
Navigating the Legal Aspects of IP for AI-Generated Content and Training AI Models



PRESENTED TO
4th Annual Forum on AI and the Law
Osgoode Professional Development
Barry Sookman

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October 27, 2026

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1. Copyright Subsistence in AI-generated content and prompts

a. [U.S. Copyright and Artificial Intelligence: Part 2 Copyrightability](#)



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- The use of AI tools to assist rather than stand in for human creativity does not affect the availability of copyright protection for the output.
- Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material.
- Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements.
- Whether human contributions to AI-generated outputs are sufficient to constitute authorship must be analyzed on a case-by-case basis.
- Based on the functioning of current generally available technology, prompts do not alone provide sufficient control.
- Human authors are entitled to copyright in their works of authorship that are perceptible in AI-generated outputs, as well as the creative selection, coordination, or arrangement of material in the outputs, or creative modifications of the outputs.

- b. [Copyright and artificial intelligence-generated outputs Protectability of outputs and competition with human-created works](#) EPRS | European Parliamentary Research Service, Published: October 2026 | Document number: PE 796.995

EU

“Case law on the copyrightability of AI-generated outputs has already started emerging. Alongside targeted legislation, legislative proposals and policy documents in the European Union and beyond, it emphasises the need to reserve copyright protection for human-created works and exclude purely AI-generated works from its scope. The emerging consensus across different jurisdictions is that purely AI-generated content with minimal to no human creativity does not qualify for copyright protection. By contrast, works created with the use of AI-applications may still enjoy copyright protection, where substantial human creativity has been exercised. Whether this threshold is met must be assessed on a case-by-case basis.”

“In February 2026, the Munich District Court ruled that AI-generated products can be copyright-protected where the creative elements incorporated through prompting determine the output to such an extent that the work reflects the individual personality of the person providing the prompts, despite the algorithmic process. The sole selection of an image from AI recommendations or through general and open-ended directions that leave the final decision to the AI model do not qualify for copyright protection, as noted by the Court. Moreover, external factors, such as whether a premium AI version is used, or the amount of time invested, are irrelevant for determining the copyright protection.

In April 2026, the Düsseldorf Higher Regional Court ruled that an AI-generated output can only constitute original work eligible for copyright protection when it is the result of the creative decisions and influence of a human being, despite the software-controlled process. Such human influence can also take place through prompting, provided that the prompter's creative touch is reflected in the final output. Similar to the Munich court ruling, the Düsseldorf court excluded from copyright protection the mere selection of an AI product from several recommendations, and the generation of the product based on entirely software-controlled process”.

China

In the Tencent Shenzhen v Shanghai Yingxin case, the court considered a financial news report generated by an AI application, Dreamwriter, to be an original work, incorporating substantial human intellectual elements reflected in the design of the algorithm, the software's operation, as well as in the data's and templates' selection and organisation. The court confirmed as copyright owner the company operating the system that generated the report. Similarly, in the Qiyu case, the court granted copyright protection to a traditional Chinese painting produced by an AI application, considering that it presented substantial creativity exercised through the prompts and parameters used, as well as through the choice of the style, the lighting effects and the selection of the final image.

c. [Thaler v Permultter](#) 130 F.4th. 1039 (D.C. Cir. 2025)

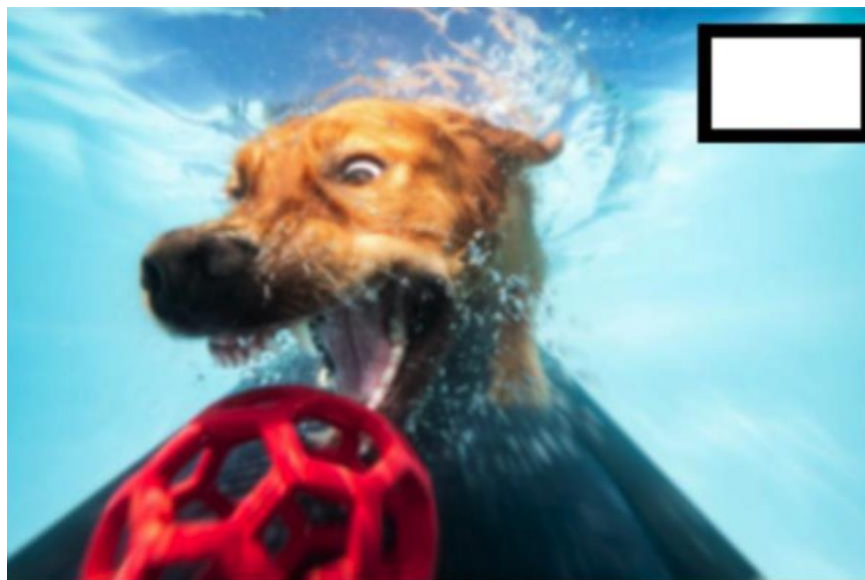


“Content generated entirely using artificial intelligence and with no human control over the expression generated cannot be protected by copyright. In short, an author must be a human being. This unsurprising conclusion was confirmed again by a U.S. Circuit Court of Appeals in *Thaler v Permultter* No. 23-5233 (D.C. Cir. March 18, 2025). In reaching its conclusion, the court acknowledged that content created using AI systems may be protected by copyright, but did not address where the line should be drawn as to what level of human authorship must exist for a work to be protected or the scope of protection to be given to a work created with the aid of an AI system. These questions did not arise because Thaler’s copyright registration application listed the Creativity Machine as the work’s sole author, even though the Creativity Machine is not a human being.

The opinion of the court did not rest on any philosophical or policy premise favoring or disfavoring the human authorship requirement. Rather, it was based on statutory construction of the Copyright Act, and confirmed by the U.S. Copyright Office practice of denying registration for non-human generated works and prior cases that supported the conclusion. As the court concluded, “As a matter of statutory law, the Copyright Act requires all work to be authored in the first instance by a human being.” Further, “the current Copyright Act’s text, taken as a whole, is best read as making humanity a necessary condition for authorship under the Copyright Act.”

d. **Oberlandesgericht Düsseldorf, I-20 W 2/26, OLG Düsseldorf, 2 April 2026 (lower court LG Düsseldorf, 12 O 282/25)**

Original underwater photograph.



AI-generated photograph.



AI-generated image is not an adaptation of the copied photograph as the prompts did not create an original “work”:

Whether products generated by artificial intelligence have the character of works therefore depends on the extent to which human creative influence is still exerted despite the software-controlled process.

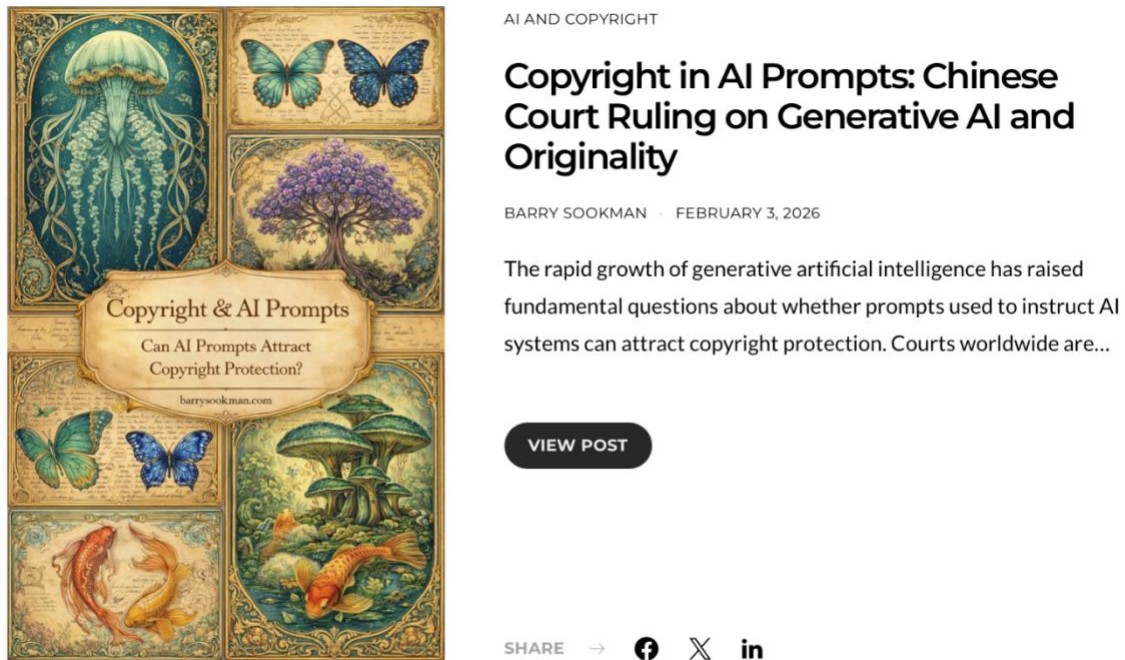
Copyright protection is therefore conceivable as a result of human intervention in AI results, which can also occur retrospectively or successively during the prompting process and which leads to the personality of the prompter being reflected in the output. This requires human creative influence on the design of the specific work itself, for example, through sufficiently individualized presets in the programming of the creation process of the specific product, possibly in conjunction with a selection process among the generated products. The mere selection of an AI product from several “suggestions” is not sufficient in itself. If the generation of the product is entirely software-controlled, copyright and related rights protection for the AI product are not applicable (correctly held by the Munich Local Court in its final judgment of February 13, 2026 – 142 C 9786/25, GRUR-RR 2026, 143 para. 19 with annotation by Braguinski; see also the Frankfurt am Main Regional Court in its judgment of December 17, 2025 – 2-06 O 401/25 GRUR-RS 2025, 41927 para. 31). According to the above-defined concept of a work, the decisive factor is therefore ultimately whether the respondent’s prompting expresses their creative abilities in an independent manner by making free and creative decisions and thus giving the output their personal touch. It is therefore insufficient if, within the framework of prompting, the AI is ultimately left to make the design “decision” through merely general, open-ended instructions, even if these instructions are numerous and the appearance of the output is thereby successively altered (Munich Local Court, loc. cit., paras. 20-22)...

Therefore, the image created by the respondent cannot be considered his original work, in which his personality is expressed as the result of a free creative decision, because he has not – despite pointing out at the hearing on March 3, 2026, that the appearance of the

image in question suggests its creation using AI, not even remotely – explained what creative decisions he actually made.

The AI-generated image was also not an infringing reproduction as it did not copy protected expression in the original image.

- e. [*Chengdu Cultural Communication Co., Ltd v Information Technology \(Shanghai\) Co., Ltd. 2025*](#) Hu 0101 Min Chu No. 14775 (November 6, 2025)



On the facts of the case, the Chinese court, in a case of first impression, held that copyright did not subsist in six sets of prompts submitted to Midjourney and hence the copying of those prompts could not infringe copyright. However, the court suggested that there could be copyright in a more elaborate and specific set of prompts that meets copyright’s standard for originality.

The court found that the prompts were not protected under the Chinese copyright law because they did not meet the law’s requirements for originality and because, in any event, they were unprotectable ideas.

In traditional creative work, originality requires that the author’s intellectual input in terms of choices, arrangements, and design reaches a level that reflects individuality. From this perspective, when evaluating the originality of prompts in AI-assisted creation, the focus should be on whether the user demonstrates substantial intellectual creativity in the design and adjustment of the prompts, and whether this reflects personalized expression. Generally, the more specific and detailed the prompt, the more fully it reflects personalized choices and aesthetic preferences, and thus the more likely it is to meet the requirements of originality. However, originality does not depend on the length or complexity of the prompt, but rather on whether it reflects the result of creative expression. It is worth emphasizing that human input must be “creative, not merely laborious.” Even if a significant amount of time is spent repeatedly modifying prompts, if it only involves rearranging generic prompts or simply combining common

stylistic words, it is usually difficult to consider it as original expression. Conversely, if the prompt is the result of purposeful conceptualization and semantic design, and can present a unique aesthetic orientation or creative expression, it can be considered as creative intellectual input.

The court then examined the prompts in issue and held they lacked originality. While not using terminology from Canadian or U.S. copyright law, the court found the prompts to be unprotectable “stock devices” or “scenes a fair” – being standard or conventional artistic styles. It also ruled they lacked both structural progression and a narrative sequence, and a logical coherence when combined, to constitute a sufficient degree of original expression. According to the court:

The six sets of prompts involved in the case adopted the basic structure of artistic style, main elements, materials and details, scientific context, and main composition. Among them, the artistic style included “Art Nouveau style” and “by Alphonse Maria Mucha”, the main elements included “Aquamarines Stygiomedusa gigantea” (Giant Aquamarine Stygian Jellyfish), “Turquoise Butterfly”, “Lapislazuli Butterfly”, “Amethyst gem tree”, “the emerald ganoderma scene”, and “Brocade carp in Black Opal”, the material was “Papyrus”, the details included “Ancient hand-painted manuscripts”, “Intricate”, “elaborate”, “Rich and detailed texture”, and “Gorgeous gold inlaid wooden picture frame”, the scientific context included “Biological notes”, “Notes for organisms”, “Encyclopedia of plants”, “interpretative statement”, “biophysical analysis”, and “A detailed explanation of plants”, and the main composition included “Mirror symmetry” and “Central composition”.

Based on the criteria for determining copyrightable works, the six sets of prompts in question are essentially instructions or descriptions entered by the user into the AI system to guide the AI in generating specific images. Formally, although they contain various elements, these elements are simply listed without grammatical or logical connections, failing to form a language expression with an inherent structure; the keyword groups are in a disordered combination, lacking both structural progression and a narrative sequence. For example, phrases like “Ancient hand-painted manuscripts” and “Complex and delicate jellyfish texture”, while each containing certain semantic information, still lack logical coherence when combined. From the perspective of originality of expression, these prompts lack the author’s personalized characteristics; the artistic styles, material details, or main compositions used are all conventional expressions in the field, failing to reflect the author’s unique aesthetic perspective or artistic judgment. The plaintiff argues that their use of a new artistic style applicable to building materials and the style of a painter skilled in drawing figures as the expression style for “animals and plants” themes, as well as the naming method of “gemstones + animals and plants” for the creative theme, demonstrates their originality. In fact, in the field of traditional painting, it is not uncommon for artists to transfer familiar styles to different subjects, and combining gemstones with animals and plants based on visual (color, form) or cultural symbolic associations is also a common creative technique, making it difficult to constitute original expression.

Furthermore, although the law does not set a word count threshold for literary works, a work still needs to possess completeness of expression to meet the requirements of originality and a certain depth of expression. The prompts in question, such as “Hand drawn manuscript” and “Biological notes,” are merely combinations of a few phrases, lacking a complete linguistic structure and depth of expression, and cannot fully express complete content through sufficient text like formal works. At the same time, these phrases only simply inform the AI of the image style and scene, without providing a deeper interpretation or assigning special meaning to the style and scene, nor do they demonstrate the necessary artistic beauty. In summary, although the prompt in question

contains some descriptive content, its expression is insufficient to demonstrate creative intellectual input, and therefore it should not be considered an original literary work.

The court also considered the prompts to be mere ideas for the creation of artistic works rather than expression. However, it also stated that if prompts went beyond pure functional instructions to “unique language choices and artistic expression” the prompts could be considered a protected work with expressive attributes. According to the court:

Ideas are abstract and not protected by law, such as thoughts, concepts, theories, designs, creative ideas, etc., while expressions are concrete and can be protected by law. That is, the law only protects the expression of a work, not the idea itself. In the context of AI-generated content, prompts serve as both a medium for users to convey their creative intentions to the AI system and a bridge connecting human thought with AI output. In most cases, the function of prompts is to convey creative requirements, such as “write an article about snow” or “create a painting of snow.” These types of prompts are instructions regarding the creative theme and style, and are usually considered to fall under the category of “ideas.” However, if a user writes text with literary originality, such as “Suddenly, like a spring breeze overnight, thousands of pear trees blossomed,” and asks the AI to further create based on this, because this prompt goes beyond pure functional instructions and reflects unique language choices and artistic expression, in this case, the prompt may be considered a protected work with expressive attributes.

In this case, the core of the prompts in question is a list and description of visual elements, artistic style, and presentation form. This content is more akin to abstract creative ideas, specifically the idea of “what kind of painting I want the AI to generate.” This idea, by its nature, belongs to the realm of thought. Only the specific ways in which lines and colors are used to depict the form, details, and stylistic characteristics of the “Turquoise Butterfly,” or the emotional atmosphere the painting conveys, could constitute “expression.” The prompts in question, remaining at the level of abstract creative ideas rather than concrete expression, should not be considered works protected by copyright law.

