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Trademark and Copyright Law:
What Shaped 2025, What's Next in 2026

Cooley's 2026 CLE Webinar Series

March 11, 2026

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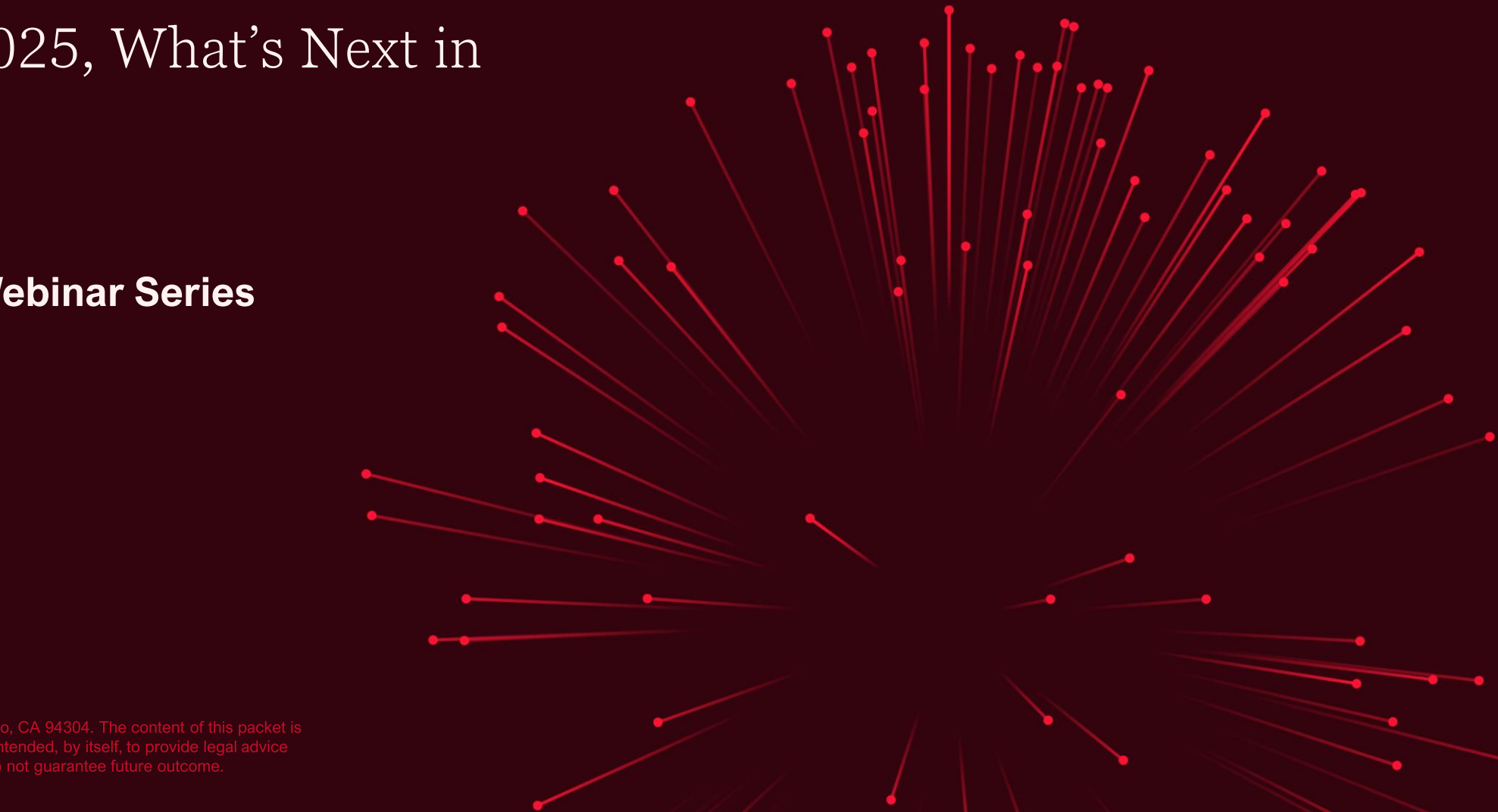


Agenda

- Copyright Office Developments
- USPTO Developments
- 2025/2026 Case Law Recap
- 2026 Cases to Watch
- Domain Names: New TLDs

