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Delaware Court Grants Summary Judgment to Plaintiff in Machine Learning / AI Copyright Case

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Albert Einstein is credited with saying "the measure of intelligence is the ability to change." In September 2023, Judge Stephanos Bibas—sitting by designation in the District of Delaware—denied plaintiff Thomson Reuters' motion for summary judgment on the issue of fair use in a Generative AI (GenAI) copyright lawsuit. On February 11, 2025, Judge Bibas issued an order contradicting that 2023 decision and granting the plaintiff's summary judgment motion on fair use and other copyright issues and denying defendant Ross Intelligence Inc.'s competing summary judgment motions.

Judge Bibas began his 2023 decision stating, "Facts can be messy even when parties wish they were not. But summary judgment is proper only if factual messes have been tidied. Courts cannot clean them up." He began his 2025 decision also with an observation: "A smart man knows when he is right; a wise man knows when he is wrong. Wisdom does not always find me, so I try to embrace it when it does––even if it comes late, as it did here. I thus revise my 2023 summary judgment opinion and order in this case."

Background

Defendant Ross is a startup in the legal-research industry that sought to create a "natural language search engine" using machine learning and artificial intelligence. Ross envisioned a software where users would enter questions and the software would return verbatim quotes from judicial opinions without any commentary. Ross initially approached Thomson Reuters for a license to use the plaintiff's Westlaw database to train Ross's machine learning-AI. Because Thomson Reuters does not allow competing platforms to use its service for the purpose of building or improving that competing platform, they declined.

A brief sidebar[1] for our non-attorney readers. Westlaw publishes judicial opinions, which are not copyrightable because they originate from government officers. Westlaw adds editorial content and annotations, including its "Headnotes" which summarize key points of law and case holdings. Westlaw also organizes its content using its "Key Numbering System" so that readers can drill down from a broad category (e.g., "intellectual property") to find cases on specific topics, such as motions for summary judgment in copyright litigations. Thomson Reuters assigns a specific number to each topic and subtopic.

When Thomson Reuters denied Ross's request for a license to Westlaw, Ross retained a third-party vendor to create memos with legal questions and answers that were direct quotations from legal opinions. The vendor created approximately 25,000 question-and-answer sets manually and by using a text scraping bot.

Two years after denying the plaintiff's summary judgment motion, Judge Bibas declared he was wrong, vacated his 2023 decision, and granted summary judgment that Ross violated the plaintiff's copyright in 2,800+ Headnotes.

In 2023, Judge Bibas found genuine disputes over material facts relating to whether Thomson Reuters had a copyright in its headnotes and Key Numbering System, whether Ross's resulting product was substantially similar to the copyrighted material (i.e., whether an ordinary person would view the two works as basically the same), and several other issues. He consequently ruled questions of direct liability for copyright infringement, contributory liability, vicarious liability, and Ross's fair use defense had to go to the jury to be resolved.

In the decision, Judge Bibas held there was no genuine dispute that both the headnote and Key Number System materials "clear[ed] *Feist's* minimal threshold for originality" standard and were copied by Ross. This directly contradicts the 2023 decision, where Judge Bibas held a jury would need to decide whether the Headnotes and Key Number System were original enough to be copyrightable. Judge Bibas granted summary judgment in favor of the plaintiff as to 2,830 Headnotes.

Judge Bibas's 2025 decision does not resolve every dispute, and some issues will proceed to a jury should the parties not settle. These include whether the Key Numbering System, 500 judicial opinions containing the plaintiff's editorial decisions, and 5,367 other Headnotes were copied by Ross, among other issues.

The 2025 decision finds Ross's copying was not protected as "fair use"

The 2025 decision also rejected Ross's defenses to copyright infringement. These "affirmative defenses" are only applicable if copyright infringement has occurred and essentially excuse what

would otherwise be a violation. Because each is an "affirmative defense," Ross as the defendant bears the burden to show each one applies.

Judge Bibas quickly resolved Ross's arguments that the defenses of "innocent infringement," "copyright misuse", "merger," and "scenes à faire" applied. He then turned to what has been a widely discussed issue in any material considering GenAI copyright decisions—whether the defendant's copying is protected as "fair use."

