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RE: Comments of ACT | The App Association on the DPIIT Committee's "Working Paper on Generative AI and Copyright — Part 1"

ACT | The App Association (ACT) appreciates the opportunity to provide comments on the Department for Promotion of Industry and Internal Trade (DPIIT) Committee's Working Paper on Generative AI and Copyright - Part 1.

ACT is a global not-for-profit trade association representing the small business technology developer community, including in India. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem who engage across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build technology. Our members both create copyright-protected works and develop and deploy artificial intelligence systems across a wide range of sectors, including education, healthcare, finance, logistics, and consumer services.

ACT members both benefit from copyright protections and the use and deployment of AI systems. AI is an evolving constellation of technologies that enable computers to simulate elements of human thinking, such as learning and reasoning. As an encompassing term, AI includes a range of approaches and technologies, such as machine learning, where algorithms use data, learn from it, and apply newly learned lessons to make informed decisions, and deep learning, where algorithms adapt based on exposure to new inputs to enable independent or assisted decision-making. Already, AI-driven algorithmic decision tools and predictive analytics have substantial direct and indirect effects on the Indian economy and show no signs of slowing.

Across use cases and sectors, AI has significant potential to improve the lives of Indian consumers through faster and better-informed decision-making, enabled by distributed cloud computing. Even now, India is adopting AI incrementally through improvements in digital services, typically in the form of streamlined processes, image analysis, and voice recognition, all forms of what may be described as narrow AI. These applications already provide meaningful societal benefit. As AI systems, powered by data and advanced algorithms, continue to improve services and generate new business models, the transformation of the Indian economy will accelerate.

For software developers, generative AI platforms are advanced technical tools that enhance creative and innovative processes by reducing cost and time, streamlining repeatable tasks, and improving efficiency. By training on large data sets such as code, audio, and images, these tools identify patterns and generate new outputs that support software development. Machine learning systems can automate routine tasks, detect errors and risks early in the development process, and support quality assurance, reducing human bias and minimising the risk of production delays.

Generative AI platforms also predict and complete lines of code by training on public-facing data not initially provided by the platform owner. While these capabilities bring efficiencies, they also raise unresolved legal and policy questions. Ongoing litigation and regulatory inquiry reflect growing concern about potential infringement of intellectual property and the exposure of proprietary information.

The use of copyrighted material in AI training creates concerns for both rights holders and platform users developing new works. These concerns are particularly salient in the context of open-source software. Open-source creators make their code publicly available subject to specific licensing terms, and failure to comply with those terms constitutes copyright infringement. This collaborative licensing model has enabled the development of secure, cost-efficient, and advanced technologies, supported by clear licensing principles such as those set out in the Open Source Definition.[1]

At the same time, both closed-source and open-source AI models have been accused of training on open-source code without complying with applicable license requirements. These practices raise questions about liability for platform providers and users and risk undermining confidence in the open-source ecosystem.

Small and medium-sized enterprises (SMEs) are a key engine of innovation and job creation in the digital economy. For these firms, legal uncertainty, high compliance costs, and fragmented regulatory approaches can disproportionately chill innovation and investment. Accordingly, any policy approach should be clear, practical, and technology-neutral, protecting intellectual property while ensuring that good-faith AI development remains accessible to small innovators.

ACT supports the Government of India's leadership in advancing artificial intelligence as a driver of economic growth and public benefit. At the same time, we urge caution against approaches that could unintentionally raise barriers to entry, entrench incumbent advantages, or impose rigid licensing and remuneration regimes before systemic harms are clearly demonstrated.

Observations on the Working Paper

The Working Paper appropriately recognises the need to balance the interests of rights holders with the growth of India's AI ecosystem. It also correctly notes that generative AI systems rely on large and diverse datasets and that copyright law plays an important role in protecting creative expression.

The Working Paper identifies real tensions at the intersection of copyright and generative AI. However, its proposed solution introduces structural interventions that are premature and risk unintended consequences for innovation, competition, and access to AI tools.

Concerns with Mandatory, Centralised Licensing

Impact on Small and Medium-Sized Innovators

Mandatory licensing regimes impose fixed compliance costs that disproportionately affect smaller developers. Large firms are better positioned to absorb licensing fees, reporting obligations, and administrative overhead. Smaller developers may be deterred from entering the market or from using AI tools that are necessary to remain competitive.

Any framework that conditions access to foundational technologies on centralised payment mechanisms risks favouring incumbents and reducing competitive pressure in AI development and deployment.

[1] *The Open Source Definition,* OPEN SOURCE INITIATIVE, https://opensource.org/osd (last modified Feb. 16, 2024).

Risks of Centralisation

The creation of a single collecting entity to license AI training concentrates market power in a centralized intermediary. Such structures raise concerns about rate-setting transparency, accountability, and the potential for rent extraction.

