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STUDENT SPOTLIGHT[1]

AI DEVELOPMENT & GENERATION PROBLEMS: CONSIDERATION OF INTERNATIONAL COPYRIGHT FOR AMERICAN FAIR USE

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This article examines how artificial intelligence challenges copyright law at both the training (input) and generative (output) stages, exposing the limits of U.S. fair use doctrine. It argues that fair use's ambiguity creates uncertainty for creators and developers, potentially hindering innovation. Through comparative analysis of Chinese and European Union copyright frameworks, the article highlights alternative approaches to balancing protection and technological progress. It concludes that the United States should clarify and modernize fair use to address AI-specific issues, promote transparency, and sustain competitiveness while preserving the constitutional goal of advancing knowledge.

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Artificial intelligence (AI) causes two major copyright problems on both the input and output levels. Training models on copyrighted data leave debates over fair use vs. infringement, while outputs from generative AI violating copyrighted content reveal international disparity in copyright protection. The question of how the United States should modify fair use is complex. Although fair use may encourage the development of

AI, the blurred lines of fair use in copyright make it difficult to consistently protect creators or properly license copyright. This may impede the long-term development of AI.

This article reviews the most relevant laws and legal doctrine, the importance of AI, and the two most salient issues in AI development and generative AI. Then, the article infers key takeaways from Chinese and E.U. copyright with the intention of offering recommendations to improve American fair use. Given that China is the largest competitor in the global AI development race, and the European Union's global prominence in extensive AI regulation, their copyright law may prove insightful.

COPYRIGHT AND FAIR USE

1. PHILOSOPHICAL FOUNDATIONS

The foundation of American copyright law lies in the Copyright Clause of the United States Constitution, which grants Congress the power "[t]o promote the Progress of Science and useful Arts" by securing exclusive rights to authors and inventors for limited times.[2] This provision reflects a utilitarian philosophy. Utilitarianism is a philosophical framework that focuses on outcomes, meaning it defines correct actions as those that produce the greatest good for the public. Copyright protection is not an end, but a means of encouraging the creation and dissemination of knowledge for the benefit of society. By granting authors exclusive rights, copyright law provides incentives for creative production, ensuring that creators can benefit from their work.

In her overview of the theoretical foundations of intellectual property in American history, U.C. Law San Francisco Professor Robin Feldman explained the philosophical foundation of the fair use doctrine as utilitarianism.[3] Fair use reflects the utilitarian foundation of copyright law because it prevents copyright from becoming overly restrictive by allowing limited uses that advance education, research, and technological innovation. This permits socially valuable uses that advance knowledge while preserving incentives for creation. Thus, together, copyright protection and fair use balance private incentives with public access, maximizing the overall social benefits of creative and technological progress.

2. DEVELOPMENT OF FAIR USE

From the first *U.S. Copyright Act* of 1790[4] to the most recent one enacted in 1976[5], there have been no technologies capable of copying, analyzing, and reproducing copyrighted materials on the massive scale the way modern AI systems can. In its April 2025 *Developments in the Law* edition, the *Harvard Law Review* pointed out the inadequacy of copyright law and the intellectual property regime in the age of AI, noting that new AI technologies may "challenge the fundamental premise that only humans can create."[6] This inadequacy in regulation has been echoed by other scholars concerned with copyright regulation issues caused by generative AI, with some noting that generative AI systems trained on copyrighted works raise ethical and legal concerns, as well as that generative AI reveals deeper structural limitations of the copyright regime.[7] One of AI's major challenges to the regime is the current standard that only humans can create.[8] The Copyright Office also requires human contributions to the creation of AI to qualify for protection.[9]

The fair use doctrine is a legal principle that permits the limited use of copyrighted material without permission of the copyright owner for public benefit, such as education, research, and news reporting. Although its early roots are in a 1740 English case, *Gyles v. Wilcox*, which established "fair abridgment,"[10] American fair use developed through judicial decisions in the 18th and 19th centuries.

