Augmented Legality: Emerging Issues for IP Enforcement in Gaming

Presented by
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Our agenda

- Copyrights
  - Copycats
  - Use of third-party works
  - UGC

- Trademarks

- Publicity rights

- Gen AI

- Key takeaways

Copyright

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Copyright 101

- Copyright protects original works of authorship that are fixed in a tangible medium of expression.

- Infringement is the exercise of an exclusive right without permission, e.g.: reproduction, preparation of derivative works, public distribution, performance, and display

- Requires "substantial similarity" of protectable expression

- Protected expression does not include content in the public domain, ideas, facts, scènes à faire

- Fair use balances exclusivity v. free expression/innovation.
  - *Google LLC v. Oracle America, Inc.,* 593 U.S. ___ (2021)
  - *Sony Comput. Ent., Inc. v. Connectix Corp.*, 203 F.3d 596 (9th Cir. 2000)
 - *Sega Enterprises Ltd. v. Accolade*, 977 F.3d 1510, 1520 (1992)

Tetris Holding v. Xio Interactive (D.N.J.)

- Background:

  - Xio Interactive developed "Mino," a mobile game that closely resembled Tetris in look and gameplay.

  - Xio admitted to copying Tetris's gameplay and visual style after being denied a license.

- The court held that Mino was "substantially similar" to Tetris in its expressive elements.

- The merger and scènes à faire doctrines did not apply because there were many ways to express a falling block puzzle game.

- Summary judgment granted for Tetris Holding on both copyright and trade dress infringement.

Krafton, Inc. v. Garena (C.D. Cal)

- PUBG developer sued Garena, alleging that "Free Fire" games were "blatant copies" of PUBG

- Assertion of protected elements included:
  - Opening "air drop" sequence
  - Interactive pre-match lobby Island battle map & terrain art
  - Scavenging-based weapons, armor & equipment system
  - Supply-crate air drops & spawn logic
  - Dynamic hazards

- Sought to stop distribution of Free Fire/Free Fire Max and remove related content from app stores and YouTube


BATTLEGROUNDS TOTAL LOOK AND FEEL

FREE FIRE TOTAL LOOK AND FEEL
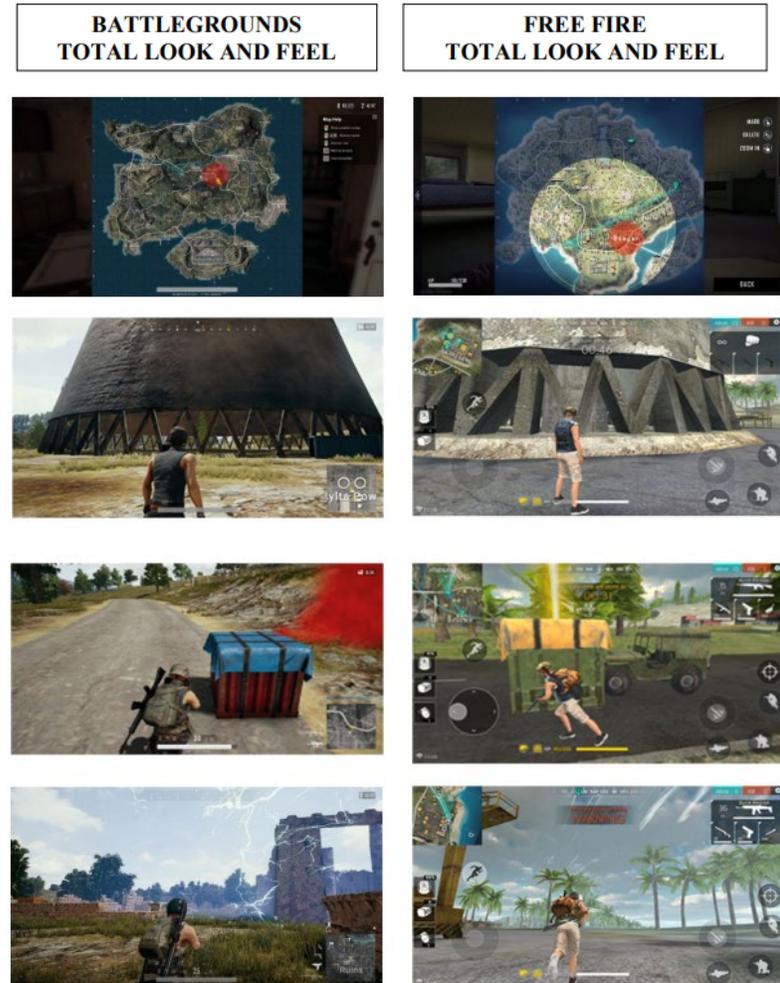
Haugen v. Activision (E.D. Tex)

- Freelance writer-photographer Clayton Haugen sued Activision Blizzard, Activision Publishing, and developer Infinity Ward

- Haugen alleged the Call of Duty: Modern Warfare operator "Mara" is a wholesale copy of his vigilante character "Cade Janus," created for an unproduced screenplay *November Renaissance*, and that Activision infringed his registered photos.

  - Downloaded Haugen's copyrighted 22 promotional photographs from Instagram and elsewhere.

  - Re-hired the same model (Alex Zedra) and the same makeup artist; recreated the hair braid, face paint, and tactical gear; and even posted Haugen's images on a studio wall as visual guides.

  - Scanned the model's likeness to build the in-game 3-D character and mirrored Haugen's photo compositions for marketing shots.
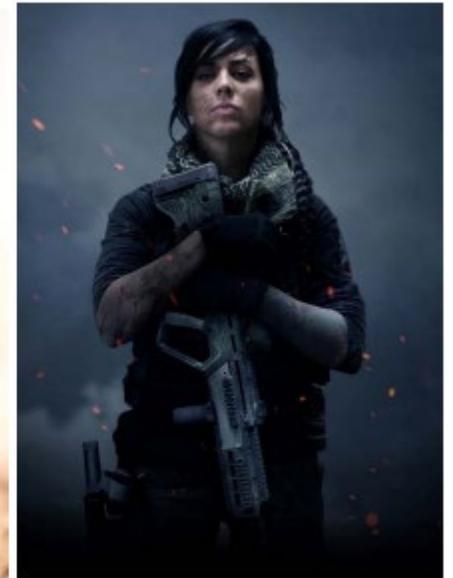
Cade Janus 6   "Mara" Marketing Photo

Hanagami v. Epic Games (9th Cir.)