Copyright Office Developments

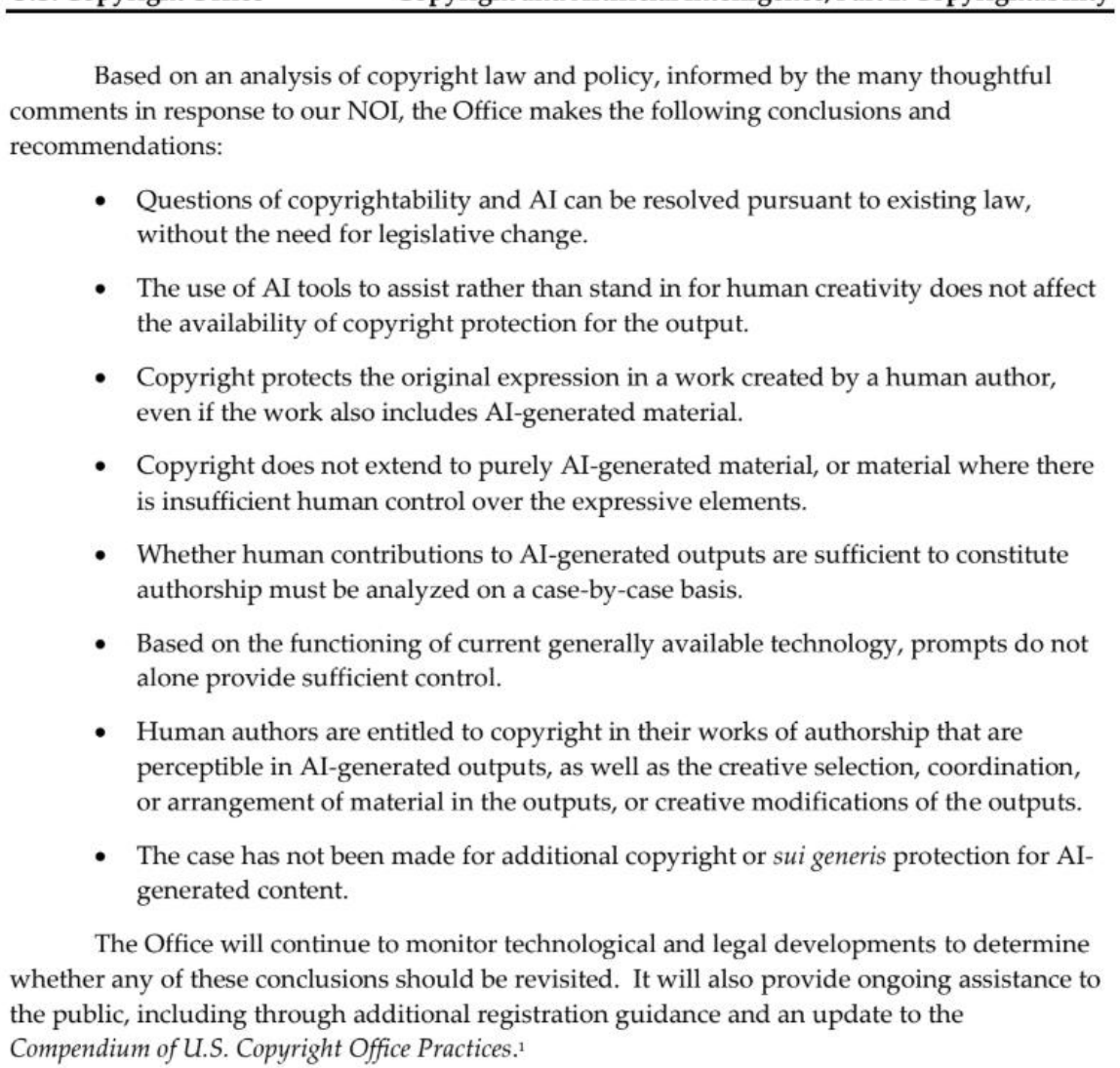
Copyright and Artificial Intelligence Report from U.S. Copyright Office

- Part 1: Digital Replicas (July 2024)
- Part 2: Copyrightability (January 2025)
- Part 3: Generative AI Training (May 2025) *"pre-publication version"*

UNITED STATES COPYRIGHT OFFICE

Copyright Protection & AI-Generated Works

- Copyright Office Report on Copyrightability (January 2025)
  - Recommended that copyright protection not extend to purely AI-generated material or material where there is insufficient human control over the expressive elements
  - Copyright protection is available for:
    - Human works of authorship that are perceptible in AI-generated outputs
    - Creative selection, coordination, or arrangement of material in AI-generated outputs
    - Creative modification of AI-generated outputs
- The Report is consistent with the Copyright Office's prior registration decisions and guidance



U.S. Copyright Office **Copyright and Artificial Intelligence, Part 2: Copyrightability**

Based on an analysis of copyright law and policy, informed by the many thoughtful comments in response to our NOI, the Office makes the following conclusions and recommendations:

- Questions of copyrightability and AI can be resolved pursuant to existing law, without the need for legislative change.
- The use of AI tools to assist rather than stand in for human creativity does not affect the availability of copyright protection for the output.
- Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material.
- Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements.
- Whether human contributions to AI-generated outputs are sufficient to constitute authorship must be analyzed on a case-by-case basis.
- Based on the functioning of current generally available technology, prompts do not alone provide sufficient control.
- Human authors are entitled to copyright in their works of authorship that are perceptible in AI-generated outputs, as well as the creative selection, coordination, or arrangement of material in the outputs, or creative modifications of the outputs.
- The case has not been made for additional copyright or *sui generis* protection for AI-generated content.

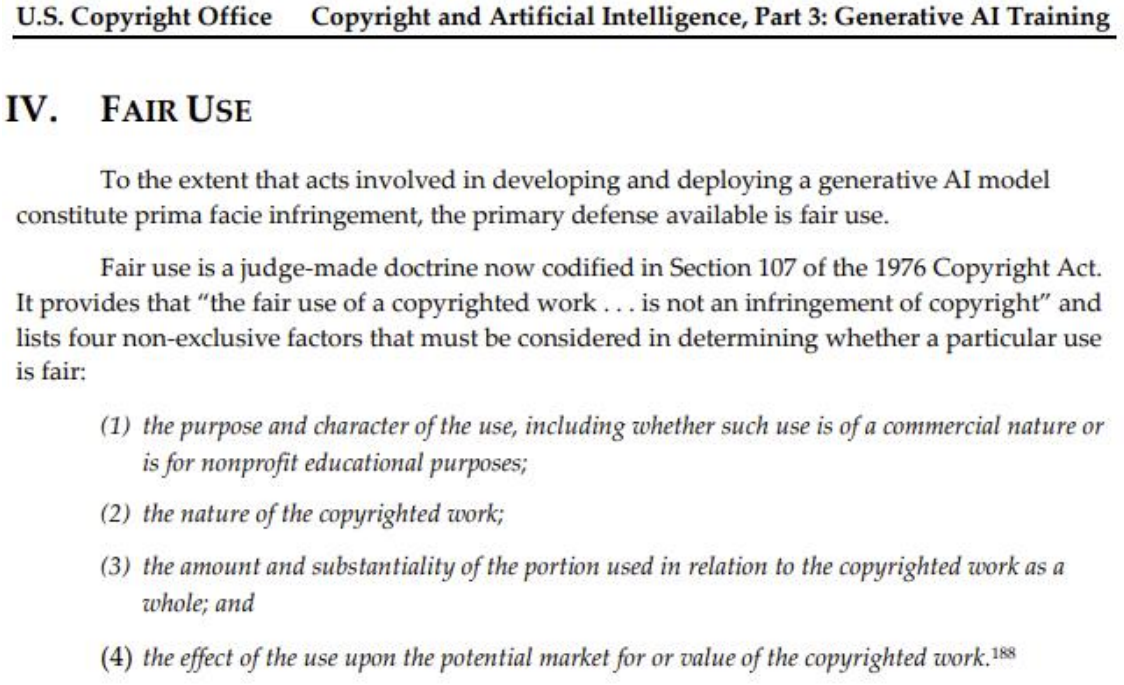
The Office will continue to monitor technological and legal developments to determine whether any of these conclusions should be revisited. It will also provide ongoing assistance to the public, including through additional registration guidance and an update to the *Compendium of U.S. Copyright Office Practices*.[1]