The first American case of fair use was *Folsom v. Marsh* in 1841.[11] Folsom published a shorter, two-volume biography of George Washington based on approximately 353 pages from a collection published by Marsh. Because Folsom copied verbatim, the plaintiffs sued for copyright infringement. In deciding whether Folsom's use of Washington's writings was a permissible abridgment (lawful borrowing), the court ruled it was infringement because, although the copying was extensive,[12] the passages taken were not incidental,[13] and the biography could substitute for the original volumes in the marketplace.[14] The court concluded that the defendant had harmed the economic value of the copyrighted work.[15]

Folsom was significant for fair use because it introduced a multi-factor analysis, considering: the nature and objects of the selections made (purpose of use);[16] the quantity and value of the materials used (amount taken);[17] and the degree to which the use may prejudice the sale or diminish the profits of the original work (market harm).[18] Another fair use requirement, the nature of the copyrighted work, developed gradually throughout several cases in the late 19th and 20th centuries. One significant case, *Rosemont Enterprises, Inc. v. Random House, Inc.*, helped solidify the principle that an original work's character affects its levels of protection, with factual works being less protected than creative ones.[19]

The statutory provision of fair use was formally codified in the *Copyright Act* of 1976.[20] In the Act, Congress codified four non-exclusive factors drawn from the judicial precedent: 1) purpose and character of the use; 2) nature of the copyrighted work; 3) amount and substantiality used, and 4) effect of the use upon the potential market.[21] Congress understood fair use as a safety valve, a balance between author incentives and public access, and doctrine rooted in copyright's constitutional purpose of promoting the progress of science and useful arts.[22] With this understanding, the section that covers the fair use doctrine in Title 17 of U.S. copyright law, 17 U.S.C. § 107,[23] exists to serve copyright's utilitarian purpose by allowing socially beneficial uses when stricter copyright enforcement would hinder progress.

(c) Modern Application of Fair Use

In the 2023 case *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, Goldsmith sued Warhol for directly copying her photograph of Prince in Warhol's orange silkscreen painting of the late singer ('Orange Prince'), which was published by *Vanity Fair* as its 2016 commemorative issue's cover.[24] Warhol argued that his use of the photo was fair use, but the United States Supreme Court held that Warhol's use of Goldsmith's photograph did not qualify as fair use, but as commercial, and was thus copyright infringement.[25] The Supreme Court concluded that Warhol's painting was not transformative enough to change the nature of the original work, and that the substantially similar purposes of the original photo and the copied painting diminished the original's commercial value.[26]

Until now, the fair use doctrine has adequately protected copyright. However, the fair use doctrine is insufficient to cover copyright cases involving AI on both the input and output levels. As discussed in later sections of this article, there have been multiple cases of AI developers using copyrighted content to train their models, leading to lawsuits over infringement. Fair use has become a ubiquitous defense for model training using copyrighted materials. The key issue on the input level is whether the large amount of copyrighted works used for the training had a suitably transformed purpose. Fair use is also unable to handle the output-level infringement, particularly the market harm to the original works and mass distribution occurring on a generative AI scale, which involves millions or even billions of infringements. Thus, as this article will demonstrate, the fair use doctrine is out of date and consequently inadequate to cover copyright issues resulting from the new technology of AI.

ARTIFICIAL INTELLIGENCE

1. THE DEFINITION OF AI

The term artificial intelligence (AI), according to Stanford Professor John McCarthy, previously meant "the science and engineering of making intelligent machines."[27] In 2021, the modern understanding of AI was codified under 15 U.S.C. § 9401(3):

> The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to—
>
> (A) perceive real and virtual environments;
>
> (B) abstract such perceptions into models through analysis in an automated manner; and
>
> (C) use model inference to formulate options for information or action.[28]

There are several types of AI, including predictive AI, machine learning, natural language processing, and – the most commercially popular – generative AI. Generative AI can create new content, including text, images, audio, or other media. With these capabilities, generative AI facilitates copying, namely through the models' collection, memorization, and duplication of portions of the training data. This results in outputs that closely approximate or even reproduce copyrighted content, which makes generative AI the most threatening to copyright protection and the most likely to lead to infringement.

2. THE IMPORTANCE OF AI

AI's increasingly ubiquitous nature lends to its exponential significance. We live in a new technological Wild West of astonishing cultivation and global advancement of AI. Many countries and companies are in fierce competition to develop AI models, particularly large language models (LLMs), multimodal foundation models, generative models, and domain-specific AI systems for

strategic sectors like defense and healthcare. The Stanford Institute for Human-Centered Artificial Intelligence *2025 AI Index Report* explains the rapid expansion of economic scale:

> [I]n 2024, U.S. private AI investment grew to $109.1 billion—nearly 12 times China's $9.3 billion and 24 times the U.K.'s $4.5 billion. Generative AI saw particularly strong momentum, attracting $33.9 billion globally in private investment—an 18.7% increase from 2023. AI business usage is also accelerating: 78% of organizations reported using AI in 2024, up from 55% the year before.[29]

The rapid growth affects not only the quality of people's lives but also establishes a new movement in the legal field.

