



AI-Driven Litigation:

Copyright, Patent & Personal Injury

A Comparative Analysis of Landmark Cases — US & Europe

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The AI Litigation Landscape

130+

"Notable" GenAI lawsuits worldwide (since 2023)
(US: 100 +, Europe 18 +)

130%

Year-on-year increase in filings (2024–25)

130

minutes minimum talking time on Copyright, Patent & Personal Injury cases

Copyright Infringement

Training-data scraping, piracy of works, output reproduction — Liability for content ingested by LLMs

Patent Litigation

AI-enabled product patents, infringement by opaque models, and inventorship of AI-generated innovations

Personal Injury

Autonomous vehicles, medical AI misdiagnosis, algorithmic harm — P: duty, breach and causation

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COPYRIGHT · USA

The Battle for AI Training Data & Fair Use



Factor 1	Factor 2	Factor 3	Factor 4
Purpose & Character Transformative use? Commercial purpose? Courts now consistently find LLM training 'highly transformative.'	Nature of the Work Fictional/creative works enjoy stronger protection than factual works. Song lyrics & novels = high protection.	Amount Taken AI ingests entire corpora. Courts weigh whether the 'amount' was necessary for the transformative purpose.	Market Effect Decisive factor in 2025: Does AI output substitute or dilute the market for the original? Crucial battleground.

Thomson Reuters v. Ross Intel. (D.Del. Feb. 2025)

Ross used TR's proprietary Westlaw headnotes (via third party) to train its AI legal research tool. Court: copyright infringement — AI training on curated editorial content not fair use. Cross-over between patent-adjacent IP and copyright.

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US CASE · N.D. CAL.

Bartz et al. v. Anthropic PBC



No. 3:24-cv-05417-WHA (N.D. Cal. · Summary Judgment: 23 June 2025 · Settlement: August 2025)

Key Facts Plaintiffs: Bartz, Graeber, et al.(class action) Claim: Anthropic trained Claude on ~7 million pirated books from LibGen & PiLiMi ('shadow libraries'), admitted to avoid 'legal/practice/business slog' (Dario Amodei) Judge <i>Alsup</i> ruling (23.6.2025): Legally acquired books → FAIR USE ('quintessentially transformative'); Pirated copies → NOT fair use; infringement found Class certified: ~500,000 works from LibGen/PiLiMi datasets	Significance Historic Settlement \$1.5 bn — largest copyright settlement in US history. ~\$3,000 per registered author. Piracy ≠ Fair Use First clear holding: source matters. Lawful v. piracy Relevance for Insurers Cyber/IP indemnity policies triggered. Existential exposure (\$ hundreds of billions) drove settlement. No Future Licence Settlement does not grant Anthropic licence for future use
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US CASE · N.D. CAL.

Kadrey et al. v. Meta Platforms, Inc.

No. 3:23-cv-03417-VC (N.D. Cal. 25 June 2025 — Full Fair Use Victory for Meta)



Same week as Bartz — but a different outcome and a different analytical path. Compare & contrast is key for insurance underwriting

Facts & Ruling

- 13 authors incl. Sarah Silverman, Ta-Nehisi Coates
- Meta downloaded books via BitTorrent from shadow libraries (LibGen, Bibliotik) to train Llama 1, 2 & 3
- Judge *Chhabria*: granted Meta's cross-motion for summary judgment on fair use
- Plaintiffs failed to show viable market harm — no evidence Llama substitutes for the original works
- Court noted 'market dilution' theory as possible future path but not proven on the facts

Bartz vs. Kadrey: Key Divergence

- Bartz* (Alsup): **source matters** — piracy ≠ fair use; *Kadrey* (Chhabria): shadow-library downloads = **fair use if no market harm shown**
- Kadrey* places decisive weight on Factor 4 (market effect) requiring concrete evidence
- Agreement: LLM training is 'highly transformative'** — transformativeness alone insufficient if market harm shown
- Implications: plaintiffs must prepare economic evidence of market substitution/dilution
- Both decisions leave class member claims open

