

All that AI Litigation Jazz

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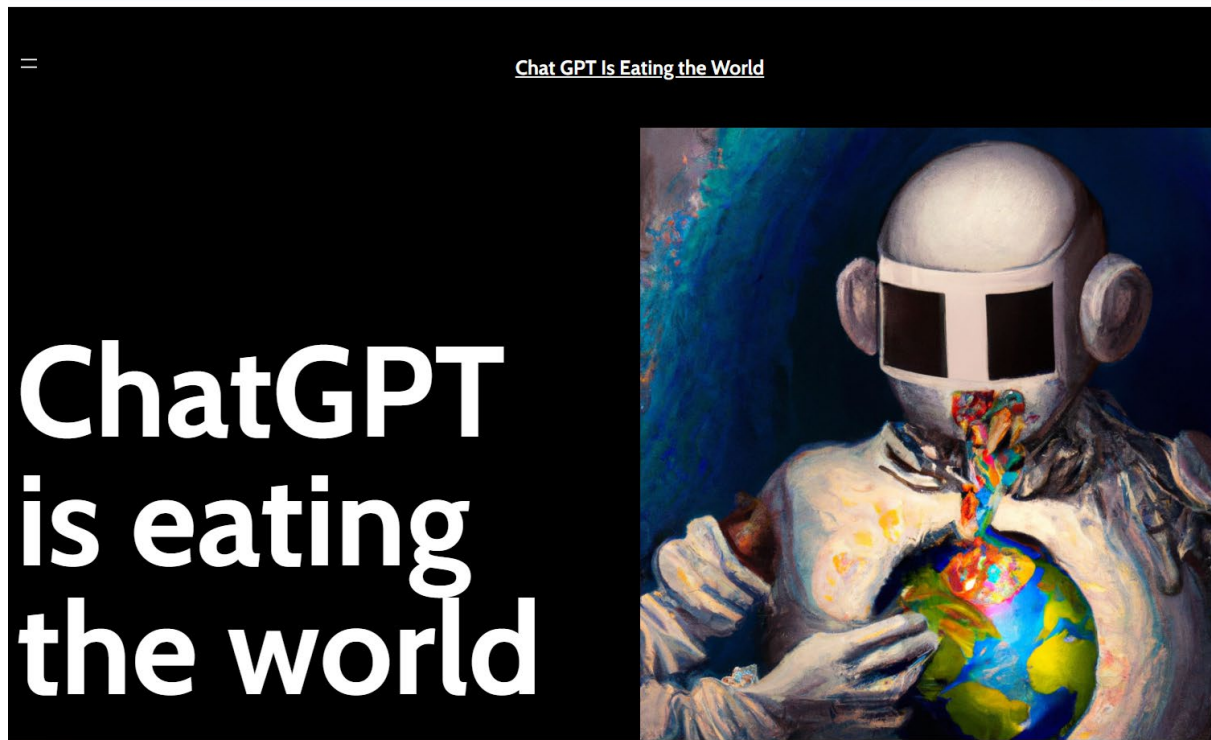
03/19/2025