- Choreographer Kyle Hanagami claimed Epic infringed his registered choreography when it sold a virtual animation known as "emote"

- District Court dismissed because no substantial similarity with *protected* elements
  - The court concluded that choreography is composed of "a number of individual poses" that are unprotectable when viewed in isolation.
  - Also ruled that the collection of "steps" Epic allegedly copied—a two-second combination of eight bodily movements, set to four beats of music, performed ten times throughout the five-minute registered work—were unprotectable as a whole.

- Ninth Circuit reversed:
  - Acknowledged that the district court applied the correct "selection and arrangement" framework, but erred by focusing exclusively on poses.
  - Court also erred in concluding choreography was not protectable because it was only a few seconds of Hanagami's overall five-minute routine.

The Tattoo Cases

- *Solid Oak Sketches v. 2K Games* (S.D.N.Y. 2020) – Tattoo licensing company sued over LeBron James's and others' tattoos in *NBA 2K.* Court ruled that tattoos were too small to be identifiable, were subject to an implied license, and were otherwise fair use.

- *Alexander v. Take-Two* (S.D. Ill. 2021) – A different result—a jury found Take-Two liable for depicting wrestler Randy Orton's tattoos in *WWE 2K*. Fair use and implied license defenses failed at summary judgment.

- *Hayden v. 2K Games* (N.D. Ohio 2017) – Lawsuit by Lebron James' tattoo artist. The court let two tattoo claims go to a jury, which in April 2024 found an *implied license* – the player likeness license to the game implicitly covered his tattoos.

# *Bungie v. Phoenix Digital et al* (W.D. Wash)

- In 2021, Bungie sued AimJunkies for copyright infringement, alleging, among other things, that AimJunkies's software:

  - Was developed using Bungie code

  - Modified audiovisual components of Destiny 2 (e.g., marking other players' locations), thereby creating a derivative work

  - Injected AimJunky code into Destiny 2 code, thereby creating a derivative work

- On May 24, 2024, jury awarded Bungie $63,210 (i.e., the Defendants' profits)

79. In addition, Bungie's *Destiny 2* copyrighted software includes data structures and functions dedicated to *Destiny 2*'s rendering, which determines what each *Destiny 2* player sees from their character's perspective while playing *Destiny 2*.

80. On information and belief, Phoenix Digital copied and modified these data structures and software code to create its *Destiny 2* cheat software.

81. For example, Defendants' *Destiny 2* cheat software included a feature called "ESP," which allowed users of Defendants' cheat software to see other *Destiny 2* players and non-player characters through solid walls by displaying a distinct box around the other players, displaying the players' names, and the distance between the cheating and non-cheating players. A screenshot of this feature of Defendants' cheat software is shown below:
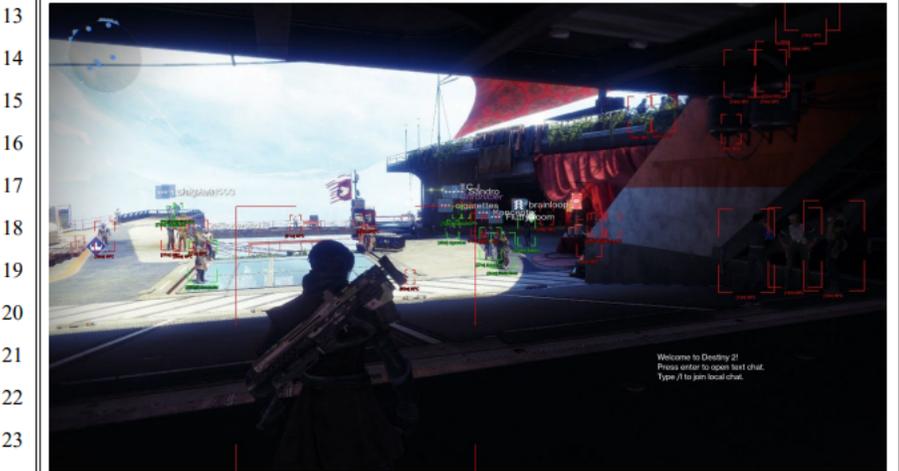
82. The resulting display by Defendants' *Destiny 2* cheat software is a modified version of *Destiny 2*'s original audiovisual output and is an infringement of Bungie's *Destiny 2* audiovisual copyrights.

Take-Two Interactive v. PlayerAuctions et al (CD. Cal.)

- In March 2025, Take-Two sued online marketplace PlayerAuctions for direct and secondary copyright infringement, alleging it contains "thousands of listings for unauthorized, infringing GTA V content – including heavily modified player accounts, in-game assets, and virtual currency – all gained by using hacking software, cheats, and technical exploits."

- On May 1, 2025, PlayerAuctions moved to dismiss, arguing:

  - GTA V is registered but GTA is not

  - Take-Two failed to adequately state how it had directly infringed

  - Take-Two failed to allege "volitional conduct"

  - Indirect infringement claims are premised on breaches of "covenants," rather than "conditions," of the Take-Two Terms of Service

Copyright as leak protection

- *Nintendo v. Keighin* (D. Col)
  - On November 6, 2024, Nintendo sued streamer for, among other things, unauthorized performance and reproduction of 10 Nintendo games prior to release

- *Cognosphere v. Lopez* (C.D. Cal)
  - On June 6, 2025, Cognosphere sued Lopez for leaking a new character from Honkai: Star Rail via Discord, prior to release

Trademark

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Trademarks 101

- A trademark is any word, slogan, tagline, symbol, design, or combination of these things, that identifies the source of your goods and services and distinguishes them from the goods and services of another party.

