

Court Definitively Rejects Fair Use Defense in AI Training Case

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In one of the most closely-watched copyright cases this year, a Delaware court rejected defendant, [ROSS Intelligence's](#) ("ROSS"), fair use and other defenses by vacating its previous stance and granting summary judgment in favor of plaintiff, [Thomson Reuters](#) ("Reuters"). The case stems from allegations that ROSS used copyrighted material from Reuters' legal research platform, [Westlaw](#), to train its artificial intelligence ("AI")-driven legal research engine. While the decision will certainly be informative to the dozens of pending lawsuits against AI developers, it is important to note the scope of the opinion is limited to the specific facts of this case. Specifically, generative AI was not involved, and the court's analysis of the fair use factors was heavily focused on the fact that the parties are direct competitors.

The fair use analysis considered the four statutory factors, with factors one and four weighing most heavily.

Factor One—Purpose and Character of the Use: The court easily determined that ROSS's use was commercial, as ROSS sought to profit from the copyrighted material without paying the customary price. Significantly, the court also found that the use was not transformative—ROSS used the copyrighted material to build a competing legal research tool, which closely resembled Westlaw's functionality. Finally, the court rejected ROSS's attempts to align its actions with a string of cases involving so-called "intermediate copying" of computer code, explaining that although the final commercial product ROSS presented to consumers was not a direct copy (the copying was an intermediate step), ROSS' use was not *necessary*. Accordingly, because the use lacked a different purpose or character, the court found this factor weighed against fair use.

Factor Two—Nature of the Copyrighted Work: While the court acknowledged that Reuters' headnotes involved editorial judgment and the minimum amount of creativity required for copyright validity, they were not highly creative works. Rather, they were more akin to factual compilations, which receive less protection under copyright law. The court found that this factor weighed in favor of fair use, but noted that this factor rarely plays a significant role in fair-use determinations,

Factor Three—Amount and Substantiality of the Use: Although ROSS copied a significant number of Westlaw headnotes, its final product did not present them directly to users. Instead, ROSS used the headnotes to train its AI to help retrieve judicial opinions. Given that the public did not receive direct access to the copyrighted material, the court found that this factor weighed in favor of fair use.

Factor Four—Market Effect. The court explained that ROSS' use created a market substitute for Reuters' legal research platform, directly harming its core business. In addition, Reuters had a potential market for licensing its headnotes as AI training data, and ROSS' use undermined that opportunity. The court emphasized that this "is undoubtedly the single most important element of fair use," and found that it weighed decisively against ROSS and against a finding of fair use.

Putting it Into Practice: Some key takeaways from this decision and its potential impact on other AI cases:

- this decision is fact-specific and does not address generative AI;
- the decision signals the limits of fair use, particularly in cases where copyrighted material is used for a non-transformative purposes to develop a competing product; and
- as AI litigation continues to evolve, companies developing or deploying AI should seek ongoing legal training and they should ensure they have (and update) effective policies to manage AI risks for training AI and using AI to generate content.