Public policy favors not protecting short sets of prompts

The interpretation of copyright laws in many countries is often informed by the policies or purposes of the copyright law. In giving reasons for decision, the Chinese court opined that protecting the prompts in issue was not in the public interest as it would adversely affect the balance in copyright that encourages creativity. According to the court:

The purpose of copyright law is to encourage creativity, thereby promoting the development of culture and science. If short instructions, keyword combinations, and similar types of prompts are recognized as works and protected by copyright law, it could lead to two potential risks. On the one hand, the free use of language will be restricted, potentially leading to the excessive privatization of linguistic resources. Once similar prompts are recognized as protected works, others using the same or similar word combinations to guide AI content generation may face the risk of infringement, and creativity will be suppressed. On the other hand, the AI innovation ecosystem will be constrained. Prompts are important guiding factors for AI-generated content; rich and diverse prompts can stimulate AI’s creativity and promote AI exploration in a wider range of fields. If excessive rights boundaries are placed on the use of prompts, the instructions and data available to AI will be drastically reduced, hindering technological innovation and the development of multi-field applications.

In summary, based on a systematic interpretation of the boundaries of copyright law and a consideration of the balance of public interest, the prompt in question reflects a certain creative intent, but it does not demonstrate the author's individualized intellectual contribution at the level of expression. Therefore, it should not be considered an original work.

- f. **Feng v. Zhangjiagang Dongshan Cultural Commc'n Co., Ltd., the People's Court of Zhangjiagang City, Jiangsu Province, (2024) Su 0582 Min Chu No. 9015, Mar. 19, 2025** (summarized [Chinese Court Found AI-Generated Pictures Not Copyrightable – Convergence with the U.S. Standard?](#))

“In this case, Ms. Feng (“**Plaintiff/Feng**”) is a designer, and she created several AI-generated pictures using Midjourney, a text-to-picture AI service, in early August 2023. She then on August 15, 2023, published the AI-generated pictures titled “Wings of Fantasy Artistic Transparent Chair” on the social media platform, Little Red Book. In her post, Feng asked if there were furniture manufacturers who might be interested in her designs. She also shared the prompts that she put into Midjourney in this post: “Children’s chair with jelly texture, shape of cute pink butterfly, glass texture, light background.”



Defendant used the same prompts and generated this.



Holding, no infringement as prompts did not result in human authorship.

- g. **CIPPIC v Ankit Sahni F.C. File T-1717-248**

FEDERAL COURT

B E T W E E N:

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST
CLINIC**

Applicant

- and -

ANKIT SAHNI

Respondent

APPLICANT'S RECORD

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Counsel for the Applicant



Figure 10: Photograph clicked and owned by Ankit Sahni; provided as the content input to RAGHAV



Figure 11: The Starry Night by Vincent van Gogh; used by Ankit Sahni as the style input to RAGHAV

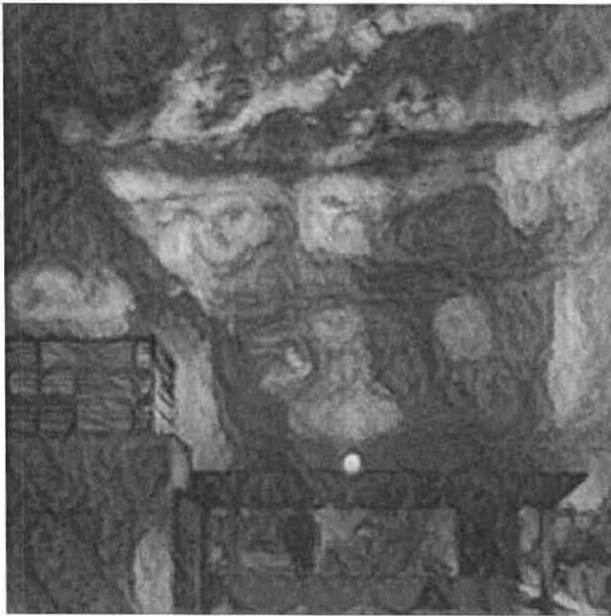
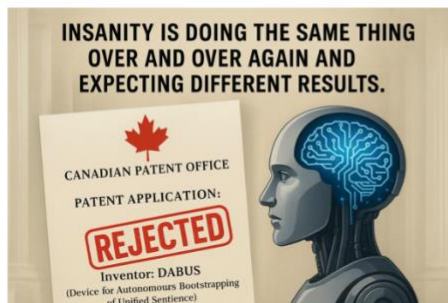


Figure 12: SURYAST (Hindi word for sunset); generated with the assistance of RAGHAV

2. Protection for AI generated inventions

a. [Thaler, Stephen L. \(Re\)](#), 2025 CACP 8



AI. ARTIFICIAL INTELLIGENCE

AI Inventors? Thaler Commissioner Decision

BARRY SOOKMAN · JULY 6, 2025

There is an aphorism, “If at first you don’t succeed, try, try again.” But, according to another aphorism “Insanity is doing the same thing over and over again and expecting different...”

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There is an aphorism, “If at first you don’t succeed, try, try again.” But, according to another aphorism “Insanity is doing the same thing over and over again and expecting different results.” Well, when it comes to Stephen Thaler, the latter aphorism appears apt. Try as he might, he has consistently lost court cases around the world which rejected his contention that content generated entirely by an artificial intelligence system can be protected either by copyrights or patents. This includes losses before the [U.S. D.C Circuit](#) (rejecting his claim that AI generated synthetic content can be protected by [copyright](#)), and the [U.K. Supreme Court, U.S. Federal Circuit, the Full Court of Australia, and European Patent Office](#)

which all rejected the claim that an inventor can be an artificial intelligence system. Thaler just lost again before the Canadian Patent Appeal Board in [Thaler, Stephen L. \(Re\)](#), 2025 CACP 8, which rejected his application for a patent entirely devised by the artificial intelligence system known as DABUS (Device for Autonomous Bootstrapping of Unified Sentience), which Thaler created and owns.

The unsurprising conclusions of the PAB and the decision of the Commissioner were summarized as follows:

- “inventor” as used in the *Patent Act* and *Patent Rules* is limited to a natural person or persons;
- since DABUS is an artificial intelligence system, it cannot be recognized as the “inventor” and therefore the application cannot be filed by “the inventor or the inventor’s legal representative” as required by subsection 27(2) of the *Patent Act*; and
- a valid “inventor” cannot be identified according to the requirements of subsection 54(1) of the *Patent Rules*.

Of course, inventions can be patentable using AI systems if there is sufficient human contribution to the invention. Similarly, content can be protected by copyright to the extent there is sufficient human authorship (skill and judgment) that went into the creation of the work. Thaler’s futile efforts so far have not helped answer where the lines should be drawn in these situations.

3. Protection for works used in generative AI inputs and outputs

a. [Disney Enterprises, Inc. v. MiniMax](#) 839 F.Supp.3d 1264 (C.D.Cal. 2026)

When prompted with the names of Plaintiffs’ characters, Hailuo AI generates extremely close reproductions of the characters. As just one of dozens of examples in the complaint, when prompted with “R2-D2 and C-3PO walking near a spaceship, movie scene,” Hailuo AI produced this image:



Plaintiffs allege that “the outputs created by MiniMax are substantially similar reproductions and derivative works of [Plaintiffs’] valuable copyrighted characters,” often containing “extensive nuance and

detail, background elements, costumes, and accessories beyond what was specified in the prompt.” The complaint alleges that Hailuo AI’s ability to reproduce such close copies of Plaintiffs’ works demonstrates that MiniMax used Plaintiffs’ copyrighted works without permission to train Hailuo AI by, among other things, downloading Plaintiffs’ copyrighted content from the internet and other sources and reformatting the content, which necessarily included creating more copies....

Second, Defendants challenge the adequacy of both theories of direct infringement pleaded in the complaint. See Dkt. No. 1 ¶ 219 (alleging that Defendants infringed Plaintiffs’ copyrights (1) by developing and training the Hailuo AI service and (2) in the outputs they generate for subscribers). As for the outputs, Plaintiffs plausibly allege that Defendants have used the Hailuo AI application to make unauthorized copies of Plaintiffs’ copyrighted characters. Even assuming that, as Defendants argue, the complaint’s 52 specific examples showing how Hailuo AI created copies in response to prompts were not themselves acts of infringement because Plaintiffs’ counsel were responsible for the prompts, those examples plausibly establish that Hailuo AI readily produces infringing images when prompted. The complaint identifies examples of other infringing reproductions not produced by Plaintiffs’ counsel, including images used in Defendants’ social media posts. Defendants’ argument that Plaintiffs’ output theory fails for lack of volitional conduct is also unavailing. The complaint alleges that Defendants trained their AI using Plaintiffs’ copyrighted content and then specifically advertised Hailuo AI’s ability to reproduce Plaintiffs’ characters, using images of those characters. This alleged volitional conduct goes beyond merely operating a website on which users are able to independently upload infringing content. At the pleading stage, Plaintiffs have plausibly alleged direct infringement.

b. [Alcon Entertainment, LLC v. Tesla, Inc.](#) 2026 WL 712574 (C.D.Cal., 2026)

As an initial matter, as the Court has previously explains, bolstered by the general similarities between Image A – an image taken from Plaintiff’s copyrighted work, the motion picture “Blade Runner 2049” (“BR2049”) – and Image C, the Court finds Plaintiff’s “literal copying” allegations to be sufficiently plausible,¹ with a proper basis for information-and-belief allegations employed in support thereof. See also TAC ¶ 16 (“Musk directly or indirectly owns and operates ... the AI company X.AI Corp.[, which] runs ‘Grok,’ an AI system with image generation functions.”); *id.* ¶¶ 27-28 (alleging that Image A is BR2049’s “most recognizable still image,” as it “was the publicity image for theatrical release promotion, and it is still the cover image to BR2049 trailers on YouTube and other platforms”); *id.* ¶ 30 (alleging that “by October 10 Tesla had already been provided a high resolution digital copy of Image A”); *id.* ¶ 39 (alleging that Musk and Tesla created Image C “using an AI image generator” because they “only had five hours or so to adjust their Event plans” after Plaintiff’s rights-denial); *id.* ¶ 40 (alleging that Musk/Tesla “generated Image C by: (i) copying Image A or even the full BR2049 work (or qualitatively significant portions), into an AI image generator, and (ii) then asking the AI to make ‘an image from the [character] K surveying ruined Las Vegas sequence of Blade Runner 2049,’ or a similar direction”)...

As explained above, that is not the full extent of Plaintiff’s case here – Plaintiff has alleged infringement not just by virtue of Musk’s publication of Image C at the Event, but by the alleged “literal copying” of Image A (or of BR2049 in its entirety) in the course of creating Image C.

- c. [*Advance Local Media LLC et al v Cohere Inc*](#), 2025 WL 3171892 (S.D.N.Y. Nov 13, 2025)



AI, AI, AI, AI AND COPYRIGHT, ARTIFICIAL INTELLIGENCE, COPYRIGHT

Trademark Infringement and AI: the Getty and Cohere cases

Cohere faced numerous claims of copyright infringement in the publishers’ action. However, in the motion before the court Cohere sought to have dismissed only the direct and secondary outputs claims made against it, to the extent premised on Cohere generating “substitutive summaries” of the publishers’ works.

Cohere argued that the publishers’ “substitutive summaries” theory must fail because Command’s summaries are not, as a matter of law, substantially similar to the publishers’ works.” Cohere contended that many of Command’s summaries do not copy any protectable expression because Command “incorporates the abstracted facts into new and original sentences.” Further that even where the summaries do copy some of the publishers’ works they do so only minimally, rendering them non-infringing.

The court rejected that the publishers had not plausibly pleaded direct infringement based on the publishers’ pleaded examples of substantial similarities between their articles and the summaries.

There is no question that Cohere is entitled to republish the underlying facts contained in Publishers’ works. Accordingly, in considering whether Publishers have plausibly alleged substantial similarity, the court looks only to the original elements in Publishers’ presentation of the facts. The appropriate inquiry is whether “the copying is quantitatively and qualitatively sufficient” to support a finding of infringement. *Nihon*, 166 F.3d at 70 (quoting [*Ringgold v. Black Entertainment Television, Inc.*](#), 126 F.3d 70, 75 (2d Cir. 1997)).

Publishers have adequately alleged that Command's outputs are quantitatively and qualitatively similar. Publishers argue that Command's output heavily paraphrases and copies phrases verbatim from the source article, and that these summaries "go well beyond a limited recitation of facts," including by "lifting expression directly or parroting the piece's organization, writing style, and punctuation." Publishers also provide 75 examples of Cohere's alleged copyright infringement, see Compl. Ex. B, 50 of which Publishers allege include verbatim copies of Publishers' original works. Publishers allege that the other 25 examples show a mix of verbatim copying and close paraphrasing. Contrary to Cohere's assertion that all of Command's summaries "differ in style, tone, length, and sentence structure" from Publishers' articles, Dkt. No. 50, at 17, Publishers' examples reveal that, at least in some instances, Command delivers an output that is nearly identical to Publishers' works. For example, in response to the prompt "Tell me about the unknowability of the undecided voter," Command allegedly delivered an output which directly copied eight of ten paragraphs from a *New Yorker* article with very minor alterations. See Compl. Ex. B, at 21. Cohere's contention that the only similarities to Publishers' works are Command's use of the same facts is belied by Publishers' allegations and examples showing that Command's outputs directly copy and paste entire paragraphs of Publishers' articles verbatim. Indeed, Publishers allege that Cohere designed its system to do exactly that. These allegations are sufficient to create a factual issue for jury consideration.

d. [**IN RE: OPENAI, INC. COPYRIGHT INFRINGEMENT LITIGATION**](#) 2025 WL 3003339 (S.D.N.Y. Oct 27, 2025)

OpenAI now moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the Consolidated Class Action Complaint's output-based infringement claim. OpenAI contends that the complaint fails to plausibly allege substantial similarity between plaintiffs' works and ChatGPT's outputs or to cite or attach examples of allegedly infringing outputs for the Court to consider when evaluating the issue of substantial similarity...

A more discerning observer could reasonably conclude that the allegedly infringing outputs are substantially similar to plaintiffs' copyrighted works. Though the ChatGPT-generated summaries submitted by plaintiffs do not recount "[e]very intricate plot twist and element of character development" in the original works, *Twin Peaks Prods., Inc. v. Publ'ns Int'l, Ltd.*, 996 F.2d 1366, 1373 (2d Cir. 1993), they are most certainly attempts at abridgment or condensation of some of the central copyrightable elements of the original works such as setting, plot, and characters. In this regard, the summaries are conceptually similar to—although admittedly less detailed than—the plot summaries in *Twin Peaks* and in *Penguin Random House LLC v. Colting*, 270 F. Supp. 3d 736 (S.D.N.Y. 2017), where the district court found that works that summarized in detail the plot, characters, and themes of original works were substantially similar to the original works. Indeed, the ChatGPT-generated summaries "include many specific details" drawn from the original works, *Colting*, 270 F. Supp. 3d at 742, such as the names and traits of characters as well as key plot points....

As set forth above, the Court concludes that the Consolidated Class Action Complaint adequately states a prima facie claim of copyright infringement based on ChatGPT's outputs. Nothing in this Opinion is intended to suggest a view on whether the allegedly infringing outputs are protected as fair uses of the original works.

- e. **Beijing Law Network, June 27, 2024, Ji Xinrui**
@ <https://mp.weixin.qq.com/s/xaUSThKXwaOE6yq20Qbj1g> (translated by Google).



AI, AI AND COPYRIGHT

AI Visual Effects and Copyright Infringement

BARRY SOOKMAN · JUNE 30, 2025

Does it infringe copyright to make an unauthorized copy of artwork and to use that as a base image for the creation of a commercial product that is substantially similar to the original work...

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Does it infringe copyright to make an unauthorized copy of artwork and to use that as a base image for the creation of a commercial product that is substantially similar to the original work using an AI tool to do minor visual editing to produce the commercial product? Yes, according to a recent decision of the Beijing Tongzhou Court.

In the case, individuals were convicted of criminal copyright infringement when they used an AI tool, described as a “picture-to-picture” method to generate effects”, to copy other peoples works of art making only minor modifications to create puzzle pieces for a jigsaw puzzle commercial product. In May 2025 five defendants were convicted. Here, the gravamen of the complaint was not content produced by an AI system, but rather infringement in the inputs that were reproduced in outputs with only minor visual effects changed. According to [a report on the case](#),^[i] the judgment of the court included the following reasons for decision:

According to the relevant provisions of the Criminal Law of the People’s Republic of China and the Copyright Law of the People’s Republic of China, to determine whether the subject matter of the case constitutes a work, it must meet the following conditions: first, it must be original; second, it must be a creation in the fields of literature, art and science; third, it must be able to be expressed in a certain form; and fourth, it must be an intellectual achievement. Therefore, “originality” is a necessary condition for a work. The key to examining whether a work is “original” lies in whether the work has “minimum intellectual creativity”, that is, whether the author has invested intellectual labor in the creative process.