- A trademark says where a product is from, NOT what a product is.

- Infringement is concerned with *likelihood of consumer confusion* as to source, sponsorship, or affiliation

E.S.S. Entertainment 2000 v. Rock Star Videos (9th Cir.)

- In 2005, ESS sued Rockstar for various claims including trademark infringement, in connection with *Grand Theft Auto: San Andreas*

- District Court granted summary judgment, adopting the Second Circuit's approach from *Rogers v. Grimaldi* (2d Cir. 1989) 875 F.2d 994, which "requires courts to construe the Lanham Act `to apply to artistic works only where the public interest in avoiding consumer confusion outweighs the public interest in free expression.'"

- Ninth affirmed ruling, and acknowledgment of Rockstar's First Amendment interest

AM General v. Activision Blizzard (SDNY 2017)

- Lawsuit claimed that *Call of Duty's* unlicensed portrayal of Humvee vehicles and related branding infringed AM General's trademarks and trade dress and misled players into thinking the company endorsed the franchise.

- On March 31, 2020 court granted summary judgment for Activision, holding that, under "Rogers Test," the First Amendment protects realistic depictions of real-world military hardware in an expressive work:

  - (1) Humvees added "artistic relevance" to game play, and

  - (2) nothing in the games or their marketing explicitly misled consumers.

Colvin etl al v. Roblox (N.D. Cal. 2023)

- Complaint by Roblox against several operators of Robux gambling websites for breach of ToS, trademark infringement, and various state law claims

- Defendant Based Plate moved to dismiss trademark claims, arguing that (1) confusion was implausible as a matter of law because of the website's use of a disclaimer; and (2) any use of Roblox marks was nominative fair use

- In April 2025, district court denied motion

  - Disclaimer is "not so conspicuous" to find in defendant's favor on the pleadings; and

  - "[B]ecause Bloxflip was using the Roblox and Robux marks even though Bloxflip credits were *not* actual Robux… there is no alleged truthful use of the marks at all."
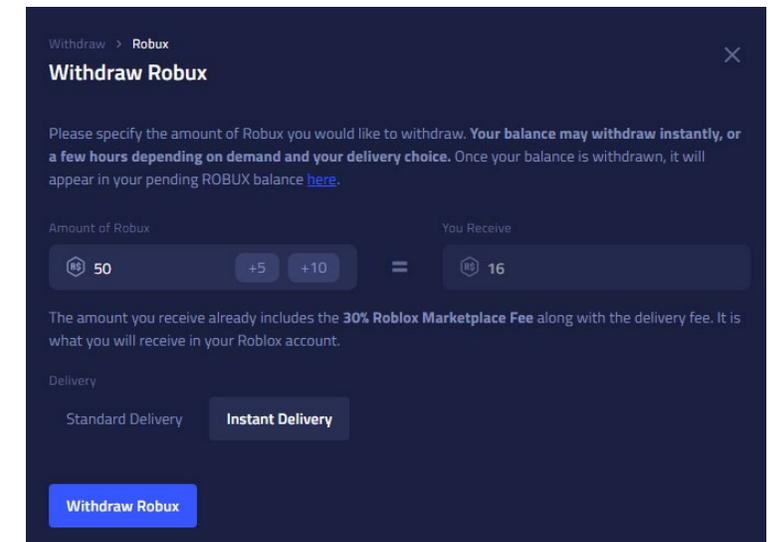
Right of Publicity

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Right of Publicity ("RoP")

- Protects an individual's identity or persona (e.g., name, likeness, signature, voice, etc.)

- Determined by state law – there is no federal right of publicity

- Common elements:

  - Use of an individual's identity or persona

  - For a commercial purpose / purposes of endorsement

  - Without consent

  - In a manner causing injury to the individual

NCAA Student Athletes v. EA (9ᵗʰ and 3ʳᵈ Cirs.)

- The use of college players' likenesses in EA Sports games sparked litigation in the 2010s (*Keller v. EA* (9th Cir. 2013) and *Hart v. EA* (3d Cir. 2013))

- Courts held that EA's NCAA Football games violated players' right of publicity by reproducing their exact jersey numbers, heights, and abilities without consent – these realistic depictions were not sufficiently "transformative" to merit First Amendment protection

- EA and the NCAA eventually paid $60 million to settle claims by thousands of ex-players in 2013

Hamilton v. Speight (E.D. Pa.)

- Lenwood Hamilton, a former wrestler, sued over the *Gears of War* character Augustus Cole, alleging it copied his persona ("Hard Rock" Hamilton).

- District court granted summary judgment for Microsoft; 3rd Cir. affirmed

- Despite some physical similarities (both were large Black men, former athletes), the game character differed in costume, context, and personality – fighting aliens in a sci-fi world.

