

Precedential Ruling – U.S. Court Rejects Fair Use Defense for AI Training with Copyrighted Content – Thomson Reuters vs Ross Intelligence

Client Update – February 2025

Dear Clients,

We wish to bring to your attention a significant legal development from the U.S. that carries substantial implications for the AI industry, particularly concerning the use of copyrighted materials in AI training.

On February 11, 2025, the U.S. District Court for the District of Delaware granted Thomson Reuters, the owner of Westlaw, a legal research platform, partial summary judgment ([click here](#) for the ruling) in its high-profile copyright infringement case against Ross Intelligence. The court found that Ross Intelligence infringed upon Thomson Reuters' copyrights by using content from Westlaw, a key feature of Westlaw is its headnotes, which summarize the key points of legal opinions and rejected Ross's fair use defense, emphasizing that the use was non-transformative, commercial in nature, and intended to directly compete with Westlaw.

Case Background

Ross Intelligence, an AI-driven legal research company, sought to obtain training data for its AI system after Westlaw declined to grant it a license. To achieve this, Ross Intelligence collaborated with a third-party provider who engaged lawyers to create "Bulk Memos" - collections of legal questions paired with possible answers derived from Westlaw's headnotes.

Thomson Reuters sued Ross Intelligence for copyright infringement, stating the Ross Intelligence is unlawfully copying Westlaw's headnotes and other editorial content.



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Thomson Reuters claimed that these headnotes, crafted by legal experts, summarize legal rulings and according to Thomson Reuters, are protected under copyright law.

Key Findings of the Court

- **Copyright Validity:** The court reaffirmed that Westlaw's headnotes and Key Number System possess the minimum threshold of originality to be protected under copyright law (and that each headnote is an individual copyrighted work).
- **Direct Copyright Infringement:** The court ruled that Ross had copied 2,243 headnotes from Westlaw, dismissing its argument that these were merely factual compilations.
- **Fair Use Defense Rejected:** The court found that Ross's use of the materials was not transformative and directly impacted the market for Westlaw's legal research services. The court applied the four-factor fair use test which is under the U.S. copyright law:

- 1) **Purpose and Character of Use:** Weighed against Ross since Ross's use was commercial in nature; and furthermore the use is not transformative since Ross sought to create a competing product.

Ross also argued that its use was permissible under the doctrine of "intermediate copying," but again the court disagreed, noting among others that the use of the headnotes was not necessary to achieve ROSS's desired purpose.

- 2) **Nature of the Copyrighted Work:** Weighed in favor of Ross since although Westlaw's material has the minimal required originality, it is not highly creative, since the headnotes are factual summaries, but this factor was not decisive.
- 3) **Amount and Substantiality of the Portion Used:** Weighed in favor of Ross because the material available to the public did not include the Westlaw headnotes.



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4) **Effect on the Market:** This is according to the court the single most important element of "fair use" and weighed against Ross since the court determined that Ross intended to compete with Westlaw by developing a market substitute, i.e an alternative legal research tool built on copyrighted content without authorization. Given these factors, the court rejected Ross's fair use defense, concluding that its use of Westlaw's headnotes constituted direct copyright infringement.

- **Defenses Dismissed:** Ross's arguments of innocent infringement, copyright misuse, and other defenses were rejected, and Thomson Reuters won summary judgment on direct copyright infringement for 2,243 headnotes.

Why This Matters

This ruling has implications for AI-driven legal research and content aggregation.

- This ruling raises questions about the strength of the fair use defenses in AI cases. The fair use defense has limits, especially as is the case here, when the copied material is used for commercial advantage in a competing product.
- This ruling emphasizes that copyright law extends to curated and organized legal research content, despite being derived from public sources, not just original judicial opinions.
- AI developers must carefully consider copyright laws when sourcing training data.
- As AI technologies continue to evolve, this case will likely influence how courts address similar disputes involving AI training and copyrighted content.

Conclusion

The above ruling highlights the necessity for companies developing AI-driven tools to ensure they have proper authorization when using copyrighted materials. AI developers should carefully assess their data sources and licensing agreements to mitigate legal risks associated with AI development.



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What's Next?

While a jury trial is still pending on matters concerning damages and specific copyright validity determinations, this ruling represents a significant legal milestone. The Court's decisive stance on copyright protection serves as a crucial warning sign for businesses that incorporate proprietary data in their operations.

It is important to note that in this case, the court emphasized that the ruling did not involve generative AI (AI that writes and creates content for itself) but rather "non-generative AI" (as is the case with Ross) because it did not produce new legal content but instead retrieved and processed existing case law to return relevant judicial opinions. Other courts will have to take up the crucial questions of fair use, transformativeness and market effects in the context of generative AI.

The Israeli Perspective

In December 2023, Israel's Ministry of Innovation, Science, and Technology published its inaugural policy on AI regulation and ethics ([click here](#) for the policy full text), recommending concrete steps to foster responsible AI innovation in the private sector (the "AI Policy"). Like many initial policies published by national regulators and global organizations, the AI Policy sets high-level guidelines, goals, and recommendations regarding the regulation of AI development and use. The AI Policy, inter alia, relates to copyright law and refers to an opinion of the Israeli ministry of Justice from 2022 ([click here](#) for the full text) which aims to clarify the scope of AI-based ventures' rights to use copyrighted content for machine learning. According to the opinion, except in exceptional cases, using copyrighted content for machine training falls under the permissible uses in the Israeli copyright law (including fair use) and therefore does not constitute a copyright infringement. In certain situations, the existing law does not permit the use of copyrighted content for machine learning, such as when the system is trained on the works of a single creator and generates tools that compete with them in their markets.

It is important to note that the opinion does not refer to an infringement of the work product itself and there should be an ad hoc examination of the venture's use of protected works.



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Furthermore, in September 2024, Israel became a signatory to Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law ([click here](#) for the full text), which sets forth provisions for the responsible deployment of AI while safeguarding human rights, democratic values and the rule of law. The convention underscores fundamental principles including the protection of human rights, equality and non-discrimination, transparency and supervision, responsibility and accountability, as well as privacy and personal data protection.

We will continue to closely monitor developments in this evolving area and provide insights into how they impact the legal and technology sectors.

If you have any questions about copyright protections or AI-related legal compliance, please reach out to our team.

The information provided on this client update is for general informational purposes only and should not be construed as legal advice or a substitute for professional legal counsel.

As always, the team at Agmon with Tulchinsky remains at your disposal.

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