In this case, the defendant used generative artificial intelligence technology to generate pictures and converted other people’s works of art into commercial puzzles. The generation of puzzle pictures only uses the preset parameters of generative artificial intelligence, that is, the “picture-to-picture” method to generate effects. The defendant did not invest intellectual labor in the generated puzzle pictures, such as setting the number of iteration steps, modifying the random number seed, adding prompt word content, etc. The degree of creative control and contribution to the generated results is minimal. Therefore, although there is a very small proportion of inconsistency between the puzzle picture and the original work of art, it should still be identified

as a picture that is substantially the same as other people's works of art, and the defendant's actions should also be identified as copyright infringement...

4. Loss of rights by using generative AI including in legal practice

- a. *Munir, R (On the Application Of) v Secretary of State for the Home Department (AI hallucinations; supervision; Hamid)* [2026] UKUT 81 (IAC) (17 November 2025)

We also observe that to put client letters and decision letters from the Home Office into an open source AI tool, such as ChatGPT, is to place this information on the internet in the public domain, and thus to breach client confidentiality and waive legal privilege, and thus any regulated legal professional or firm that does so would, in addition to needing to bring this to the attention of their regulator, be advised to consult with the Information Commissioner's Office. Closed source AI tools which do not place information in the public domain, such as Microsoft Copilot, are available for tasks such as summarising without these risks....

Uploading confidential documents into an open-source AI tool, such as ChatGPT, is to place this information on the internet in the public domain, and thus to breach client confidentiality and waive legal privilege, and any such conduct might itself warrant referral to the regulatory body and should, in any event, be referred to the Information Commissioner's Office.

- b. *BRETT KENDALL FRY., Petitioner v. DANIELLA VIKTOROVNA FRY, Respondent* 2026 WL 2531956 (E.D.Pa. 2026)

With Petitioner's renewed motion, the Court required Petitioner to submit an AI certification describing any assistance of AI that Petitioner utilized to prepare his motion. Petitioner disclosed to the Court that he had uploaded his redacted documents to non-enterprise versions of Claude and Claude CoWork, products by third-party company Anthropic, in preparing his motion. As such, the Court finds that the full sealing of any document is not appropriate. Documents and information uploaded to Claude are processed on Anthropic's servers, and Anthropic's data privacy and data training pages make clear that such information is not private. See, e.g., Privacy Policy, Anthropic <https://www.anthropic.com/legal/privacy> (last accessed August 24, 2026); How Do You Use Personal Data in Model Training?, Anthropic, <https://privacy.claude.com/en/articles/10023555-how-do-you-use-personal-data-in-model-training> (last accessed August 27, 2026); see also *United States v. Heppner*, 820 F. Supp. 3d 292, 296 (S.D.N.Y. 2026) (holding that communications with Claude are not privileged due, in part, to Claude's privacy policy). As such, it would be inappropriate for the Court to seal a document that has already been provided to a private, for-profit research and artificial intelligence company.

- c. *Tov Realty, LLC v. Suarez* 360 A.3d 1062 (D. Conn. 2026)

Although we did not discuss this point during the show cause hearing, we emphasize that the duty of competence with respect to the use of generative AI in legal practice also includes recognition of its implications as to the attorney-client privilege, the confidentiality of information relating to an attorney's representation of a client, and the work product doctrine, particularly when a public access platform is involved. See, e.g., *United States v. Heppner*, 820 F. Supp. 3d 292, 296–99 (S.D.N.Y. 2026).

- d. *Assini v. Hayward* 261 N.Y.S.3d 915 (2026)

Plaintiff cites to the matter of *United States v. Heppner*, for the proposition that defendant Recchio's use of AI is not privileged. [820 F.Supp.3d 292 \(S.D.N.Y. 2026\)](#). In *Heppner*, the Court found that AI communications with Claude not privileged or confidential and not subject to work-product protection

because the materials were created by the defendant “on his own volition,” not at counsel’s direction and not reflecting counsel’s mental impressions or litigation strategy.

However, in opposition to [United States v. Heppner](#), a criminal case, it was found that “in the context of a pro se litigant’s use of AI to assist with their litigation preparation, the use of AI closely resembles the kind of confidential, strategy-laden iterative work product that Rule 26(b)(3) was designed to protect. In other words, given how AI tools function, it is entirely reasonable for a person to expect some privacy and confidentiality when interacting with these tools, even though they understand a third party is behind the tool collecting and storing their information.” [Morgan v. V2X, Inc., 2026 WL 864223, *5, 2026 U.S. Dist. LEXIS 67939, *10-11 \[Dist Colorado March 30, 2026\]](#).

The [Morgan](#) Court directly addressed [Heppner](#) in its Decision and found that it was not binding as [Heppner](#) involved a criminal matter and not a civil matter.

The [Morgan](#) court further found that, “[h]ere, like in [Warner v. Gilbarco, Inc., 820 F.Supp.3d 629 \(E.D. Mich. 2026\)](#), Plaintiff can assert work product protections in connection with his AI use. It is true that AI systems like ChatGPT, Claude, Gemini, and others widely available to the public, collect user data for training and other purposes. But in this Court’s estimation, that does not eliminate all expectations of privacy or automatically *920 waive protections.” [2026 WL 864223, *5, 2026 U.S. Dist. LEXIS 67939, *10-11 \[Dist. Colorado March 30, 2026\]](#).

The Court finds the rationale presented in [Morgan](#) persuasive.

Accordingly, the Subpoena and Amended Subpoena shall be quashed.

e. [Morgan v V2X, Inc, 2026 WL 864223 \(D Colo 3 March 2026\)](#)

“AI is forcing litigants and courts to confront difficult questions about how and to what extent longstanding protections will apply when parties use AI to assist them in the litigation process.” . [Morgan v V2X, Inc, 2026 WL 864223 \(D Colo 3 March 2026\)](#) (pro se litigants can use AI without waiving work product protection. “Here, like in [Warner v Gilbarco, Inc, 2026 WL 373043 \(ED Mich 10 February 2026\)](#), Plaintiff can assert work product protections in connection with his AI use. It is true that AI systems like ChatGPT, Claude, Gemini, and others widely available to the public, collect user data for training and other purposes. But in this Court’s estimation, that does not eliminate all expectations of privacy or automatically waive protections.”

“Today, nearly all electronic interaction passes through third-party systems. Google, for example, hosts millions of accounts, and by extension, has access to millions of messages, emails, documents, videos, and more. Moreover, we now know that our phones, computers, in-home smart devices, and other electronics, collect information about us to offer more bespoke services. Does that mean that anyone with a Gmail account has forfeited all rights to confidentiality and privacy? In [United States v Warshak](#), the Sixth Circuit held—albeit in the context of a Fourth Amendment seizure analysis—that email subscribers have a reasonable expectation of privacy in the contents of emails stored with commercial internet service providers. [631 F.3d 266, 268 \(6th Cir. 2010\)](#). The court rejected the idea that intermediary access alone extinguishes privacy expectations. [Id. at 285-86](#). And though the Tenth Circuit did not fully weigh in on this issue in [United States v. Ackerman, 831 F.3d 1292, 1308 \(10th Cir. 2016\)](#), the Supreme Court has since held that the mere fact that information is held by a third-party intermediary, does not automatically extinguish a reasonable expectation of privacy in that information. [Carpenter v. United States, 585 U.S. 296, 310-16 \(2018\)](#).

f. [United States v Heppner](#), 2026 WL 436479 (SDNY 17 February 2026)

A person that communicates with a publicly available GenAI platform (such as Claude) in connection with a pending criminal investigation may not be protected by attorney-client (solicitor client) privilege or the work product doctrine.

“Generative artificial intelligence presents a new frontier in the ongoing dialogue between technology and the law. Time will tell whether, as in the case of other technological advances, generative artificial intelligence will fulfill its promise to revolutionize the way we process information. But AI’s novelty does not mean that its use is not subject to longstanding legal principles, such as those governing the attorney-client privilege and the work product doctrine. Because Heppner’s use of Claude fails to satisfy either of these rules, the AI Documents do not merit the protections Heppner has claimed.” *United States v Heppner*, 2026 WL 436479 (SDNY 17 February 2026)

First, AI Documents are not communications between a client and his counsel. Second, the “written privacy policy to which users of *Claude* consent provides that Anthropic collects data on both users’ “inputs” and Claude’s “outputs,” that it uses such data to “train” Claude, and that Anthropic reserves the right to disclose such data to a host of “third parties,” including “governmental regulatory authorities.” Third, the client did not communicate with Claude for the purpose of obtaining legal advice. Work Product: “The AI Documents do not merit protection under the work product doctrine because, even assuming, arguendo, that they were prepared “in anticipation of litigation,” [In re Grand Jury Subpoenas](#), [318 F.3d at 383](#), they were nevertheless not “prepared by or at the behest of counsel”.)

g. [Fortis Advisors, LLC v Krafton, Inc](#), 354 A.3d 906 (Del .Ch. 2026)

Legal advisors stating that agreement with counterparty is binding; CEO turns to ChatGPT for legal strategy that it implements found to be in breach of contract.

On June 2, Park warned Kim over Slack that a “dismissal with cause” would not eliminate the earnout obligation, while exposing Krafton to “lawsuit and reputation risk.”¹⁸⁴ And so Kim turned to ChatGPT for help.¹⁸⁵ When the AI chatbot responded that the earnout would be “difficult to cancel,” Kim complained to Park that the EPA was “a contract under which we can only be dragged around.”¹⁸⁶ He expressed frustration that Unknown Worlds had the “authority to determine the release date and determine publishing” without Krafton’s involvement.¹⁸⁷ Kim asked Park to reach out to the Legal Department and to call him. Moments later, Park sent Kim the section of the EPA discussing the Key Employees’ “operational control” over Unknown Worlds for so long as “any Key Employee is employed by the Company.”

At ChatGPT’s suggestion, Kim formed an internal task force, dubbed “Project X.”¹⁸⁹ The task force’s mandate was to either negotiate a “deal” on the earnout or execute a “Take Over” of Unknown Worlds.¹⁹⁰ They looked to buy time.

Over the next month, Krafton followed most of ChatGPT’s recommendations.

Kim admitted at trial that he had deleted specific, relevant ChatGPT logs. *Id.* at 441. This particular chat was deleted. I

(Slack message from Kim to Park: “Now, chatgpt starts to answer that it is difficult to cancel the earn-out.”)

(Kim writing that the goal of the message was to “secure public support from fans and legal validation of our legitimacy” and suggesting that ChatGPT draft the message).

5. Who is responsible for access to (and copying) websites by AI Agents?

a. [Amazon.com Services, LLC v. Perplexity AI, Inc.](#) 184 F.4th 1083 (9th.Cir. 2026)

Agentic AI is an emerging technology. There is thus little to no existing caselaw directly dealing with how to ascribe responsibility for AI agents like the Assistant, let alone caselaw specifically dealing with agentic AI in the CFAA context. And CFAA cases dealing with more established technologies do not provide a perfect analogue to the case at hand. Take the parties’ two main cited cases as examples...

The Amicus Brief of Electronic Frontier Foundation, Alliance for Responsible Data Collection, Mozilla Corporation, Digital Medusa, and EleutherAI articulates the nature of the system most clearly:

When a user visits a website, only ... the browser ... communicates with the website’s server. Specifically, when a user visits an Amazon.com webpage, the browser requests the contents of the page from Amazon’s server and displays the page to the user. If the user activates the Assistant, the Assistant will analyze the contents of the page that has been displayed by the browser on the user’s computer.... If necessary to carry out the task requested by the user, the Assistant may communicate the user’s instructions, along with information received from the browser pertaining to the page accessed by the user and any potentially relevant browsing history, to Perplexity’s AI servers. Perplexity’s servers never directly access Amazon’s servers.

The Supreme Court has instructed that, “in the computing context, ‘access’ references the act of entering a computer system itself or a particular part of a computer system, such as files, folders, or databases.” Van Buren, 593 U.S. at 388, 141 S.Ct. 1648 (internal quotation marks omitted). Our focus is thus to ask whether Perplexity uses a tool (the Assistant) to “access” Amazon’s computers. On the facts before us, we answer no. It is the user who “accesses” Amazon’s computers, with the help of the Assistant to carry out specific acts on Amazon.com. To be sure, Perplexity may receive screenshots of the user’s browser and may communicate instructions to the Assistant. But those activities, by themselves, do not mean that Perplexity has “accessed” (gained entry) to Amazon’s servers. We do not address whether, on a different record or new facts, Perplexity may exercise control over the Assistant in such a way as to gain entry to Amazon’s servers. On the current record, Amazon is not likely to succeed in proving the “access” prong of its CFAA claim.

6. Diligence to mitigate risks of loss of rights

a. [Trinidad v. OpenAI Inc.](#) 2026 WL 21791 (N.D. Cal. Jan 5, 2026)

“To succeed on a claim for misappropriation of trade secrets under the [Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836,] a plaintiff must prove: (1) that the plaintiff possessed a trade secret, (2) that the defendant misappropriated the trade secret; and (3) that the misappropriation caused or threatened damage to the plaintiff.” Nat’l Specialty Pharmacy, LLC v. Padhye, 734 F. Supp. 3d 922, 929 (N.D. Cal. 2024) (quoting InteliClear, LLC v. ETC Glob. Holdings, Inc., 978 F.3d 653, 657–58 (9th Cir. 2020)). “The DTSA defines a ‘trade secret’ as information that ‘the owner thereof has taken reasonable measures to keep ... secret’ and that ‘derives independent economic value, actual or potential, from not being generally known to ... another person who can obtain economic value from the disclosure or use of the information.’ “ Attia v. Google LLC, 983 F.3d 420, 424 (9th Cir. 2020) (quoting 18 U.S.C. § 1839(3)).

“To prove ownership of a trade secret, plaintiffs must identify the trade secrets and carry the burden of showing they exist.” Nat’l Specialty, 734 F. Supp. 3d at 929 (citation omitted).

Trinidad alleges only that her “protocols and frameworks” constitute trade secrets. ECF No. 5 ¶ 24. However, she has not alleged that she took any reasonable measures to keep these “protocols and frameworks” secret. Rather, she admits that she developed these “frameworks” using an OpenAI product, ChatGPT. Id. ¶¶ 6–7. As OpenAI argues, using ChatGPT in this manner “would have required her to voluntarily share the information she now alleges is part of her ‘trade secrets’ with OpenAI.” ECF No. 43 at 17. Because she “disclose[d] [her] trade secret to others who are under no obligation to protect the confidentiality of the information, ... [her] property right is extinguished.” Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1002 (1984).

Trinidad raises two responses. First, she argues that the OpenAI Terms of Use provide that she owns the output of her work—presumably referring to the output of any conversation she undertook with ChatGPT. ECF No. 44 at 6. But for the trade secrets claim, like the copyright claim, it is not sufficient for Trinidad to establish ownership. Rather, she must show that the information misappropriated by OpenAI was “secret” within the meaning of 18 U.S.C. § 1839(3). By developing her ideas through ChatGPT, Trinidad voluntarily disclosed the existence of her ideas to OpenAI; whether she owned those ideas notwithstanding the disclosure is not relevant...

Because the allegations in the complaint show that Trinidad’s protocols and frameworks are not trade secrets, her claim under the DTSA fails and is dismissed.

b. Cultural Communication Co et al, Shanghai Huangpu District People’s Court Civil Judgment (2025) Hu 0101 Min Chu No. 14775

(II) Public domain defense. According to the Midjourney platform’s terms of service, users waive their rights related to prompt words, and this content defaults to the public domain. According to the “Guidelines for the Trial of Copyright Infringement Cases by the Beijing High People’s Court,” if the identical or similar parts of the alleged infringing work and the plaintiff’s work originate from the public domain, the defendant can claim a legitimate source defense from the public domain.

c. Examples of IP diligence

- Q. Whether uploading assets to these platforms will ultimately result in our content being used to train model?
 - o A. These are answered in the table below. As described some models use inputs and outputs for training (and other purposes), some do not, and OpenAI provides an opt out right.
- Q. Are we providing a royalty-free, perpetual license to the platform?
 - o A. In general there are 2 types of licenses. 1. For the vendor to use your content to provide you with service. This is expected. 2. Customer provides certain rights to use your inputs and outputs, as summarized below.
- Q. Do the platform’s terms disclose what data was used to train their AI models?
 - o A. The terms do not describe what data was used to train the models. More research would be needed such as reviewing model cards or public statements.
 - o The training data used is particularly important as the risk of infringing outputs is directly related to the training data used and most providers below shift the entire risk of infringements of inputs, outputs and use of the services on customers.
 - o None provide indemnities for infringements in the use of the services such as the copyright commitment provided by Microsoft with Co-Pilot.