- According to the 3rd Cir., "at most" Hamilton was "one of the raw materials" from which the fictional character was made, and thus such use was transformative.
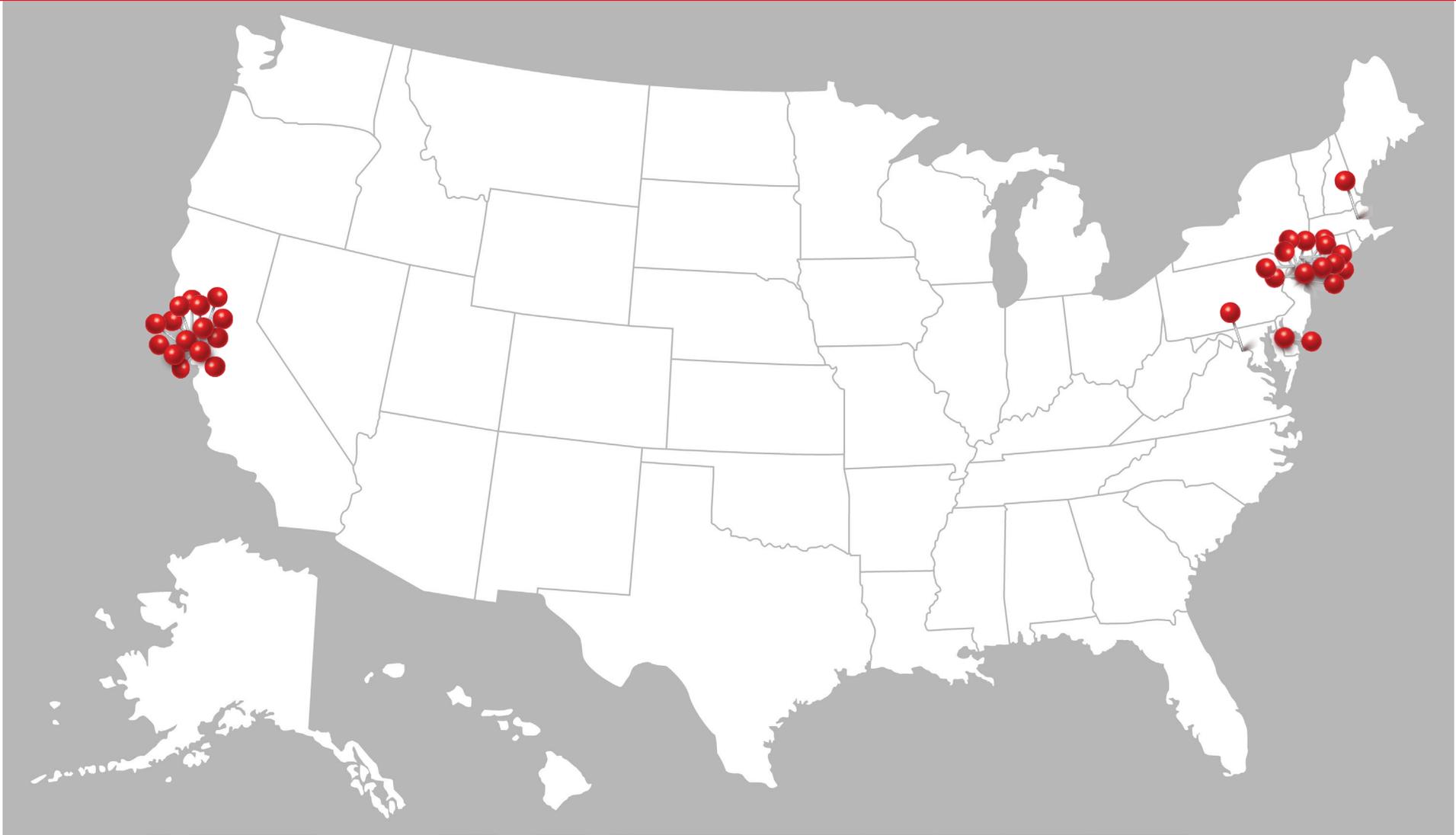

Hard Rock Hamilton
S.C.W.

Generative AI

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Gen AI Litigation

Pending Gen AI Lawsuits

- ***Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc.,*** No. 1:20-cv-613-SB (D. Del. filed May 6, 2020) [on appeal to Third Circuit)

- ***Thaler v. Perlmutter***, No. 1:22-cv-1564-BAH (filed June 2, 2022), *appeal filed*, No. 23-5233 (D.C. Cir. filed Oct. 18, 2023)

- ***Doe v. GitHub, Inc.***, No. 4:22-cv-6823-JST (filed Nov. 11, 2022)
  - On appeal to the Ninth Circuit (dismissal of CMI claims)

- ***Andersen v. Stability AI, Ltd.***, No. 3:23-cv-201 (N.D. Cal. filed Jan. 13, 2023)

- ***Getty Images (US), Inc. v. Stability AI, Ltd.,*** No. 1:23-cv-135 (D. Del filed Feb. 3, 2023)

- ***Flora v. Prisma Labs, Inc.***, No. 3:23-cv-680 (N.D. Cal. filed Feb. 15, 2023)

- ***Young v. NeoCortext, Inc.***, No. 2:23-cv-2496-WLH-PVC (C.D. Cal. filed Apr. 4, 2023)

- ***Walters v. OpenAI, LLC***, No. 23-A-04860-2 (Ga. Super. Ct. filed June 5, 2023), *remanded from*, ***Walters v. OpenAI, LLC***, No. 1:23-cv-3122 (N.D. Ga. Oct. 15, 2023).

- ***In re OpenAI ChatGPT Litigation,*** No. 3:2023-cv-3223 (N.D. Cal.) (*Tremblay*, *Chabon*, and *Silverman* consolidated Feb. 16, 2024)
  - ***Tremblay v. OpenAI, Inc.***, No. 3:2023-cv-3223 (N.D. Cal. filed June 28, 2023)
  - ***Chabon v. OpenAI, Inc.***, No. 3:23-cv-4625 (N.D. Cal. filed Sept. 8, 2023) (N.D. Cal. filed Sept. 8, 2023)
  - ***Silverman v. OpenAI, Inc.***, No. 4:2023-cv-3416 (N.D. Cal. filed July 7, 2023)
  - ***Millette v. OpenAI, Inc.,*** No. 3:24-cv-04710 (N.D. Cal. filed August 2, 2024)
    - MDL panel ordered consolidation of these cases in SDNY with the others (April 2025)