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EUROPE · GERMANY

GEMA v. OpenAI — Landgericht München I

Az. 42 O 14139/24 · 11 November 2025 · 42nd Civil Chamber (Specialist Copyright Division)



Facts & Claims	Ruling (GEMA Win)	Significance for EU Practice
GEMA (German collecting society for music) sued two OpenAI entities for: (i) memorisation of song lyrics in GPT-4 and GPT-4o model parameters, and (ii) verbatim regurgitation in ChatGPT output. Nine iconic German songs including 'Atemlos' (Helene Fischer) & 'Über den Wolken' (Reinhard Mey). Claims: injunctive relief, disclosure, and damages. Pending: <i>Penguin v. OpenAI</i> (26 March 2026) and <i>GEMA v. Suno</i> (21 January 2025; oral hearing 26 March 2026)	Court: memorisation = reproduction (§§ 15, 16 UrhG / Art. 2 InfoSoc Directive). Text & Data Mining exception (§ 44b UrhG / Art. 4 DSM Directive) does NOT cover memorisation — applies only to initial analytical phase, not long-term storage. Output reproducing lyrics = further act of reproduction AND communication to the public (§ 19a UrhG); <i>Schack</i> NJW 2024, 113 OpenAI directly liable (not just the user). ECJ will decide on Art. 4 DSM Directive and Art. 2 InfoSoc Directive (Case C-250/25 of Budapest Könyvéki Törvényszék – Like Company)	First German court to rule that AI output can infringe copyright. Contrast with US: no 'fair use' safety valve in German/EU law — TDM exceptions are narrow and conditional (but cf.: non-commercial users; <i>Kneschke v. LAION e.V.</i>, OLG Hamburg 10 December 2025 – 5 U 104/24) No precedent: yet illustrative for other collecting societies. On appeal to OLG München. AI Act (EU 2024/1689) requires training data disclosure — will support future infringement claims.

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UK · HIGH COURT

Getty Images (US) Inc. & Ors v. Stability AI Limited

[2025] EWHC 2863 (Ch) · Case IL-2023-000007 · Justice Joanna Smith · 4 November 2025



Jan 2023

Getty files proceedings

Jun 2025

Getty drops primary copyright & DB rights claims at trial

4 Nov 2025

Judgment handed down

Secondary Copyright X

Getty had **abandoned primary copyright** claim (no UK-based training proven). P: Territoriality Principle (cf. EU Art. 53(1) AI Act)

Secondary Copyright: No reproduction found under §§ 17, 22, 23 CDPA 1988.

Getty's argument that Stability 'imported' an article containing infringing copies of parts of its image gallery rejected.

Court found "Stable Diffusion" learns statistical distributions — does not store copies in model weights.

Trade Mark ✓ (limited)

Stable Diffusion v1.x–2.1 found to **reproduce synthetic Getty watermarks** in outputs.

Stability held liable as model provider — **user cannot be blamed** when model was trained on watermarked images.

No liability for later SD versions (XL, v3+).

Significant: AI provider bears responsibility for its model's inherent infringement tendency.

Takeaways

Narrow decision: territorial issues and evidence gaps drove outcome, not a policy preference for AI.

Training outside UK = no UK primary infringement. **Watch the appeal.**

EU/German courts (GEMA) taking **opposite approach on output liability.**

Divergence between UK and continental Europe on AI copyright critical for global AI product deployment.

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PATENT · IP

AI & Patent Law: Infringement & Inventorship



US Key Issues in AI Patent Litigation

AI Inventorship (Fed. Cir. *Thaler v. Vidal*, 2022)
USPTO (Nov. 2025 guidance): AI **cannot be a named inventor** — human must meaningfully contribute to claim. US Supreme Court declined review. Impact: human creative contribution in AI-assisted R&D needs to be documented.

Infringement by Opaque Models
For 35 USC § 271(a) infringement, proving internal workings is difficult — training data and weights = trade secrets. Courts accept evidence from documentation (marketing, technical papers). **Discovery battles** over model architecture.

