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# RECONCEPTUALISING INTELLECTUAL PROPERTY IN THE AGE OF ARTIFICIAL INTELLIGENCE: A COMPETITION-ORIENTED APPROACH IN INDIA

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## ABSTRACT

The spread of generative and predictive artificial intelligence (AI) across the creative, industrial, and platform markets is undermining the doctrinal underpinnings of Indian intellectual property (IP) law. Systems that generate technical and expressive output with little human involvement jeopardise the trade-secret protection of training data, the requirements of human authorship in copyright, and the exclusion of “computer programmes per se” under Section 3(k) of the Patents Act 1970 in patent law. This paper argues that the traditional internal remedies for these strains, such as redefining “author,” acknowledging machines as “inventors,” or extending *sui generis* rights, are analytically insufficient because they treat IP and competition law as separate legal domains. But encouraging a marginal creator is not the only economic difficulty posed by AI; market structure also plays a role. The computation, data, and foundation models that form the basis of downstream innovation are controlled by a small number of businesses. The paper develops a “competition-oriented” reconceptualization of Indian IP law based on the Competition Commission of India’s 2025 Market Study on Artificial Intelligence and Competition, the Competition (Amendment) Act 2023, the Draft Digital Competition Bill 2024, and the ongoing Delhi High Court litigation in ANI Media Pvt Ltd v. OpenAI Inc. In order to show that IP exclusivity, competition oversight, and data-access regulation must be interpreted in tandem rather than sequentially, it examines the RAGHAV co-authorship incident, the Ferid Allani line of patent jurisprudence, and the Department for Promotion of Industry and Internal Trade’s (DPIIT) December 2025 Working Paper on Generative AI and Copyright. Five specific, understudied concerns at the IP-competition interface that need ongoing scholarly and regulatory attention in India are noted in the paper’s conclusion.

**Keywords:** Artificial Intelligence, Intellectual Property, Competition Law, Competition Act 2002, Copyright Authorship, Patent Eligibility, Algorithmic Collusion.

## I. Introduction

The status of artificial intelligence in intellectual property law is becoming more and more precarious. In the past, IP doctrine presumed that every protectable work or idea had a human creator or inventor, and that the only competitive harm that needed to be prevented was free-riding by a rival human competitor. Now, both presumptions are being tested. Predictive and optimisation models produce technical solutions whose “inventive step” is hard to find in a human mind; generative models produce text, images, music, and code with little discrete human input at the point of output; and the assets that matter most competitively in the AI economy, large-scale training corpora, compute infrastructure, and foundation models, are not obviously “inventions” or “works” at all, but they are the chokepoints around which market power in the AI stack concentrates.

To date, India has mostly addressed these issues inside distinct ideological divisions. In the RAGHAV “*Suryast*” episode, the Copyright Office first registered an AI application as co-author before issuing a withdrawal notice that questioned that very recognition under Section 2(d) of the Copyright Act 1957.<sup>1</sup> This is just one example of how copyright scholarship and the Copyright Office’s own practice have struggled with authorship of AI-assisted works. Ankit Sahni, who commissioned the painting “*Suryast*,” was granted ownership rights to the RAGHAV artificial intelligence painting software, which was the first AI tool acknowledged by the Indian copyright office.<sup>2</sup> The Delhi High Court’s ruling in *Ferid Allani v. Union of India*<sup>3</sup>, which held that the bar in Section 3(k) is on computer programmes per se, not on all computer-related inventions, and that the phrase “per se” was inserted to ensure genuine inventions receive patent protection, significantly influenced the question of whether Section 3(k) of the Patents Act 1970, which excludes “mathematical or business methods or computer programmes per se or algorithms.”<sup>4</sup> The Competition Commission of India’s (“CCI”) Market

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<sup>1</sup> Yalen. (n.d.). *Copyright Law essay*. Scribd. <https://www.scribd.com/document/1039659245/Copyright-Law-Essay>

<sup>2</sup> Prasad, S. S. (2026, May 2). From Prompt to protection: Evaluating copyright ownership of AI-Generated Works in India. *YOUR LAW ARTICLE*. <https://www.yourlawarticle.com/post/from-prompt-to-protection-evaluating-copyright-ownership-of-ai-generated-works-in-india>

<sup>3</sup> Ojha, A. & National e-Governance Division (NeGD). (2024). AI & Copyright in India: law, policy, and the future of creative rights. In *National e-Governance Division (NeGD)* [Case study]. <https://negd.gov.in/wp-content/uploads/2025/10/Astha-Ojha-AI-Copyright-in-India-Bridging-the-Digital-Divide.pdf#:~:text=Recent legal developments demonstrate the urgency of,highlighting the regulatory uncertainty surrounding AI-generated works.>

