AI age.

As the matter proceeded before the court, it was noted that ANI had the technical ability to block third-party web crawlers (like OpenAI's GPTBot) from using its data for such purposes, although it had not completely exercised that right. This development reveals a structural weakness in the mechanisms through which rights are protected and enforced within the contemporary digital ecosystem: the contractual tools that creators have long relied upon to control the use of their works-website terms governing access and use, end-user licensing arrangements (EULAs), and electronically assented clickwrap contracts-are proving wholly inadequate against the scale and opacity of AI training.²

THE CLICKWRAP ILLUSION: WHEN 'I AGREE' MEANS NOTHING

End-user license agreements and terms of service have been the backbone of digital contracting for decades. Website visitors and software users routinely encounter and assent to "I Agree" to a set of terms that purport to govern their use of the platform's content. AI training, however, presents a materially different legal context these agreements are proving to be paper tigers.

Understanding the contractual foundations of the internet is essential to assess this issue. OpenAI's own Terms of Use³ dictate what users can do with ChatGPT's outputs, assigning

¹Copyright Act, 1957, s. 52(1)(a).

²*ANI Media Pvt. Ltd. v. Open AI OpCo LLC*, CS(COMM) 1028/2024, decided on 24 July 2026 (Del HC).

³OpenAI, *Terms of Use* (effective January 1, 2026).

ownership of generated content to the user while restricting certain uses. However, these contractual terms primarily regulate the user's interaction with the AI system. They do not-and cannot-govern what OpenAI does with the data it scrapes from third-party websites like ANI's.

Furthermore, the territorial dimension of the contractual framework raises a significant concern: ChatGPT's Terms of Use designate San Francisco, California, as the forum for adjudicating disputes. ANI argued that this forum selection clause should not bar Indian courts from hearing the matter, as OpenAI actively targets Indian users and the effects of the alleged infringement are felt domestically. If website terms of service prove insufficient to restrain AI companies from systematically extracting online content, and if forum selection clauses in those terms are subjected to lengthy jurisdictional battles, the enforceability of standard digital contracts is called into question. Online restrictions should be enforceable only when users receive clear notice of the terms and meaningfully accept them. Without informed assent, clickwrap agreements risk becoming a formal display of consent rather than evidence of genuine agreement.

THE WEBSITE TERMS TRAP: WHY 'NO AI TRAINING' CLAUSES ARE UNENFORCEABLE

The core problem is one of privity of contract. Website terms of use may contractually bind users to the site's conditions. When an AI company scrapes the site using automated tools, it is not "accepting" the terms in any meaningful legal sense. Without click-based assent or a meeting of minds, the AI developer is not a party to the contract. The Delhi High Court's observation that ANI could have blocked web crawlers but did not is telling. AI training datasets are massive and opaque. Even with a 'No AI Training' clause, developers may struggle to identify and exclude specific content from massive training database. The scale of the operation makes compliance with individual website terms functionally impossible.

THE LICENSING VACUUM: WHY AI DEVELOPERS DON'T NEGOTIATE

Across the AI industry, developers often train on copyrighted works without prior licensing, leaving creators to seek remedies through litigation. The economics explain the behaviour. Negotiating individual licenses with every rights holder whose work is included in a training dataset is commercially unviable. One LLM can be trained on billions of documents owned by

millions of different rights holders. The transaction costs of obtaining individual licenses would be excessively costly.

This economic justification, however, obscures a deeper problem. ANI submitted that OpenAI had recognized similar proprietary rights held by global news outlets and secured licences from them. If OpenAI is willing to negotiate with some rights holders but not others, the refusal to engage with certain creators is not strictly a matter of economic necessity-it reflects a deliberate strategic choice.

The sheer breadth of industry intervention in the ANI case reflects this growing concern. The Federation of Indian Publishers, the Digital News Publishers Association (DNPA)⁴, and the Indian Music Industry (IMI)⁵ have all sought to intervene. Permitting AI developers to use copyrighted works without licences risks destabilising the economic model of creative and digital asset sectors.