- o Training data could be from licensed sources (rare), shadow or pirate libraries, common crawl, data from other services provided by the vendor e.g. Google uses of YouTube videos, other customers inputs and outputs.
- o Some of the vendors in your table are being sued for copyright infringement.
- Q. Are there any warranties or representations regarding the outputs generated by these models? Or is it our responsibility to conduct due diligence independently?
 - o A. The vendors do not provide warranties on outputs.
 - o In fact they shift the risks of infringement onto customers who have to make assessments on whether outputs are infringing.
- Q. Do the platform terms require us to indemnify the company?
 - o A. Yes, most do require an indemnity, as summarized below.
- Q. Does the platform provide any indemnity to us?
 - o A. None of the platforms below provide indemnities.
- Q. Do the terms cover commercial use?
 - o A. The terms generally do not impose any restrictions on uses of outputs, except to comply with various linked policies that prohibit certain usages.
 - o The vendors generally do not claim ownership in outputs, which implies they will not try to prevent your use.
 - o However, as Customer has the risks of infringement from uses and generally agrees not to use the outputs in infringing ways, there are practical limits on the use of outputs.
 - o Most vendors do not provide assignments of any IP wording. However, there is a possibility that courts would interpret vendors' terms as effecting assignments.
 - o However, as IP rights may not exist in pure GenAI content, Customer would not obtain rights under assignments in any event that could be enforced against third parties.
 - o To obtain protection, Customer would need to add and incorporate assets or make modifications or create some selection or arrangement of content to obtain any protection.

Tool	Summary of provider terms
Runway ML Currently for Roto, frame interpolation Image generation and the image to video generation tool	Review terms @ https://runwayml.com/enterprise-terms/ As between Customer and Runway, Customer owns all IP rights in inputs and outputs (which is included in Customer Content). Runway will not use Customer Content for training purposes. The risk of IP infringement in outputs is on Customer, (even if caused by training data though this is not expressly stated). Customer may not use the services in a manner that infringes. Customer also indemnifies Runway for any infringements including in inputs and outputs and other third party rights. Customer also has all responsibilities for Inputs including for clearing rights and for non-infringement. Customer is also responsible for all uses of outputs. Runway provides a narrow indemnity only for infringement of patent rights in use of the services, but this excludes claims based on inputs. There is no copyright indemnity for infringing outputs or uses of the service.

Tool	Summary of provider terms
Adobe – Firefly Text to image Image to video Text to video. [Adobe gives you an option to use Blackforest, veo3, openai, flux]	Agree that Adobe terms are confusing. Appears that Adobe’s product specific terms for generative AI apply, see, https://www.images2.adobe.com/content/dam/cc/en/legal/servicetou/adobe-generative-ai-product-specific-terms-en-us-20250617.pdf. So does the Adobe General Terms of Use, Customer owns inputs and outputs (referred to a “Content”), although there is no assignment language. Customer takes responsivity for inputs and outputs and indemnifies Adobe for infringing outputs, even if generated by Adobe products. Adobe doesn’t train AI models using Content, but Customer grants broad rights to content if it uses Firefly Gallery and permits training using Content if it uses Adobe Stock marketplace.”
Black Forest Labs Self Hosting Flux context pro or max	Website and FLUX Terms of Service https://bfl.ai/legal/terms-of-service BFL does not claim ownership in inputs or outputs, but there is no assignment of rights, but does say that Customer may use the Output for your own personal or commercial purposes, subject to the terms. BFL has the right to use your inputs and outputs to “develop, train and improve our technologies, products and services, including the Services, and to otherwise permit access to or disclose your Input or Output to third parties”. Customer has all responsibilities for outputs and indemnifies BFL for claims arising from inputs and outputs.
Leonardo AI Image generation Create mini models based on our data sets	License @ https://customeralphakilo-my.sharepoint.com/:w:/g/personal/sarah_dayus_customerbot_com Nov 10 2025. Customer owns its Inputs and Outputs. Leonardo will not make any copyright ownership claim over Customer’s Inputs. Risk of claims based on Inputs are on Customer. Customer providers an indemnity that inputs may infringe. Customer warrants it has all rights to generate outputs. The wording could be broad enough to put the risk of infringing outputs on Zula, even if not caused by inputs. Leonardo does not indemnify Customer for infringing outputs, but does not expressly ask Customer to indemnify for this. Customer does not use “private” customer data for training. (No explanation what “private” means).

Tool	Summary of provider terms
Open AI – Sora Text to Video	Terms of use @ https://openai.com/policies/terms-of-use/ Customer owns IP rights in inputs and outputs (“Content”), to the extent permitted by law. OpenAI uses Content (inputs and outputs) for training and to improve and develop its services. Customer can opt out of its Content being used for training, but not for the other permitted uses by OpenAI. Customer assumes all risks and responsibilities that inputs and outputs and uses of the services infringe IP rights. Customer also indemnifies OpenAI against infringements of inputs and outputs and uses of the services, and OpenAI disclaims any warranties of IP infringement.
Weavy	Terms @ https://content.weavy.ai/terms-of-service Nov 10, 2025 All risks of infringement in using Figma Weavy including inputs and outputs (“Content”) falls on Customer. Customer also indemnifies against all IP claims from Content and uses of the services. Weavy can use Content for training Figma Weave. Weavy can also use Customer Content to improve Figma Weave, and to create new products and services. Customer takes particular risks with Weavy as its terms permit third party service providers to use Customer content for training purposes. Presumably third party service providers include the services listed on its website such as Wan, Runway, Veo3Flux Pro etc. As between Customer and Weavy, Customer owns the IP rights in Outputs. However, as ML may produce similar outputs, Customer doesn’t own outputs to the extent similar outputs are generated for other uses. Customer also takes special risks, as Customer is bound by third party service provider terms and these may have contrary terms re ownership.

d. [Australian Securities and Investments Commission v Bekier \(Liability Judgment\)](#)
[2026] FCA 196 (5 March 2026)

First, I considered above a submission that the Star board packs were so voluminous that certain World Check Report information was “buried”. In rejecting this submission on the facts, I also explained, in Section H.1.5, that directors cannot content themselves by being passive recipients of information. An important initial step in taking an intelligent interest in the information relevant to guiding and monitoring management is exercising control and preventing Brobdingnagian electronic document dumps masquerading as board packs. Those observations were made conscious of the contemporary reality that individual public company directors are now commonly making use of artificial intelligence to assist

them in navigating material provided by management. This cannot be politely overlooked. There is nothing inherently objectionable in obtaining such assistance, but what ought not occur is that this development becomes an excuse for a failure to instill discipline in the provision of information to directors or leads to a quiet normalisation of private reliance by them upon computer-generated distillations, unregulated by any agreed policy. Proper collective governance requires transparency about how information is being reduced and relied upon in either the preparation of board packs by management, or their digestion by directors. The use of technology may assist comprehension, but it cannot displace judgment. The statutory obligation imposed by s 180(1) remains personal, and it requires informed human judgment.

- e. **CANDOR COMPASS LLC, Plaintiff/Counterclaim Defendant, v. IDENTIVISUALS SRL and IDENTIVISUALS INC., Defendants/Counterclaim Plaintiffs.** 2026 WL 2620613 (Ct.Ch.Del. Sept 4, 2026)

A startup hoping to commercialize its artificial intelligence-based emotion detection technology sought out a partner with more experience and access to the legal technology space. The startup was cash-strapped and its technology was far from ready for market. Still, it found a well-connected partner and mentor who saw promise. After two months of negotiations, the startup and the partner's company executed a term sheet for a license agreement....

Relevant here, the Term Sheet obligates IDV to take two actions with respect to the licensed technology. Under the "Delivery and Acceptance" provision, IDV must "provide materials sufficient to enable [Candor Compass] to test, operate, adjust, modify, and adapt the technology independently, without the need to seek technical support from [IDV]."105 And under the "Escrow" provision, IDV must "cause any IP not explicitly provided to [Candor Compass] to be held by an escrow agent at its own expense" and "cause this material to be updated not less frequently than monthly."106 If IDV breaches any of those obligations, "all Technology and escrowed material shall be automatically conveyed in fee simple to [Candor Compass]...

So the equities favor enforcing the Term Sheet's specific performance provision to give Candor Compass the benefit of IDV's promises. Half-measures do no work here. Candor Compass is entitled to specific performance of IDV's promise to transfer ownership of the licensed technology. Candor Compass, too, is required to perform its obligations under the Term Sheet—namely, the obligation to assign equity to IDV....

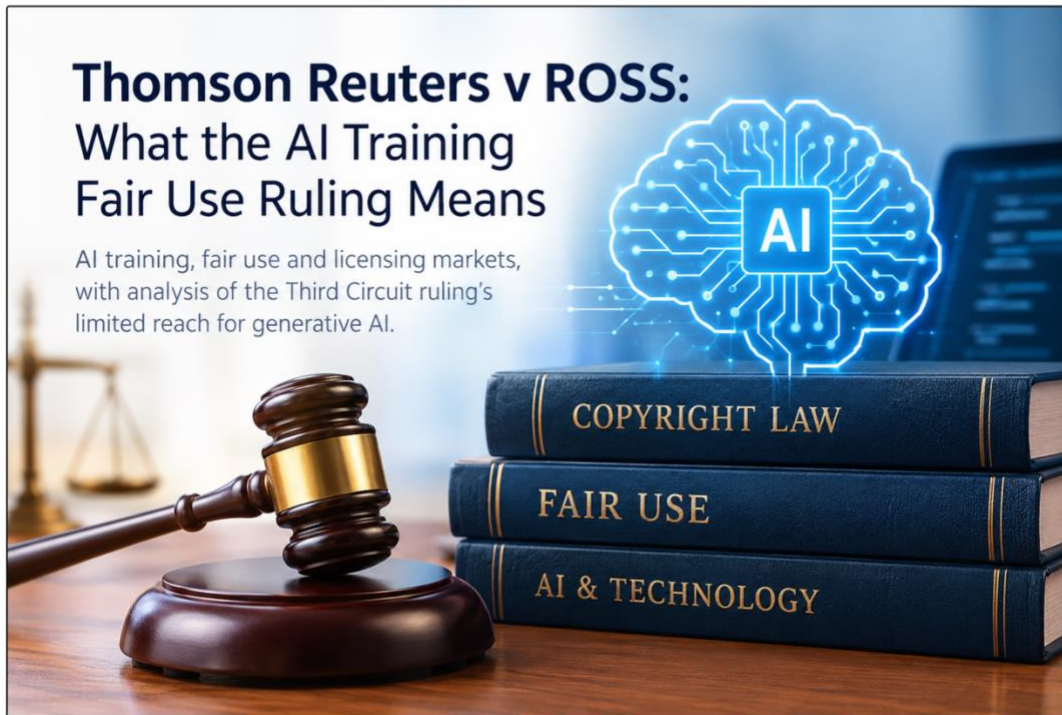
Because Candor Compass has proven its entitlement to specific performance, it is entitled to a declaration that Candor Compass owns the licensed technology. Judgment is entered in Candor Compass's favor on all of its claims.

7. Training (non-generative) AI models and fair use

- a. **Thomson Reuters Enterprise Centre GmbH; West Publishing Corp v. ROSS Intelligence Inc.,** 2026 WL 2932557 (3rd Cir. Sep. 29, 2026)

Thomson Reuters v ROSS: What the AI Training Fair Use Ruling Means.

OCTOBER 13, 2026 · BARRY SOOKMAN



“Before getting into the details of the case, here is an FAQ with key takeaways from the ROSS opinion.

Did the Court hold that copying copyright works for all AI training is unlawful?

No: it held on the record before it that such copying may be infringing as the fair use defense did not apply.

Why did the court find that ROSS’s copying was not fair use?

The Court found that ROSS’s copying of Thomson Reuter’s headnotes was for a commercial purpose and was not transformative because the copying was for the purpose of training a machine learning model that would be used to compete with Thomson Reuters in the legal research market. The Court also accepted that ROSS harmed Thomson Reuter’s position in a potential derivative market for licensing headnotes as AI training data.

Why did the Court not find that ROSS’s intermediate copying of headnotes to train its AI system to be transformative?

The Court did not accept that it was necessary for ROSS to copy the Thomson Reuter’s headnotes. It made this finding even though ROSS’s AI system was able to generate new selections of published opinions based on it’s trained model.

Will the case have any impact on the generative AI cases now before U.S. District Courts?

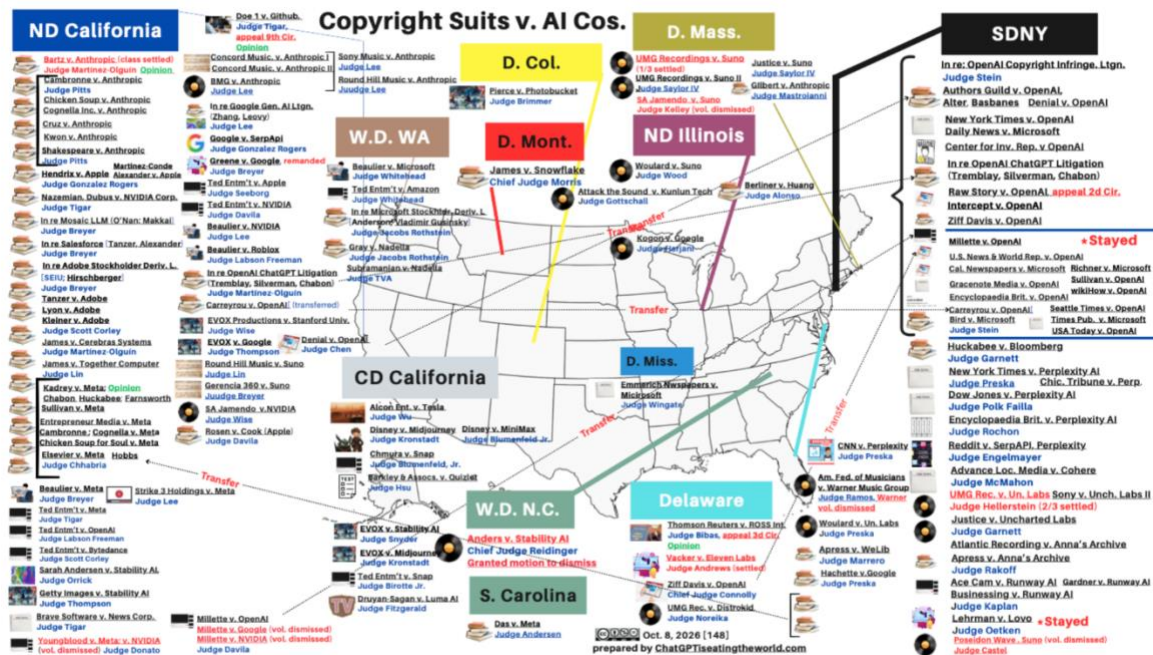
Very unlikely. The Court found that copying training data which cannot generate new content as not transformative. It also expressly distinguished the ROSS case from the generative AI fair use cases. The Court's finding that loss of licensing revenue may be a cognizable harm may be referred to in future cases, especially in the Third Circuit, but it is not consistent with at least some of the cases in the circuits where the majority of the cases are being tried.

Is the Opinion in Ross final?

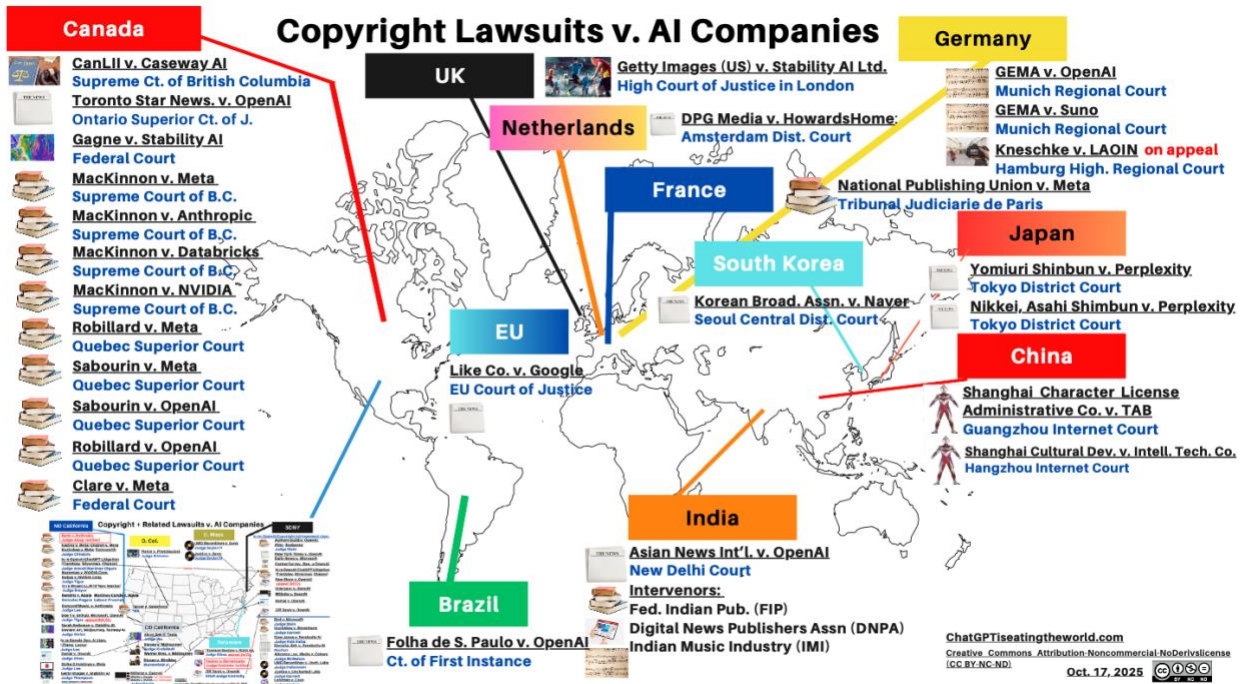
It may not be as ROSS’s lawyers have indicated that ROSS intends to seek cert, or en banc review by the Third Circuit.”