<sup>4</sup> IPVarna. (2026, April 4). *OPENING THE DOOR, BUT NOT DEFINING THE PATH*. IPVarna. <https://ipvarna-research.in/ferid-allani-software-patent-technical-effect-india/>

Study on Artificial Intelligence and Competition, which concluded that AI adoption introduces new competition challenges including ecosystem lock-in, algorithmic collusion, data concentration and opaque decision-making, found that approximately 37% of surveyed startups expressed concern about potential AI-facilitated collusion.<sup>5</sup> Meanwhile, a parallel and largely disconnected literature on competition law has begun documenting how AI concentrates market power in digital markets.

The main argument of this study is that Indian IP research and policy have under-theorized the structural interconnection of these three discussions: copyright authorship, patent eligibility, and competition oversight of digital/AI marketplaces. Literature is reviewed in Section II. Section III traces the doctrinal fault lines in Indian copyright and patent law. The competition-law framework that has developed around Indian AI markets is examined in Section IV. The main argument of the paper for a competition-oriented reconceptualization of IP entitlements over AI-relevant assets is developed in Section V. Five specific, understudied topics are identified in Section VI, each of which addresses (1) the prevailing existing position, (2) the specific doctrinal gap or unresolved tension, and (3) the basis for its timeliness, based on a recent ruling, regulation, or change in policy. The end of Section VII.

## II. Literature Review

It is helpful to divide the Indian literature on AI and intellectual property into three overlapping threads.

### Authorship, Inventorship and Human-Centricity Problem

The predominant line of research in India is whether the legal definitions of “author” and “inventor” may be expanded to include AI-generated content without the need for legislative change.<sup>6</sup> While Section 2(d)(vi) of the Copyright Act defines the author of a computer-generated literary, dramatic, musical, or artistic work as “the person who causes the work to be created”<sup>7</sup>, a formula drafted in 1994 for expert systems and spreadsheets, not for large

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<sup>5</sup> Werner, J. (2025, October 16). *CCI study highlights rising AI market, competitive challenges, and path for regulation in India*. BABL AI. <https://babl.ai/cci-study-highlights-rising-ai-market-competitive-challenges-and-path-for-regulation-in-india/>

<sup>6</sup> Legal Service India. (n.d.). Artificial intelligence and copyright issues.; Singhania & Co. LLP. (2023). Artificial intelligence, intellectual property, Indian copyright act. Live Law.

<sup>7</sup> U.S. Copyright Office. (2025). *Copyright and Artificial intelligence: Part 2 - Copyrightability*. <https://copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>

generative models and leaves open whether it identifies the programmer who “causes the work to be created” as the program’s developer or its user, commentary on the RAGHAV episode notes that there is no explicit clause that recognises AI systems as “authors”.<sup>8</sup> The literature on patents traces a doctrinal thaw that started with *Ferid Allani*, where the Delhi High Court ruled that not all computer-related inventions are prohibited by Section 3(k), provided that such inventions demonstrate a technical effect or technical contribution.<sup>9</sup> This principle was later applied in software-patent disputes, such as Microsoft’s challenge to a controller’s rejection, where the applicant contended that the invention could not be classified as a “computer program per se” because it related to a technical process and addressed a technical issue of data access on a network.<sup>10</sup> However, this body of literature continues to focus on a single question: can AI-related output be protected at all? It pays relatively little attention to the market implications of granting protection to a small number of foundation-model developers or to who should hold that protection once it is granted.

### Training Data, Fair Dealing and the ANI v OpenAI Litigation

The legality of using copyrighted content as AI training data is the subject of a second, more recent thread, which is shown by the ongoing Delhi High Court case *ANI Media Pvt Ltd v. OpenAI Inc & Anr.*<sup>11</sup> While OpenAI has maintained that none of the pertinent actions of reproduction took place in India, ANI claimed that OpenAI utilised its content to train ChatGPT without sufficient authorisation and asserted that content that was only available to subscribers or republished by them could not be used legitimately.<sup>12</sup> While ANI itself argues that OpenAI’s use cannot fall under the fair-dealing exception in Section 52 of the Copyright Act 1957 because ChatGPT’s responses are generated for commercial purposes,<sup>13</sup> intervenors, such as the Digital News Publishers Association, have emphasised that unchecked use of copyrighted news content by AI platforms diminishes the incentive to create and undermines the viability

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<sup>8</sup> Altacit Global, “AI-Generated Works in India: Examining the ‘Raghav’ Signal in Copyright Law,” Medium (January 2026); Khurana & Khurana, “Ownership of AI Generated Content: A Deep Dive into Copyright Law in India” (2025).

