COGNITO LEGAL

Intellectual Property | Technology | Commercial

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LEGAL BRIEFING: ***Regulatory shifts, intermediary obligations and key judicial precedents shaping AI, data and digital platforms*.**

A. REGULATORY HIGHLIGHTS

1. Digital Personal Data Protection (DPDP) Framework: Phased Implementation

The DPDP Rules, 2025 were notified in November 2025. Their phased rollout continues through 2026-2027 and remains a core compliance focus for B2B and D2C companies handling personal data of Indian users, employees or other individuals (including participants in marketing surveys, contests and similar activities).

Phase 1	Phase 2	Phase 3
From Nov 2025	**From Nov 2026**	**May 2027**
Institutional provisions & Data Protection Board of India (DPBI) framework. As of August 2026, the Board has not yet appointed Chairperson and Members.	Consent Manager registration and related obligations come into force.	Full substantive obligations on data fiduciaries (notice, consent, security, breach notification, data principal rights). Penalties can reach ₹250 crore.

Key Takeaways:

→ Regulators will examine actual practice such as data flows, retention and access and not only written policies.
→ Technology and service providers can be held responsible wherever they control how data is processed.
→ Involve engineering teams early; maintain simple evidence trails; align contracts.
→ Build compliance into workstreams and data pipelines rather than treating it as a one-time checklist.

2. IT (Intermediary Guidelines & Digital Media Ethics Code) Amendment Rules: Deepfakes & Synthetic Content

These amendments to the IT Rules, 2021 primarily address deepfakes and other AI-generated or altered audio, visual or audiovisual content defined as "synthetically generated information" (SGI).

Key Features

- **Definition of SGI:** Artificially created or altered content that appears authentic such as deepfakes, AI images/videos, voice clones. Routine good-faith editing, accessibility tools or document creation without misrepresentation are generally excluded.
- **Intermediary obligations:** User warnings, technical measures to prevent unlawful SGI such as CSAM, non-consensual intimate imagery, deceptive impersonation, prominent labelling of permissible SGI, and permanent metadata or provenance markers where feasible.
- **Significant Social Media Intermediaries (SSMIs):** Additional due diligence including user declarations and technical verification of SGI.
- **Sharply reduced timelines:** Unlawful content takedown often within 3 hours of a valid court order or reasoned government direction (down from 36 hours); certain sensitive complaints within 2 hours.

Impact on Emerging Platforms

Platforms offering generative AI tools, design, AI image or video generators, content-creation SaaS, or any service that facilitates user-generated synthetic media now face new due diligence, labelling and rapid-response duties. Failure risks loss of safe-harbour protection under Section 79 of the IT Act. Text-only outputs are largely outside the SGI definition, but general unlawful-content rules still apply.

B. JUDICIAL PRECEDENTS

1. GUIs Registrable as Designs: Calcutta High Court (March 2026)

In NEC Corporation vs. Controller of Patents and Designs, the Calcutta High Court held that Graphical User Interfaces (GUIs) including icons, layouts, colour combinations, screen displays and ornamentation can qualify as registrable "designs" under the Designs Act, 2000.

The Court rejected the Designs Office's earlier narrow view that GUIs lack physicality, permanence or industrial process. It clarified that:

- "Article" and "design" are distinct; a GUI applied to a screen/device can satisfy the requirements.
- Visual features judged by the eye - shape, configuration, pattern, colour, are key.
- Applications must be examined case-by-case on novelty, originality and aesthetic appeal rather than rejected categorically.

> **Why it matters:** This opens a clearer path to design registration and enforcement for digital interfaces, aligning India more closely with jurisdictions that protect GUIs. Copyright protection for underlying software remains available in parallel. UI/UX designers, software product companies and digital design firms should assess their IP strategy.

2. CCPA v. PhysicsWallah: Dark Patterns (June 2026)

In a suo-moto proceeding, the Central Consumer Protection Authority imposed a fine of ₹5 lakh on the ed-tech platform PhysicsWallah for deploying dark patterns that resulted in unfair trade practices, misleading advertisements and violation of consumer rights.

Dark patterns held violative:

- **Automatic pre-selection** of a 'donation' option during purchase without explicit consent, coupled with emotionally persuasive prompts characterised as "confirm-shaming".
- **Mandatory personal-information disclosure** as a condition for accessing 'free' courses.

The Authority emphasised that consumers were not provided fair, transparent and informed choices, noting that the platform caters to students (including minors), a particularly vulnerable class in digital environments.

3. ANI v. OpenAI: Copyright & AI Training (Delhi High Court, July 2026)

The Delhi High Court refused ANI's application for an interim injunction against OpenAI on the question of whether training LLMs using copyrighted content constitutes infringement. Key holdings:

- **Jurisdiction**: Indian courts have jurisdiction even if OpenAI's servers are located in the USA, given ANI's principal office in Delhi and OpenAI's targeting of, and collection of subscription fees from, Indian users.
- **No Prima Facie Infringement in Outputs:** ChatGPT responses were not substantially similar to ANI's articles when compared as a whole.
- **Training & Storage as Fair Dealing**: A commercial entity can invoke the fair-dealing defence; research is not confined to human actors. The Court applied a two-step test:
  - **Purpose test:** "Research" and "private use" must be read in light of modern technological conditions. Training of LLMs is a form of research; because the training dataset is not used by the LLM in the sense of being made available to the public, the use is private.
  - **Fairness test:** (i) use is limited to training: dataset in tokenised form, not communicated to the public; (ii) no market substitution, as the businesses are fundamentally different; (iii) public interest, requiring individual licences from every copyright holder would stifle development of Indian LLMs.

Key takeaways as per the Interim Order

→ Where outputs differ substantively from source materials and reproduction requires prompting, infringement risk is lower.

→ OpenAI's licence arrangements with other publishers were not considered relevant to the fair-dealing analysis.

→ Use of RAG techniques that generate dissimilar content, without memorising the source, does not amount to infringement under Section 51.

→ There is no mandatory 'non-commercial' requirement under Section 52(1)(a). Temporary commercial storage does not disentitle a fair-dealing claim.

→ The training process itself falls under "private or personal use, including research" in Section 52(1)(a).

This briefing is for informational purposes only and does not constitute legal advice. Regulatory positions and judicial interpretations continue to evolve.

For tailored guidance on DPDP readiness, intermediary compliance, design registration strategy or AI training risk assessments, reach out to Cognito Legal: contact@cognitolegal.com.