For example, in August 2025, the AI company Anthropic agreed to pay $1.5 billion to settle the copyright lawsuit *Bartz v. Anthropic PBC*.[30] It is the largest settlement in U.S. copyright history, topping *Oracle Corp. v. SAP AG*[31] in 2014, which had a jury award of $1.3 billion, later reduced on remittitur. Many other potential landmark copyright cases, notably *U.S. News & World Report, L.P. v. OpenAI, Inc.*,[32] *Disney Enterprises, Inc. v. Midjourney*,[33] and *Reddit v. SerpApi LLC*,[34] are pending or awaiting final decisions.

The biggest problem comes from AI training processes, which largely rely on using massive datasets from AI model developers' own databases, their users' inputs, or publicly available online content. The difficulty is determining whether the AI's use of copyrighted data in training is an infringement, particularly if the training material was a pirated copy.

3. THE PROBLEM WITH AI TRAINING

At first glance, fair use seems to protect copyright; for if the material is used for public benefit, the rule allows for copying protected materials.[35] In practice, however, the application of the fair use doctrine varies widely and is highly dependent on court interpretation and the specific facts of each case, resulting in inconsistency in courts' copyright decisions. As several cases in this section will demonstrate, the specific area of determining fair use that struggles in AI copyright cases on model training is the transformative purpose and nature of the use. In its policy report *Copyright and Artificial Intelligence Part 3: Generative AI Training*, the United States Copyright Office determined that while "it is not possible to prejudge litigation outcomes, … some uses of copyrighted works for generative AI training will qualify as fair use, and some will not."[36]

In the 2015 case *Authors Guild v. Google, Inc.*, Google copied millions of entire copyrighted books without permission to create a searchable digital database; the United States Court of Appeals for the Second Circuit decided it was fair use.[37] Google had stored the copies in a database which was not directly accessible to users, allowing only "snippet" searches.[38] Because Google's purpose – creating a searchable research tool – was different from the books' original purpose, and because users could not access books in their entirety, the court ruled it was suitably transformative and caused no meaningful harm to the market.[39] The ruling reflects the utilitarian purpose of copyright law by enabling technological innovation that benefits the public without undermining the economic incentives of creators.

A recent example of litigation over AI training and copyrighted works is *The New York Times Company v. Microsoft Corp.*, filed in 2023 in federal court.[40] The Times alleges that OpenAI and Microsoft infringed its copyright by using millions of its articles — many behind a paywall — to train their LLMs, such as ChatGPT, without permission. The defendants are expected to rely heavily on the fair use doctrine, like the reasoning in *Authors Guild*.

AI companies argue that training models is analogous to Google Books,[41] in that the models similarly transform the works into statistical representations used to generate new text rather than reproducing the originals,[42] and that the training process does not allow users to fully access the originals.[43] As a result, the precedent set by *Authors Guild* may allow the widespread use of copyrighted works in AI training under fair use, potentially expanding the transformative purpose factor far beyond the context in which it was originally applied. It is hypothetically possible that the court may decide that the LLM's outputs compete with the original works, thereby harming the market, or that they undermine a legitimate market for licensing; in either case, the use of copyrighted data in training would not qualify for fair use protection.

However, the key legal question courts are currently grappling with is not simply whether outputs might compete, but whether the training use itself harms a legally cognizable market for the copyrighted works. This demonstrates that although fair use is flexible, courts may find that arguments based on legal precedents set for earlier digital technologies fail to adequately address the unprecedented capabilities, scale, and impact of modern generative AI model training. Given the ambiguous application of fair use, and the current legal challenges, it is difficult for AI developers to train their models without violating copyright. This uncertainty can slow innovation by discouraging or delaying research and development efforts, creating major economic costs and reducing American competitiveness in the global AI market. The fair use tests are unsettled and fact-specific, which means companies must build complex compliance strategies. To stay competitive in AI development, the United States should consider how other countries handle copyright and fair use issues involving AI models.