<sup>9</sup> *Ferid Allani v. Union of India & Ors*, 2019 SCC OnLine Del 11867 (Delhi High Court, 12 December 2019).

<sup>10</sup> Managing Intellectual Property. (2023, September 15). Evolution of the patenting of computer-related inventions in India.

<sup>11</sup> *ANI Media Pvt Ltd v Open AI Inc & Anr*, CS(COMM) 1028/2024 (Delhi High Court, filed November 2024).

<sup>12</sup> The Ippress. (2025, April 30). Delhi High Court considers copyright implications of ChatGPT’s AI training in *ANI v. OpenAI*; The Leaflet. (2025). *ANI v. OpenAI* in the Delhi HC: Everything so far and all that is at stake.

<sup>13</sup> Mondaq. (2026, May 6). *ANI v. OpenAI*: Where will the court draw the line?

of journalism.<sup>14</sup> After reviewing US, UK, EU, Japanese, and Singaporean approaches, the government's own December 2025 Working Paper on Generative AI and Copyright prepared by a committee appointed by the Department for Promotion of Industry and Internal Trade ("DPIIT") concluded that no single model currently in use sufficiently serves India's objectives and that a purely binary approach either allowing unrestricted use or imposing a complete restriction may not be sustainable, so a more balanced framework should be taken into consideration.<sup>15</sup> This doctrinally rich but nearly wholly copyright-internal strand concerns whether training constitutes "infringement" or "fair dealing," rather than whether the concentration of trained models in the hands of a small number of corporations poses issues that cannot be resolved by copyright theory alone.

### **AI, Market Power and the Emerging Competition-Law Response**

The response of competition law to AI-driven market structures is the third and thinnest strand, which this paper aims to expand. In order to reach a policy juncture that necessitates alignment between AI innovation, data governance, and competition policy, the CCI's market study, carried out through the Management Development Institute, Gurgaon, is described as India's first thorough analysis of how AI affects market structures, competitive behaviour, and enforcement priorities. According to the study, 67% of AI startups focus on the application layer using pre-existing foundation models created by a few major players.<sup>16</sup> In addition, the study found that the dominance of the multinational technology companies, including Alphabet, Amazon, Meta, Microsoft, OpenAI and Nvidia, in data processing, provision of computing resources and development of foundational models, makes it difficult for start-ups to compete with these businesses. While commentators have noted that pricing algorithms, particularly self-learning and signalling algorithms, may inadvertently lead to coordinated pricing behaviour or discrimination, making enforcement in digital markets more difficult, the study observed that AI algorithms can collude without human intervention and can be used to engage in exploitative conduct.<sup>17</sup> The Competition (Amendment) Act 2023 and the Draft

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<sup>14</sup> Tekale, A. R. (2025, August 22). *Delhi High Court Hears ANI vs OpenAI Copyright Case: DNPA Warns ChatGPT Threatens Survival of News Industry*. LinkedIn. [https://www.linkedin.com/posts/rajeshtekale\\_delhi-high-court-hears-ani-vs-openai-copyright-activity-7364586117402189824-1HLX](https://www.linkedin.com/posts/rajeshtekale_delhi-high-court-hears-ani-vs-openai-copyright-activity-7364586117402189824-1HLX)

<sup>15</sup> Department for Promotion of Industry and Internal Trade. (2025, December 8). Working paper on generative AI and copyright.

<sup>16</sup> Competition Commission of India, *supra* note 5.

<sup>17</sup> India Business Law Journal. (2025, November 24). *The Competition Commission of India (CCI) has published its Market Study on Artificial Intelligence and Competition, which has observed that*. LinkedIn. [https://www.linkedin.com/posts/indiabusinesslawjournal\\_qa-competition-law-expert-discusses-cci-activity-7398586173008306177-SCWj](https://www.linkedin.com/posts/indiabusinesslawjournal_qa-competition-law-expert-discusses-cci-activity-7398586173008306177-SCWj)

Digital Competition Bill 2024 are two parallel reform proposals that are said to require mandatory algorithmic transparency requirements, ex-ante regulation for dominant digital platforms and increased investigative powers for the CCI.<sup>18</sup> However, detractors point out that the Digital Competition Bill's draft rules currently focus more on gatekeeper obligations than algorithmic price-setting, and the Bill's progress has been uncertain anyhow. Even more critical is independent commentary, which contends that the CCI's AI study highlights legitimate competition issues but relies on antiquated analytical techniques, and that reviving the draft Digital Competition Bill and implementing an ex-ante regulatory strategy based on public interest are necessary to address Big Tech's dominance throughout the AI supply chain.<sup>19</sup> The market study lists data concentration and model dominance as competition issues without considering how the IP system's own distribution of exclusivity over training data, model weights, and computer-related inventions contributes to that concentration in the first place. Despite its value, this strand has developed largely independently of the IP-doctrinal strands mentioned above.