8. Generative AI Copyright litigation

- a. Prof. Ed Lee, [Updated Map of US Copyright Suits v. AI companies](#) (Oct. 19, 2025)(148)



- b. Ed Lee, [Latest World Map of All Copyright Suits v. AI companies](#), 79 total (Oct. 17, 2025)



- c. WIPO, [Scoping Study on AI Training and Copyright](#), SCC/49 Oct 23, 2026



E

SCCR/49/6
ORIGINAL: ENGLISH
DATE: OCTOBER 23, 2026

Standing Committee on Copyright and Related Rights

Forty-Ninth Session

Geneva, November 30 to December 4, 2026

SCOPING STUDY ON AI TRAINING AND COPYRIGHT

commissioned by the Secretariat

- d. Anthropic, PBC U.S., [Securities and Exchange Commission, Form S-1](#), October, 26, 2026

Risks Related to Privacy, Cybersecurity, and Intellectual Property

The application of certain copyright law doctrines and contractual interpretations of open-source licenses to modern AI model training are uncertain. The application of certain copyright law doctrines and contractual interpretations of open-source licenses to modern AI model training has not been authoritatively resolved by U.S. and non-U.S. courts as of this date. We have a good faith belief that we own or possess all sufficient legal rights and/or defenses to the training data used in or with our AI models, platform, and applications, which is based in part on our belief that our use or acquisition of the training data used in or with our AI models, platform, and applications constitutes “fair use” of such training data under copyright law doctrine. In addition, copyright laws in some jurisdictions outside the United States generally do not recognize fair use, and our reliance on analogous exceptions is subject to evolving conditions and to adverse or unsettled judicial interpretation in those jurisdictions. If a court of law disagrees with our belief that our use or acquisition of such training data constitutes fair use or otherwise concludes that it violates copyright law, for example, by adopting the reasoning in Bartz (as defined below), including without limitation in currently active litigation against us or another company in our industry, our business may be adversely affected. In particular, adverse rulings in litigation involving other AI developers, regardless of the specific facts, data practices, or legal theories at issue in those cases, could establish legal precedents or interpretations of copyright law that apply broadly across the industry and limit our ability to train, develop, or deploy AI models, even if our own data procurement and usage practices differ. Such outcomes could restrict access to certain categories of training data, narrow the scope of available legal defenses, or impose new licensing, compliance, or operational requirements across the AI industry. For example, if we cannot rely on the fair use doctrine to access copyrighted work for training our models, we may be required to pay significant fees to obtain a license

to such training data or our ability to further develop our models, platform, and applications and distribute models trained on such data at issue could be adversely affected. In addition, an adverse ruling against us or another company in our industry could result in injunctive relief that restricts our ability to use or distribute models trained on the data at issue or could require us to retrain affected models from scratch at substantial cost. If we are unable to manage the foregoing risks, our business, financial condition, and results of operations could be adversely affected...

We have been, are currently defending against, and may in the future be, subject to intellectual property rights claims by third parties, which are extremely costly to defend, may require us to pay significant damages and may limit our ability to use certain technologies, which may adversely affect our business, financial condition, and results of operations.

There is considerable intellectual property development activity in our industry. Our competitors, as well as a number of other entities, including non-practicing entities and individuals, may own or claim to own intellectual property rights relating to our industry or our technology. As we face increasing competition and our public profile increases, the possibility of intellectual property rights claims against us may also increase. To train our models, we use material from many sources, some of which may include third-party copyrighted content or trademarks. Regardless of whether the material is copyrighted or the trademarks are registered, parties who own the rights to that content or those trademarks, or distribute that content, may attempt to sue us based on intellectual property infringement or other theories. We also face claims that outputs generated by our models infringe, or facilitate infringement of, third-party works. Lawsuits asserting such claims have been filed, are pending, and may be filed in the future in the United States and internationally. For example, in September 2025, we reached an agreement to settle a copyright infringement class action, captioned Bartz, et al. v. Anthropic PBC (“Bartz”), for \$1.5 billion, which was approved by the district court in July 2026. As additional examples, various publishers have filed suit against us alleging copyright infringement of song lyrics and unlawful removal of copyright management information in the cases captioned Concord Music Group, Inc., et al. v. Anthropic PBC, Concord Music Group, Inc., et al. v. Anthropic PBC et al., BMG Rights Management (US) LLC v. Anthropic PBC, Round Hill Music LP, et al. v. Anthropic PBC, Sony Music Publishing (US) LLC v. Anthropic PBC et al., and others. Similarly, a third party alleges we accessed and reproduced posts stored on the third party’s platform in violation of its legal rights and has filed suit against us, captioned Reddit, Inc. v. Anthropic PBC. The possibility of statutory damages under some intellectual property legal frameworks creates additional risk for us. We are vigorously defending ourselves in these pending lawsuits and believe we have meritorious defenses, though these lawsuits address novel issues and areas of law that make the results uncertain.... We may be required to settle such litigation on terms that are unfavorable to us. For example, a settlement may require us to obtain a license to continue practices alleged to violate a third party’s rights, which may not be available on reasonable terms and may significantly increase our operating expenses. Such a license may not be available to us at all. As a result, we may be required to develop alternative technology or practices or discontinue such allegedly infringing practices. The development of alternative technology or practices would require significant effort and expense or may not be successful. Similarly, if any litigation to which we may be a party fails to settle and we go to trial, we may be subject to an unfavorable judgment which may not be reversible upon appeal. The terms of a judgment may require us to cease some or all of our operations or require the payment of substantial amounts. Any of these events could cause our business, financial condition, and results of operations to be adversely affected as a result. We also offer to indemnify our contract counterparties for certain third-party infringement claims against them, and such indemnification obligations may be excluded from contractual limitation of liability provisions that limit our exposure. In certain cases, our indemnification obligations may be broad or unlimited in scope, which could expose us to significant contingent liabilities, particularly given the unsettled nature of intellectual property law as applied to AI-generated outputs and the potential for claims to arise from a wide range of customer use cases that we cannot predict or control. For example, certain of our agreements require us to defend and indemnify the

counterparty, without a cap on our liability, against third-party claims alleging that our models, or outputs generated by our models, infringe third-party intellectual property rights...If we cannot obtain all necessary licenses on commercially reasonable terms or are unable to modify our models, platform, and applications or technology so that they are no longer infringing, our customers may be forced to stop using our models, platform, and applications, and our distribution partners may be forced to stop selling our models, platform, and applications. Even if we do not litigate these matters to a judgment, we may be required to settle such litigation on terms that are unfavorable to us.

e. [Bartz v Anthropic PBC](#), 787 F.Supp. 3d 1008 (N.D.Cal. 2025)



UNCATEGORIZED

Anthropic AI Decision on Copyright Fair Use

BARRY SOOKMAN · JUNE 24, 2025

United States District Court judge William Alsup just released an important decision in the AI copyright litigation in *Bartz v Anthropic PBC*. He summarized his ruling as follows: The use of...

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“This order grants summary judgment for Anthropic that the training use was a fair use. And, it grants that the print-to-digital format change was a fair use for a different reason. But it denies summary judgment for Anthropic that the pirated library copies must be treated as training copies.”

The Purpose and Character of the Use.

The [Copies Used to Train Specific LLMs](#).

All agree that one use at issue was training LLMs to receive text inputs and return text outputs. More specifically, Anthropic used copies of Authors’ copyrighted works to iteratively map statistical relationships between every text-fragment and every sequence of text-fragments so that a completed LLM could receive new text inputs and return new text outputs as if it were a human reading prompts and writing responses. Authors further argue — and this order takes for granted — that such training entailed “memoriz[ing]” works by “compress[ing]” copies of those works into the LLM (Opp. 16–17; see Opp. Expert Zhao ¶ 74). The LLMs “memorize[d] A LOT, like A LOT” (Opp. Exh. 35 at -029109). Regardless, the “purpose and character” of using works to train LLMs was transformative — spectacularly so.

To repeat and be clear: Authors do not allege that any LLM output provided to users infringed upon Authors' works. Our record shows the opposite. Users interacted only with the Claude service, which placed additional software between the user and the underlying LLM to ensure that no infringing output ever reached the users. This was akin to the limits Google imposed on how many snippets of text from any one book could be seen by any one user through its Google Books service, preventing its search tool from devolving into a reading tool. [Google, 804 F.3d at 222](#). Here, if the outputs seen by users had been infringing, Authors would have a different case. And, if the outputs were ever to become infringing, Authors could bring such a case. But that is not this case.

Instead, Authors challenge only the inputs, not the outputs, of these LLMs. They point to the fully trained LLMs and the Claude service only to shed light on how training itself uses copies of their works and the ways the Claude service could be used to produce still other works that would compete with their works. This order does the same. Authors' arguments that the training use is not transformative are unavailing.

First, Authors argue that using works to train Claude's underlying LLMs was like using works to train any person to read and write, so Authors should be able to exclude Anthropic from this use (Opp. 16). But Authors cannot rightly exclude anyone from using their works for training or learning as such. Everyone reads texts, too, then writes new texts. They may need to pay for getting their hands on a text in the first instance. But to make anyone pay specifically for the use of a book each time they read it, each time they recall it from memory, each time they later draw upon it when writing new things in new ways would be unthinkable. For centuries, we have read and re-read books. We have admired, memorized, and internalized their sweeping themes, their substantive points, and their stylistic solutions to recurring writing problems.

Second, to that last point, Authors further argue that the training was intended to memorize their works' creative elements — not just their works' non-protectable ones (Opp. 17). But this is the same argument. Again, Anthropic's LLMs have not reproduced to the public a given work's creative elements, nor even one author's identifiable expressive style (assuming *arguendo* that these are even copyrightable). Yes, Claude has outputted grammar, composition, and style that the underlying LLM distilled from thousands of works. But if someone were to read all the modern-day classics because of their exceptional expression, memorize them, and then emulate a blend of their best writing, would that violate the Copyright Act? Of course not. Copyright does not extend to “method[s] of operation, concept[s], *1022 [or] principle[s]” “illustrated[] or embodied in [a] work.” [17 U.S.C. § 102\(b\)](#); *see, e.g., Nichols v. Universal Pictures Corp.*, [45 F.2d 119, 120–22 \(2d Cir. 1930\)](#) (Judge Learned Hand) (stage properties and storytelling elements); [Apple Comput., Inc. v. Microsoft Corp., \[35 F.3d 1435, 1445 \\(9th Cir. 1994\\)\]\(#\) \(“user-friendly” design principles and elements\); \[Swirsky v. Carey, \\[376 F.3d 841, 848 \\\(9th Cir. 2004\\\)\\]\\(#\\) \\(music theory principles and chord progressions\\).\]\(#\)](#)

Third, Authors next argue that computers nonetheless should not be allowed to do what people do.

Authors cite a decision seeming to say as much (Opp. 16–17). But the judge there twice emphasized while discussing “purpose and character” of the use that what was trained was “not generative AI (AI that writes new content itself).” Rather, what was trained — using a proprietary system for finding court opinions in response to a given legal topic — was a competing AI tool for finding court opinions in response to a given legal topic. That was not transformative. [Thomson Reuters Enter. Centre GmbH v. Ross Intell. Inc.](#), [765 F. Supp. 3d 382, 398 \(D. Del. 2025\)](#) (Judge Stephanos Bibas), *appeal docketed*, No. 25-8018 (3d Cir. Apr. 14, 2025).

A better analogue to our facts would be an AI tool trained — using court opinions, and briefs, law review articles, and the like — to receive legal prompts and respond with fresh legal writing. And, on facts much

like those, a different court came out the other way. It found fair use. [*White v. W. Pub. Corp.*, 29 F. Supp. 3d 396, 400 \(S.D.N.Y. 2014\)](#) (Judge Jed Rakoff).

The latter use stood sufficiently “orthogonal” to anything that any copyright owner rightly could expect to control. See [*Warhol*, 598 U.S. at 538–40, 143 S.Ct. 1258](#). It could thus be freed up for the copyist to use, “promot[ing] the progress of science and the arts, *without* diminishing the incentive to create.” [*Id.* at 531, 143 S.Ct. 1258](#) (emphasis added); see [*U.S. Const. art. I, § 8, cl. 8*](#).

In short, the purpose and character of using copyrighted works to train LLMs to generate new text was quintessentially transformative. Like any reader aspiring to be a writer, Anthropic’s LLMs trained upon works not to race ahead and replicate or supplant them — but to turn a hard corner and create something different. If this training process reasonably required making copies within the LLM or otherwise, those copies were engaged in a transformative use.

The first factor favors fair use for the training copies.

The Effect of the Use Upon the Market for or Value of the Copyrighted Work.

The final factor is “the effect of the use upon the potential market for or value of the copyrighted work.” 17 U.S.C. § 107(4). This factor points against fair use when a copyist makes copies available that displace demand for copies the copyright owner already makes available or readily could. *Texaco*, 60 F.3d at 926–28 (reproduced copies); *Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 461 (9th Cir. 2020) (derivative copies). “While the first factor considers whether and to what extent an original work and secondary use [in principle could] have substitutable purposes, the fourth factor focuses on actual or potential market substitution.” *Warhol*, 598 U.S. at 536 n.12, 143 S.Ct. 1258 (emphasis added).

The Copies Used to Train Specific LLMs.

The copies used to train specific LLMs did not and will not displace demand for copies of Authors’ works, or not in the way that counts under the Copyright Act.

Again, Authors concede that training LLMs did not result in any exact copies nor even infringing knockoffs of their works being provided to the public. If that were not so, this would be a different case. Authors remain free to bring that case in the future should such facts develop.

Instead, Authors contend generically that training LLMs will result in an explosion of works competing with their works — such as by creating alternative summaries of factual events, alternative examples of compelling writing about fictional events, and so on. This order assumes that is so (Opp. 22–23 (citing, e.g., Opp. Exh. 38)). But Authors’ complaint is no different than it would be if they complained that training schoolchildren to write well would result in an explosion of competing works. This is not the kind of competitive or creative displacement that concerns the Copyright Act. The Act seeks to advance original works of authorship, not to protect authors against competition. *Sega*, 977 F.2d at 1523–24.

Authors next contend that training LLMs displaced (or will) an emerging market for licensing their works for the narrow purpose of training LLMs (Opp. 21–22). Anthropic argues that transactional costs would exceed Anthropic’s expected benefit from any such bargain, prompting it to cease dealing with any rightsholders or else to cease developing such technology altogether (Br. 22–23). Our record could support either account — so this order must assume Authors are correct. A market could develop (Opp. 19–21 (citing record)). Even so, such a market for that use is not one the Copyright Act entitles Authors to exploit.

None of the cases cited by Authors requires a different result. All contemplated losses of something the Copyright Act properly protected — not the kinds of fair uses for which a copyright owner cannot rightly expect to control. See *TVEye, Inc.*, 883 F.3d at 181 (use of a right legally reserved to and factually already being licensed by copyright owner); *Texaco*, 60 F.3d at 931 (same); *Ringgold v. BET, Inc.*, 126 F.3d 70, 80–81 (2d Cir. 1997) (use of a right legally reserved to and factually likely to be marketable by copyright owner — displaying images of her artistic work in television shows); cf. *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1179 (9th Cir. 2013) (no evidence use could be or “was likely to” be marketable).

The fourth factor thus favors fair use for the training copies.

f. [Bartz v Anthropic PBC](#), Case 3:24-cv-05417-WHA (N.D.Cal. Oct 17, 2025)

“Plaintiffs have a strong case on the downloading, but success is not assured were they to go to trial. The district judge ruled that Anthropic’s reproductions of named plaintiffs’ books specifically in the process of training large language models was a fair use and therefore not a violation of the Copyright Act. And, the judge ruled that Anthropic’s one-to-one conversion of purchased print copies for its central library into digital copies for its central library, done for space-saving and searchability, was a fair use. However, the judge also ruled that Anthropic’s downloading of millions of books (named plaintiffs’ among them) from pirate libraries and assembling them into its own central library was not a fair use, at least not on the summary judgment record. Anthropic had copied many pirated books. It had made further copies of only some for training LLMs, keeping all.

Because only Anthropic had moved for summary judgment, all factual disputes and inferences were drawn in plaintiffs’ favor at that point. At trial, however, plaintiffs would need to prove all facts before a jury...