Alice/Mayo Test & AI Patents
Software/AI process patents face **35 USC § 101 Patent Act** eligibility challenges. Key: claim must not merely recite abstract mathematical concepts. Natural-language-processing and neural-network patents remain vulnerable (cf. *Recentive Analytics, Inc. v. Fox Corp.* (134 F.4th 1205, Fed. Cir. 2025)).

European and UK Perspective: Patentability Focus

EU Approach
EPO in *DABUS* (21 December 2021): AI-assisted inventions patentable if a **human inventor** is identified (Art. 81 and Rule 19(1) EPC). **AI Act disclosure obligations** may assist infringement plaintiffs in identifying training methods.

UK Supreme Court 11 February 2026 *Emotional Perception AI Ltd v Comptroller-General of Patents* [2026] UKSC 3
Invention: Suggestions by passing music through a trained ANN
UKSC: ANN avoids statutory exclusion from patentability of a program for a computer as such (sec. 1 (2) (c) Patents Act 1977)
"intermediate step": scrutiny of which features contribute to technical character
Decision brings UK into alignment with EPO after 20y of divergence

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AI & Personal Injury: Shifting Patterns of Liability



Autonomous & Semi-Autonomous Vehicles

Benavides v. Tesla (Florida wrongful death & products liability case): jury apportioned fault between Tesla Autopilot (design/misleading marketing) and human driver — shared liability model emerging **(not available in Continental Europe!)**

(33% fault TESLA damages of \$ 243 mio. upheld upon appeal 20 February 2026)

CA AB 1777 (2024): manufacturers — not drivers — liable for autonomous vehicle traffic violations

Key issues: defective design, failure to warn, product liability (strict vs. negligence), insurance coverage gaps

Medical AI & Diagnostic Tools

Dickson v. Dexcom Inc. (E.D. La. 2024): first major AI-adjacent medical device product liability case — preemption defence tested

ALI Restatement of Medical Malpractice (May 2024): shifts standard of care toward evidence-based norms — AI adoption may become obligatory

Dual exposure: not using AI may be negligent; over-relying on AI as well

Hospital / physician / developer — who bears primary liability for AI misdiagnosis?
Respondent superior strained

Other Cases & EU law

Voice Cloning: Damages in form of assumed licence fee awarded by Landgericht Berlin II (20 August 2025 — 2 O 202)

Personal injury from AI: 10% of GenAI lawsuits (2020–25) growing fast

EU AI Act (2024): high-risk AI (medical, transport) subject to conformity assessment — non-compliance = liability

EU AI Liability Directive (draft of 2024, withdrawn 16 July 2025): rebuttable presumption of causal link where AI developer non-compliant with Act; otherwise: national rules by means of analogy (*Brand MedR* 2019, 943)

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Insurance Implications



Things to Watch

AI E&O and media liability policies are now essential.

Fair Use interpretation in the US after *Kadrey v. Meta*

Convergence or divergence of UK/E-approach after *Getty* Appeal and ECJ Case C-250/25

Final Fate of the EU AI Liability Directive (so far withdrawn) and the transposition of the **EU Product Liability Directive by 9 December 2026**

New Status Quo

Copyright: European copyright exposure may be more severe for insurers than US exposure (no fair-use doctrine)

Patent: Infringement by AI products triggers: (i) IP indemnity policies; (ii) tech E&O.

Rising allowance rates for AI patents = more infringement suits.

'Black box' opacity creates proof-of-infringement and causation challenges

Personal Injury: ISO exclusions (Jan 2026): standard CGL policies may exclude AI-generated bodily injury — dedicated AI coverage required

Things to Do

Existing cyber/IP/CGL policies have coverage gaps for AI risks (in particular patent litigation!).

e.g. AI output = "occurrence"?; model failure = cyber incident?

"Silent AI" problem in legacy products: New ISO exclusions (2026) require dedicated AI coverage (**Careful use in Continental Europe**).

Exclusion design: structured approach (e.g. modular structure):

- Covered AI use,
- Excluded intentional scraping/piracy
- Sublimited output IP infringement

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