### **The Gap This Paper Addresses**

When AI market structure is taken seriously as a constraint on IP policy choices, none of these three strands alone can explain how India's IP settlement should be redesigned. For instance, decisions about how to interpret authorship broadly under Section 2(d), how liberally to grant patents for AI-related technical contributions under the *Ferid Allani* standard, or how to resolve the *ANI v. OpenAI* training-data question will determine which firms accumulate defensible AI assets and which do not. That interdependence is the subject of this paper's investigation.

## **III. Doctrinal Stress Points in Indian IP Law**

### **Copyright: Authorship Without an Author**

A computer-generated literary, dramatic, musical, or artistic work's author is defined as "the person who causes the work to be created" under Section 2(d)(vi) of the Copyright Act 1957, while Section 17 independently transfers initial ownership away from the author under certain conditions.<sup>20</sup> This formula was put to the test in the RAGHAV episode. The artwork "*Suryast*,"

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<sup>18</sup> Draft Digital Competition Bill, 2024 (India). Report of the Committee on Digital Competition Law.; The India Forum. (2026). The case for digital competition law in India.

<sup>19</sup> *The India Forum*, *supra* note 19.

<sup>20</sup> Copyright Act, 1957 (India), *supra* note 1.

which was created using the RAGHAV application and listed both the AI tool and the human applicant Ankit Sahni in the authorship details, was registered by the Copyright Office before a withdrawal notice inviting attention to Section 2(d)(iii) and (iv) was sent out.<sup>21</sup> Interestingly, only the co-authorship formulation was (briefly and irregularly) accepted after an earlier application listing RAGHAV as sole author had already been rejected. Commentators noted that the Copyright Office did not provide an explanation for the registration, and it remains the first instance of AI co-authorship in history prior to its subsequent withdrawal.<sup>22</sup> Whether “the person who causes the work to be created” relates to the developer of a generative system or its end-user is still up for debate, and no appellate or judicial authority has yet to make a decision on the matter. As a result, India is left without both a fixed rule and a settled institutional procedure.

### Copyright: Training Data as the Prior Question

The antecedent concern of whether copyrighted content can be utilised to train a model at all is situated downstream of authorship. The Delhi High Court appointed Dr. Arul George Scaria, a professor at the National Law School of India University, and advocate Adarsh Ramanujan as amicus curiae to offer independent legal insight in *ANI v. OpenAI*. This process highlights the doctrinal novelty of applying Section 52’s fair-dealing exceptions to machine-scale text and data mining.<sup>23</sup> There is also a significant jurisdictional aspect to the dispute: OpenAI’s stance, as summed up in the case comments, is that none of the pertinent acts have been carried out in India. OpenAI similarly used this tactic in the *Getty Images v. Stability AI* case in the UK.<sup>24</sup> Regardless of the result, the DPIIT Working Paper’s own conclusion that a strictly binary approach to AI training and copyright is unsustainable and a more balanced framework should be considered indicates that Indian policy is shifting away from a pure infringement/fair-dealing binary and toward some sort of licensing-based intermediation.<sup>25</sup> Section V below examines the competition-law implications of how that licensing market is structured.

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<sup>21</sup> Altacit Global, *supra* note 8; Legal Service India, *supra* note 6.

<sup>22</sup> Khurana & Khurana, *supra* note 8; Prasad, S. S., *supra* note 2.

<sup>23</sup> *The Leaflet*, *supra* note 11; *The Legal Affair, Jurisdiction of Delhi High Court and Copyright Implications in AI Training: ANI v. OpenAI Case* (n.d.).

<sup>24</sup> *Does Human Learning equal Machine Learning? High Court of Delhi to rule on lawfulness of TDM for Machine Learning*. (n.d.). Kluwer Copyright Blog. <https://legalblogs.wolterskluwer.com/copyright-blog/does-human-learning-equal-machine-learning-high-court-of-delhi-to-rule-on-lawfulness-of-tdm-for-machine-learning/>

<sup>25</sup> Department for Promotion of Industry and Internal Trade, *supra* note 14.