Copyright Protection & Software

- Limitations on protectability of AI-generated works also extend to software – software that is AI-generated is not protectable
- Material that is not protected by copyright must be disclaimed in a registration application (*Compendium (Third)* § 503.5)
- Other material that must be disclaimed:
  - material that was previously published
  - material that was previously registered
  - material that is in the public domain
  - material that is owned by someone other than the claimant
- **Application:** Software developed with AI tools (e.g., "vibe coding" or agentic AI) or using third-party or open-source software may not be registrable or will require identification of excluded material
- Failure to be candid with the Copyright Office could create vulnerabilities down the line, even if the software is successfully registered

Copyright Office & Generative AI Training

- Copyright Office Report on Generative AI Training (May 2025) *pre-publication version*
  - Provides the Office's understanding of technical aspects of training – how generative AI systems are developed and deployed
  - Identifies points in the development of generative AI systems where acts implicating copyright rights may occur
  - Analyzes how the fair use doctrine may apply to those acts



U.S. Copyright Office Copyright and Artificial Intelligence, Part 3: Generative AI Training

IV. FAIR USE

To the extent that acts involved in developing and deploying a generative AI model constitute prima facie infringement, the primary defense available is fair use.

Fair use is a judge-made doctrine now codified in Section 107 of the 1976 Copyright Act. It provides that "the fair use of a copyrighted work . . . is not an infringement of copyright" and lists four non-exclusive factors that must be considered in determining whether a particular use is fair:

(1) *the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*

(2) *the nature of the copyrighted work;*

(3) *the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*

(4) *the effect of the use upon the potential market for or value of the copyrighted work.*[188]

USPTO Developments

USPTO Trademark Fee Update

New Fees Introduced

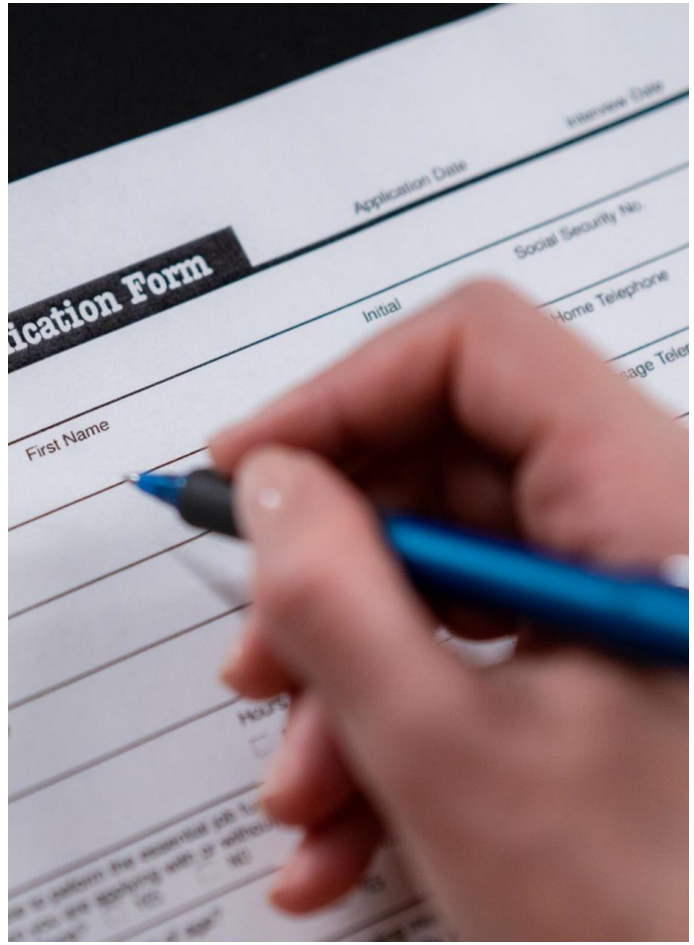
USPTO now charges additional fees for trademark applications listing goods or services not in the Trademark ID Manual

Streamlined Application Review

The fee change is designed to make application review faster and more efficient by encouraging accurate descriptions

Applicant Recommendations

Applicants should check the Trademark ID Manual to avoid extra fees and speed up the prosecution process



USPTO Trademark Wait Times

Overall Timeline

- **First Office Action:** ~4–5 months from filing
- **Total Pendency (to registration/abandonment):** ~10–11 months

Filing → 4–5 Months → First Action → 2–3 Months response → Publication →

(If ITU) 4–5 Months SOU → Registration

Trends

- Push to use identifications in the ID Manual appears to have positive effects on timing
- Effect of USPTO layoffs TBD

USPTO Modernization Efforts

Modernizing Infrastructure, Improving Cybersecurity, & Reducing Fraudulent Filings

Security Modernization

- Users must create a USPTO.gov account to access filing systems
- Two-factor authentication is now required, and authentication must be through an authenticator app or security key

Replacement of TEAS and ESTTA with Trademark Center and TTAB Center

- On January 18, 2025, the USPTO retired the traditional TEAS initial application forms
- The Trademark Center, which provides a single, unified base application, is now the exclusive platform for filing new trademark applications
- The TTAB launched the TTAB Center in August 2024
- On May 12, 2025, the platform began accepting petitions for cancellation and is now the exclusive platform for filing petitions for cancellation

2025/2026 Case Law Recap

AI Training & Copyright

Kadrey, et al. v. Meta Platforms, Inc. (N.D. Cal, 2025)

Background

- Authors (including Richard Kadrey, Sarah Silverman, and Christopher Golden) sued Meta Platforms, Inc.
- Core claim was for direct copyright infringement based on the use of the Plaintiffs' books to train Meta's LLaMA large language model

Judge Chhabria's Summary Judgment Decision

- Fair Use Analysis
  - **Factor 1**: Use of copyrighted works to train an AI model was highly transformative
  - **Factor 2**: Creative works weigh against fair use (but not heavily)
  - **Factor 3**: Entire works copied, but justified for transformative purpose
  - **Factor 4**:
    - Plaintiffs failed to show actual or likely market harm
    - No evidence LLaMA outputted ***competing*** works that substituted Plaintiffs' books
    - No cognizable market for licensing works for AI training (as framed in this case)
- **Result:** Summary judgment for Meta on core copyright infringement claim based on training use.