Prof. Edward Lee, Chicago Kent Law

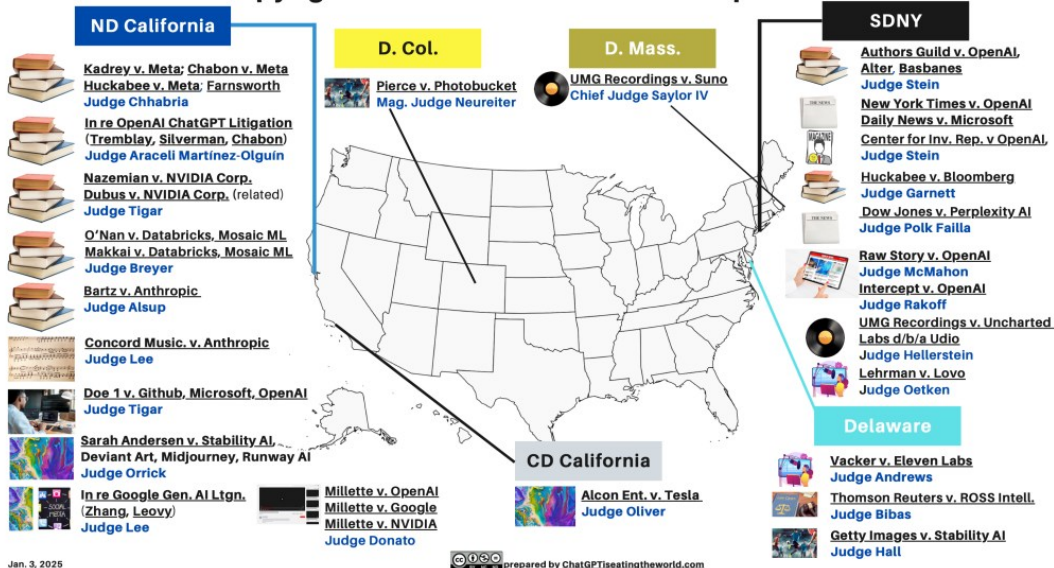
https://chatgptiseatingtheworld.com

*Primarily directed to all the litigation against the AI companies for how they train & output



State of Play, USA

Copyright + Related Lawsuits v. AI Companies



“We compiled a running list of the lawsuits filed against AI companies, including OpenAI. This list is currently being updated in *January 2025* from the prior version of August 30, 2024. You can check out our last status report of the [35 copyright lawsuits from November 2024](#).

As of January 2025, 38 copyright lawsuits related to AI have been filed in the United States.”

*Does not count litigations as to the © status of AI outputs. Also does not include recent antitrust suit.



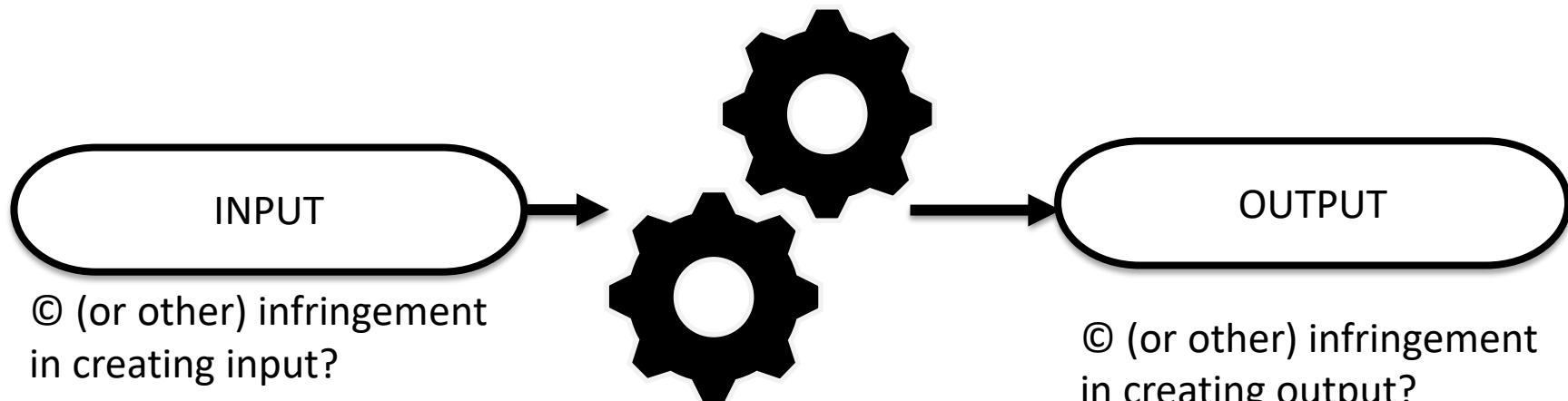
State of Play, ROW (Rest of World)

Pending lawsuits in:

- UK
- Germany
- India
- Canada
- (as of last week) France



What Are The Issues?



© (or other) infringement
in creating input?

© (or other) infringement
in inputting input into
system?

© (or other) infringement
in creating & storing
model/weights/vectors?