Once established, centralised licensing systems tend to expand in scope and complexity. This can create long-term distortions that are difficult to correct and may ultimately harm both creators and innovators. ACT believes that value should be derived from bargaining power and voluntary bilateral licensing, not government-mandated rates. ACT is concerned that the imposition of statutory royalties tied to global revenue upon commercialisation and administered through a centralised Copyright Royalties Collective for AI Training (CRCAT) entity could introduce new financial and administrative hurdles for resource-constrained SMEs.

Displacement of Flexible Legal Analysis

A mandatory licensing model effectively presumes that AI training is compensable conduct. This approach displaces flexible, case-by-case legal analysis with a blanket rule that does not distinguish between transformative, non-substitutive uses and conduct that meaningfully harms rights holders.

Copyright law is designed to accommodate technological change through balanced, fact-specific inquiry. Presumptive licensing short-circuits this process and risks sweeping in socially beneficial uses that copyright law would otherwise permit.

Improperly Shifting the Burden of Demonstrating Copyright Infringement

Per the Copyright Act, 1957, a party alleging infringement must demonstrate that an infringement has occurred. DPIIT's suggested hybrid approach would upend this framework by shifting the responsibility to AI creators, requiring them to demonstrate non-use of protected material whenever generated results resemble existing works. Such a requirement would impose a heavy and practically impossible obligation as generative systems operate through probabilistic mechanisms rather than fixed, predictable processes, making it unfeasible to definitively trace or exclude influences from vast training datasets.

This proposed policy reversal would disproportionately harm smaller enterprises that ACT represents. SMEs lack the extensive legal and technical resources of large firms, so facing the need to defend against claims, potentially through costly audits, documentation, or litigation, would undermine their ability to innovate or compete across the generative AI space.

Retroactive Liability is Inappropriate and Infeasible

ACT is concerned about the retrospective application of remuneration obligations proposed by DPIIT because such a requirement would impose impractical liabilities on developers. Given the unique way that AI models handle data through probabilistic learning to identify patterns and generating novel outputs, it is not clear how imposing retrospective claims can be done fairly or accurately since tracing back to individual copyrighted works is technically infeasible. As proposed, DPIIT's approach risks creating significant uncertainty and financial exposure for SME developers who build on open and/or existing models. We urge the DPIIT to reconsider any retrospective elements, favouring instead forward-looking mechanisms based on clear prospective guidelines, opt-out options, or scaled obligations.

ACT Encourages a Pragmatic Approach to the Text and Data Mining (TDM) Exception

While we take no position at this time on whether a new text and data mining (TDM) exception is needed in India's copyright framework to enable the lawful use of copyrighted works for generative AI training, if such a policy change is pursued then we strongly urge India to ensure that such a new exception is aligned with modern commercial realities. Because DPIIT's proposed hybrid model diverges from a pure exception-based approach by incorporating mandatory statutory royalties upon commercialisation, ACT is concerned that such a revenue-linked obligations could impose new financial and administrative challenges on resource-limited SMEs. Further, ACT supports employing standardised and accessible machine-readable formats for rights reservations while supporting broader access to reduce barriers for small developers.

Transparency and Disclosure Considerations

Transparency regarding AI development can support trust and accountability. However, disclosure obligations must be narrowly tailored, technically feasible, and proportionate.

Broad requirements to summarise training data risk exposing confidential business information, creating compliance uncertainty, and imposing burdens on developers who lack full visibility into complex data pipelines. Transparency measures should be developed with careful attention to their practical impact, particularly on smaller firms.

ACT AI Policy Recommendations

To develop a balanced approach that mitigates the dissonance between copyright and AI to supporting India's AI and creative economies, the DPIIT must consider how all other areas of the law impact copyright-related solutions for transparency. To understand and shape rules for this complex and evolving technology, ACT's voice, representing small businesses, is critical.

Since 2021, ACT has worked with its members to develop AI principles that would support the imminent future where data driving ever more powerful computers could exist alongside strong intellectual property protections. We know that if policymakers were to enact an overwhelming regulatory framework governing the use or development of AI based on what we know about it today, it would likely be out of date in the next five to 10 years. With the direct exposure to consumers of generative AI tools, AI in general jumped to the forefront of the global consciousness. To guide policymakers on a coordinated whole-of government approach to addressing the risks and benefits of AI, including those related to copyright, privacy, and data security, we recommend the following principles for action:

1. Quality Assurance and Oversight: Policy frameworks should utilise risk-based approaches to ensure that the use of AI aligns with the recognised standards of safety, efficiency, and fairness. Providers, technology developers, and vendors, and other stakeholders all benefit from understanding the distribution of risk and liability in building, testing, and using AI tools. Policy frameworks addressing liability should ensure the appropriate distribution and mitigation of risk and liability. Specifically, those in the value chain with the ability to minimise risks based on their knowledge and ability to mitigate should have appropriate incentives to do so. Some recommended guidelines include:
    - Ensuring AI is safe, efficacious, and fair.
    - Supporting that algorithms, datasets, and decisions are auditable.