AI Training & Copyright

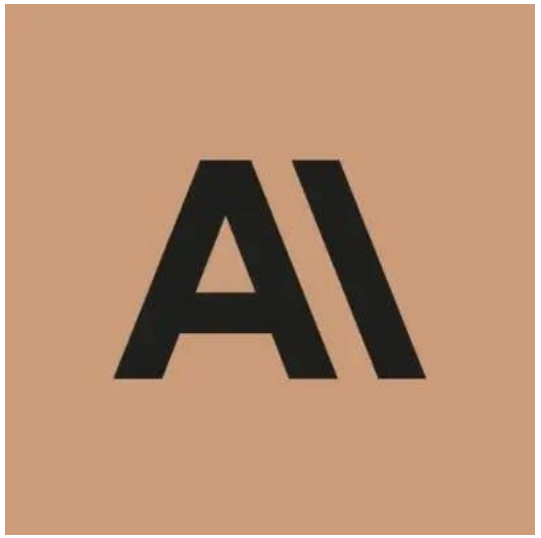
Bartz, et al. v. Anthropic PBC (N.D. Cal, 2025)

Background

- Authors (including Andrea Bartz, Charles Graeber, Kirk Wallace Johnson) sued Anthropic
- Core claim was for direct copyright infringement based on the use of the Plaintiffs' books to train Anthropic's Claude large language model

Judge Alsup's Summary Judgment Decision

- **Training Use (Generally)** – Fair Use
  - Court held training LLMs on copyrighted works was "exceedingly transformative" and constituted fair use under § 107
  - Rationale: training extracts uncopyrightable patterns and enables creation of new text, not reproduction of original content
- **Format Conversion** – Fair Use
  - Converting lawfully acquired print copies to digital format for training was also found to be fair use.
- **Pirated Copies** – Not Fair Use
  - Anthropic's retention of over 7 million pirated book copies in its central library was *not* fair use
  - Court denied summary judgment on pirated-copy claims, leaving piracy liability and damages for trial



Copyright Protection for AI-Generated Works

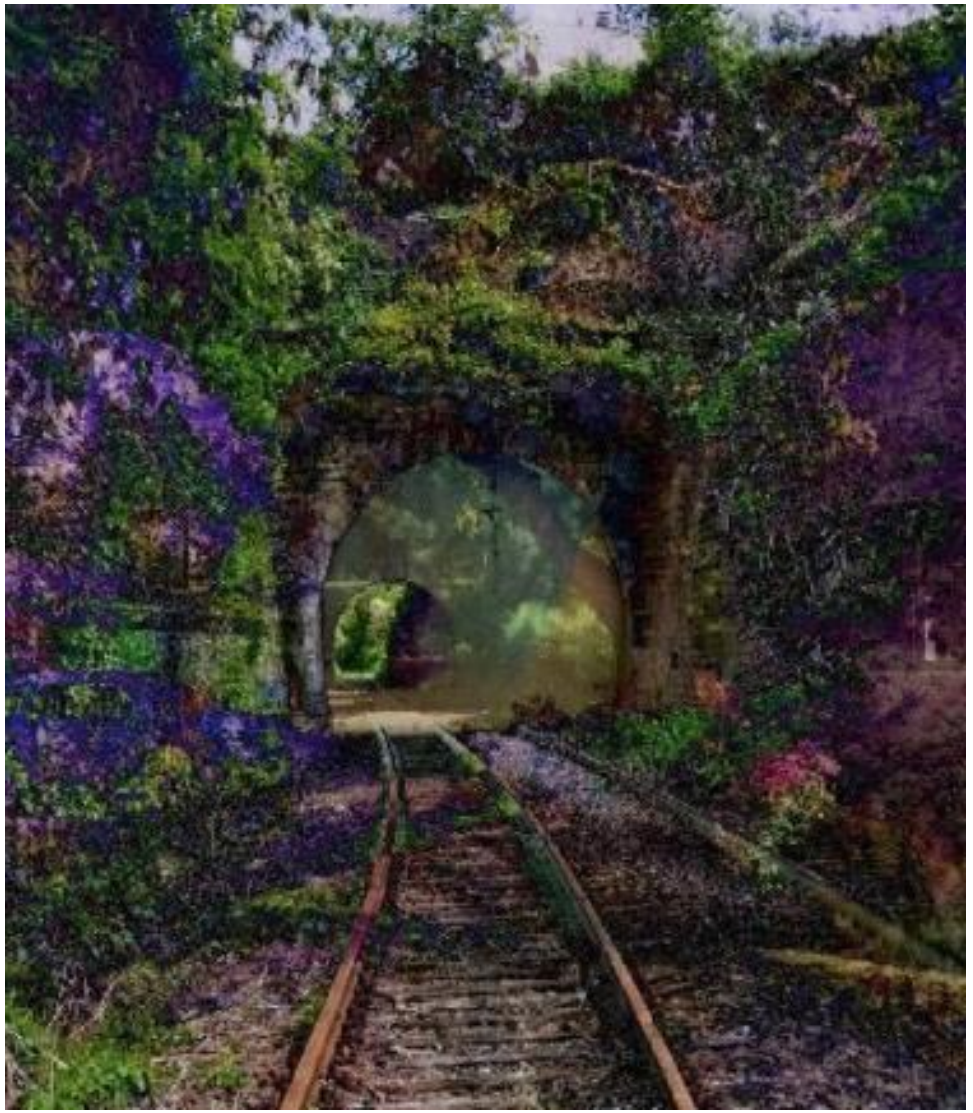
Thaler v. Perlmutter (D.C. Cir., 2025)

Background

- Thaler submitted a copyright application *A Recent Entrance to Paradise* that was AI-generated autonomously
- Thaler listed the Creativity Machine as the sole author and himself as the claimed owner
- Copyright Office denied the application