## Patents: From “Per Se” Exclusion to Technical Effect

Algorithms, computer programs in general, and mathematical or business procedures are not patentable under Section 3(k) of the Patents Act of 1970. This was interpreted broadly for almost 20 years, excluding the majority of software-related inventions.<sup>26</sup> In *Ferid Allani v. Union of India*, the Delhi High Court held that the Section 3(k) bar does not cover all computer-related inventions, if the invention has a technical effect or contribution. Subsequent rulings have reiterated that “if the invention demonstrates a technical effect or a technical contribution, it is patentable even though it may be based on a computer program.”<sup>27</sup> While Section 3(k) continues to place Indian inventors at a comparative disadvantage in comparison to jurisdictions where software patents are more freely available, commentary notes that recent decisions from 2024–2025 show a more balanced approach, allowing patents for computer-related inventions with obvious technical benefits.<sup>28</sup> This liberalisation is important for AI because it broadens the range of patentable technical contributions related to AI, such as model architectures, training techniques, and inference optimisations, at a time when a limited number of companies control the computer and data required to produce such contributions at scale (a point further developed in Section V).

## Patents: The Inventorship Question in Comparative Relief

Although DABUS (Device for Autonomous Bootstrapping of Unified Sentience), developed by Dr. Stephan Thaler, was the first AI system in history to be named as the creator of an invention on a granted patent in South Africa,<sup>29</sup> India has not experienced its own DABUS-style application naming an AI system as inventor.<sup>30</sup> However, the comparative reference point is instructive. Since the Patents Act 1970 restricts patent rights to a “person” and does not apply

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<sup>26</sup> Patents Act, 1970 (India), *supra* note 4; The Legal School, *Section 3(k) Patents Act: An Overview of Non-Patentable Inventions* (n.d.).

<sup>27</sup> *Adjudicating Health-Related Rights: proposed considerations for the United Nations Committee on Economic, Social and Cultural Rights, and other Supra-National Tribunals* | *Chicago Journal of International Law*. (2016, November 15). <https://cjl.uchicago.edu/print-archive/adjudicating-health-related-rights-proposed-considerations-united-nations-committee>.

<sup>28</sup> Managing Intellectual Property, *supra* note 9; Managing Intellectual Property, *India: Patent Eligibility of AI-Related Inventions* (Oct. 6, 2023).

<sup>29</sup> Phillips Ormonde Fitzpatrick. (2026, May 6). *Another one bites the dust – Patent application naming AI machine DABUS as inventor refused in New Zealand* | Phillips Ormonde Fitzpatrick. <https://www.pof.com.au/insights/another-one-bites-the-dust-patent-application-naming-ai-machine-dabus-as-inventor-refused-in-new-zealand/>

<sup>30</sup> *Featured - Naina Pachnanda*. (n.d.). Naina Pachnanda. <https://nainapachnanda.com/featured/>

to AI systems, Indian opinion views the Act as effectively blocking this path locally.<sup>31</sup> In contrast to the United States, the United Kingdom, the European Patent Office, and South Africa, there has been no litigation on this issue in India, which is noteworthy in and of itself and is discussed again in Section VI.

#### **IV. The Competition-Law Architecture Around AI Markets in India**

##### **The CCI's Market Study on Artificial Intelligence and Competition**

The most significant current document supporting the claim made in this report is the CCI's 2025 market study. Adoption of AI is framed as both procompetitive and structurally risky: on the one hand, it gives adopters a significant competitive advantage by increasing productivity, efficiency, and innovation; on the other hand, it creates new competition challenges such as data concentration, ecosystem lock-in, algorithmic collusion, and opaque decision-making systems.<sup>32</sup> Additionally, 67% of AI startups focus on the application layer, building on pre-existing foundation models rather than creating their own.

As per the report, India's AI market grew from USD 3.20 billion in 2020 to USD 6.05 billion in 2024 and is expected to reach USD 31.94 billion by 2031.<sup>33</sup> Also, 67% of AI startups are working on the application layer, focusing on existing foundation models rather than creating new ones. This structural dependency reflects and is partially caused by the IP and trade-secret protections that foundation-models. The study's main conclusion regarding coordination is striking: AI algorithms can engage in exploitative behaviour and collude without human intervention. This finding has direct relevance to the interpretation or amendment of Section 3 of the Competition Act, 2002, which has an "agreement" requirement.<sup>34</sup>

#### **Legislative Response: The Competition (Amendment) Act 2023 and the Draft Digital Competition Bill 2024**

India's key legislative response has come in the form of a passed amendment and a pending

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<sup>31</sup> Global Patent Filing, *Does AI Invention Qualify Under Indian Patent Law?* (2023); The Legal School, *supra* note 27.