ARTIFICIAL INTELLIGENCE PROBLEMS ON AN INTERNATIONAL SCALE

With AI's global presence, potential infringement, such as duplicating copyrighted works, is not limited to the United States. The global use of AI systems trained on massive datasets raises significant risks of intellectual property infringement. This requires reshaping how intellectual property is protected.

For example, the Japanese Content Overseas Distribution Association (CODA), which includes most world-renowned Japanese content creators such as Studio Ghibli and Bandai Namco, wrote to OpenAI demanding it stop using their copyrighted content to train AI models because "CODA considers that the act of replication during the machine learning process may constitute copyright infringement."[44] The Japanese Minister of State for Intellectual Property Strategy and AI Strategy, Minoru Kiuchi, echoed CODA's request to OpenAI to stop violating Japanese copyright.[45] Akihisa Shiozaki, member of the Japanese House of Representatives, pointed out the imbalance of copyright protection in OpenAI:

> [Sora 2] generated a succession of images of popular anime characters with such high quality that it was indistinguishable from the real thing, … [h]owever, for some reason, characters whose rights are owned by major American companies, such as Mickey Mouse or Superman, did not appear.[46]

In October 2025, Rep. Shiozaki called for Japan's national legislature, the Diet, to request Sora 2's basic specifications, filtering measures, and records of deletion responses, which the Diet is authorized to do under Article 16 of the *AI Promotion Act* of 2025.[47] As of early 2026, the Diet has not done so, and seems to have shifted its focus to more active enforcement and oversight, such as under the *AI Basic Plan* of 2025.[48]

Given that AI generative content may create international copyright conflicts, a comparative examination of foreign copyright regimes becomes increasingly relevant. Establishing an understanding of other countries' copyright laws may reveal the advantages and disadvantages of their fair use or alternative doctrines. This would not only prepare American litigators for potential legal disputes but could foster the improvement of fair use in the United States. Particularly for new legal issues involving AI inputs and outputs, drawing comparative insights from foreign copyright systems likewise struggling to address new frontiers of technological uses of copyrighted works may reveal potential solutions to the gaps in American fair use doctrine.

CASE STUDY 1: CHINA

1. CHINESE COPYRIGHT PROTECTION

When comparing the United States' copyright protection with many other countries, the biggest difference is fair use,[49] but that is decreasingly the case for China. The Copyright Law of the People's Republic of China (*Zhōnghuá Rénmín Gònghéguó Zhùzuòquán Fǎ*) originally did not have the concept of fair use, but Chinese courts have recently accepted the American concept of fair use as a "general legal principle[]."[50] In Chinese courts, general legal principles are broad, foundational rules or values invoked by courts and judges when the written statutes are incomplete or unclear. Such principles are intended to provide Chinese courts with interpretive flexibility when confronting new legal issues.

One of China's purposes in adopting the fair use doctrine, particularly transformative factor analysis, is to introduce flexibility in rapidly evolving AI contexts.[51] China's application of American fair use indicates that a willingness to learn and borrow from other countries' legal doctrines may allow courts to more efficiently address AI issues. However, it seems the Chinese legislators are transplanting fair use as a new legal concept indirectly rather than directly copying American fair use, instead amending China's copyright law with an open-ended clause.[52] Article 24, [53] for instance, includes a non-exhaustive list of acceptable circumstances to use copyrighted work without creators' permission or compensation. The provision lists specific examples — such as quotation for commentary, news reporting, and classroom teaching — but the open-ended structure

allows Chinese courts to recognize additional permissible uses when they are consistent with the provision's underlying principles.

MAJOR CHINESE AI CASES

In the 2024 case *Li v. Liu*, the Beijing Internet Court recognized that certain AI-generated images can qualify for copyright protection when the human creator's intellectual input is significant, thereby meeting the originality requirements under Chinese copyright law.[54] The court explained that the plaintiff repeatedly adjusted prompt words and parameters when generating the image, noting that "such adjustment and modification also reflect the plaintiff's aesthetic choice and personal judgment."[55] Because different prompts and parameters could produce different outputs, the court determined that the image was not a "mechanical intellectual achievement" and therefore met the requirement of originality.[56]