- Encouraging AI developers to consistently utilise rigorous procedures and enabling them to document their methods and results.
- Requiring those developing, offering, or testing AI systems to provide truthful and easy-to-understand representations regarding intended use and risks that would be reasonably understood by those intended, as well as expected, to use the AI solution.
- Ensuring that adverse events are reported in a timely manner to relevant oversight bodies for appropriate investigation and action.

2. Thoughtful Design: Policy frameworks should require design of AI systems that are informed by real-world workflows, human-centred design and usability principles, and end-user needs. AI systems solutions should facilitate a transition to changes in the delivery of goods and services that benefit consumers and businesses. The design, development, and success of AI should leverage collaboration and dialogue among users, AI technology developers, and other stakeholders to have all perspectives reflected in AI solutions.

3. Access and Affordability: Policy frameworks should ensure AI systems are accessible and affordable. Significant resources may be required to scale systems. Policymakers should take steps to remedy the uneven distribution of resources and access and put policies in place that incentivise investment in building infrastructure, preparing personnel and training, as well as developing, validating, and maintaining AI systems with an eye toward ensuring value.

4. Research: Policy frameworks should support and facilitate research and development of AI by prioritising and providing sufficient funding while also ensuring adequate incentives (e.g. streamlined availability of data to developers, tax credits) are in place to encourage private and non-profit sector research. Transparency research should be a priority and involve collaboration among all affected stakeholders who must responsibly address the ethical, social, economic, and legal implications that may result from AI applications.

5. Modernised Privacy and Security Frameworks: While the types of data items analysed by AI and other technologies are not new, this analysis will provide greater potential utility of those data items to other individuals, entities, and machines. Thus, there are many new uses for, and ways to analyse, the collected data. This raises privacy issues and questions surrounding consent to use data in a particular way (e.g. research, commercial product/service development). It also offers the potential for more powerful and granular access controls for consumers. Accordingly, any policy framework should address the topics of privacy, consent, and modern technological capabilities as a part of the policy development process. Policy frameworks must be scalable and assure that an individual's data is properly protected, while also allowing the flow of information and responsible evolution of AI. This information is necessary to provide and promote high quality AI applications. Finally, with proper protections in place, policy frameworks should also promote data access, including open access to appropriate machine-readable public data, development of a culture of securely sharing data with external partners, and explicit communication of allowable use with periodic review of informed consent.

6. Bias: The bias inherent in all data, as well as errors, will remain one of the more pressing issues with AI systems that utilise machine learning techniques. Any regulatory action

should address data provenance and bias issues present in the development and uses of AI solutions. Policy frameworks should:

- Require the identification, disclosure, and mitigation of bias while encouraging access to databases and promoting inclusion and diversity.
- Ensure that data bias does not cause harm to users or consumers.

7. Ethics: The success of AI depends on ethical use. A policy framework will need to promote many of the existing and emerging ethical norms for broader adherence by AI technologists, innovators, computer scientists, and those who use such systems. Policy frameworks should:
    - Ensure that AI solutions align with all relevant ethical obligations, from design to development to use.
    - Encourage the development of new ethical guidelines to address emerging issues with the use of AI, as needed.
    - Maintain consistency with international conventions on human rights.
    - Ensure that AI is inclusive such that AI solutions beneficial to consumers are developed across socioeconomic, age, gender, geographic origin, and other groupings.
    - Reflect that AI tools may reveal extremely sensitive and private information about a user and ensure that laws protect such information from being used to discriminate against certain consumers.

8. Collaboration and Portability/Interoperability: Policy frameworks should enable eased data access and use through creating a culture of cooperation, trust, and openness among policymakers, AI technology developers and users, and the public.

9. Education: Policy frameworks should support education for the advancement of AI, promote examples that demonstrate the success of AI, and encourage stakeholder engagements to keep frameworks responsive to emerging opportunities and challenges.
    - Consumers should be educated as to the use of AI in the service they are using.
    - Academic education should include curriculum that will advance the understanding of and ability to use AI solutions.

10. Intellectual Property: The protection of IP rights is critical to the evolution of AI. In developing approaches and frameworks for AI governance, policymakers should be mindful of how current legal protections apply in circumstances involving AI and ensure that compliance measures and requirements do not undercut IP or trade secrets.

ACT appreciates the opportunity to share its views with DPIIT on this critical issue. We look forward to assisting DPIIT and others across Indian government moving forward.

Sincerely,

Brian Scarpelli
Senior Global Policy Counsel

Kedharnath Sankararaman
Policy Associate

ACT | The App Association
1401 K St NW (Ste 501)
Washington, DC 20005