<sup>32</sup> Competition Commission of India, *supra* note 5.

<sup>33</sup> Iiprd, & Iiprd. (2025, December 12). *Protection or privilege? Regulating giants in modern markets of capitalism*. IIPRD. <https://www.iiprd.com/protection-or-privilege-regulating-giants-in-modern-markets-of-capitalism/>

<sup>34</sup> *Ibid.*

bill. While the Committee on Digital Competition Law's 2024 report recommended a draft Digital Competition Bill to supplement the existing antitrust regime in the regulation of emerging technology markets, with the vision of ex-ante regulation for dominant digital platforms, mandatory algorithmic transparency requirements, and enhanced investigative powers for the CCI, the Competition (Amendment) Act, 2023 expands the CCI's enforcement toolkit for digital markets. However, its pace has slowed. Recent comments indicate that the Bill has been withdrawn, further creating regulatory uncertainty, with the draft provisions currently focused more on gatekeeper requirements than algorithmic price-setting.<sup>35</sup> In order to regulate coordination and exclusion in AI-driven markets, India is now dependent on Sections 3 and 4 of the current Competition Act 2002, which were created for human-negotiated cartels and single-firm dominance. This gap is further examined in Question 2 below.<sup>36</sup>

### **Why Competition Law Cannot Do This Work Alone?**

It would be a mistake, however, to treat competition law as a sufficient substitute for reformed IP doctrine. The CCI's ex-post, effects-based toolkit works well for sanctioning behaviour after market power has been used, but it is not well suited for allocating the underlying entitlements that determine who initially gain that power, such as copyright in training corpora, patents over model architectures, and trade-secret protection of weights. This point is made clear by independent commentary, which contends that while the CCI's study is valuable, it is based on antiquated methods and that, in order to address Big Tech's dominance in the AI supply chain, the Digital Competition Bill must be revived and an ex-ante regulatory approach based on public interest rather than case-by-case enforcement alone must be adopted.<sup>37</sup> Because they establish the initial distribution of exclusivity that competition law may only later challenge, IP allocation decisions are, in this sense, upstream of competition enforcement.

### **V. Towards a Competition-Oriented Reconceptualization**

Rather than seeing IP and competition as sequential, independently administered regimes, this

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<sup>35</sup> The India Forum. (2026). The case for digital competition law in India.

<sup>36</sup> Competition Act, 2002 (India) s.3–4.

<sup>37</sup> Attorneys, K. S. & K. A. &. (2025, October 9). *Artificial Intelligence and the Competition Act, 2002: CCI's Market Study and the Architecture of Digital Competition*. LinkedIn. [https://www.linkedin.com/posts/kingstubbkasiva\\_artificial-intelligence-and-the-competition-activity-7382017024446648321-EOq2](https://www.linkedin.com/posts/kingstubbkasiva_artificial-intelligence-and-the-competition-activity-7382017024446648321-EOq2)

study offers four related propositions for rethinking Indian IP policy toward AI through a competition lens, building on Sections III and IV.

*First*, rather than being just doctrinal classification exercises, authorship and inventorship determinations under Sections 2(d) and 17 of the Copyright Act, as well as under the Ferid Allani “technical effect” test for patents, should be viewed as market-structuring decisions. The small group of companies identified in the CCI study as controlling data processing, computing resource provision, and the development of foundational models<sup>38</sup> systematically benefit from granting broad, exclusive rights over AI-generated output to whichever entity happens to operate the underlying model. In order to prevent escalating an entrenchment that is already, according to the CCI’s own findings, a first-order competition concern, a competition-oriented reading would calibrate the scope of protection, for example, through narrower ownership defaults, mandatory attribution, or shorter terms for computer-generated works.

*Second*, downstream market structure should be taken into consideration while addressing the training-data concern in *ANI v. OpenAI* and the DPIIT Working Paper.<sup>39</sup> The architecture of any subsequent licensing regime is crucial for competition if India decides to adopt the “more balanced framework” proposed in the Working Paper, rejecting a strictly binary permit/prohibit approach. Only the biggest AI developers could afford to license at scale from major publishers in a bilaterally negotiated licensing market, which would replicate and legitimise current dominance. In contrast, a collectively administered or mandatory licensing mechanism, similar to the kind long familiar to Indian copyright law in the broadcasting and music context, would distribute access more fairly among incumbents and entrants alike.