In another 2024 case, *Shanghai Character License Administrative Co., Ltd. v. AI Company*, the plaintiff argued that a generative AI platform allowed the creation of images that were identical or substantially similar to the copyrighted Ultraman characters.[57] The plaintiff demonstrated that when users entered basic prompts, such as "generate an Ultraman," the system produced images with substantial similarity.[58] The defendant furthermore did not implement any safeguards or user rules preventing infringement, such as user agreements or notices warning users not to infringe copyright.[59] Citing the 2023 the Interim Measures for the Administration of Generative Artificial Intelligence Services, the first set of Chinese regulations on artificial intelligence, the Guangzhou Internet Court decided that the AI service provider was liable for copyright infringement because the similar images were produced without authorization and because the provider had failed its responsibility to cease infringement.[60]

CASE STUDY 2: THE EUROPEAN UNION

1. THE EUROPEAN UNION'S COPYRIGHT PROTECTION

Rather than a single act, E.U. copyright law is a framework made up of directives and regulations that E.U. members must implement, often referred to as E.U. copyright law or E.U. *acquis*.[61] E.U. copyright law does not recognize a general fair use defense like the United States does; instead, it relies on an "exhaustive list" of specific exceptions and limitations that are defined in E.U. directives such as the Information Society Directive (2001/29/EC)("InfoSoc Directive")[62] and the Digital Single Market Directive (2019/790) ("DSM Directive").[63]

Article 5 of the InfoSoc Directive contains a closed list of permissible exceptions,[64] including: temporary technical reproductions necessary for digital transmissions; reprographic and private copying subject to compensation; reproductions by libraries, archives, and educational institutions; ephemeral recordings by broadcasters; certain uses for teaching, research, and the benefit of persons with disabilities; news reporting and quotation; uses related to public security or official proceedings; uses of works located in public places or incidentally included in other material; parody, caricature, or pastiche;

limited promotional or technical uses; and certain narrowly defined minor uses. Under the civil law framework, E.U. courts cannot add new exceptions, so open-ended fair use does not apply in the European Union.

Since the lists predefine the cases where E.U. copyright law does not protect intellectual property rights, AI developers' use of copyrighted content needs to clearly fall into the exceptions' categories. This informs AI model developers more transparently about what copyright is protected and what would be, in American terms, fair use. Furthermore, both directives call for current copyright law to be adapted to technological developments.[65] This suggests that even though the European Union will maintain its alternative to fair use, it recognizes the need to adapt to meet the needs of AI copyright cases.

2. MAJOR E.U. AI CASES

In the 2025 case *GEMA v. OpenAI*,[66] GEMA argued that OpenAI was trained with massive datasets that included copyrighted song lyrics. The Munich Regional Court decided that because the training process memorized and reproduced the materials, the training did not qualify for an exception, and it was copyright infringement. The court reasoned that the E.U. text-and-data-mining (TDM) exception listed in the DSM Directive only covers "necessary reproductions when compiling the data corpus for training," but does not cover reproduced materials that infringe copyright.[67]

On the other hand, in the 2024 case *Kneschke v. LAION e.V.*,[68] the Hamburg Regional Court ruled that LAION's use of images to build an AI training dataset did not infringe copyright because it fell under the TDM exception.[69] The court reasoned that the defendant had used copyright images "to carry out a comparison of the image content with the pre-existing image description and create a new data set," thereby constituting scientific research.[70]

CONCLUSION

This article only briefly explored ways other countries protect their intellectual property in the wake of AI. China has adopted the fair use doctrine with the purpose of solving economic and technical problems while keeping strong control over copyright. This illustrates how a country can adopt and adapt another country's legal doctrines to address modern problems.

Although the European Union does not have any fair use doctrine, its explicit exceptions to copyright function as an alternative and more clearly guide AI development on which copyrighted material can be used in training. Establishing more detailed fair use guidelines and renewing the fair use doctrine are urgent tasks for Congress to promote progress.

In July 2025, a federal bill, the *Transparency and Responsibility for Artificial Intelligence Networks Act* (TRAIN), was introduced for a second time in the Senate.[71] The

bill is designed to allow "any United States district court to issue a subpoena to a[n AI] developer for disclosure of copies of, or records sufficient to identify … copyrighted works," so that copyright holders may determine if their work was included in an AI's training data.[72] Another bill, the *Generative AI Copyright Disclosure Act*, was introduced in 2024, and would have required AI developers to submit notices to the U.S. Copyright Office identifying copyrighted works used in training before releasing new or updated AI models.[73]

These two bills indicate Congressional efforts to protect copyright by focusing on transparency; however, neither bill includes the phrase "fair use."[74] If Congress doesn't explicitly state the boundaries of fair use, copyright protection for AI cases is still ambiguous.