- ***Kadrey v. Meta Platforms, Inc.***, No. 3:23-cv-03417 (N.D. Cal. filed July 7, 2023)
  - ***Chabon v. Meta Platforms, Inc.***, No. 3:23-cv-4663 (N.D. Cal. filed Sept. 12, 2023) (consolidated with *Kadrey* Dec. 7, 2023)
  - ***Huckabee v. Meta Platforms, Inc.***, No. 3:23-cv-06663 (N.D. Cal. filed Oct. 17, 2023) (consolidated with *Kadrey* Jan. 23, 2024)
  - ***Farnsworth v. Meta Platforms, Inc.***, No. 3:24-cv-06893 (N.D. Cal. filed Oct. 1, 2024) (consolidated with *Kadrey* Oct. 18, 2024)

- ***Leovy v. Google LLC***, No. 3:23-cv-3440 (N.D. Cal. filed July 11, 2023) (formerly *J.L. v. Alphabet*)

- ***A.T. v. OpenAI LP***, No. 3:23-cv-4557-VC (filed Sept. 5, 2023)

- ***P.M. v. OpenAI LP***, No. 3:23-cv-3199 (filed Sept. 15, 2023)

- ***Authors Guild v. OpenAI, Inc.,*** No. 1:23-cv-8292 (S.D.N.Y. filed Sept. 19, 2023)
  - ***Sancton v. OpenAI, Inc.***, No. 1:23-cv-10211 (N.D. Cal. filed Nov. 21, 2023) (consolidated with *Authors Guild* Jan. 22, 2024)
  - ***Basbanes v. OpenAI, Inc.***, No. 1:24-cv-85 (S.D.N.Y filed Jan. 5, 2024) (consolidated with *Authors Guild* Jan. 6, 2024)
  - ***New York Times v. OpenAI, Inc.***, No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023) (related to *Authors Guild* Jan. 2, 2024)

- ***Huckabee v. [Bloomberg L.P.]***, No. 1:23-cv-9152 (S.D.N.Y. filed Oct. 17, 2023) (claims against Meta transferred to N.D. Cal. Dec. 28, 2023)

- ***Concord Music Group v. Anthropic PBC***, No. 3:23-cv-1092 (M.D. Tenn. filed Oct. 18, 2023) (transferred to NDCA)

Pending Gen AI Lawsuits

- ***Main Sequence, Ltd. v. Dudesy, LLC***, No. 2:24-cv-711 (C.D. Cal. filed Jan. 25, 2024)

- ***Intercept Media, Inc. v. OpenAI, Inc.***, No. 1:24-cv-1515 (S.D.N.Y. filed Feb. 28, 2024)

- ***Raw Story Media, Inc. v. OpenAI, Inc.***, No. 1:24-cv-1514 (S.D.N.Y. filed Feb. 28, 2024)

- ***Nazemian v. NVIDIA Corp.***, No. 5:24-cv-1454 (N.D. Cal. filed Mar. 8, 2024)

- ***O'Nan v. Databricks***, No. 3:24-cv-1451 (N.D. Cal. filed Mar. 8, 2024)

- ***Zhang v. Google LLC***, No. 5:24-cv-2531 (N.D. Cal. filed Apr. 26, 2024)

- ***Daily News, LP v. OpenAI, Inc***., No. 1:24-cv-3285 (S.D.N.Y. filed Apr. 30, 2024)

- ***Makkai v. Databricks, Inc.***, No. 4:24-cv-2653 (N.D. Cal. May 2, 2024)

- ***Dubus v. NVIDIA Corp.***, No. 3:24-cv-2655 (N.D. Cal. May 2, 2024)

- ***UMG Recordings et al v. Suno, Inc.***, No. 1:24-cv-11611 (D. Ma. filed Jun. 24, 2024)

- ***Bartz v. Anthropic***, No. 3:24-cv-05417 (N.D. Cal. filed Aug. 19, 2024)

- ***Millette v. NVIDIA***, No. 5:24-cv-05157 (N.D. Cal. Aug. 15, 2024)

- ***Vacker v. ElevenLabs***, No. 1:24-cv-00987 (D. Del. Filed Aug. 29, 2024)

- ***Alcon Entertainment v. Tesla et al***., No. 2:224-cv-09033 (C.D. Cal. filed Oct. 21. 2024)

- ***Dow Jones & Company v. Perplexity AI***, No. 1:24-cv-07984 (S.D.N.Y. filed Oct. 21, 2024)

- ***Advance Local Media v. Cohere,*** No. 1:25-cv-01305 (S.D.N.Y. filed Feb. 13, 2025)

- ***Chegg v. Google***, No: 1:25:cv-00543 (D. D.C. filed Feb. 24, 2025)

- ***Ziff Davis v. Open AI,*** No. 2:24-cv-00501 (D. Del. filed April 24, 2025)
  - Transferred to SDNY in May 2025, 1:25-cv-04315 (S.D.N.Y.)

- ***Disney et al v. Midjourney, Inc.***, No. 2:25-cv-05275 (C.D. Cal. Filed June 11, 2025)

Common Themes

- Attacks on unauthorized use of copyrighted works to train AI models

- Allegations that AI models are infringing derivative works

- Allegations that outputs are infringing copies (e.g., *Anthropic* case) or derivative works

- Assertions of violations of the "copyright management information" provisions of the DMCA

- Contributory or vicarious copyright infringement

- Fair use as a defense

Kadrey et al. v. Meta Platforms (N.D. Cal.)
Bartz v. Anthropic (N.D. Cal.)