D.C. Circuit's Decision

- Human authorship is required for a work to be eligible for copyright protection
- Because the Creativity Machine was designated as the author with no human creative contribution asserted, the work was ineligible for copyright
- The Court **affirmed** the district court's and Copyright Office's denial of registration on this basis
- The Court also rejected Thaler's argument that he should be the author under the work-for-hire doctrine
- Cert denied on March 2, 2026



DMCA Safe Harbors

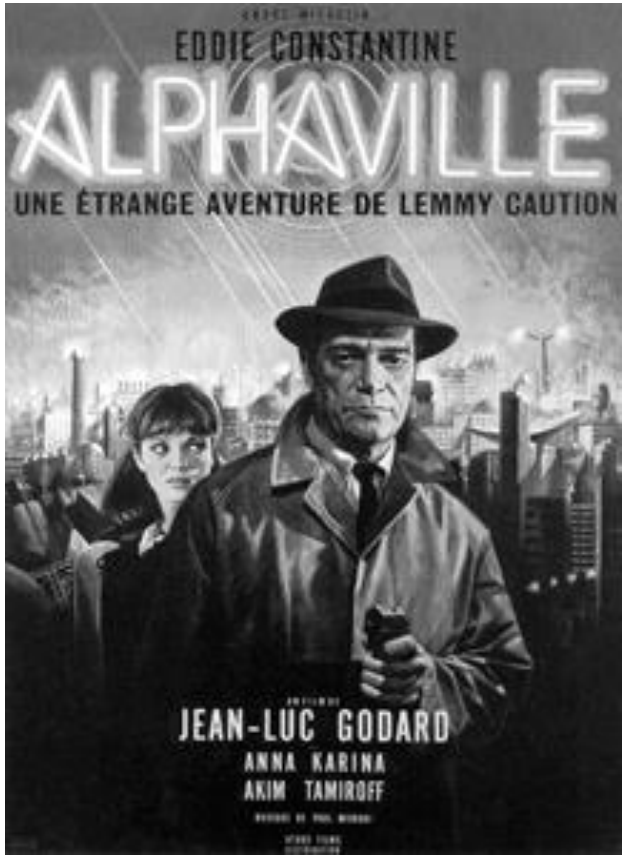
Athos Overseas Limited Corp. v. YouTube, Inc., et al. (11th Cir. 2026)

Background

- Athos found unauthorized uploads of its films on YouTube and served repeated DMCA takedown notices
- YouTube removed the identified videos, but Athos argued YouTube's content-management technologies gave it actual or "red flag" knowledge of additional infringing copies that it failed to remove

Eleventh Circuit's Decision

- The court rejected Athos's argument that YouTube's copyright management tools automatically gave YouTube knowledge of un-noticed infringements
- YouTube's moderation and curation features do not by themselves amount to the "right and ability to control infringing activity" for purposes of losing safe-harbor protection where no evidence that YouTube exercised substantial influence over infringing uploads
- **Result:** YouTube was entitled to safe-harbor protection under 17 U.S.C. § 512(c)



Copyrightability of Characters

Carroll Shelby Licensing Inc. et al. v. Halicki et al. (9th Cir. 2025)

Background

- Dispute over whether the iconic movie car "Eleanor" from the *Gone in 60 Seconds* films is a copyrightable character
- Halicki alleged that Shelby's reproduction and licensing of similar cars infringed his asserted copyright in the character "Eleanor"

Ninth Circuit's Decision

- The court applied the *Towle* character test and held that Eleanor **does not** qualify as a copyrightable character:
  - Lacks conceptual qualities like agency, personality, sentience, or emotion
  - Physical appearance varied widely across films
  - Not "especially distinctive" beyond generic sports car imagery

Implications for AI

- Could potentially limit claims based on outputs that resemble "iconic" objects
- Trademark and trade dress claims may still be viable

Trademark Damages

Dewberry Group Inc. v. Dewberry Engineers Inc. (SCOTUS, 2025)

Background

- Dewberry Engineers sued Dewberry Group for trademark infringement and won at the district court, with a large profits award
- District court awarded nearly $43 million by aggregating Dewberry Group and its property-owning affiliates' profits
- Fourth Circuit affirmed

Supreme Court's Decision

- The Lanham Act permits a prevailing plaintiff to recover the "defendant's profits" in a trademark infringement action
- The court unanimously held that this language refers only to profits ascribable to the ***named defendant(s)***, not profits of legally separate affiliate companies that were not sued
- Justice Sotomayor's concurrence suggested lower courts might consider alternative methods (e.g., assessing the defendant's real financial gain or using the "just sum" adjustment in § 1117(a))

Doctrine of Foreign Equivalents

In re Vetements Group AG (Fed. Cir., 2025)

Background

- Vetements Group AG, Swiss fashion brand, sought to register VETEMENTS for clothing and associated retail services
- “Vêtements” is the French word for “clothing.”
- USPTO and TTAB refused registration of the mark as generic under doctrine of foreign equivalents

Federal Circuit’s Decision

- Affirmed TTAB’s refusal to register on genericness grounds
- Rejected Vetements’ argument for a threshold rule requiring that a majority (over 50%) of American purchasers must understand the foreign word; only “appreciable number” is required
- Burden is on the party opposing translation to show that it is unlikely the ordinary American purchaser would stop and translate the word

“Failure to Function” Refusals

In re Brunetti (Fed. Cir., 2025)

Background

- Brunetti filed multiple intent-to-use applications to register F*** as a trademark for goods (e.g., sunglasses, jewelry, bags) and retail services
- USPTO and TTAB refused registration on the ground that the term “failed to function” as a trademark

Federal Circuit’s Decision

- The court vacated and remanded the TTAB’s refusal, not because the F-Word must be registered, but because the Board’s reasoning lacked sufficient clarity and a coherent standard
- The Board concluded that the term is ubiquitous and thus not a source identifier, but failed to explain how other commonly-used words could still function as trademarks
- The court criticized the TTAB’s “I know it when I see it” reasoning

2026 Cases to Watch

AI Decisions

Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc. (3d Cir.)