The experiences of the United States, China, and the European Union illustrate a common challenge: rapidly developing AI technologies require flexible copyright frameworks that balance innovation and protection. Each jurisdiction has attempted to address this challenge through different legal mechanisms, but all reflect the same underlying policy goal —encouraging socially beneficial technological development. Using this utilitarian interpretation, fair use maximizes the development and ethical use of AI. Congress should keep this principle in mind when legislating copyright, and it must legislate fair use directly.

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[1] The Journal of Paralegal Education and Practice highlights student excellence by featuring articles written by current or recently graduated paralegal students. Unlike the articles written by professionals, which must address matters related to paralegal education or the paralegal profession, Student Spotlights may be on any topic. That is the only difference between the Student Spotlights and the professionals: students are held to the same standards as the professionals are in every other category

[2] U.S. CONST. art. I, § 8, cl. 8.

[3] ROBIN FELDMAN, AI VERSUS IP: REWRITING CREATIVITY 31-33 (2025).

[4] U.S. Copyright Act of 1790, Pub. L. 1–15.

[5] U.S. Copyright Act of 1976, Pub. L. 94–553.

[6] *Developments in the Law -- Artificial Intelligence and the Creative Double Bind* 138 HARV. L. REV. 1585, 1585 (2025) ("New, sophisticated forms of artificial intelligence (AI) have the potential to challenge the fundamental premise that only *humans* can create. Such a shift stands to threaten key underpinnings of the existing intellectual property (IP) regime, which is designed to create incentives for human innovation. The potential for AI to disrupt copyright law can already be seen in early battles over what constitutes "fair use" when training AI models,....") (emphasis in original).

[7] Micaela Mantegna, *ARTificial: Why Copyright Is Not the Right Policy Tool to Deal with Generative AI* 133 YALE L. J. FORUM 1126, 1126 (2024) ("As some of these Artificial Intelligence (AI) systems were trained with copyright-protected works, ethical and legal questions arose"); BJ Ard, *Copyright's Latent Space: Generative AI and the Limits of Fair Use,*110 CORNELL L. REV. 509, 514 (2025) ("generative AI will be deployed regardless, illustrating deeper structural limitations of the copyright regime. Several developers have already built functional image-generation systems without recourse to unauthorized copying.")

[8] U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 306 (3d ed. 2021), https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf.

[9] U.S. COPYRIGHT OFFICE, COPYRIGHT REGISTRATION GUIDANCE: WORKS CONTAINING MATERIAL GENERATED BY ARTIFICIAL INTELLIGENCE (Mar. 16, 2023), https://www.copyright.gov/ai/ai_policy_guidance.pdf.

[10] Gyles v. Wilcox, (1740) 26 Eng. Rep. 489 (Ch.); 2 Atk. 141, 143, *available at* https://www.copyrighthistory.org/cam/pdf/uk_1741_1.pdf.

[11] Folsom v. Marsh, 9 F. Cas 342 (C.C.D. Mass 1841), *available at* https://cdn.ymaws.com/www.musiclibraryassoc.org/resource/resmgr/copyright/FolsomvMarsh.pdf.