THE WAY FORWARD: RETHINKING THE CONTRACTUAL ARCHITECTURE FOR AI

The ANI v. OpenAI suit has exposed the fragility of EULAs and terms of service in the context of AI training, but it also reveals the urgent need for legislative and contractual evolution.

First, contracts must be drafted with AI training specifically in mind. Traditional software contracts do not adequately address AI-specific risks and should establish the licensing status and permitted use of training datasets.⁶

Second, website terms must be reinforced by technological measures. The Delhi High Court's observation on ANI's failure to restrict web crawlers serves as a cautionary reminder. Content owners who wish to prohibit AI training must implement technological measures-such as **robots.txt** exclusions, IP blocking, and CAPTCHA challenges-to restrict automated extraction of content. Contractual terms alone may be insufficient.

⁴Shruti Kakkar, "Delhi High Court-OpenAI ANI Copyright Case Order: What It Means for AI Publishers in India", *Hindustan Times*, July 29, 2026.

⁵The Wire Staff, "Digital News Publishers Association Join Copyright Suit in Delhi HC Against OpenAI", *The Wire*, January 28, 2025.

⁶Sidhartha Das, "AI Contracts in India: Why Copyright Compliance and Disclosure Architecture Are Now Non-Negotiable", *Vera Lex*, February 28, 2026.

Third, licensing structures must adapt to the scale of AI training. Industry associations such as NASSCOM and the Business Software Alliance (BSA) have supported TDM exceptions permitting AI training on lawfully accessed works. However, to protect creators, the Department for Promotion of Industry and Internal Trade (DPIIT) must examine collective or statutory blanket licensing models that enable rights holders to earn royalties without negotiating individual agreements.

Fourth, courts must clarify the relationship between contract and copyright in the AI context. To what extent can website terms restricting AI training be enforced against AI developers?⁷

CONCLUSION

The *ANI v. OpenAI* suit is far more than a copyright dispute- it is a seismic warning about the obsolescence of traditional contractual frameworks in the age of artificial intelligence. EULAs, website terms, and clickwrap agreements have long provided the principal contractual framework for digital content use. Creators and publishers have relied upon these agreements to protect their works, establish boundaries for use, and secure compensation for commercial exploitation. The Delhi High Court proceedings demonstrate that traditional contractual mechanisms are increasingly inadequate for regulating AI training.

The problem is not merely one of enforcement- it is one of fundamental design. EULAs and terms of service assume a human user who accesses content, reviews the terms, and provides consent. AI training operates on a completely different paradigm. Automated crawlers scrape billions of documents without any meaningful interaction with website terms. Where an algorithm accesses content without any click, signature, or affirmative assent, the traditional basis for constructive notice is weakened. This mismatch between the architecture of digital contracting and the mechanics of AI training represents a systemic failure that courts alone cannot remedy.

A comprehensive legislative framework is necessary, with statutory blanket licensing offering a potential pathway forward- but it must be complemented by reforms that address the contractual gap. Creators need the ability to enforce their terms against automated data extraction, rather

⁷John T. Isaza and Joshua I. Kramer, “AI Training Models and Website Terms of Use”, *Lexology*, September 22, 2023.

than only individual users. The *ANI v. OpenAI* suit and its subsequent dismissal on jurisdictional grounds- is just the beginning of India's jurisprudential journey into the intersection of artificial intelligence, copyright, and contract law.

Where website terms prohibit AI training, yet an AI company proceeds to scrape the site- without ever clicking "I Agree"-has a contract been breached? Or has the contract simply been bypassed by technology?⁸

The answer to that question will determine whether EULAs remain relevant in the age of artificial intelligence. The *ANI v. OpenAI* suit is not the final answer- it is the opening argument in a debate that will define the future of creative work in the digital economy.

⁸David Atkinson, "Putting GenAI on Notice: GenAI Exceptionalism and Contract Law" (2025).