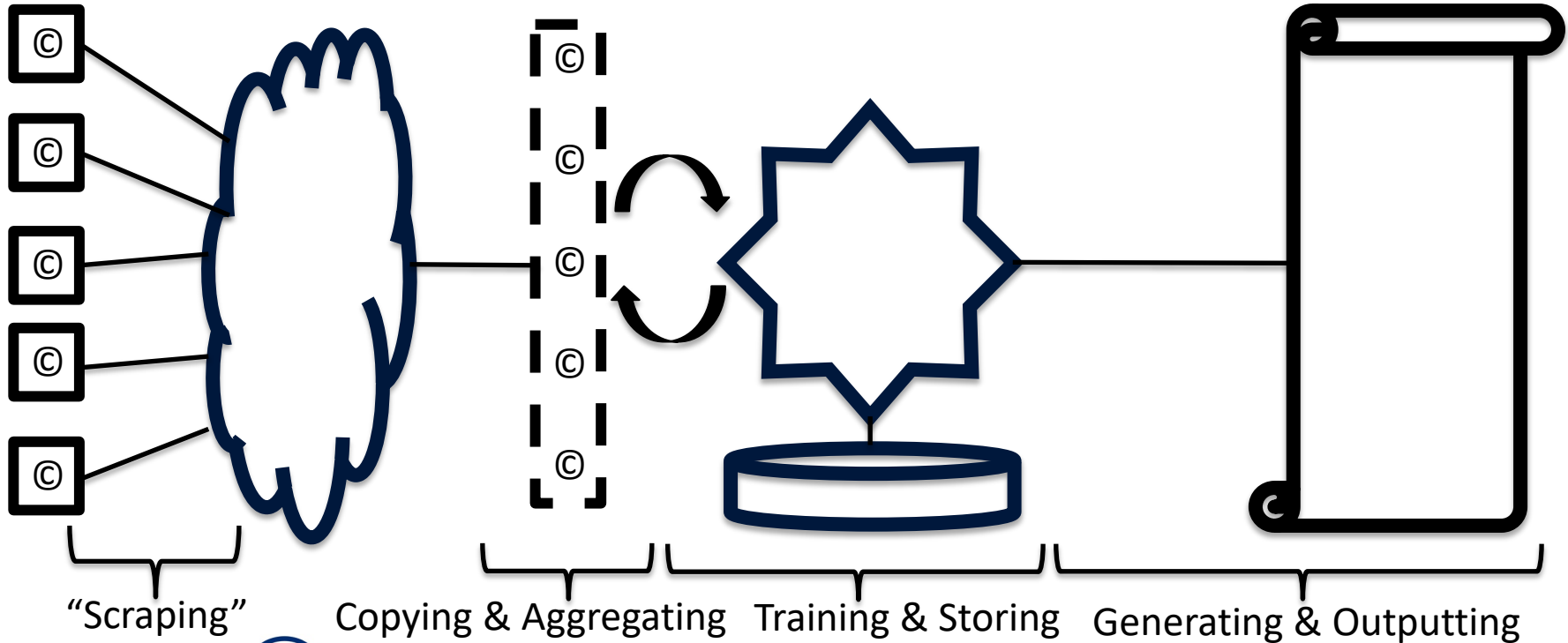
© (or other) infringement
in creating output?

© (or other) available in
the output, by the system?

Antitrust?