Background

- Ross developed an AI-driven legal research tool intended to compete with Thomson Reuters' Westlaw tool
- Ross created "Bulk Memos" from memos obtained by a third party LegalEase which had incorporated Westlaw headnotes, and used them to train a machine-learning system designed to match legal questions with relevant judicial opinions

District Court Proceedings (D. Del.)

- Thomson Reuters sued Ross in 2020 for copyright infringement
- In February 2025, district court granted partial summary judgment for Thomson Reuters, finding Ross liable for copyright infringement and rejecting Ross's fair-use defense
- Key Fair Use Factors
  - Factor 1: Use was commercial and served the same purpose as Westlaw
  - Factor 4: Use competed with Westlaw and threatened legal research market and a potential licensing market for training data

Third Circuit Appeal

- First appellate decision reviewing a fair-use ruling involving AI training data

THOMSON REUTERS
WESTLAW™

DMCA Anti-Circumvention

Yout LLC v. Recording Industry Association of America Inc. (2nd Cir.)

Background

- Yout operates a stream-ripping service and website that allows users to download music and video files from platforms like YouTube
- Yout filed a declaratory judgment action against the RIAA in D. Conn. that its software did not violate the DMCA's anti-circumvention provisions under § 1201
- District court entered judgment in favor of RIAA; Yout appealed

Current Status

- **Question on Appeal**: Is Yout's stream-ripping tool circumventing an "access control" under § 1201?
- Oral arguments were heard in February 2024, but in October 2025, the Second Circuit allowed AI developers Suno and Udio to file amicus briefs

Broader Implications

- Second Circuit's decision could have implications for a new string of lawsuits against AI developers under DMCA § 1201

ISPs and Online Piracy

Cox Communications, Inc. v. Sony Music Entertainment (SCOTUS)

Background

- Rights holders sued Cox alleging that Cox's internet subscribers repeatedly engaged in copyright infringement primarily via peer-to-peer file sharing
- Core claims were for contributory or vicarious infringement based on Cox's alleged knowledge of repeat infringers and failure to respond
- Record companies argued Cox failed to implement a reasonable policy to curb infringement after receiving copyright-infringement notices
- E.D. Va. granted summary judgment in favor of the record companies on contributory and vicarious infringement and jury awarded $1 billion in statutory damages; Fourth Circuit affirmed

Current Status

- SCOTUS heard oral arguments in December 2025 and seemed unlikely to accept the lower courts' decisions

“Schedule A” Counterfeiting Cases

“Schedule A” Cases

- Typically brought in N.D. Ill, these cases are commonly used to combat online counterfeiting
- Instead of naming each defendant in the complaint, the plaintiff includes a “Schedule A” attachment containing a long list of defendants
- Plaintiffs typically move quickly to obtain ex parte temporary restraining orders to freeze the alleged counterfeiters' business accounts while litigation proceeds

What to Watch

- “Schedule A” cases have recently come under scrutiny
  - June 2025 – Judge Kness put a pause on all “Schedule A” cases before him to reevaluate how they are handled
  - August 2025 – Concluded, in an opinion, that the litigation strategy "should no longer be perpetuated in its present form.“
- *Louis Poulsen A/S v. Lightzey* and *Yinnv Liu v. Monthly et al.* before 7th Circuit, but panels appeared wary of tackling issue at oral arguments

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PC, LLC,

Plaintiff,

v.

THE PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS IDENTIFIED IN SCHEDULE “A”,

Defendants.

No. 23-cv-3501

DEMAND FOR JURY TRIAL

COMPLAINT

PC, LLC (“Plaintiff”), by and through its undersigned counsel, hereby files this Complaint for trademark infringement under the Lanham Act, offering for sale and selling counterfeit goods in violation of Plaintiff’s exclusive rights, design patent infringement, copyright infringement, violations of the Illinois Deceptive Trade Practices Act, and civil conspiracy against the Partnerships and Unincorporated Associations Identified in

Trademark Strength – Question for the Court or Jury?

RiseandShine Corp. vs. PepsiCo Inc. (SCOTUS)

Background

- RiseandShine Corp. sued Pepsi in 2021, claiming the emphasis on "Rise" in the branding of Pepsi's MTN DEW RISE energy drinks would create "reverse confusion"
- The Second Circuit reversed SDNY's preliminary injunction, faulting the lower court for not considering the "strong logical associations" between "rise" and coffee, suggesting a weak mark.
- On remand, the district court awarded Pepsi summary judgment, and the Second Circuit affirmed

Current Status

- RiseandShine filed a petition for writ of certiorari in March 2025, arguing that trademark strength in a likelihood of confusion analysis is a question of fact, not a question of law
- In October 2025, Supreme Court asked the U.S. government to weigh in on RiseandShine's claims

Domain Names: New TLDs

ICANN's 2026 gTLD Launch

What Are gTLDs?

gTLDs are a fundamental part of how the Internet works—they define the namespace that comes after the final dot in domain names (e.g., “.com”)