Under the settlement, class members will give up all claims they could have brought against Anthropic broadly related to past AI inputs, namely pirating and copying their works in the past up to the point of any AI output. But they do not give up claims about past AI outputs, nor claims of any kind about future conduct (on or after August 25, 2025). They get in return an injunction that Anthropic destroy copies of their works derived from LibGen and PiLiMi (so long as not subject to legal preservation requirements). They also get a per-work award of about \$3,000”.

- g. [Kadrey v Meta Platforms, Inc](#) 788 F.Supp.3d 1026 (N.D.Cal. 2025)



AI, AI AND COPYRIGHT

Meta Copyright AI Success in Recent Legal Battles

BARRY SOOKMAN · JUNE 28, 2025

In two decisions issued within a week, Meta won two summary judgment motions in defending the copyright and DMCA claims against it related to training its Llama models. The first decision,...

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FACTOR ONE: THE PURPOSE AND CHARACTER OF THE USE

The first factor “considers the reasons for, and nature of, the copier's use of an original work.” [Warhol](#), 598 U.S. at 528, 143 S.Ct. 1258. Several things can be relevant to the “purpose and character” of a use. One is whether that use is “of a commercial nature or is for nonprofit educational *1044 purposes.” 17 U.S.C. § 107(1). Another might be whether it was made in good or bad faith (although whether this is relevant is unclear under current law). See [Oracle](#), 593 U.S. at 32–33, 141 S.Ct. 1183.

Primarily, however, the first factor focuses on whether the secondary use is “transformative”—that is, on whether and to what extent “the new work merely supersedes the objects of the original creation (supplanting the original), or instead adds something new, with a further purpose or different character.” [Warhol](#), 598 U.S. at 528, 143 S.Ct. 1258 (cleaned up). Allowing a use with a “distinct purpose” is often consistent with the goals of copyright because it encourages the development of new expression “without diminishing the incentive to create.” [Id.](#) at 531, 143 S.Ct. 1258. On the other hand, a secondary use with the same purpose as the original work is “more likely to provide the public with a substantial substitute for” the original. [Id.](#) at 531–32, 143 S.Ct. 1258 (cleaned up). This factor favors **Meta**. There is no serious question that **Meta's** use of the plaintiffs’ books had a “further purpose” and “different character” than the books—that it was highly transformative. The purpose of **Meta's** copying was to train its LLMs, which are innovative tools that can be used to generate diverse text and perform a wide range of functions. Cf. [Oracle](#), 593 U.S. at 30, 141 S.Ct. 1183 (transformative to use copyrighted computer code “to create a new platform that could be readily used by programmers”). Users can ask Llama to edit an email they have written, translate an excerpt from or into a foreign language, write a skit based on a hypothetical scenario, or do any number of other tasks. The purpose of the plaintiffs’ books, by contrast, is to be read for entertainment or education.

The plaintiffs do not meaningfully disagree about Llama’s purpose. To the contrary, they acknowledge that LLMs have “end uses” including serving “as a personal tutor,” assisting “with creative ideation,” and helping users “generate business reports.” And several of the plaintiffs testified to using LLMs for various purposes, all distinct from creating or reading an expressive work like a novel or biography—for instance, to find recipes, get tax or medical advice, translate documents, or conduct research. All of these functions are different from the use to which the plaintiffs’ books are generally put. So copying the books to develop a tool that can perform those functions is a use with a different purpose and character than the books themselves.

FACTOR FOUR: THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK

This factor looks to both the “extent of market harm caused by the particular actions of the alleged infringer” and to “ ‘whether unrestricted and widespread conduct of the sort engaged in by the defendant ... would result in a substantially adverse impact on the potential market’ for the original.” Campbell, 510 U.S. at 590, 114 S.Ct. 1164 (quoting 3 M. Nimmer & D. Nimmer, Nimmer on Copyright § 13.05 (1993)). The “only harm” relevant to this factor “is the harm of market substitution.” Id. at 593, 114 S.Ct. 1164. When, by contrast, the secondary work kills demand for the first through criticism or parody, the harm is not cognizable under the Copyright Act. Id. at 591–92, 114 S.Ct. 1164. Also relevant to this factor are “the public benefits the copying will likely produce.” Oracle, 593 U.S. at 35, 141 S.Ct. 1183.

As noted previously, the fourth factor is “undoubtedly the single most important element of fair use.” Harper & Row, 471 U.S. at 566, 105 S.Ct. 2218. Meta is therefore wrong to suggest that, because the first factor strongly favors it, the inquiry should basically end there. To the contrary, given the fourth factor’s importance, it’s easy to imagine a situation in which a secondary use is highly transformative but the secondary user nonetheless loses on fair use because allowing people to engage in that kind of use would have too great an effect on the market for the original work. But by the same token, in a case where the first factor cuts strongly in favor of the defendant, generally the plaintiff’s only chance to defeat fair use will be to win decisively on factor four.

In a case involving the use of copyrighted works to train generative AI models, there are at least three ways a plaintiff might try to argue that the defendant’s copying harmed the market for the works (or that the market would be harmed if that copying were widespread). First, the plaintiff might claim that the model will regurgitate their works (or outputs that are substantially similar), thereby allowing users to access those works or substitutes for them for free via the model. Second, the plaintiff might point to the market for licensing their works for AI training and contend that unauthorized copying for training harms that market (or precludes the development of that market). Third, the plaintiff might argue that, even if the model can’t regurgitate their own works or generate substantially similar ones, it can generate works that are similar enough (in subject matter or genre) that they will compete with the originals and thereby indirectly substitute for them. In this case, the first two arguments fail. The third argument is far more promising, but the plaintiffs’ presentation is so weak that it does not move the needle, or even raise a dispute of fact sufficient to defeat summary judgment.

h. [In Re OpenAI, Inc Copyright Infringement Litigation](#), Statement of Interest of the United States (Sept 1, 2026)

“American creators, publishers, and innovators should be protected from AI-generated outputs that infringe their protected content, without undermining lawful innovation and free expression.” In striking that balance, the President has encouraged Congress to consider enabling licensing frameworks or collective rights systems for rights holders (while suggesting that such legislation should not address when or whether such licensing is required), establishing a federal framework for protecting individuals

from the unauthorized distribution or commercial use of AI-generated digital replicas of their identifiable attributes, and monitoring the development of copyright law to evaluate whether additional legislation is needed. But consistent with the national interest in promoting innovation and free expression, the “training of AI models on copyrighted material,” in and of itself, “does not violate copyright laws.”

“In this litigation, the New York Times seeks to narrow fair-use doctrine to exclude the training of OpenAI’s large language models (LLMs). That result would be inconsistent with basic copyright law principles and severely hamper “the Progress of Science and useful Arts.” U.S. CONST. art. I, § 8, cl. 8. As discussed below, publications—including independent and startup media, in addition to the New York Times itself—are leveraging LLMs for journalistic and other purposes. And beyond the subject matter of this litigation, LLMs are already helping researchers across fields achieve major breakthroughs. Constraining LLM development under a misunderstanding of fair use doctrine would thwart such creative and scientific progress while hindering American prosperity and economic mobility.”

Training Of LLMs On Written Works Is Exceedingly Transformative

In sum, the use of copies to train LLMs is extraordinarily transformative. That OpenAI uses its LLMs for commercial purposes does not move the needle. “Nearly all of the illustrative uses listed in the preamble paragraph of § 107 . . . are generally conducted for profit.” Campbell, 510 U.S. at 584. And “the more transformative the [secondary] work, the less will be the significance of other factors, like commercialism.” Authors Guild, 804 F.3d at 219 (quoting Campbell, 510 U.S. at 579).

Training Of AI Models Does Not Hamper The Potential Market For Or Value Of The Copyrighted Work In The Relevant Sense

To “affect the market for the original in a way cognizable under this factor,” a use must

“act[] as a substitute for” the copyrighted work. Campbell, 510 U.S. at 591; see also Harper & Row, 471 U.S. at 567 (the use must “materially impair the marketability of the work which is copied”). The question is not whether the use could cause “some loss of sales.” Authors Guild, 804 F.3d at 224. What matters is “significant substitutive competition,” not competition generally. *Id.* at 219 (emphasis added). Because copyright “protects only the author’s manner of expression,” the question is whether the use “could provide a significant substitute for the purchase of the author’s [work].” *Id.* at 224-25. That hinges on whether the copying is “done in a manner that results in widespread revelation of sufficiently significant portions of the original as to make available a significantly competing substitute.” *Id.* at 223. After all, to succeed on any “claim of infringement under the Copyright Act, . . . [a] plaintiff must usually show not only a similarity but a ‘substantial’ similarity between the allegedly infringing work and the original elements of his own copyrighted work.” Goldsmith, 598 U.S. at 557 (Gorsuch, J., concurring) (citing 4 Nimmer on Copyright § 13.03[A] (2023)); accord *Yurman Design, Inc. v. PAJ, Inc.*, 262 F.3d 101, 110 (2d Cir. 2001) (similar).

Using a copyrighted work to train an LLM—without more—generally does not result in this sort of substitution because it does not “reveal[]” a significant amount of original “authorial expression.” Authors Guild, 804 F.3d at 224; see also, e.g., Bartz, 787 F. Supp. 3d at 1031 (“[T]raining LLMs did not result in any exact copies nor even infringing knockoffs of their works being provided to the public.”). In fact, training does not reveal anything to the public at all—it simply creates a copy of a protected work in order to teach an LLM to recognize relationships between data and adapt to new information. The potential for future outputs that might cause market harm is simply not relevant to evaluating an LLM training use under the required use-by-use analysis.

To be clear, even LLM outputs that compete with text articles—without reproducing or substantially resembling protected aspects of text articles—would not be substantially similar to, or substitutes for, copyrighted works in the relevant sense. When outputs “copy no protected elements of the original work, much less significant portions,” they cannot cause the relevant form of market harm just because they happen to be “in the same genre or category of works” as the original, given that “a genre is an uncopyrightable idea or method of expression.” Edward Lee,

Copyright Dilution Under Constitutional Scrutiny, 25 Chi.-Kent J. Intell. Prop. 1, 6 (2026) (citing *Peters v. West*, 692 F.3d 629, 636 (7th Cir. 2012) (“[N]o poet can claim copyright protection in the form of a sonnet or a limerick.”)); accord *Abdin v. CBS Broad. Inc.*, 971 F.3d 57, 70 (2d Cir. 2020) (no infringement where “an independent comparison of the works reveals that there is no substantial similarity between the protectible features of [the original]” and the secondary use). Whether a particular output or category of outputs is substantially similar to the copyrighted work, and whether any substantially similar reproduction might be a significantly competing substitute, are distinct questions involving distinct “challenged use[s]” (and potentially additional legal questions). *Harper & Row*, 471 U.S. at 568. But outputs lacking in substantial similarity cannot cause the sort of market harm that is cognizable in the fair-use analysis.

Contrary dicta in a Northern District of California decision misapplies copyright principles to LLM training. See *Kadrey*, 788 F. Supp. 3d at 1052-57. Without the benefit of briefing, the *Kadrey* court adopted an “indirect substitution” theory of “market dilution” based on the potential “use [of] LLMs to create books and then sell them, competing with books written by human authors.” *Id.* at 1052, 1054 (internal quotation marks omitted); see also *id.* at 1036 (noting “the plaintiffs barely g[a]ve this issue lip service”). The court acknowledged that “in a more typical case, an original work is being compared to a single secondary work,” and whether the works are “similar” is relevant. *Id.* at 1054. The court also appeared to acknowledge that its theory of indirect market dilution has “never made a difference in a case before.” *Id.* at 1055. But in the court’s view, similarity between an original work and a secondary use is irrelevant in this context, because LLMs “are trained on the creative expression in copyrighted books” as an initial matter, and LLM outputs have the “potential to flood the market with competing works.” *Id.* at 1054-55. The court thus stated that LLM developers “will generally need to pay copyright holders for the right to use their materials” even for training, because LLMs will often have “the ability to severely harm the market for the works being copied, and thus severely undermine the incentive for human beings to create.” *Id.* at 1035-1036.

Even putting aside the fact that human beings use LLMs to create, the *Kadrey* court’s application of the fourth fair-use factor is deeply flawed. Most obviously, the court improperly collapsed LLM training and LLM outputs into a single continuous use, then applied a capacious, genre-level understanding of “substitution.” But LLM training is its own use. It does not involve any substitution. And even when it comes to LLM outputs competing with text articles, “the type of loss of sale envisioned . . . will generally occur in relation to interests that are not protected by the copyright.” See *Authors Guild*, 804 F.3d at 224. In other words, the *Kadrey* court’s broad market dilution theory overlooks arguably the most basic element of copyright infringement—whether the “works are substantially similar,” *Goldsmith*, 598 U.S. at 525—by conflating training (which requires copying of entire works, but no public access) with outputs (which the public may access, but which will often if not always lack substantial similarity).

i. [In re Mosaic LLM Litigation](#) 2025 WL 2294910, (N.D.Cal., 2025)

District Court expressed the opinion on a discovery motion that “while the conclusions in *Kadrey* and *Bartz* are well-reasoned, the Ninth Circuit has not yet addressed factor four in the context of generative AI. This remains an unsettled area of law.”

For example, although Judge Alsup found that factor four weighed in favor of fair use, he differentiated between the types of use that infringed on “something the Copyright Act properly protected” versus those “for which a copyright owner cannot rightly expect to control.” Bartz, 2025 WL 1741691, at *17. As generative AI proliferates, the right to license one’s creative work to train generative AI models may arguably become—or may already be—something copyright owners “rightly expect to control.” Id.; see Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 568 (1985) (citing senate report stating that “a use that supplants any part of the normal market for a copyrighted work would ordinarily be considered an infringement”) (emphasis added). Five years ago, a market for licensing one’s books for AI training could hardly be considered “normal” or “reasonable[.]” See Harper & Row, 471 U.S. at 586; Am. Geophysical Union v. Texaco Inc., 60 F.3d 913, 930 (2d Cir. 1994). Five years from now, it may be as “normal” a market as the market for licensing books for movies or television shows. Given the rapid evolution of generative AI and entrepreneurial responses to this emerging technology, what “the normal market for a copyrighted work” is in flux. Harper & Row, 471 U.S. at 586. Documents regarding Microsoft’s negotiations with third parties to license books for training AI models may show that such a market is “normal[.]” “reasonable, or likely to be developed” and thus such a market could be cognizable under factor four. 4 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 13F.08 (2025); Texaco Inc., 60 F.3d at 930. And, as Plaintiffs note, the Second Circuit has held that the existence of a “ready market or means to pay for the use” of copyrighted work can, under factor four, make unauthorized use “less fair.” Texaco, 60 F.3d at 931. Microsoft’s negotiations regarding licensing with publishers and other rightsholders are relevant to support or belie the existence of a “ready market[.]” Id.

The undersigned is not aware of controlling authority that forecloses a finding that evidence of an existing market for licensing material for training AI bears on the factor four analysis. And, if Judge Breyer considers the market for licensing for AI-training purposes under factor four, documents responsive to RFP No. 2 would be highly important to resolving the fair use issue, which may very well be dispositive of Plaintiffs’ claims. See Fed. R. Civ. P. 26(b) (permitting discovery that is “relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy...[and] the importance of the discovery in resolving the issues”). The door has not yet been shut on Plaintiffs’ arguments regarding the market for licensing and, as long as this theory is active, documents related to the licensing market are substantially needed and highly relevant.

j. Getty Images (US) Inc v Stability AI Limited [2025] EWHC 2863 (Ch)



AI, AI, AI AND COPYRIGHT, ARTIFICIAL INTELLIGENCE, COPYRIGHT

Copyright Infringement and AI: Insights from Getty v Stability AI

BARRY SOOKMAN · NOVEMBER 5, 2025

In a landmark decision released yesterday in Getty Images (US) Inc v Stability AI Limited [2025] EWHC 2863 (Ch), a United Kingdom court ruled that Stability AI was not liable for secondary...

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In a landmark decision released yesterday in *Getty Images (US) Inc v Stability AI Limited* [2025] EWHC 2863 (Ch), a United Kingdom court ruled that Stability AI was not liable for secondary copyright infringement by importing or distributing models that were partly trained using images allegedly owned or exclusively licensed by Getty. Central to the decision was the finding of Justice Joanna Smith that Stability AI's trained models did not store copies of Getty images as required by the U.K. Copyright, Designs, Copyright, Designs and Patents Act 1988 (the "CDPA"), and hence were not infringing copies, even though they may have been trained without copyright holder authorization.

Summary of findings on secondary infringement

As in Canada, the CDPA differentiates between primary and secondary acts of infringement. Secondary acts of infringement are broadly addressed to downstream dealings or involvement, as opposed to acts which originate reproductions of copyright works.

Under the CDPA, persons can be liable for secondary infringement if they import an infringing copy of a work or they commit other acts such as distributing an infringing copy of a work, and satisfy other statutory conditions including that they knew or had reason to believe that their relevant dealings are with an infringing copy of a work.^[i]

Getty argued that the model(s) in issue, known as Stable Diffusion, was an "infringing copy" because it has been imported into the UK and its making in the U.K. would have constituted an infringement of the copyright under CDPA. It also contended that because the model was trained using infringing copies of Getty images that the model itself had to be regarded as an infringing copy. The court rejected these contentions finding that Stable Diffusion did not itself store the data on which it was trained and could not therefore be considered an infringing copy.