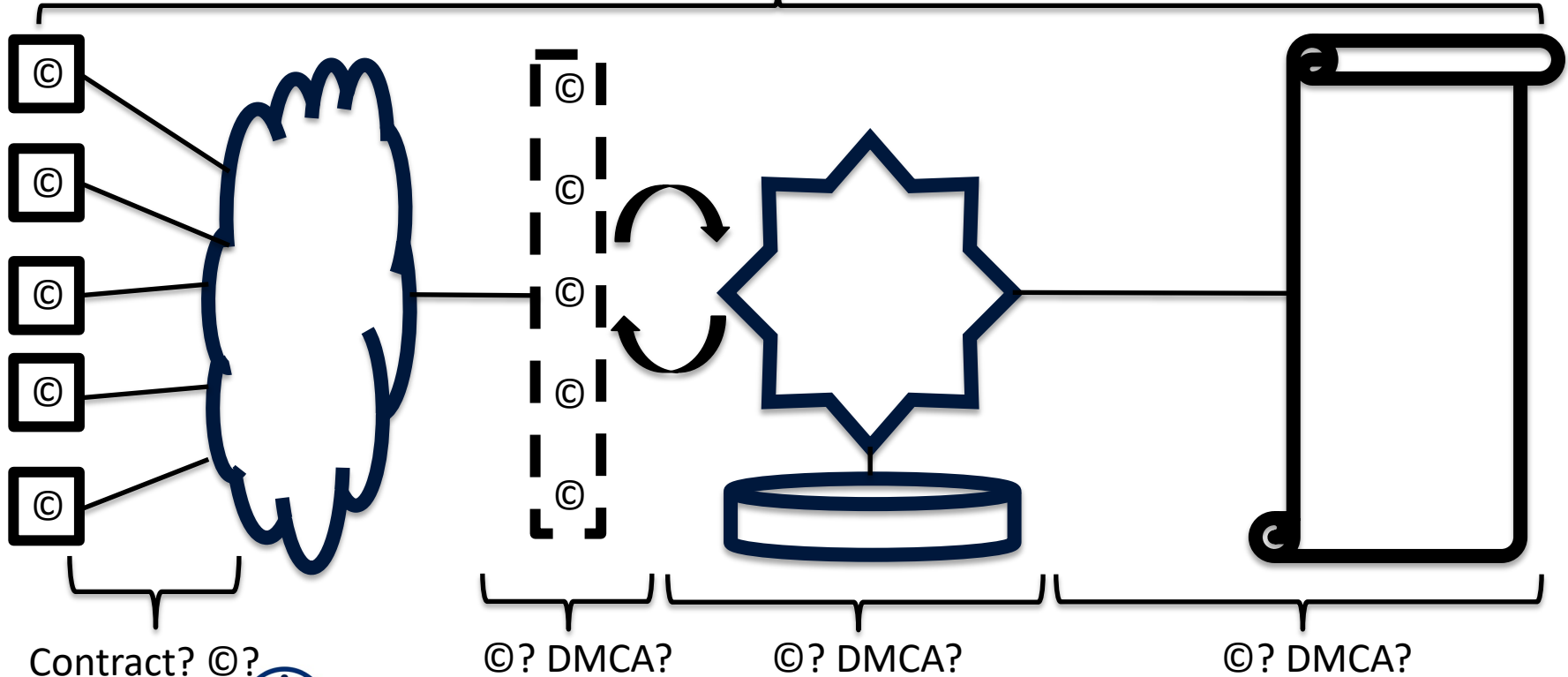
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Where's The Harm?



Where's The Claim?

Antitrust? State Law, Claims? "Quasi-IP"



What's It All About?

- Tired:
 - ©, DMCA, Breach of ToS, “Moral Rights,”
Various State Law theories (unfair comp, etc.),
Antitrust
- Wired:
 - 1L Civil Procedure



One Rule to Rule Them All

- FRCP 12(b)(6)
 - “Failure to State a Claim Upon Which Relief May be Granted”
 - “Twiqbal” (Twombly/Iqbal)
- Substantially deployed to throw out claims early
 - Especially in the class action cases N.D. Cal.
 - Lots of amending of complaints to try to salvage cases
 - Not always successfully
 - “I think what you need, frankly, is to bring in somebody who can help you litigate the case, who has the resources and the wherewithal to move this case forward...I think you need to reconstitute your legal team.”
 - Judge Chhabra, N.D. Cal., Kadrey et al. v. Meta
- MSJ (FRCP 56) also coming into play



New Legal Interpretation Issue

- DMCA 1202(b):
 - “No person shall, without the authority of the copyright owner or the law—
 - (1) intentionally remove or alter any copyright management information [CMI]”
- Must © notices flow all the way through generative process, for every work upon which system was trained?
- If not followed with an internal-only training dataset, is there a claim, and are there damages?
- Is this obligation something that exists separate and apart from © infringement?
 - I.e., do you have to comply with this obligation even if legally you aren't infringing the work's ©?