New gTLD Program: 2026 Round

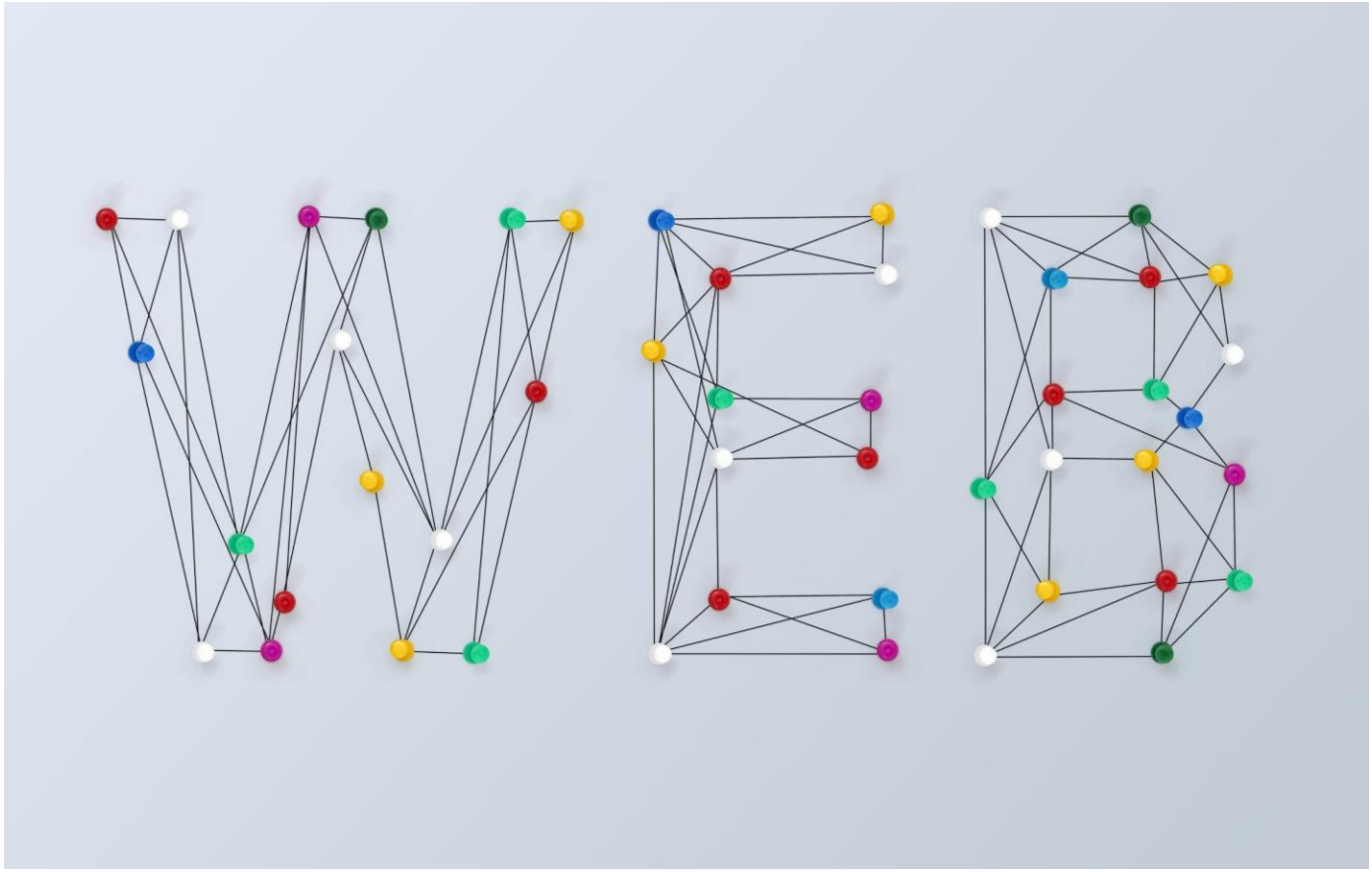
Application round for new gTLDs to provide organizations unique online identities, tailored to their community, culture, language, business, and customers

Key Components of the 2026 Round

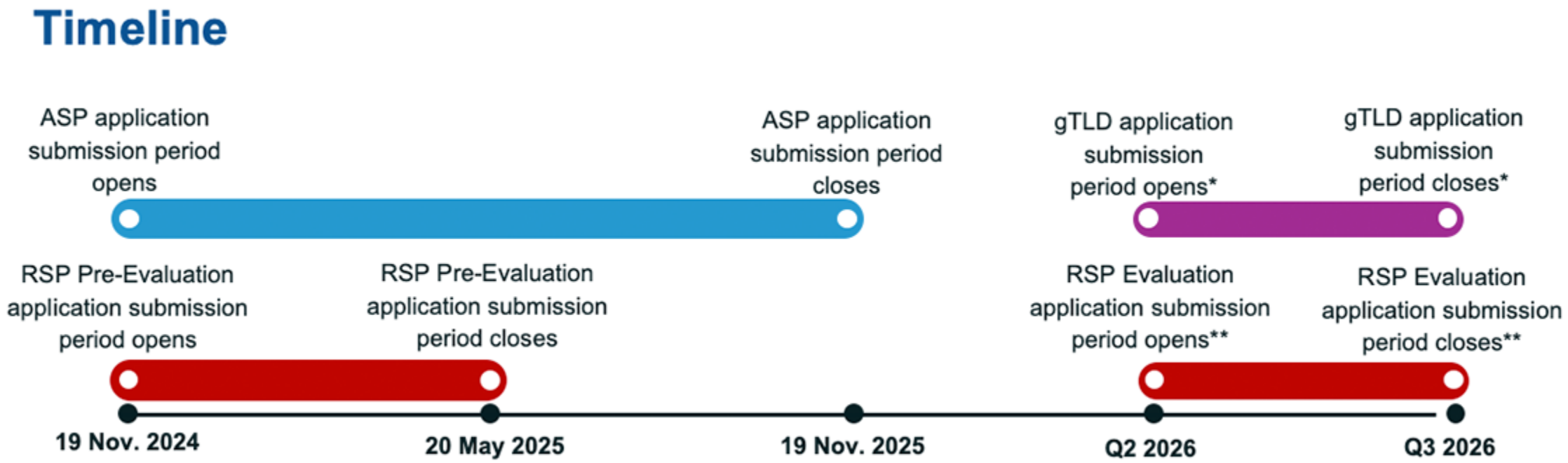
Applicant Guidebook (AGB)

Registry Service Provider (RSP) Evaluation Program

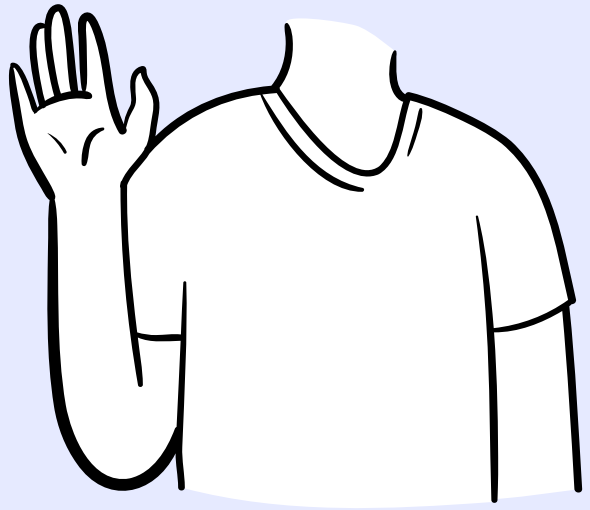
Applicant Support Program (ASP)



New gTLD Program: 2026 Round Timeline



Questions?