The court summarized evidence adduced at the trial to support the findings. For example, Justice Smith quoted from unchallenged evidence in a report from Professor Brox which described why the training process did not result in the training data being stored in the model:

"8.36...in order for a diffusion model to successfully generate new images, that model must learn patterns in the existing training data so that it can generate entirely new content without reference to that training data.

8.37 Rather than storing their training data, diffusion models learn the statistics of patterns which are associated with certain concepts found in the text labels applied to their training data, i.e. they learn a probability distribution associated with certain concepts. This process of learning the statistics of the data is a desired characteristic of the model and allows the model to generate new images by sampling from the distribution...

8.40 ...For models such as Stable Diffusion, trained on very large datasets, it is simply not possible for the models to encode and store their training data as a formula.... It is impossible to store all training images in the weights. This can be seen by way of a simple (example) calculation. As I explained in paragraph 6.28 above, the LAION-5B dataset is around 220TB when downloaded. In contrast, the model weights for Stable Diffusion 1.1-1.4 can be downloaded as a 3.44GB binary file. The model weights are therefore around five orders of magnitude smaller than a dataset which was used in training those weights".

Justice Smith also found this evidence to be consistent with the evidence in an Expert Joint Statement that "the model weights do not directly store the pixel values associated with billions of training images" – i.e. digital images each consisting of what Professor Farid describes in his report as "an array of pixels".

“During training, images are converted from pixel space into “latent space” using an autoencoder. Latent space is a compressed, representative form of the pixel space image that is more memory and computationally efficient.” [ii]

Getty did not assert that the various versions of Stable Diffusion (or more accurately, the relevant model weights) included or comprised a reproduction of any Copyright Work. Getty’s case was that they did not need to show any of this; they argued it was enough that the making of the model weights (had it been carried out within the UK) would have constituted an infringement of copyright. The court rejected this, finding that the relevant provisions of the CDPA did not address “the act of reproduction of a copy, but to the downstream dealings in an article which is “an infringing copy”.

Thus, it seems to me to be clear that an infringing copy must be a copy, as Stability submits; the essence of the infringement is that there has been an infringement of copyright by the reproduction of the work (including by its storage in any medium by electronic means) in any material form. Consistent with the decision in *Sony v Ball*, I cannot see how an article can be an infringing copy if it has never consisted of/stored/contained a copy...

As *Sony v Ball* also makes plain, an article becomes an infringing copy when the act of reproduction occurs. From that moment the article is an infringing copy – but it ceases to be an infringing copy once it no longer contains the copy...

In reality therefore, the dispute between the parties as it finally emerged in closing, really turns on whether an article whose making involves the use of infringing copies, but which never contains or stores those copies, is itself an infringing copy such that its making in the UK would have constituted an infringement. Taking the specific facts with which I am concerned, is an AI model which derives or results from a training process involving the exposure of model weights to infringing copies itself an infringing copy?

In my judgment, it is not. It is not enough, as it seems to me, that (in Getty Images’ words) “the time of making of the copies of the Copyright Works coincides with the making of the Model” (emphasis added). While it is true that the model weights are altered during training by exposure to Copyright Works, by the end of that process the Model itself does not store any of those Copyright Works; the model weights are not themselves an infringing copy and they do not store an infringing copy. They are purely the product of the patterns and features which they have learnt over time during the training process. Getty Images’ central submission that “as soon as it is made, the AI model is an infringing copy” is, accordingly, in my judgment, entirely misconceived... The fact that its development involved the reproduction of Copyright Works (through storing the images locally and in cloud computing resources and then exposing the model weights to those images) is of no relevance. The model weights for each version of Stable Diffusion in their final iteration have never contained or stored an infringing copy.

I agree with Stability that the concept of an infringing copy cannot be interpreted in the abstract without reference to the fundamental nature of a copy.. Such an interpretation precludes the potential for an article which has never contained a copy to be capable of being “an infringing copy”. But, sections 27(2) and (3) require the article that is made to be a “copy”. They are not concerned with a process which (while it may involve acts of infringement) ultimately produces an article which is not itself an infringing copy.

k. [*Doe 1 v. GitHub, Inc.*](#) 2026 WL 2728464 (9th Cir. Sept. 16. 2026)

Turning to the merits of the output theory, we agree with the district court that the complaint does not state a claim under the DMCA. The complaint describes an AI tool that does not look up and reproduce stored work but rather creates new work. That new work may or may not infringe plaintiffs' copyrights in their code, but it cannot reasonably be described as a copy of that code from which CMI has been “removed” or “altered.”

11 “[W]e start where we always do: with the text of the statute.” [Van Buren v. United States](#), 593 U.S. 374, 381, 141 S.Ct. 1648, 210 L.Ed.2d 26 (2021). [Section 1202\(b\)](#) provides that “[n]o person shall, without the authority of the copyright owner or the law,” “intentionally remove or alter any copyright management information” or “distribute ... works [or] copies of works, ... knowing that copyright management information has been removed or altered without authority of the copyright owner or the law.” [17 U.S.C. § 1202\(b\)\(1\), \(3\)](#). The verb “remove” means “to get rid of,” while “alter” means “to cause to become different in some particular characteristic.” Webster's Third New International Dictionary 63, 1921 (1993). In context, both verbs imply taking an affirmative act with respect to CMI connected to a work that already exists. See, e.g., 4 Nimmer on Copyright § 12A.10[B][1][a] (2026) (citing “defacing ... the title page of a book” or “delet[ing] the electronic information that may accompany a computer file” as paradigmatic [section 1202\(b\)](#) violations). One who creates a new work and fails to include CMI cannot be said to have “removed” or “altered” anything. See [Falkner v. General Motors LLC](#), 393 F. Supp. 3d 927, 938 (C.D. Cal. 2018) (explaining that mere “failure to include” CMI does not “constitute[] removal or alteration” of CMI); accord [Kipp Flores Architects, LLC v. AMH Creekside Dev., LLC](#), No. 23-50750, — F.4th —, — — —, 2026 WL 2453096, at *13–17 (5th Cir. Aug. 21, 2026) (opinion of Willett, J.). Instead, removal or alteration requires taking away or changing attribution information from an existing work... According to the complaint, Copilot relies on a “complex probabilistic process” to predict “the most likely solution to a given prompt,” based on “the solution it has found in the most projects” answering similar questions. Sometimes, plaintiffs allege, that output may match snippets of “code from the training data.” But their account of the algorithm's internal process—inferring “statistical patterns governing the structure of code” and identifying the most likely completion—does not describe an action taken with respect to CMI attached to an existing work. Instead, it describes a process through which Copilot generates new works. In that respect, it differs from a traditional search engine, which, in response to a user's query, retrieves and displays stored information—that is, copies of materials that already exist. If Copilot functioned like a search engine and produced outputs that were identical to plaintiffs' code but did not contain CMI, then plaintiffs might have a stronger claim that Copilot had removed their CMI. But that is not what plaintiffs have alleged.

To be sure, Copilot's output may in some cases be substantially similar to existing code. As the district court observed, Copilot may produce “a ‘modified format,’ ‘variation[],’ or the ‘functional[] equivalent’ of the licensed code” without the CMI. We express no view on whether that similarity would allow plaintiffs to assert a claim for copyright infringement. But we note that many copyright cases involve the creation of a work that is substantially similar to the plaintiff's without attribution. See [Yonay v. Paramount Pictures Corp.](#), 163 F.4th 685, 692 (9th Cir. 2026) (“To show unlawful appropriation,” a plaintiff must show “that the works in question share ‘substantial similarity in protectable expression.’ ” (emphasis omitted) (quoting [Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin](#), 952 F.3d 1051, 1064 (9th Cir. 2020) (en banc))). If that were all it took to violate [section 1202\(b\)](#), the DMCA would supplant traditional copyright protections and subject defendants to potentially ruinous liability under the DMCA's enhanced statutory damages. Compare [17 U.S.C. § 1203\(c\)\(3\)](#) (permitting up to \$25,000 per violation) with [17 U.S.C. § 504\(c\)\(1\)](#) (capping traditional copyright statutory damages at \$30,000

per work). We decline plaintiffs' invitation to transform run-of-the-mill copyright-infringement claims into DMCA claims.

I. [ANI Media Pvt. Ltd. v. OpenAI OpCo LLC, CS\(COMM\) 1028/2024 \(India\)](#)

Whether use by Open AI amounts to “private or personal use, including research

214. The process of “research” is generally an intermediary process in all cases. It is undertaken before an output is generated. Research happens before an academician writes a book or a research paper, or before a judge writes a judgment, or before a medicinal chemist develops a drug, or before any such developmental process. It is normally a closed activity and is not disclosed to the general public. It is always the output of the research that is communicated to the public.

215. From the submissions made in the present case, it transpires that the process of training LLMs underlying ChatGPT involves machine learning of the stored literary works by screening and organising them. In this process, the data is analysed by making extractions from the literary works and converting them into machine-readable training inputs. This data is used to train the LLMs iteratively to rectify errors and generate the most probable statistical output. Accordingly, the process of training of LLMs underlying ChatGPT can be considered as a form of research for generating new knowledge and advancing artificial intelligence systems.

216. Clearly, when Section 52(1)(a) was last amended in 2012, the legislature could not have imagined the advent of artificial intelligence (AI) and/or LLMs. However, when the Court interprets the aforesaid provisions in the light of modern-day technological developments, the Court has to give a liberal and purposive interpretation using the ‘doctrine of updating construction’.

218. In my opinion, the expression “research” should be given an updating construction by taking into account the modern-day technical advancements. With the advent of these technologies, research/ learning is no longer confined to humans. It is now being done through Artificial Intelligence. However, ultimately the research is at the behest of humans and for the benefit of humans. For example, Section 52(1)(i) of the Copyright Act exempts the act of reproduction by a teacher “in the course of instruction” from the ambit of infringement. If tomorrow a human teacher is replaced by an AI bot or Robot to say that the said exception could only be used by a human would be a regressive view. Such an approach would limit societal progress. Therefore, the acts of further research cannot be confined to acts of human being alone and the same would extend to machine learning as well.

219. Therefore, on a prima facie view, from the above analysis, this Court is of the view that the process of training LLMs underlying ChatGPT undertaken by Open AI using stored literary work of ANI falls under “private or personal use, including research” as provided in Section 52(1)(a) of the Copyright Act and fulfils the purpose test.

FAIRNESS TEST

There is no single test which has been adopted uniformly or consistently by the Indian Courts. There is broad consensus amongst the counsel in the present case also that the US four-factor test is not applicable in India and there is no single uniform test for examining whether an act under Section 52(1)(a) is fair dealing or not.

235. In light of the aforesaid, this Court shall attempt to formulate factors to determine “fair dealing” which are suitable in the facts and circumstances of the present case. Whether use by Open AI amounts to fair dealing or not is ultimately a question of fact, degree and the overall impression carried by the Court.

236. As discussed above, Section 52 of the Copyright Act balances the author's right and the public interest. Therefore, Court has to consider if the training of LLMs by using the original literary works of ANI violates ANI's rights. To determine fairness, it has to be examined whether the aforesaid use by Open AI of ANI's works prejudice interests of ANI, resulting in competition, actual or potential damage to ANI's legitimate commercial interests. Simultaneously, consideration must be given to the extent to which the activities of Open AI serve broader public interests, including scientific research, technological innovation, access to information, and the dissemination of knowledge. Thus, in the facts and circumstances of the case, in my opinion, the factors relevant for determining fair dealing can be summarised as under:

- a. Whether Open AI's use of ANI's original literary works is limited to training its LLMs underlying ChatGPT?
- b. Whether the usage of ANI's literary works by Open AI would result in economic competition and would prejudice the legitimate interests of ANI, thereby causing actual or potential damage to ANI?
- c. Whether the functions performed by Open AI through ChatGPT serve the overall public interest?

237. The first two factors examine how Open AI's use of ANI's works does not affect the author's rights, and the third factor examines whether functions performed by Open AI serve public interest.

238. The aforesaid factors are broadly in line with the principles emerging from Article 9 of Berne Convention for the Protection of Literary and Artistic Works (1886) (hereinafter 'Berne Convention'). Article 9 of the Berne Convention which discusses the rights available to a copyright holder and its possible exceptions is reproduced below:

Article 9 Right of Reproduction:

1. Generally; 2. Possible exceptions; 3. Sound and visual recordings (1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.
2. It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.
3. Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

[Emphasis supplied]

239. The Statements of Objects of the Copyright (Amendment) Act, 1983 provides that the Copyright Act is in conformity with the Berne Convention. 240. Now, I proceed to examine the facts and circumstances of the present case in light of the aforesaid factors.

Whether the usage of ANI's literary works by Open AI would result in economic competition and would prejudice the legitimate interests of ANI, thereby causing actual or potential damage to ANI?

246. As is evident from aforesaid, the functions performed by ChatGPT are quite distinct from the functions performed by ANI. ChatGPT has multifarious functions, whereas business of ANI is limited to news reporting and syndication of news. In the context of news, ChatGPT only provides a summary or snippets of the news articles or reports carried by ANI along with a reference to its website. As held in Issue No.2, the expressions used are not the same as used by ANI. Even when a user searches for daily news, the responses given by ChatGPT are similar to that of an AI-enabled search engine, using RAG technique to provide multiple sources for the snippets of the news content. In sum, the purpose and character of use of copyrighted works by Open AI is fundamentally different from that of the news articles of ANI. Hence, it cannot be said that responses produced by ChatGPT are substitutes for news articles published by ANI.

250. Except for bare averments, nothing has been placed on record on behalf of ANI to show that they have lost any market share or there has been a reduction in subscription revenues due to operations of Open AI.

251. Hence, in my prima facie opinion, the use of ANI's works by Open AI would not result in market substitution of ANI's works and consequently, will not affect its market share or cause actual or potential damage to ANI.

Whether the functions performed by Open AI through ChatGPT serve the overall public interest?

252. The public benefits flowing from such trained LLMs underlying ChatGPT are considerable. They are designed to assist users in analysing and generating text, improving access to information, supporting education, assisting scientific research, facilitating software development, enabling translation and communication, and creating tools for persons with disabilities. The technology is also capable of supporting research, learning, and knowledge dissemination at scale, thereby advancing science and the useful arts in a broader societal sense.

253. Training LLMs underlying ChatGPT therefore contributes to advancing scientific knowledge, developing innovative computational tools, disseminating information, promoting education, enhancing accessibility, and advancing artificial intelligence research. These objectives resonate with the broader constitutional and statutory commitment to advancing knowledge and learning. While the rights of copyright owners remain important, the societal benefits arising from scientific and technological research constitute a relevant consideration in assessing the fairness of a dealing.

254. Therefore, the factor of public interest also stands established. 255. Thus, on a prima facie view, all the factors for establishing the aspect of fair dealing stand satisfied in the present case and the fairness test stands fulfilled.

FINDINGS

256. In light of the discussion above, both the purpose test as well as the fairness test under Section 52(1)(a) stand fulfilled. Hence, in my prima facie view, Open AI's acts of storage of the literary works of ANI for the training of its LLMs would fall under Section 52(1)(a) of the Copyright Act and hence, would not amount to infringement.

**m. GEMA v. OpenAI (Munich Regional Court I, Case No. 42 O 14139/24)
Landgericht München I, 11 November 2025**

The infringement of copyright exploitation rights through reproduction under § 16 UrhG in models was recognized early on in the literature (cf. Wandtke, NJW 2019, 1841, 1842). Nevertheless, in the legal literature, both the classification as reproduction in the model within the meaning of § 16 UrhG and its coverage by the exception in § 44b UrhG are disputed (on the state of the debate, Sesing-Wagenpfeil, ZGE 2024, 212, 217 f., fn. 25 et seq.), which is partly because different factual premises are assumed. The correct approach, however, is to distinguish between reproductions that merely serve to convert the original into a digital format or are made for purposes of analysis, and copies that remain in the model. Following Spindler (GRUR 2016, 1112) and the Hamburg Regional Court (LG Hamburg, 27.09.2024, 310 O 227/23 para. 46 – LAION), the following temporally successive phases are to be distinguished:

- (1) the extraction of the training material and its conversion into a machine-readable format, i.e. the creation of the training data material,
- (2) the analysis of the data material and its enrichment with meta-information, i.e. the training of the model, and
- (3) the subsequent use of the trained model by means of prompts and outputs.

For the asserted claim for injunctive relief based on reproductions within the meaning of § 16 UrhG in the model, phase 2 is relevant. The song lyrics at issue are reproducibly contained in the models. Their memorization constitutes a reproduction relevant under copyright law.