- Core issue over whether unauthorized use of copyrighted content to train the models is fair use or infringement

- In *Kadrey v. Meta*, summary judgment was argued May 1, 2025; in *Bartz v. Anthropic*, May 22, 2025

- Different judges hearing each case

- Similar claims pending against OpenAI, Google, Nvidia, DataBricks, and others

- On June 24, Judge Alsup granted Anthropic's motion for summary judgment in part, but denied it in part
  - Copies of books downloaded from unauthorized sources – NOT FAIR USE
  - Copies of books digitized from purchased physical copies – FAIR USE
  - Copies of books created during the training process – FAIR USE

- On June 25, Judge Chhabria granted Meta's motion for summary judgement in its entirety
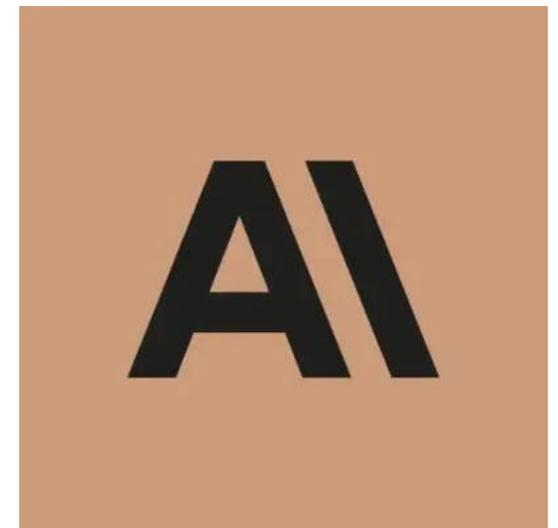
Allegedly Infringing Outputs

- *Concord Music Group et. al v. Anthropic* (ND Cal.)

  - Complaint filed by a number of music publishers concerning Anthropic's use of music lyrics as training data + Claude 2's generation of outputs that reproduce those lyrics

- *New York Times v. OpenAI et al.* (SDNY)

  - NYTimes sued OpenAI and Microsoft on December 27, 2023, alleging direct and vicarious copyright infringement, violation of the CMI provisions of the DMCA, and misappropriation.

  - OpenAI alleges that "the Times paid someone to hack OpenAI's products."

- *Dow Jones v. Perplexity* (SDNY)

  - "Input" copies are infringing reproductions of Dow Jones articles.

  - Certain "outputs" include verbatim material from Dow articles and are infringing derivatives.

  - Certain outputs falsely attribute to Dow Jones publications false information (or "hallucinations"), thereby damaging company brands.

- *Disney v. Midjourney* (CD Cal.)

  - Allegations of direct and contributory infringement for outputs of well-known Disney, Marvel, Star Wars, and Universal characters

Getty Images v. Stability AI (D. Del.)

- Getty alleges trademark infringement and dilution from outputs containing distorted watermark

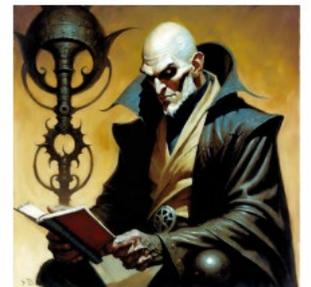- Litigation currently in limbo over jurisdictional issues

Andersen et al. v. Stability et al. (N.D. Cal.)

- **First Amended Complaint:**

  - Direct copyright infringement by training

  - DMCA § 1202 violations for removing and altering CMI from training images

  - False endorsement under Lanham Act (Midjourney only)

  - **Vicarious trade-dress violation under Lanham Act (Midjourney Only)**

  - Unjust enrichment

- **Order granting-in-part and denying-in-part motions to dismiss (Aug. 12, 2024)**

"Gerald Brom is known for his gritty, dark, fantasy images, painted in traditional media, combining classical realism, gothic and counterculture aesthetics." Second Amended Complaint ¶ 159.

prompt: "gerald brom teacher"

Dow Jones v. Perplexity (SDNY)

- **Count 3:** False designation of origin (i.e., trademark infringement) and dilution (by tarnishment)

- Hallucinations (or errors) by Perplexity AI falsely attributes facts to Plaintiffs or makes up stories allegedly from Plaintiffs, which harm Plaintiffs' trademarks.

141. Perplexity, in connection with its AI applications, has used and, upon information and belief, continues to use in interstate commerce "The Wall Street Journal," "WSJ," "New York Post," and other marks similar and/or identical to Dow Jones's and NYP Holdings' well-known and famous trademarks in a misleading manner, falsely attributing content to Plaintiffs' trademarked publications.

142. Perplexity's use of similar and/or identical copies of Plaintiffs' famous, distinctive marks, *The Wall Street Journal, WSJ,* and *New York Post* – marks used to denote sources of high-quality journalism – without authorization, in connection with its AI applications, creates an association in the minds of its users that the outputs generated by Perplexity's AI applications, including hallucinations, are derived from and/or associated with sources of high-quality journalism, thereby impairing the distinctiveness of the marks.

143. Further, Perplexity's use of similar and/or identical copies of Plaintiffs' marks in connection with fictitious and/or fake news stories and information that Perplexity's AI applications hallucinate harms the marks *The Wall Street Journal, WSJ,* and *New York Post,* each of which has become recognized by the news-consuming public for their high-quality journalism due to the multi-layered drafting, fact-checking, editing, and review process used by those publications.
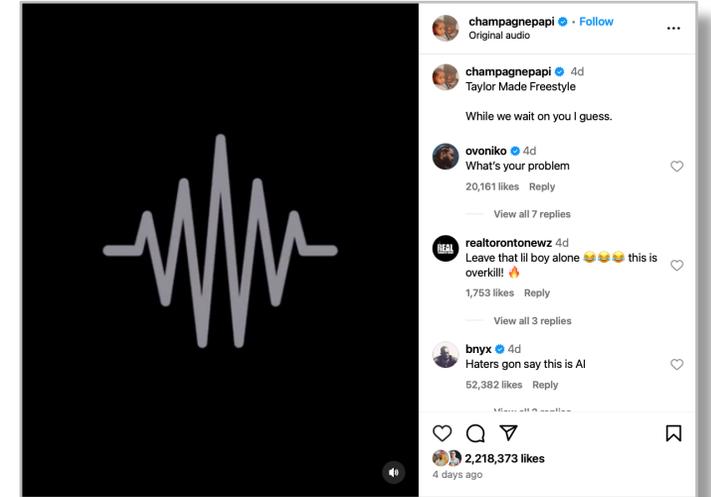
The Problem of Deep Fakes