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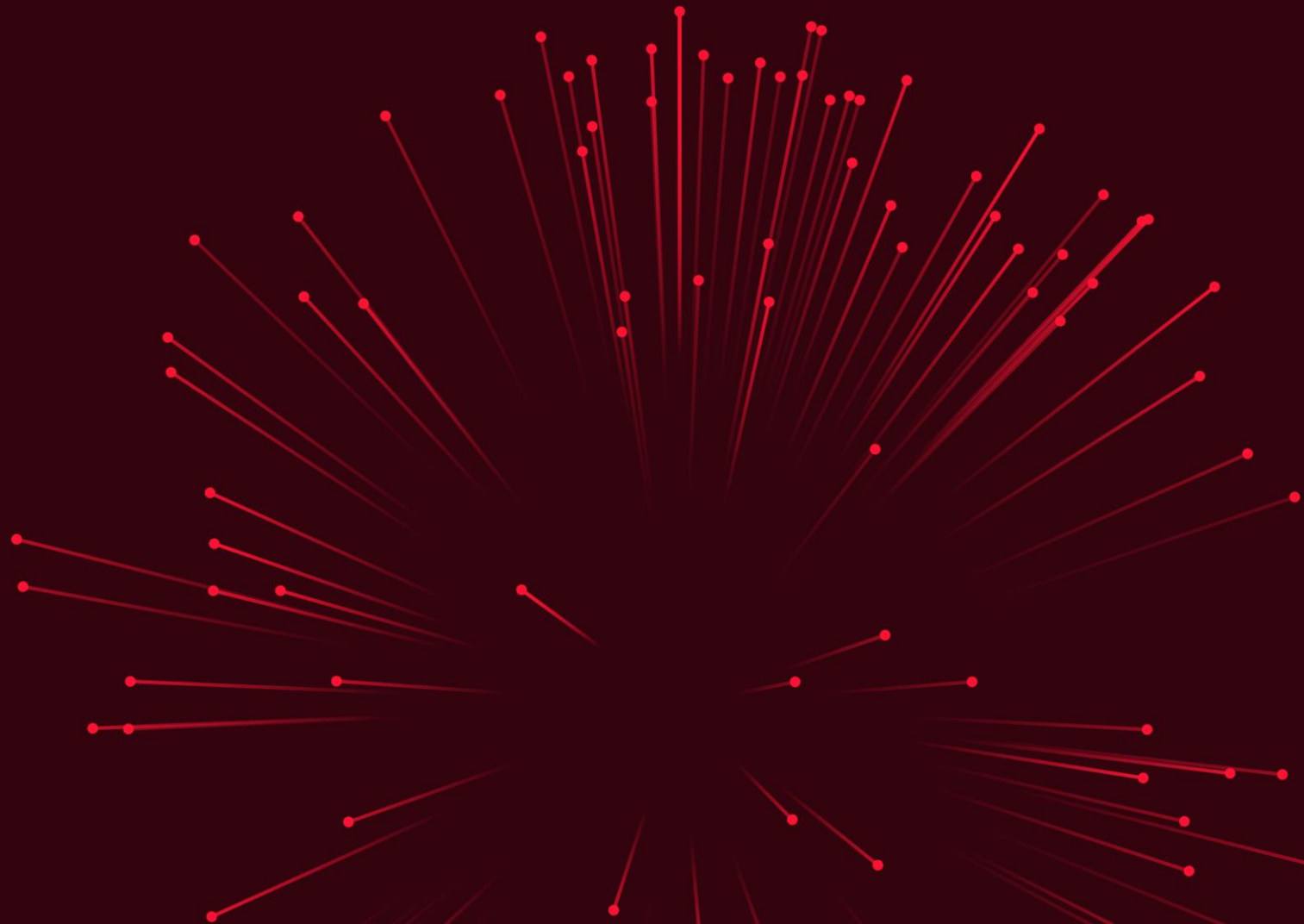

References

- U.S. Copyright Office, *Report on Copyright and Artificial Intelligence*, https://www.copyright.gov/ai/
- *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026 (N.D. Cal. 2025)
- *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007 (N.D. Cal. 2025)
- *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025)
- *Athos Overseas Ltd. Corp. v. YouTube, Inc.*, 162 F.4th 1330 (11th Cir. 2026)
- *Carroll Shelby Licensing, Inc. v. Halicki*, 138 F.4th 1178 (9th Cir. 2025)
- *Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.*, 604 U.S. 321 (2025)

References

- *In re Vetements Grp. AG*, 137 F.4th 1317 (Fed. Cir. 2025)
- *In re Brunetti*, 151 F.4th 1367 (Fed. Cir. 2025)
- *Sony Music Ent. v. Cox Commc'ns, Inc.*, 93 F.4th 222 (4th Cir. 2024)
- *Cox Communications, Inc., et al., Petitioners v. Sony Music Entertainment, et al.*, Docket No. 24-171
- *Yout LLC v. Recording Indus. Ass'n of Am., Inc.*, No. 3:20-cv-1602 (SRU), 2022 WL 4546349 (D. Conn. Sept. 30, 2022)
- *Yout, LLC v. Recording Industry Association of America, Inc.*, No. 22-2760 (2d Cir.).

References

- *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112 (2d Cir. 2022)
- *RiseandShine Corp. v. PepsiCo, Inc.*, No. 23-1176-cv, 2024 U.S. App. LEXIS 32182 (2d Cir. Dec. 19, 2024)
- *RiseandShine Corp. v. PepsiCo, Inc.*, Docket No. 24-1016
- ICANN, *New gTLD Program: 2026 Round Applicant Guidebook* (Version 1, Dec. 16, 2025), https://newgtldprogram.icann.org/sites/default/files/documents/new-gtld-program-2026-round-applicant-guidebook-current-en.pdf