**n. GEMA v. Suno (Munich Regional Court I, Case No. 42 O 763/25)
Landgericht München I, 31 July 2026 — Request REQ0008236**

“The storage of the musical works at issue in the models constitutes a reproduction pursuant to § 16(1) of the German Copyright Act (UrhG).”

“The model’s functionality, the application for generating music, and the recognizable outputs in Exhibit K 3 constitute infringements of the copyright exploitation rights, which are attributable to the defendant. aa. By offering the model and using it to generate music, the defendants infringe the unnamed right of public performance under § 15(2), sentence 1, of the German Copyright Act (UrhG).”

“The musical works at issue are reproduced by the defendant through the outputs in Exhibit K 3 pursuant to § 16(1) of the German Copyright Act (UrhG).”

“The reproduction of the musical orks at issue in the model during Phase 2 is not covered by the text and data mining exception under § 44b UrhG or Art. 4 of the DSM Directive.”

“The reproductions resulting from the memorization within the model were not created for the purpose of generating the training dataset—and thus within the scope of Phase 1, in which the authors’ exploitation interests are not affected—but rather occurred additionally during the training of the model in Phase 2. The reproductions within the model do not serve any further data analysis. The premise of text and data mining and the related exceptions—that the automated analysis of mere information in and of itself does not affect exploitation interests— does not apply in this context. On the contrary, the reproductions in the model constitute an infringement of the rights holders’ exploitation rights.”

“Article 53(1)(c) and (d) of the AI Regulation, which entered into force on August 2, 2025, following the act of infringement pursuant to Article 113(3)(b) of the AI Regulation, does not lead to a different result.”

“The claims asserted under U.S. law based on acts of infringement that took place within the territory of the United States are available to the plaintiff under applicable law.”

“The defendant cannot defend its reproductions during training under the fair use doctrine.”

aa “The assessment must be based on the specific use that actually took place (see *Warhol*, 598 U.S. 508, 533 (2023)). The defendant downloaded the works at issue from the Internet and produced additional audio recordings, including for processing and preprocessing (e.g., conversion and formatting) and for creating backup and security copies of the training data. In doing so, the defendant created sound recordings that fall under the reproduction right pursuant to 17 U.S.C. §§ 106(1), 101. In addition, the defendant trained its model using the musical works at issue. The defendant’s music generator produced the outputs submitted. Even if, as the defendant argues, infringements—if any—occurred only in extremely isolated instances and therefore did not alter the fundamental nature and purpose of the reproductions made by the defendant during training, in the present case these infringements are not merely incidental and insignificant, but rather serious and therefore at the heart of the legal dispute.

bb. The first factor weighs against the defendant.

Undoubtedly, the training of a model such as the defendant’s, which can generate new musical works, may generally be viewed—and, as decided by the two lower courts, may constitute—a transformative use that serves a broader purpose and is therefore covered by the fair use doctrine: new musical works are created using a novel technology. In the present case, however, there is no justification for the specific use, as required by the Supreme Court under the first factor (see *Warhol*, 598 U.S. 508, 531–533 (2023)). The defendant’s application did not generate new musical works, but rather, through the outputs at issue, sound recordings that bear a substantial resemblance to the musical works at issue with which the defendant trained its model. The musical works were thus not transformed (see *Lee, Cooper, Grimmerman* 72 J. Copyright Soc’y (2025) 251, 366: “When a model memorizes a work and generates it verbatim as an output, there is no transformation in content. Even a non-exact generation can still be nontransformative.”). Furthermore, the defendant’s use was commercial within the meaning of 17 U.S.C. § 107(1). If such commercial use exists, and the original and the reproduction serve the same or a very similar purpose, the first factor generally weighs against a finding of fair use (see *Warhol*, 598 U.S. 508, 532–533 (2023)). Furthermore, the defendant circumvented the Rolling Cipher’s security mechanism to access the data at issue and thereby acted in bad faith. Specifically:

1) Contrary to the requirements under 17 U.S.C. § 107(1), the defendant’s use of the musical works at issue to train its model neither differs in character from the original nor serves a further purpose.

(a) As a result of the reproduction of the musical works at issue as training data and their storage in the model, the defendant’s music generator generated the outputs at issue, as already established in the assessment of the evidence to be evaluated under the *lex fori* (see above B. XI. 2.). Under the applicable German copyright law, these outputs infringe upon the exploitation rights granted to the copyright holder.

Even under U.S. law, if it were applicable to the outputs, the outputs at issue would likewise be classified as infringements. Since each of the outputs exhibits substantial similarities to the musical works at issue with which the model was trained, they would constitute infringing sound recordings under 17 U.S.C. §§ 101, 106(1).” (Based on Google Translate)

o. [*Toronto Star Newspapers Limited v. OpenAI Inc.*, 2025 ONSC 6217](#)

Barry Sookman, [Ontario Court Refuses to Dismiss Copyright case against OpenAI](#), December 10, 2025.



Comments on the OpenAI decision

While the decision is an important one, it did not decide any of the substantive issues in the case. In fact, the decision made clear that it did not preclude OpenAI from raising the territorial principle in later proceedings to limit extra-territorial claims that fall outside the scope of the CCA. OpenAI would also not be precluded from contesting whether the breach of contract and unjust enrichment claims are pre-empted as being in conflict with the CCA.

The court's findings on the carrying on business connecting factor was heavily influenced by purely virtual activities carried on by OpenAI and by the decisions in *Equustek*. However, the court did not refer to later decisions by the Supreme Court of Canada in *Chevron*^[ii] and *H.M.B Holdings*^[iii] where the court confirmed that carrying on business requires a physical and not merely a virtual presence.

The court's findings on the infringements in Ontario connecting factor was heavily influenced by its reliance on *SOCAN*. However, *SOCAN* applied the real and substantial connection test to the communication to the public right. Later decisions of the Federal Court in *Sirius* and *Maier Estate*,^[iv] which the court did not refer to, have held that that test does not apply to the reproduction right. These courts have held that the only relevant factor is the location in which copies of a work are fixed into some material form. The locations where source copies reside or acts of copying onto servers located outside of Canada, are not infringements according to those cases.

The court's finding that OpenAI may have been subject to the publishers' terms of use was made without any analysis of the general criteria for the enforcement of contracts. In particular, it did not address whether OpenAI was aware of the publishers' website terms having regard to, for example, the conspicuousness of those terms including to OpenAI's crawlers, whether the sites used any directives in robots.txt or HTTP response headers to signal that content must not be scraped or used for model training. It also did not analyze how scraping a site using autonomous agents constituted an objective manifestation of acceptance of the website terms, something required for contract formation.^[v] In *Century 21*, the court based its decision by applying to the facts of that case, the ordinary principles of offer and acceptance. According to that Court:

As noted in the authorities referred to above, the law of contract requires that the offer and its terms be brought to the attention of the user, be available for review and be in some manner accepted by the user. Such an analysis turns on the prominence the site gives to the proposed Terms of Use and the notice that the user has respecting what they are agreeing to once they have accepted the offer. To establish a binding contract consideration will also be given to whether the user is an individual consumer or a commercial entity and in addition a one-time user or a frequent user of the site.

The court also did not address other cases that have found browse wrap agreements to be problematic and unenforceable...

OpenAI is appealing the Ontario court decision. We can therefore expect that the decision will not be the last word on the issues in this case.

9. **AI and trade-mark infringement**

a. **Getty Images (US) Inc v Stability AI Limited [2025] EWHC 2863 (Ch)**



AI, AI, AI, AI AND COPYRIGHT, ARTIFICIAL INTELLIGENCE, COPYRIGHT

**Trademark Infringement and AI: the
Getty and Cohere cases**

Getty Trade-mark infringement – high level findings

More than half of the over 200 page Getty decision was taken up with the court's assessment as to whether Stability AI was liable for trademark infringement for displaying Getty watermarks in response to user prompts. Examples of images in outputs bearing Getty watermarks are shown below:



The court found that in that a few circumstances some of the Stability AI models produced images with synthetically generated watermarks that infringed the UK's trademark law.

Justice Smith summarized her decision as “both historic and extremely limited in scope” [. \[i\]](#)

Other commentators have focused on the “extremely limited scope” statement by the judge. But, her findings on trademark infringement are truly also “historic”. This case may have dealt with synthetically generated watermarks, but future cases may deal with other types of signs (aka, marks) that are generated by prompts with other generative AI services, other types of AI generated content, and even potentially to more traditional services such as search services .

Stability AI defended the trademark allegations by, among other things, contending that while [Stable Diffusion](#) may be used to generate synthetic images which include Getty images' watermarks, broadly, that (i) where such images are generated by a user, this is the result of third party use of Stable Diffusion, and not a statement or commercial communication attributable to Stability, or for which Stability is responsible in law; (ii) any such generation of watermarks does not amount to use of any sign in those watermarks in the course of trade; and that (iii) watermarked synthetic image outputs will only be generated with willful contrivance of the user.

Justice Smith found against Stability AI on these arguments, at least in some cases, to find that it infringed Getty's trademark rights under Sections 10(1) and 10(2)(b) of the UK Trade Marks Act (the “TMA”).

These findings were strongly contested and could raise very important issues on any appeal.

Getty was able to establish through technical and expert evidence that:

- Real users had been able to generate synthetic images with Getty (including iStock) watermarks using certain versions of Stability AI models.
- Some watermarks only resulted from prompting designed to display the watermarks such as through the use of verbatim prompting.
- In many cases watermarks were not displayed in outputs because an effective watermark filter was used or because some other technique was used to identify and remove images containing Getty watermarks.
- Some watermarks were distorted or blurred to such an extent that they could not support a claim for trademark infringement.

After reviewing extensive evidence, the judge confessed that she “can arrive at no determination as to the statistical probability of watermarks* being generated in any given situation based on any of the experiments undertaken by the parties.”

However, the court found that in real world examples the Getty marks could appear in outputs such as the Donald Trump Image shown below.



Findings on Section 10(1) of the TMA

The court made some important findings in assessing whether Stability AI was liable for infringement under Section 10(1) of the UK TMA.

Section 10(1) TMA [\[ii\]](#), requires, among other things, that the use of the signs [\[iii\]](#) must be in the course of trade, and must be in relation to goods or services which are identical to those for which the trade mark is registered. [\[iv\]](#)

Use in the course of trade

With respect to use in the course of trade, the alleged infringer only “uses” a sign if it uses it “in its own commercial communication”. There must be some ‘active behaviour’ on the part of the defendant ‘and direct or indirect control of the act constituting the use’, such as ‘affixing’ the sign on the goods, or ‘offering’ or ‘supplying’ services under that sign.” Under this law, e-commerce platforms like e-Bay that merely enable uses by customers and internet referencing service providers like Google which only create the technical conditions necessary for the use of the infringing sign, will not meet this requirement. [\[v\]](#)

In deciding whether Stability AI’s models met these requirements, the court accepted Getty’s contention that the models were responsible for the outputs that contained the Getty watermarks because Stability AI trained the models that resulted in the generation of the synthetic Getty watermarks. The court agreed with these submissions of Getty essentially finding that Stability AI’s role in the generation of the watermarks was not merely passive, instrumental, and automated, the hallmarks of passive neutral innocent intermediaries., although the court did not uses these terms.

Getty Images contend that (unlike in Google France), Stability is using the sign for its own commercial communication: the communication that bears the watermark* in the form of the output image is the commercial communication of Stability because it is generated by its Model. This, says Getty Images, involves more than merely storing the output images (unlike in Coty) – but instead involves offering the service of generating the images and putting those images onto the market. Unlike in Daimler, this case also involves active behaviour and control on the part of Stability because (i) it is the entity that trained the Model; (ii) it is the entity that could have filtered out watermarked images in order to ensure that its model did not produce outputs bearing

watermarks*; (iii) it makes the Model available to consumers through GitHub, Hugging Face, the Developer Platform and DreamStudio (which I have accepted in relation to v2.x; SD-XL and v1.6. For v1.x the position is more complex); and (iv) it is the entity making the communication that bears the relevant signs. None of this can be said to be the independent action of another economic operator.

Use in relation to goods

Under the Section 10(1) of the TMA, use of a sign “in relation to goods and services” means use for the purposes of distinguishing the goods and services in question from those of other suppliers, and use such as to create the impression that there is a material link in the course of trade between the goods or services concerned and the undertaking from which those goods or services originate. The mark must be used as a trademark, a guarantee to consumers of the origin of the goods and services.

Stability contended that the average consumer seeing a watermark on a synthetic image would not form the impression that it was a message about trade origin or that it indicated any material link in the course of trade between the images on which the watermarks appear and the Getty images. The court rejected this contention stating:

For all the reasons I have identified above, I consider that there is evidence in this case of output images, generated by v1.x and v2.1, which include the Sign and which, in my judgment, will be perceived by the average consumer as a commercial communication by Stability. Stability is running a business in the UK and providing Stable Diffusion to consumers as part of that business. The Signs are affixed to synthetic images generated by customers owing to the functionality of the Model, itself dependent upon its training data (over which Stability has absolute control and/or responsibility). It is in this way that Stability “offers and puts synthetic images bearing the Signs on the market” and this is Stability’s commercial communication to the consumer.

I find that the use of the Sign (assuming it to be sufficiently clear and subject to the fact sensitive analysis... above in relation to the synthetic image on which it appears) is such as to create the impression that there is a material link in the course of trade between the goods concerned and the trade mark proprietor. The average consumer using DreamStudio may interpret the Sign as designating Getty Images as the undertaking of origin of the images. The average consumer using all access mechanisms may interpret the Sign as indicative of a connection between Getty Images and Stability, including because the Models have been trained on Getty Images Content and licensed for use. [\[vi\]](#)

Findings on Section 10(2)(b) of the TMA

Under Section 10(2)(b) of the TMA, a person infringes a registered trade mark if the person uses in the course of trade a sign that is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered, and there exists a likelihood of confusion on the part of the public, which includes the likelihood of confusion associated with the use if the trademark.

Given the court’s finding under Section 10(1), the main remaining issue under Section 10(2)(b) for the court was whether the Getty could establish a likelihood of confusion in the use of the watermarks.[\[vii\]](#) The court found this condition to be met.

A significant proportion, paying a moderate degree of attention, will think that a generated image bearing a watermark* has been supplied by Getty Images or that Stable Diffusion has been trained on Getty Images Content under license from Getty Images, or that there is some other economic link between Getty Images and Stability. I agree with Getty Images that the average consumer in this class (or a significant proportion) would not assume that a major corporation such as Getty Images would allow its assets and signs to be used by third parties without its permission. Even assuming that such consumer was not confused as to the origin of the image, the natural assumption would be that the synthetic output was generated by a company that had some form of licensing or other economic arrangement in place with Getty Images – there would thus be confusion as to the licensing position and thus the extent of any association with the Marks.

Infringement under Section 10(3) of the TMA and passing-off

Getty also alleged infringements under Section 10(3) of the TMA where there can be an infringement, if among other things, a “trade mark has a reputation in the United Kingdom and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.” It also alleged common law passing off.

The court dismissed all of these claims.

- b. [*Advance Local Media LLC et al v Cohere Inc*](#), 2025 WL 3171892 (S.D.N.Y. Nov 13, 2025)



AI, AI, AI, AI AND COPYRIGHT, ARTIFICIAL INTELLIGENCE, COPYRIGHT

Trademark Infringement and AI: the Getty and Cohere cases

The publishers allege trademark infringement and false designation of origin in violation of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a)(1)(A). Specifically the publishers allege that, when RAG is turned off, Command sometimes delivers a hallucinated text in response to a request for a specific article, with the output bearing the publishers' marks. The publishers contend that Cohere's use of their trademarks leads users to incorrectly believe that Command's hallucinated articles are written by, associated with, or approved by Publishers, a context different from the facts in the Getty case.

The court dismissed Cohere's motion to dismiss these claims.

McMahon, J., of the U.S. Southern District held that Cohere had used the publishers' marks in commerce because the publishers had plausibly pleaded that their trademarks are displayed to users when Cohere falsely attributes its own hallucinated articles to publishers and because of Cohere's use of their marks in advertising its Command model.

The court also found that the Complaint plausibly alleged a likelihood of confusion.

The Complaint alleges that consumers have come to recognize Publishers' trademarks as exclusively identifying Publishers' brands, which are known to the public as high-quality sources of reliable and

informative content due to decades of widespread, exclusive use. It further alleges that the marks Cohere uses are indistinguishable from Publishers' registered trademarks and that when Cohere distributes news articles, Command competes with Publishers in the marketplace. Specifically, Publishers claim that Cohere uses these indistinguishable marks when disseminating Publishers' articles in order "to build and deliver a commercial service that mimics, undercuts, and competes with lawful sources for their articles and that displaces existing and emerging licensing markets." According to Publishers, it is not readily apparent to users that the output Command delivers is inaccurate, and users will therefore rely on the output as if it were Publishers' authentic content. This is especially likely given that Publishers have publicly announced the licensing of their content to other AI companies in recent years. Based on Publishers' allegations, it is plausible that an ordinary consumer would be confused about an article's source.