- Music

- Photos

- Voice emulation

- Video
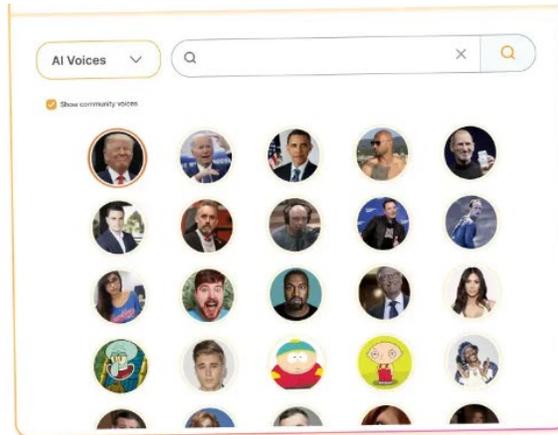
Right of Publicity Litigation

- ***Lehrman v. Lovo***, No. 1:24-cv-03770 (SDNY, filed May 16, 2024)

  - Voice actors sued for use of their voices allegedly beyond the scope of their agreements

  - Allege false advertising and false affiliation, among other claims

- ***Vacker et al. v. Eleven Labs***, No. 1:20-cv-00987 (D. Del. filed Aug. 30, 2024)

  - Voice actors filed suit for unlicensed use of their voices to train AI

  - Claims include:

    - Invasion of privacy, through the misappropriation of Vacker's likeness and right of publicity, under Texas Common Law

    - Unjust Enrichment under Texas Law

    - Misappropriation of Boyett's likeness and publicity rights under New York Civil Rights Law § 51

Federal Right of Publicity?

- **NO FAKES Act** – Introduced in Senate in July 2024; House version reintroduced in 2025

  - Establishes a federally recognized right to "authorize use of the image, voice, or visual likeness" in a "digital replica" for the life of every individual + up to 70 years (with post-mortem renewal periods every five years contingent upon continued use)

  - Creates causes of action for any "production of a digital replica" without consent, as well as publication, distribution, transmission, etc. with knowledge that the replica was unauthorized
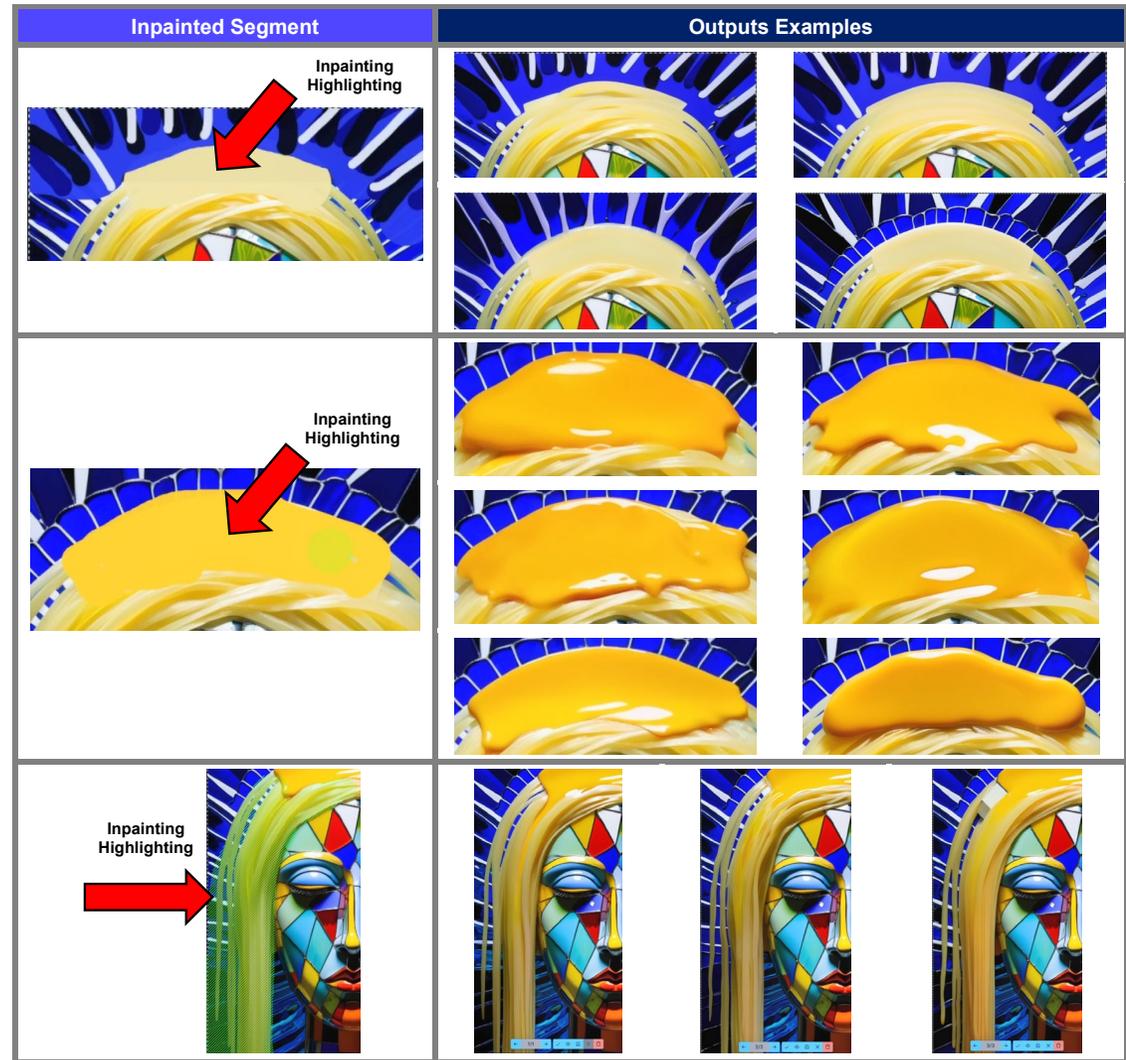
AI x © Protection

Copyright & AI

- Ownership vests in "author[s]." 17 USC § 201.