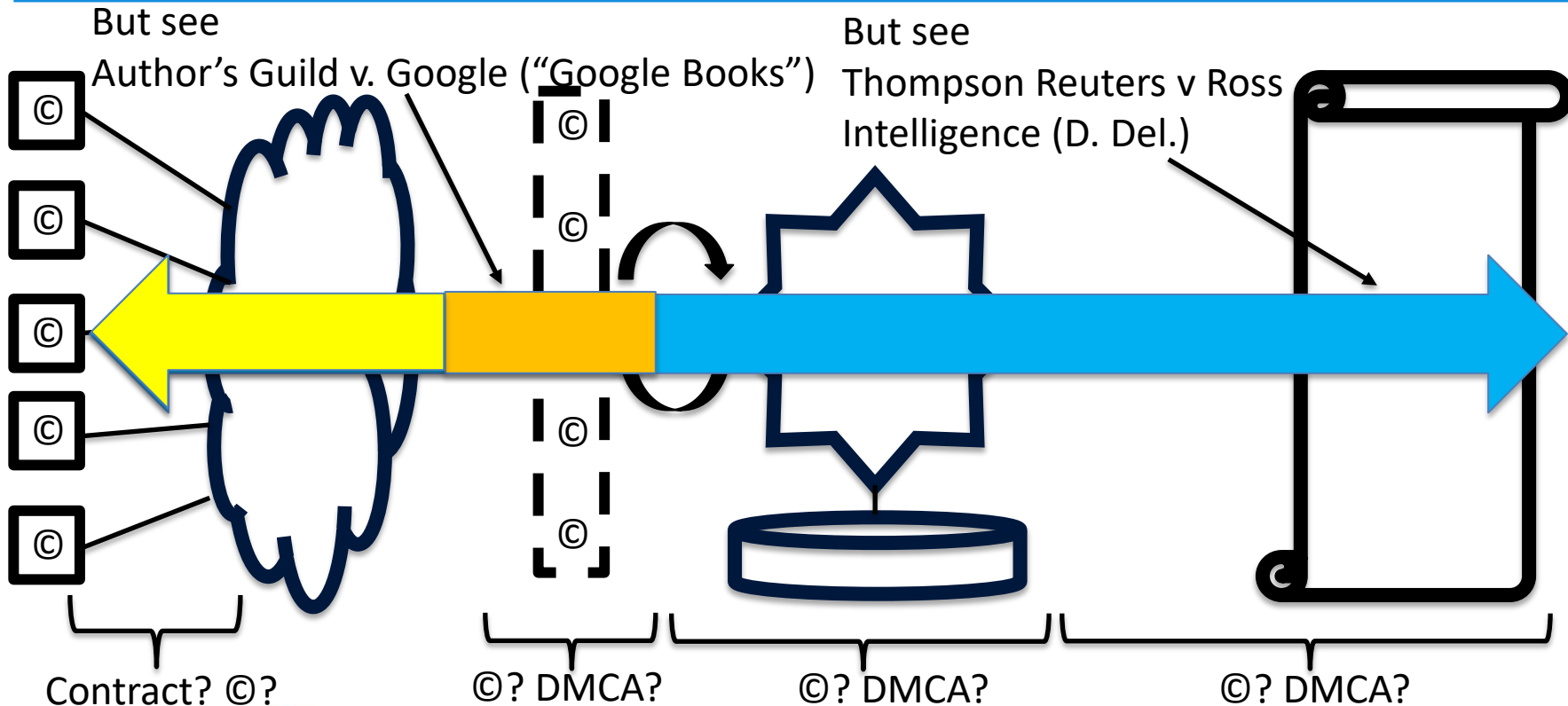


New(-ish) Legal Interpretation Issue

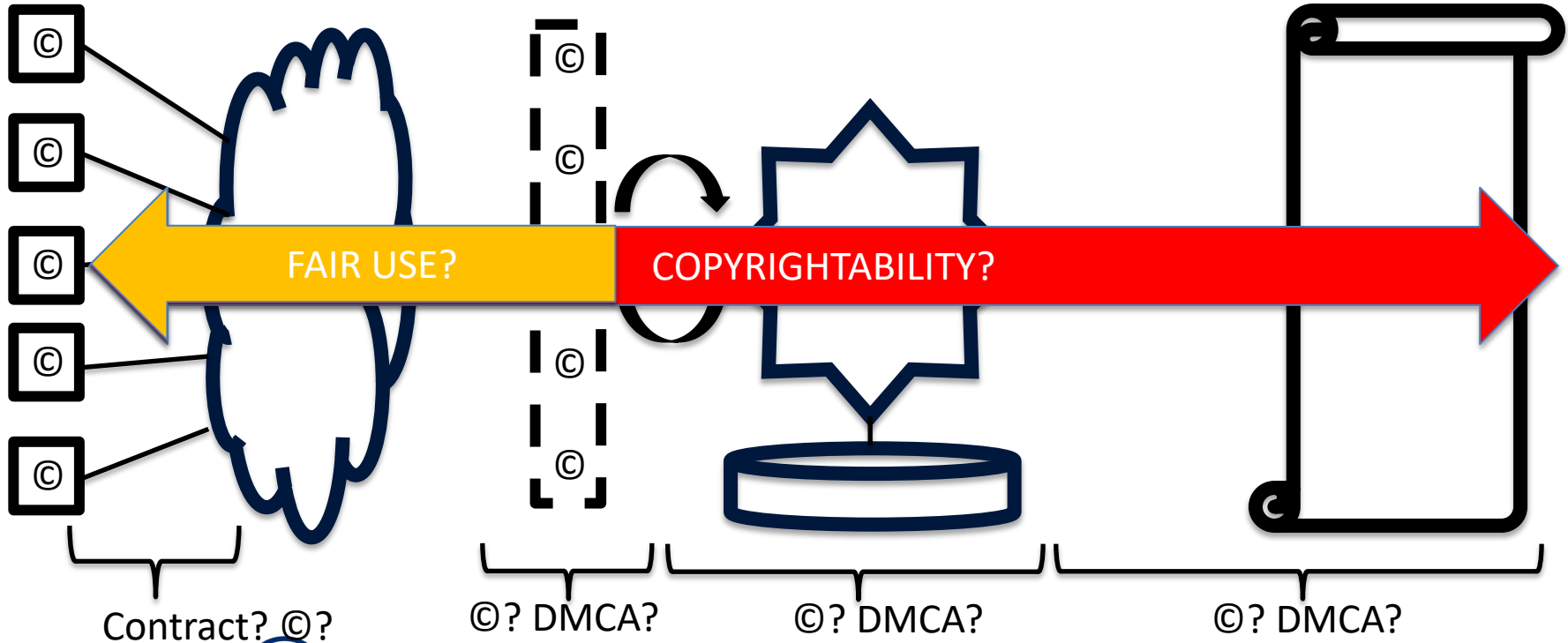
- Does v Github (“Copilot” case of AI-generated software source code)
 - “no DMCA violation exists where the works [containing CMI and alleged infringing work] are not identical”
 - Order June 24, 2024
 - Certified for interlocutory appeal to 9th Circuit September 27, 2024
 - Appeal docketed with 9th Circuit October 8, 2024
 - 9th Circuit briefing starting this month
 - 9th Circuit law seems to support lower court decision



How Hot is The Claim?