*Third*, since recent rulings permit patents for computer-related inventions with obvious technical advantages in a market the CCI has already identified as concentrated,<sup>40</sup> the liberalisation of patent-eligibility standards following Ferid Allani, while sound in isolation, should be accompanied by increased competition scrutiny of patent pooling, cross-licensing, and standard-setting behaviour around AI-related technical contributions. For foundational AI inputs (compute clusters, large curated datasets, foundation-model weights), essential-facilities-style reasoning, long opposed by the CCI in physical-infrastructure contexts may be

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<sup>38</sup> Competition Commission of India, *supra* note 5.

<sup>39</sup> Govil, M., Kaur, R., Srivastava, S., Bhattacharjea, A., Khaitan, H., Singh, H. V., Shroff, P. S., Pathak, A. S., & Pandey, M. (2024). REPORT OF THE COMMITTEE ON DIGITAL COMPETITION LAW. In *Ministry of Corporate Affairs*.

<sup>40</sup> Competition Commission of India, *supra* note 5.

more easily justified because, according to the market study, two-thirds of AI startups build on pre-existing foundation models rather than their own, making access to those models a real chokepoint rather than a convenience.

*Fourth*, the CCI's conclusion that AI algorithms are capable of collusion without human intervention should be interpreted in conjunction with the intellectual property incentives that initially render such algorithms proprietary and commercially valuable; transparency requirements of the type put forth in the Draft Digital Competition Bill<sup>41</sup> cannot be fulfilled if trade-secret and confidential-information protections are concurrently extended to prevent scrutiny of algorithmic pricing logic. Therefore, rather than being left to distinct ministries and separate statutes acting on separate timeframes, IP and competition reform in this domain must be sequenced and designed simultaneously.

## VI. Five Under-Researched Questions at the IP-Competition Interface

Five particular issues that have not received enough attention in Indian legal studies are listed in this section. For each, the question's timeliness is linked to a particular recent ruling, statute, or policy development; the dominant existing stance is described; and the exact gap or unsolved tension is indicated.

| #  | Question                                                                                                                                                        | Dominant Position                                                                                                                                                     | Gap/Tension                                                                                                                                                                                                                                                                     | Timeliness                                                                                                                                                                                                                       |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <i>Does the definition of “the person who causes the work to be created” under s.2(d)(vi) changes when an entity performs more than one role?</i> <sup>42</sup> | Commentators say this isn't clear, but they think it's a simple choice between developer and user. Officials still don't know how to use the definition in real life. | For generative AI, one vertically integrated company can play all three parts (trainer, deployer, and prompter) at the same time. This is something that the people who wrote the 1994 draft didn't think about, and previous commentary (based on the simpler two-party RAGHAV | RAGHAV's registration was taken away without a public explanation. The DPIIT's Dec. 2025 Working Paper is now shaping policy after deciding that India does not need a current international model. This leaves a window of time |

<sup>41</sup> *Draft Digital Competition Bill*, 2024 (India), *supra* note 19.

<sup>42</sup> Patrias, K., & Wendling, D. (n.d.). *Box 32, Secondary author performing more than one role - Citing Medicine – NCBI Bookshelf*. <https://www.ncbi.nlm.nih.gov/books/NBK7273/box/A58301/?report=objectonly>

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|    |                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                              | facts) doesn't talk about it.                                                                                                                                                                                                                                                                                                                                                       | before any legislative fix.                                                                                                                                                                                                                                                                                              |
| 2. | <i>Does an "agreement" under s.3 of the Competition Act include unspoken coordination from self-learning pricing algorithms that are used by different companies but were not created by them together?</i> | The CCI's own market study says that India's cartel law is meant to stop people from working together, but it may have trouble stopping people from working together through algorithms, which is made harder by the CCI's limited resources and the fact that algorithms are "black boxes." | The exact question that hasn't been answered is whether the simultaneous use of similar algorithms that were bought separately by different companies, without any contact between them, can meet s.3's "agreement" requirement, or whether the law (like the US Preventing Algorithmic Collusion Act) needs to be used first. This level has not been reached by any Indian order. | The CCI's market study found that about 37% of startups were worried about how AI could be used to help people work together. The Draft Digital Competition Bill, which didn't say much about algorithmic pricing, has been withdrawn, leaving s.3 interpretation as the only way to enforce the law in the near future. |
| 3. | <i>If the CCI declares a foundation model's training corpus, weights, or compute as an "essential facility" they can demand access to, how would IP/trade-secret protection change?</i>                     | Indian law prefers remedies based on behaviour over structure access requirements. AI-market commentary talks about dependence (67% of AI startups rely on foundation models from a few dominant firms) without calling it an essential-facilities claim.                                    | No one has asked if a foundation model, which is an intangible and trade-secret-protected asset, can be considered an "essential facility" or how a s.4 access remedy would work with India's contractual and common-law trade-secret rights (India doesn't have its own trade secrets law).                                                                                        | The CCI's market study is the first official proof of this dependence. Since the Digital Competition Bill has been put on hold, the only way to solve the problem quickly would be through court cases or a CCI order, not by-passing new laws.                                                                          |
| 4. | <i>If India doesn't have DABUS-style lawsuits, what legal form should low-human-</i>                                                                                                                        | Indian law doesn't allow non-human inventors (the Patents Act only gives rights to a                                                                                                                                                                                                         | People see the lack of an Indian DABUS case as an answer, not a question that needs                                                                                                                                                                                                                                                                                                 | Ferid Allani and its descendants have made it easier to get patents for computer-related                                                                                                                                                                                                                                 |