- "To qualify as a work of 'authorship' a work must be created by a human being." U.S. Copyright Compendium (3rd ed. 2017)

  - *Thaler v. Perlmutter* (D.D.C. Aug. 18, 2023) – "Copyright Office acted properly in denying copyright registration for a work created absent any human involvement."

  - *Zarya Of The Dawn* — Zarya creator "lack[ed] sufficient control over generated images to be treated as the 'master mind' behind them."

  - *Theatra D'Opera Spatial* (appealed) — "Mr. Allen's actions as described do not make him the author of the Midjourney Image because his sole contribution to the Midjourney Image was inputting the text prompt that produced it."

  - *Suryast* – "While Mr. Sahni emphasizes his specific choices of image inputs and filter strength as one choice 'from nearly infinite permutations and possibilities of specific inputs,' these choices only constitute an unprotectable idea for the Work, that is: an altered version of his photograph in the style of The Starry Night."

  - *Rose Enigma* – Registration issued but "limited to unaltered human pictorial authorship that is clearly perceptible in the deposit and separable from the non-human expression that is excluded from the claim."
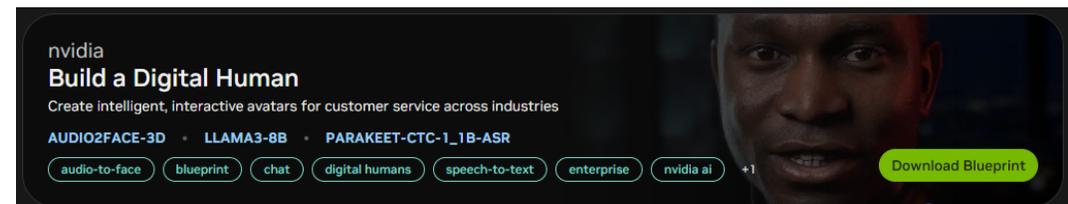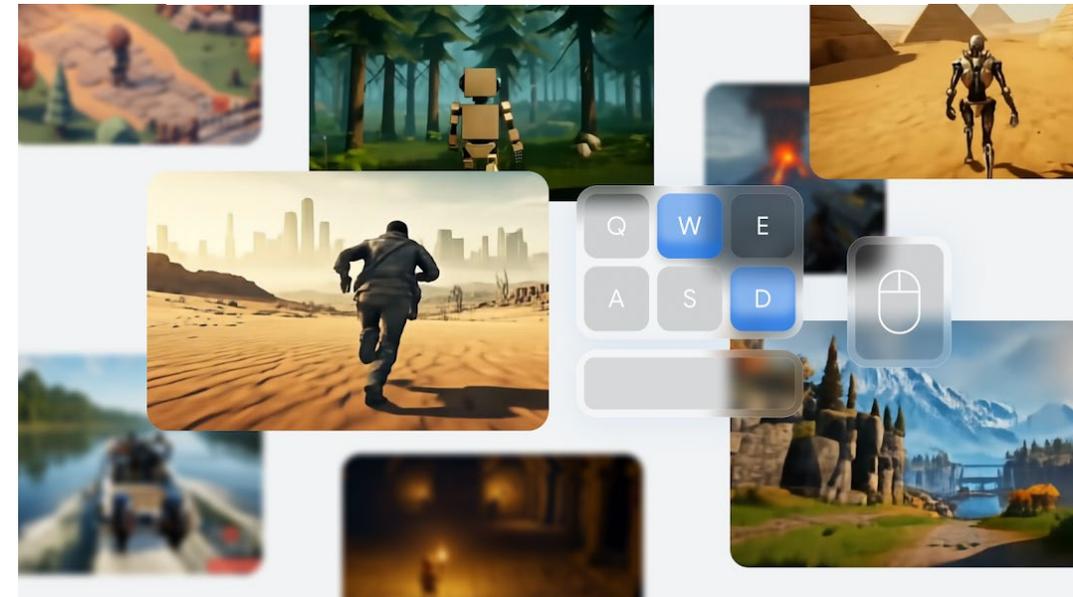
A Single Piece of American Cheese

Gen AI - Key Takeaways

- **Protectability issues.**

  - AI-generated characters, dialogue, and virtual worlds may be excluded from protection in whole or in part

  - Outsourced artists who rely on Gen-AI may deliver art the studio can't own

  - Any unprotectable AI layers, including code, are effectively free for competitors to reuse, so it's important to keep track of what the team created with and without AI

  - Code generation also risks open source contamination, loss of trade secret/confidentiality, possibly malware vulnerabilities

- **IP-leakage risk.** Not always clear what platforms are doing with user inputs/outputs.

Google DeepMind

nvidia
Build a Digital Human
Create intelligent, interactive avatars for customer service across industries
AUDIO2FACE-3D • LLAMA3-8B • PARAKEET-CTC-1_1B-ASR
audio-to-face blueprint chat digital humans speech-to-text enterprise nvidia ai +1
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Recommendations

- Require human review of all output from a quality perspective

- Lack of IP ownership and requirement to identify AI generated content when seeking registrations

- Require open source scans and documentation, and document AI generated code

- Diligence third-party providers, and limit the types of Generative AI tools that can be used

- Exercise opt-out functionality and filtering tools

- Manage copyright infringement risks

Developing AI Policies

Employee Use

- Written policies (prohibited, permitted, and required activities)
- Approval of AI platforms on a platform-by-platform basis
- Mechanisms to ensure appropriate compliance by employees
- Risk management processes

Contractor/Vendor Use

- Require disclosure of AI use
- Treat AI produced work product similar to use of open source materials (i.e., AI won't be used unless approved in advance)
- Include standard AI-related terms in forms of agreements (e.g., compliance with laws, indemnification, ownership)

Thank You

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