

# First AI Copyright Appeal's Reach Hinges on Market Impact Issue

By Kyle Jahner 2026-06-10T14:13:11000-04:00

The first federal appeals court oral argument over AI training copyright fair use is set to take place Thursday, and how the judges analyze the issue of market impact could say a lot about the impact on other AI cases.

Ross Intelligence Inc. is arguing before the US Court of Appeals for the Third Circuit that it made fair use of Westlaw headnotes to train its AI legal analysis tool.

The case differs from the more sprawling copyright lawsuits against Anthropic, Meta, and OpenAI in a number of ways. Its AI is non-generative, uses relatively low-creativity legal summaries, and more directly competes with Thomson Reuters Enterprise Center GmbH's Westlaw product.

But like the other cases, Thomson's implicates disagreement over how to parse the market impact of AI outputs on works used as training inputs,, which can swing fair use analyses. That could make the Third Circuit's ultimate ruling a potential bellwether in litigation that's worth billions and carries massive implications.

Third Circuit Judge Stephanos Bibas, sitting by designation on the US District Court for the District of Delaware, [held](#) that the direct competition between Ross and Westlaw was relevant to the fair use analysis, even when Ross' AI outputs [didn't infringe](#).

Courts weighing in on the premise since then have varied in their perspectives.

If the panel expresses interest in resolving that question, it's more likely its eventual opinion will resonate broadly, said [Rebecca Tushnet](#), an intellectual property professor at Harvard Law School who wrote a friend-of-the-court brief in the case on behalf a group of law professors.

## Potentially Distinguishable

Thomson Reuters [accused](#) Ross of copying Westlaw summaries of important topics in court opinions and other proprietary information for Ross' AI search engine, which users can ask for direct quotations from those decisions.

Rejecting Ross' fair use and other defenses, Bibas found direct copyright infringement of more than 2,000 Westlaw headnotes, leaving to the jury the question of whether another roughly 5,000 headnotes were infringed.

Despite commonalities, core differences could let other parties distinguish this case from theirs.

Ross, for example, didn't need to copy Westlaw's legal summaries to make its tool that happens to directly compete with it, said IP professor [Jake Linford](#) of Florida State University's College of Law.

"This will be an easy case for the pro-AI folks to cabin if it goes in Thomson's favor," said Linford, who signed onto a separate amicus brief.

"If a court on these facts finds in favor of Ross, this probably is a bad sign for plaintiffs" pursuing copyright claims against AI companies, he said. "These are pretty favorable facts to Thomson."

But if the appeals court's opinion instead turns on the thin copyright protection of legal summaries, it could make it less disastrous for owners of more creative works like books and photos, he said.

## 'Dilution Theory'

The fair-use defense has been central to a host of copyright lawsuits from authors, publishers, and others who say AI developers are illegally using their works to train their models. The results are mixed.

Since-retired Judge William Alsup of the Northern District of California, for example, called Antropic PBC's tool "exceedingly transformative" as he found fair use in training the generative AI on at least non-stolen copies of books.

In the same district, Judge Vince Chhabria also validated Meta Platforms Inc.'s fair use defense of its

Llama model, but only because the authors there “made the wrong arguments” and failed to sufficiently show market harm, a critical factor in the fair use analysis.

He said it “can’t be right” that it’s fair to use copyrighted works to build an AI model able to create millions of competing works just because that competition doesn’t itself infringe.

But that “dilution theory” doesn’t really apply to Ross, Tushnet said, because its tool’s output is legal opinions, which don’t enjoy copyright protection.

Chhabria and Bibas both improperly considered the market impact of outputs that didn’t infringe, she said.

“Historically, what we’re concerned with is competition from substantially similar works,” she said.

Phoenix Center for Advanced Legal & Economic Policy Studies President [Lawrence Spiwak](#) said what Ross did is “kinda stealing” given that companies are paying for rights to data to feed their AI training. That should be considered a market for a protected derivative of the works, so market impacts can be shown without needing to analyze particular outputs, said Spiwak, who wrote an amicus for the center.

“That’s why the whole thing doesn’t make sense,” he said.

Judges L. Felipe Restrepo, T. Montgomery-Reeves, and Emil Bove will hear the case.

Morris, Nichols, Arsht & Tunnell LLP and Kirkland & Ellis LLP represent Thomson Reuters. Pillsbury Winthrop Shaw Pittman, White & Case, Crowell & Moring LLP, and Potter Anderson & Corroon LLP represent Ross.

The case is Thomson Reuters Enter. Ctr. GmbH v. Ross Intelligence Inc., 3d Cir., No. 25-02153, oral argument scheduled 6/11/26 .

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