


AI Law and Policy

Legal Considerations Involving Artificial Intelligence

Court Grants Interlocutory Appeal on AI Fair Use Issue



By James Gatto on April 4, 2025

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We previously **reported** on the groundbreaking AI Fair Use ruling in the Thomson Reuters Ross Intelligence case, where the court found that based on the facts of this case fair use was not a defense. Ross Intelligence moved, pursuant to 28 U.S.C. § 1292(b), for certification of the Court's Order, for interlocutory appeal and for a stay pending that appeal. The Court has now granted that request.

The Court noted: "Though I remain confident in my February 2025 summary judgment opinion, I recognize that there are substantial grounds for difference of opinion on

controlling legal issues in this case. These issues have the potential to change the shape of the trial. I thus certify the following two questions to the Third Circuit: (1) whether the West headnotes and West Key Number System are original; and (2) whether Ross’s use of the headnotes was fair use. A short opinion further explaining my reasoning will follow.”

In its brief in support of its motion, Ross argued that this case presents “urgent questions” governing AI. It asserted that the legal theories in this case “understate the importance of originality and overstate the scope of copyright protection.” It further asserts that the evident and predictable result is a pronounced chill on AI innovation, as copyright law is used to stop “fair learning”^[1] based on factual statements. Based on this it concludes that Appellate review of these questions cannot wait.

A district court may certify an order for interlocutory appeal when it finds “that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b)(2).

ROSS requested certification on two questions: (1) whether the Westlaw headnotes fail the Copyright Act’s originality requirement because the notes lack “creative spark” and (2) whether ROSS’s use of .076% of Westlaw’s headnotes to help train an AI search engine is transformative or otherwise a fair use of the headnotes.

ROSS asserted that the issues presented are controlling questions of law and that there are substantial grounds for differences of opinion on each question. Interestingly, as evidence of substantial grounds for differences of opinion, ROSS cited the Court’s own two conflicting opinions in this case. See *Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc.*, 694 F. Supp. 3d 467, 478, 487 (D. Del. 2023) (Thomson Reuters I) (where the Court concluded that originality and fair use were jury questions) and *Thomson Reuters II*, 2025 WL 458520 (where the Court had a “belated insight” that inspired a “change of heart,” and granted summary judgment to Thomson Reuters on both originality and fair use).

FOOTNOTES

[1] See [paper](#) on Fair Learning by Professor Lemley et al.

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