[12] *Id.*, at 8 (PDF pagination) (noting that defendants' work was "mainly founded" on the plaintiff's letters and that the copied material constituted more than one-third of the work).
[13] *Id.*, (explaining that the defendants copied entire letters rather than merely abbreviated or incidental passages).
[14] *Id.*, (PDF pagination) ("I have come to this conclusion … that it may interfere, in some measure, with the very meritorious labors of the defendants").
[15] *Id.*, at 7 (PDF pagination) (observing that infringement exists when the use "prejudice[s] the sale" or "diminish[es] the profits" of the original work).
[16] *Id.*, at 6 (PDF pagination) (stating that courts should consider "the nature and objects of the selections made").
[17] *Id.*, (PDF pagination) (directing courts to evaluate "the quantity and value of the materials used").
[18] *Id.*, at 5-6 (PDF pagination) (stating that infringement may occur when a work takes substantial parts of another in a way that may "supersede the objects of the original work").
[19] Rosemont Enters. Inc. v. Random House, Inc., 366 F.2d 303 (2d Cir. 1966).
[20] *See supra* note 4.
[21] *Id.*
[22] *See supra* note 1.
[23] 17 U.S.C. § 107.
[24] Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).
[25] *Id*., at 573, 578 ("Warhol's use, to be sure, had a commercial aspect."; "an emphasis on commercialism would … mostly *deprive* them of fair-use protection") (emphasis in original) (Kagan, J., dissenting).
[26] *Id*., at 531-533.
[27] John McCarthy, *What is Artificial Intelligence?* COMPUTER SCIENCE DEPARTMENT STANFORD UNIVERSITY 1, 2 (2007) (https://www-formal.stanford.edu/jmc/whatisai.pdf).
[28] 15 U.S.C. § 9401(3).
[29] STANFORD UNIVERSITY, HUMAN-CENTERED ARTIFICIAL INTELLIGENCE *The 2025 AI Index Report*, (2025) (https://hai.stanford.edu/ai-index/2025-ai-index-report).
[30] Bartz v. Anthropic PBC, 3:24-cv-05417, (N.D. Cal.).
[31] Oracle Corp. v. SAP AG, 765 F.3d 1081 (9th Cir. 2014).
[32] U.S. News & World Report, L.P. v. OpenAI, Inc., 1:25-cv-09912, (S.D.N.Y.).
[33] Disney Enters. Inc. v. Midjourney Inc., 2:25-cv-05275 (C.D. Cal.).
[34] Reddit, Inc. v. SerpApi LLC, 1:25-cv-08736 (S.D.N.Y.).
[35] FELDMAN, *supra* note 2, at 44 (2025) ("[A] copyright gives the legal owner the right to prevent others from making unauthorized copies of protected material without permission. Those rights are subject, of course, to the all-important doctrine of fair use, which serves as a limit on the power of the copyright owner").
[36] U.S. COPYRIGHT OFFICE, COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 3: GENERATIVE AI TRAINING, A REPORT OF THE REGISTER OF COPYRIGHTS 74 (May 2025) (https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf).
[37] Authors Guild v. Google, Inc., 804 F.3d 202, 229 (2nd Cir. 2015) ("Google's unauthorized digitizing of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses.")
[38] *Id*., at 207
[39] *Id*., at 217-219, 223-225.
[40] Complaint, N.Y. Times Co. v. Microsoft Corp., No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023), *available at* https://storage.courtlistener.com/recap/gov.uscourts.nysd.612697/gov.uscourts.nysd.612697.1.0_1.pdf.
[41] BitLaw, *Fair Use and the Training of AI Models on Copyrighted Works*, https://www.bitlaw.com/ai/AI-training-fair-use.html.
[42] Edward Lee, *Fair Use and the Origin of AI Training*, 63 HOUS. L. REV. 105, 158 (2025), https://houstonlawreview.org/article/147422-fair-use-and-the-origin-of-ai-training.
[43] *Id*., at 170.
[44] CODA, *CODA Issues Written Request to OpenAI Regarding Sora 2* (2025) (https://coda-cj.jp/en/news/817/).
[45] Javier Perez, *Japanese government requests Sora 2 refrain from "copyright infringement" in AI-generated videos,* THE BEAT: THE NEWS BLOG OF COMICS CULTURE (Oct. 17, 2025, 2:00 PM) (https://www.comicsbeat.com/japanese-government-requests-sora-2-copyright-infringement/).
[46] *Id*.
[47] *Id*. *See* Act on Promotion of Research and Development, and Utilization of Artificial Intelligence-related Technology, Act No. 53 of 2025 (Japan), https://www.japaneselawtranslation.go.jp/en/laws/view/5066.

