

# Highlights

## Highlights of the 2025–2026 Update to Abrams and Ochoa, *The Law of Copyright* include the following:

Coverage of cases involving generative artificial intelligence (AI), including copyright protection for AI-generated works and fair use of copyrighted work for training generative AI models:

- the D.C. Circuit’s decision in *Thaler v. Perlumtter*, upholding the denial of registration for an image created by autonomously by generative AI software
- the district court decision in *Thomson Reuters Enterprise Centre v. Ross Intelligence Inc.*, holding that West’s individual headnotes are copyrightable works, and that copying them in the process of training AI software to find citations to legal questions was not a fair use
- two district court decisions in *Bartz v. Anthropic PBC* and *Kadrey v. Meta Platforms, Inc.*, each holding that copying works for the purpose of training a generative AI model was a fair use, but disagreeing whether the source of the copies must be lawful, and whether “market dilution” caused by competition from generative AI programs was a viable theory of harm
- the district court’s decision denying a motion for a preliminary injunction in *Concord Music Group v. Anthropic PBC*, on the grounds that an injunction against copying lyrics would be unworkable, and that plaintiffs had failed to prove irreparable harm
- district court decisions concerning liability for alleged removal of copyright management information in the course of training generative AI models

Coverage of numerous cases involving fair use, including

- the Second Circuit’s decision in *Romanova v. Amilus, Inc.*, with extended dictum listing multiple justifications for lawful fair use of copyrighted works
- the Second Circuit’s decision in *Hachette Book Group v. Internet Archive*, affirming the ruling that the Archive’s “controlled digital lending” program, where it purchases physical books and makes and lends electronic versions to users, was not a fair use
- the Eighth Circuit’s decision in *Designworks Homes, Inc. v. Columbia House of Brokers Realty*, holding that making

and displaying floorplans of an architectural work when a residential home is offered for sale online is a fair use

- the district court’s decision in *Santos v. Kimmel* that TV talk-show Jimmy Kimmel’s use of Cameo videos recorded by disgraced former Congressman George Santos was a fair use
- the district court’s decision in *Grant v. Trump* that the Trump campaign’s use of the song “Electric Avenue” in an online video promoting his candidacy was not a fair use
- additional cases considering whether educational purposes can be considered fair use

Coverage of other important cases, including

- the Supreme Court’s decision to grant *certiorari* to review the Fourth Circuit’s decision in *Sony Music Entertainment v. Cox Communications*, concerning contributory infringement of an Internet access provider for infringement committed by its users, and proper application of the “wilfulness” standard for recovery of statutory damages
- the Fifth Circuit’s decision in *UMG Recordings, Inc. v. Grande Communication Networks*, upholding contributory infringement of an Internet access provider for infringement committed by its users, and the proper calculation of statutory damages
- the Second Circuit’s decision in *Capitol Records, LLC v. Vimeo, Inc.*, affirming the ruling that Vimeo did not have either “substantial influence” over its users or “red-flag” awareness of specific instances of infringement that would disqualify Vimeo from the “safe harbor” for online service providers
- the Ninth Circuit’s decision in *Tangle, Inc. v. Aritzia, Inc.*, concerning the scope of protection in movable (manipulable) sculptures
- the Ninth Circuit’s decision in *Carroll Shelby Licensing, Inc. v. Halicki*, holding that the four Ford Mustangs code-named “Eleanor,” featured in the movie *Gone in 60 Seconds*, its remake, and its sequels, was not a “character” entitled to copyright protection
- the district court’s decision in *Vetter v. Resnik* that renewal and termination rights under U.S. law include worldwide rights and are not limited to the U.S. portion of the copyright

New material on all of the following topics:

- prices as uncopyrightable facts or ideas
- copyright protection in maps
- the merger doctrine

## HIGHLIGHTS

- works made for hire under the 1909 Act (the “instance and expense” test)
- termination of transfers outside of the statutory five-year period
- streaming royalties under the Music Modernization Act of 2018
- ownership of a “copy” for the section 117 exemption for computer programs
- the exclusive right to prepare derivative works
- contributory infringement and vicarious liability for infringement
- application of the “discovery rule” to the Copyright Act’s statute of limitations
- equitable estoppel as a defense to copyright infringement claims
- recovery of “indirect profits” from use of an infringing work
- whether statutory damages can be calculated on a “per song” basis
- recovery of prejudgment and postjudgment interest under the Copyright Act
- anti-circumvention of technological protection measures
- removal of copyright management information and “identity” requirement
- Article III standing and statutory standing under section 501(b)
- subject-matter jurisdiction and motions to confirm arbitration awards

And new cases or updated citations on all of the following topics:

- copyright protection for privately-authored codes incorporated into law
- copyright protection for typefaces, font software, and font data
- copyright protection for computer software
- display of copyright-protected useful articles in advertisements
- the “server test” for infringement of the public display right
- the “volitional conduct” standard for direct liability for infringement
- copying for educational purposes as fair use
- waiver of sovereign immunity for claims against the U.S. government
- fraud on the Copyright Office under section 411(b)
- bad faith notices of claimed infringement under section 512(f)

THE LAW OF COPYRIGHT

- voluntary dismissals and “prevailing party” status for attorneys’ fees
- prevailing defendants and recovery of attorneys’ fees
- preemption of state-law claims