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|    | <p><i>involvement creative or authorial contributions take? Should they be non-protected, operator vesting, or a category of their own? How should entry-barrier effects affect that choice?</i></p> | <p>“person”), and s.2(d)(vi) still needs a human “causer” for computer-generated copyright works. Cases like DABUS (for example, South Africa) are seen as a path India hasn’t taken and doesn’t need to take.</p>                                                                                          | <p>to be answered. Some things that haven’t been tried are whether an applicant who structures a claim like Ankit Sahni’s RAGHAV co-authorship filing could give rights to a human “operator,” and what the competitive effect would be if rights were given to dominant model operators instead of leaving output unprotected.</p>                                                                                                                         | <p>ideas. This has led India to file more patents for AI-related things without figuring out who owns the rights to automated contributions; RAGHAV’s unresolved withdrawal keeps the copyright side alive.</p>                                                                                                                                                              |
| 5. | <p><i>The Delhi High Court and DPIIT are now working on a plan for how to license AI training data. The question is how to keep AI firms from becoming too powerful?</i></p>                         | <p>The current discussion about <i>ANI vs. OpenAI</i> sees it as a simple case of fair dealing or infringement under s.52 of the Copyright Act. The DPIIT Working Paper suggests a more balanced framework because it believes that a simple “permit or prohibit” approach can’t work in the long term.</p> | <p>The lawsuit and the working paper don’t talk about competitive design. Two-way licensing would help developers with a lot of money, which would make them even more dominant. On the other hand, collective licensing, compulsory licenses with controlled royalties, or a data-dividend model would make access fairer for everyone. This point where copyright and competition meet hasn’t been looked at as a single design problem.<sup>43</sup></p> | <p>After hearing from intervenors, including the Digital News Publishers Association, the Delhi High Court has put off making a decision in the case of <i>ANI v. OpenAI</i>. The outcome and the DPIIT Working Paper will have a lasting impact on India’s AI training data licensing system for years to come, as there will be no turning back once the case is over.</p> |

<sup>43</sup> *Samsung Sidekick – David Fite ▪ Product Designer*. (n.d.). <https://davidwfite.com/project/samsung-sidekick>

## VII. Conclusion

Artificial intelligence and Indian IP law have thus far been described as a set of distinct doctrinal conundrums, such as whether Section 2(d)(vi) can accommodate an AI co-author, whether Section 3(k) allows patenting an AI-related technical contribution, and whether Section 52 permits the use of copyrighted material as training data. The Copyright Office in the RAGHAV episode, the Delhi High Court in *Ferid Allani* and now in *ANI v. OpenAI*, and the DPIIT in its December 2025 Working Paper are just a few examples of the real Indian institutions and courts that have tested these puzzles in one way or another. Each of these puzzles has produced authentic and valuable literature. The competition-law findings that the CCI has, for the first time, methodically documented in its Market Study on Artificial Intelligence and Competition that a small number of multinational firms dominate data processing, compute provision, and foundational model creation, that the vast majority of Indian AI startups build on those firms' foundation models rather than their own, and that AI systems can coordinate market outcomes without any human agreement in the traditional sense have not yet been thoroughly examined, this paper has argued.

Reimagining Indian IP law for the era of artificial intelligence requires that authorship, inventorship and licensing-design choices be understood as choices that allocate market power, rather than being merely creative or technical credit. Further, the copyright, patent and competition-law reform processes currently underway in India need to be brought together into a single, coordinated discussion before each is separately resolved.