[48] Cabinet Office (Japan), *Artificial Intelligence Basic Plan* (Cabinet Decision, Dec. 23, 2025), https://www8.cao.go.jp/cstp/ai/ai_plan/aiplan_eng_20260116.pdf.
[49] Jonathan Bailey, *10 Ways EU Copyright is Different from the US*, PLAGIARISM TODAY (Aug. 4, 2020) (https://www.plagiarismtoday.com/2020/08/04/10-ways-eu-copyright-is-different-from-the-us/).
[50] Qingchuan Xie & Tianxiang He, *Battle between "Long" and "Short" Videos: Fragmented Uses, Diversified Purposes, and the Evolution of China's Copyright Limitation Rules in the AI Era*, 11 CHINESE J. COMP. L., Vol. 3, 1, 1 (2024).
[51] *Id.*, at 3, 3-4 ("The fusion of generative AI with the burgeoning short video industry has introduced a new layer of complexity to existing copyright conundrums"; "In China, the impact of the US fair use doctrine and the related transformative use theory is noticeable: Chinese courts have been working to adapt and implement these concepts to manage the complex legal landscape of short videos and [AI-generated content] AIGC.")
[52] Tianxiang He, *Transplanting Fair Use in China? History, Impediments and the Future*, 20 J. L. TECH. & POLICY 359, 399 (2020) ("[T]here is no reason for Chinese legislators to bear the risk of transplanting a not-so-perfect U.S. copyright law doctrine directly, as the top priority for China is to establish an "open" model rather than a 'US' model of copyright exceptions.").
[53] "Copyright Law of the PRC (2021 Version)." CHINA LAW TRANSLATE (Nov. 12, 2020) (https://www.chinalawtranslate.com/en/Copyright-Law-of-the-PRC-(2021-Version)/).
[54] *Li v. Liu*, Jing 0491 Min Chu No. 11279, at 12 (Beijing Internet Court 2023) (https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivilJudgment112792023.pdf).
[55] *Id*.
[56] *Id*.
[57] *SCLA v AI Company*, Yue 0192 Min Chu No. 113, at 4 (Guangzhou Internet Court 2024) (Guangzhou Internet Court 2024) (https://ia800409.us.archive.org/3/items/scla-v-ai-company-guangzhou-internet-court-02082024-with-english-translation/SCLA%20v%20AI%20Company%20Guangzhou%20Internet%20Court%2002082024%20with%20English%20Translation.pdf).
[58] *Id*., at 3.
[59] *Id*., at 27.
[60] *Id*., at 23 ("Pursuant to Article 52 and Article 53 of the Copyright Law of the People's Republic of China, Defendant's conduct infringed upon Plaintiff's reproduction and adaptation rights in the disputed Ultraman work. Defendant assumes the responsibility to cease such infringement, and to compensate for injury, in addition to other civil liabilities").
[61] "Copyright and related rights in the information society" EUR-LEX (https://eur-lex.europa.eu/EN/legal-content/summary/copyright-and-related-rights-in-the-information-society.html).
[62] "Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society," 167 O.J.L. 10 (2001) (https://eur-lex.europa.eu/eli/dir/2001/29/oj/eng).
[63] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130/92) (https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng).
[64] *See supra* note 61.
[65] *See supra* notes 61; *see supra* note 62.
[66] *GEMA v. OpenAI*, I 42 O 14139/24 (Higher Regional Court of Munich 2025) (https://ifrro.org/resources/documents/General/German_Court_OpenAI_Memory_Output_Infringe_Copyright_NOV25.pdf).
[67] *Id.*, at 2.
[68] LAION e.V. stands for "Large-scale Artificial Intelligence Open Network," with e.V. short for "eingetragener Verein," the German legal designation for a non-profit.
[69] *Kneschke v. LAION e.V.*, No. 310 O 227/23 (Hamburg Regional Court, Germany 2024) (https://www.wipo.int/wipolex/en/text/592042).
[70] *Id*. ("The only issue before the Chamber concerned the permissibility of the download of the disputed image, which the defendant undertook to carry out a comparison of the image content with the pre-existing image description and create a new data set. The Chamber found that downloading the image in this context was covered by the copyright exception for text and data mining for the purposes of scientific research conducted by non-commercial research organizations (Section 60d of the German Copyright Act). The plaintiff failed to carry its burden of proving that the exception did not apply.")

[71] S.2455, Transparency and Responsibility for Artificial Intelligence Networks Act (TRAIN),-119th Cong. (2025) (https://www.congress.gov/bill/119th-congress/senate-bill/2455/text).
[72] *Id*., Sec. 2. § 514 (b)(1).
[73] H.R. 7913, Generative AI Copyright Disclosure Act of 2024, 118th Cong. (2023) (https://www.congress.gov/bill/118th-congress/house-bill/7913).
[74] *See supra* note 70; *see supra* note 72.

KEYWORDS: GENERATIVE AI, INTERNATIONAL LAW, AI, FAIR USE, INTELLECTUAL PROPERTY, COPYRIGHT