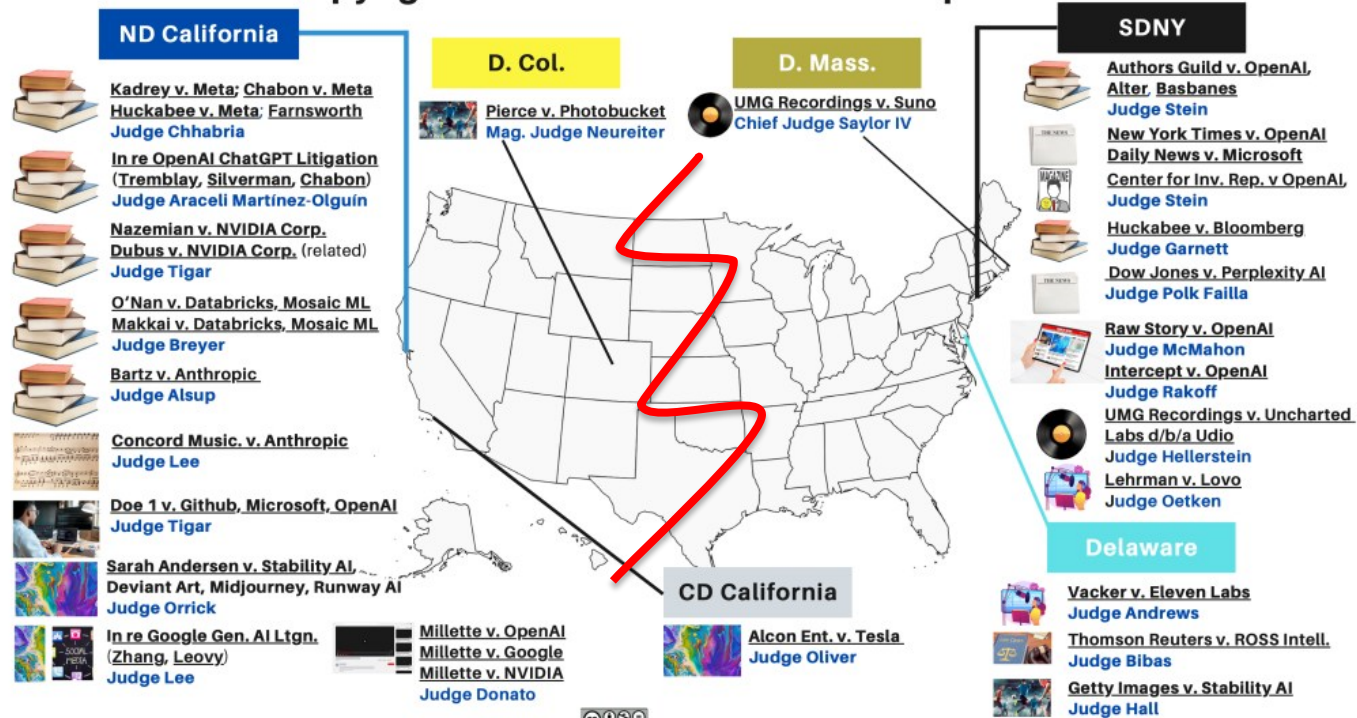


What (Should Be) The Defense?



East Coast vs. West Coast Beef?

Copyright + Related Lawsuits v. AI Companies



Jan. 3, 2025

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East Coast vs. West Coast Beef?

- West Coast cases (primarily N.D. Cal.) not going well for plaintiffs:
 - Lots of 12(b)(6) dismissal of claims, and denial of attempts to amend those claims
 - Cases appear to be narrowing to only claims based on copying & CMI removal as part of creating a training database
 - Example: Kadrey v Meta
 - Earlier dismissal of many of the claims on outputs being © or DMCA infringements
- At least one East Coast case (Thompson Reuters v. Ross Intelligence) chalks up substantial plaintiff win



East Coast vs. West Coast Beef?

- Thompson Reuters & West Publishing Corp. v. Ross Intelligence Inc. (D. Del.)
 - Training AI on WestLaw headnotes
 - MSJ granted for plaintiffs on © infringement
 - Feb 11, 2025
 - Judge reverses prior opinion (Sep 25, 2023) rejecting MSJ



East Coast vs. West Coast Beef?

- Thompson Reuters & West Publishing Corp. v. Ross Intelligence Inc. (D. Del.)

II. I GRANT PARTIAL SUMMARY JUDGMENT TO THOMSON REUTERS, NOT ROSS, ON DIRECT COPYRIGHT INFRINGEMENT AND RELATED DEFENSES

The dispute boils down to whether the LegalEase Bulk Memo questions copied Thomson Reuters's headnotes or were instead taken from uncopyrightable judicial opinions. To decide many issues here, one must compare the Bulk Memo questions, headnotes, and opinions side by side. I include the table below as an example. The questions and headnotes in this case are sealed. So the headnote and question in this table are not actual materials from the record, but an example I created based on *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

Question	West Headnote	Case Opinion
Does originality for copyright purposes mean that the work was independently created and has some minimal degree of creativity?	Originality, for copyright purposes, means that the work was independently created and has some minimal degree of creativity.	Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity.



East Coast vs. West Coast Beef?