Under the Copyright Act, a court must consider four factors when determining whether a fair use affirmative defense applies: (1) the use's purpose and character, including whether it is commercial or nonprofit; (2) the copyrighted work's nature; (3) how much of the work was used and how substantial a part it was relative to the copyrighted work's whole; and (4) how the defendant's use affected the copyrighted work's value or potential market. 17 U.S.C. § 107(1)–(4).

In 2023, Judge Bibas found genuine disputes over material facts under each factor and denied the plaintiff's summary judgment motion. Far from granting the plaintiff's summary judgment motion, the 2023 decision stated, "The nature of the copyrighted work favors fair use." In 2025, however, he vacated the 2023 decision and granted the plaintiff's summary judgment motion, finding the fair use defense did not apply to the facts of this specific case.

The decision **first** found the use was commercial because Ross stood to profit from the exploitation of the copyrighted material without paying. Judge Bibas also found the use was not transformative because Ross's use of the material did not have a further purpose or different character from Thomson Reuters' use of the same material. In determining whether this first factor supported a fair use defense, Judge Bibas considered case law allowing copying as part of an "intermediate step" to discover unprotectable information or as a minor step towards developing an entirely new product. Thus, even if the intermediate copying step was not transformative, the resulting end product was. This theory has been applied to video games and computer programs. In 2023, Judge Bibas found a factual dispute over whether Ross used the Headnotes' text to get its AI to replicate and reproduce the work or merely studied the language patterns to learn how to produce new material and therefore denied summary judgment. In 2025, he found the intermediate copying cases did not apply because those cases were specific to computer code and "[i]n copyright, 'computer programs differ from books, films, and many other literary works in that such programs almost always serve functional purposes.'" Relatedly, he found in those cases the copying was necessary for the competitors to innovate, and while Ross's copying made it easier to reach a different end-product, it was by no means necessary.

The court then held the second and third factors favored finding a reasonable juror could find the fair use affirmative defense existed. Judge Bibas found the material was "not **that** creative" although it did have more than the "minimal spark of originality" required to be copyrightable. Although the

second factor favored Ross, Judge Bibas noted in 2025, as he did in 2023, that "this factor 'has rarely played a significant role in the determination of a fair use dispute.'" Judge Bibas also found the third factor supported Ross because "Ross's output to an end user does not include a West Headnote."

The court finally held the fourth factor—which is "undoubtedly the single most important element of fair use"—favored Thomson Reuters. In 2023, Judge Bibas noted Ross's use may create a brand-new research platform that serves a different purpose than the plaintiff's platform such that it would not impact the mark for the plaintiff's Westlaw platform. The 2025 decision states, "In hindsight, those concerns are unpersuasive." It did not matter whether Thomson Reuters used the data to train its own legal search tools because the effect on a **potential** market for AI training data was enough for this factor to support the plaintiff.

What this means to you

Judge Bibas's 2025 decision is the first to hold a fair use defense does not apply in a machine learning case. The complaint in this litigation was filed on May 6, 2020, several years before OpenAI released its GPT-4 model and GenAI became a common phrase in both businesses and at home. Judge Bibas's 2025 decision says it is "undisputed that Ross's AI is not generative AI" because the program does not "generate" new text in response to a question but rather regurgitates verbatim quotations from published judicial opinions. This is in sharp contrast to other GenAI litigations where the parties dispute to what extent a response from a GenAI tools includes verbatim text from the material on which it was copied. The underlying facts are nevertheless very similar to how other GenAI tools were "trained," and other courts will have to decide whether they agree with Judge Bibas's finding that the intermediate copying cases are not relevant to GenAI.

Regardless, this decision will almost certainly be addressed by those courts handling copyright lawsuits against undisputedly GenAI companies such as OpenAI. Indeed, less than 24 hours after the 2025 decision, other defendants have brought the decision to the attention of the judges in their own cases. In *Concord Music Group Inc. et al. v. Anthropic PBC*, the plaintiffs requested leave to submit a notice of supplemental authority regarding Judge Bibas's 2025 summary judgment decision. The defendants opposed the motion for leave, noting Judge Bibas's statements limiting the scope of his decision.

Contact us

If you have questions relating to the intersection of artificial intelligence and intellectual property law, contact Dustin Taylor or your Husch Blackwell attorney.

[1] Double pun fully intended.