- Other East Coast cases following pattern of West Coast cases:
 - The Intercept Media v OpenAI (S.D.N.Y.); Raw Story Media v OpenAI (S.D.N.Y.)
 - Dismissal of many DMCA claims on 12(b)(6)



Antitrust Enters the Picture

- Chegg, Inc. v. Google LLC, 1:25-cv-00543, (D.D.C. Feb 24, 2025)
 - ©-like claims, but complaint is for antitrust
 - Google leveraged its “monopoly” in search in order to gain access to plaintiff’s content to train AI
 - AI then competes with plaintiff
 - Plaintiff’s content heavily fact-dependent



Antitrust Enters the Picture

The screenshot shows a search engine interface with a search bar at the top containing the query: "Adaptive Restoration" is the preferred approach by restoration ecologists because: Informs b. Below the search bar are navigation tabs for All, Images, Shopping, Forums, Web, Videos, News, and More, along with a Tools button. The main content area features an AI Overview section with a blue diamond icon and the text: "Adaptive Restoration" is preferred by restoration ecologists because it incorporates science into practice by using a monitoring and learning process to adjust restoration strategies based on new data, essentially making the restoration process more informed by scientific knowledge. Below this is an Explanation section with a sub-section for Adaptive management: This is a key aspect of adaptive restoration, where ongoing monitoring and evaluation of restoration efforts inform future actions, allowing for adjustments based on the observed results. A "Show more" button is located below the explanation. To the right of the AI Overview is a sidebar with two items: "Adaptive Restoration LLC" with a sub-description "WHO is Adaptive Restoration? Adaptive Restoration is a full-service ecological restoration and land management compan..." and "Restoration Ecology - an overview | ScienceDirect Topics" with a sub-description "Historically, restoration ecology has applied ecological theory to recover biodiversity and ecosystem functions [12]. Recent...". At the bottom of the screenshot, a red dashed box highlights a Chegg search result snippet. The snippet includes the Chegg logo, the URL "https://www.chegg.com / questions-and-answers / adapti...", the text "Solved 'Adaptive Restoration' is the preferred approach by", and a question: "Question: 'Adaptive Restoration' is the preferred approach by restoration ecologists because: Informs basic ecological science All of these answers incorporates ...".



Can You © (or (P)) the Outputs?

- Report of US © office, Jan 29, 2025:
 - “Where that creativity is expressed through the use of AI systems, it continues to enjoy protection. ***Extending protection to material whose expressive elements are determined by a machine, however, would undermine rather than further the constitutional goals of copyright.***”
 - US Constitution, Article I, Section 8, Clause 8: “Authors” & “Inventors” = natural persons.
- Thaler cases:
 - Thaler v Perlmutter (D.C. Cir): ©
 - © denied in USCO, D. D.C. & (yesterday) D.C. Cir.
 - Thaler v Vidal (D.C. Cir.): (P)
 - (P) denied in USPTO & Fed. Cir.; cert. denied



Why Should We Care?

- Potential to establish new law on boundaries of copyrightability, and thus what is infringement and/or a derivative work?
 - But maybe not – see Google/Oracle
 - Will every major case from now on devolve into a multifactor, fact-intensive fair use analysis?
 - No judge wants to touch the third rail of narrowing and/or defining what is copyrightable?
 - Are Thompson Reuters (MSJ © infringement granted) and N.D. Cal. decisions (most © claims dismissed) reconcilable?



Why Should We Care?

- Could there be a revival of *INS v. AP* (“quasi-property” right to some fact gathering?)
 - From quasi- to actual via public policy lobbying?
- Perhaps some clarity on CMI obligation in DMCA
 - Is it something beyond © itself?



Why Should We Care?

- Dispute about whether (and under what conditions) outputs can themselves be © (and (P)) may implicate interesting statutory and constitutional questions for © and patent
 - Can a machine be an “Author” or “Inventor”?



Looking Long-Term

- The initial, splashy, cases may not be the ones that ultimately have legs and/or establish new law
 - Follow the ones filed by the big corporate © holders, not the smaller – but headline-grabbing – individual authors
 - Getty Images, Thompson Reuters, etc.
 - But maybe not the news organizations (NY Times, Washington Post, etc.)
 - Will N.D. Cal. class action cases turn in a different direction now that “big” litigation firms involved?
 - Boies Schiller
- Still very early in the process; after the civil procedure wars are mostly resolved, the real interesting stuff may emerge
- Is all of this eventually headed to the Supreme Court, to “further clarify” Google/Oracle (and perhaps Google Books)?



Questions?

