



# AI 2035: The Legal Profession and the Judiciary in the Age of Artificial Intelligence

## Artificial Intelligence & Intellectual Property: What Every Lawyer Should Know

This session provides a comprehensive overview of how AI is reshaping core areas of IP law, including copyright, trade secrets, patents, trademarks, and open-source compliance. Attendees will gain a practical framework for navigating licensing, regulatory developments, and litigation trends, along with actionable takeaways for advising clients in an AI-driven landscape.



### **Alexis Crawford Douglas, Partner, K&L Gates**

Alexis Crawford Douglas is a partner at K&L Gates specializing in intellectual property, trademarks, and brand protection. Alexis manages global trademark portfolios and advises clients across multiple industries. She provides strategic guidance on brand development and dispute resolution. Alexis helps clients protect and enhance the value of their intellectual property.



### **Sahil Malhotra, Founder, Drishti Law**

Sahil Malhotra is an intellectual property attorney and founder of Drishti Law. Sahil focuses on helping innovators, startups, and businesses protect and grow their intellectual property assets. He has experience with trademark prosecution and advising clients on IP strategy. His background includes work with the UIC Intellectual Property Clinic and the U.S. Patent and Trademark Office. Sahil is dedicated to helping clients navigate competitive markets through effective IP protection.



### **Moderator: Kevin Thompson, Partner, Levin Ginsburg**

Kevin Thompson leads Levin Ginsburg's intellectual property and data privacy practice group. Kevin advises clients on trademark strategy, data privacy, and internet law. He has over 20 years of experience counseling clients on brand protection and compliance. Kevin also provides guidance on digital and technology-related legal issues. His practice combines legal insight with technical understanding.

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**AI 2035: The Legal Profession and the  
Law in the Age of Artificial Intelligence**

**Artificial Intelligence &  
Intellectual Property:  
What Every Lawyer  
Should Know**

Chicago Bar Association AI Symposium



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# Speaker Biographies





## Timed Agenda

- 0:00 – 0:05 | Welcome & Framing**
- 0:05 – 0:15 | I. Why AI Is an IP Issue for Every Lawyer**
- 0:15 – 0:35 | II. Copyright & AI: The 2025 Fair-Use Fracture**
- 0:35 – 0:45 | III. Trade Secrets & AI: 2025–2026 Developments**
- 0:45 – 0:55 | IV. Patents & AI: USPTO Nov. 2025 Guidance**
- 0:55 – 1:05 | V. Open Source Meets AI: A Compliance Trap**
- 1:05 – 1:15 | VI. Branding, Trademarks & the NO FAKES Act**
- 1:15 – 1:22 | VII. Licensing & Contracting: 10-Clause Framework**
- 1:22 – 1:27 | VIII–IX. Regulatory Overlay & Litigation Trends**
- 1:27 – 1:30 | X. Practical Takeaways & Q&A**

# I. AI Hallucination Sanctions: From District to Circuit (2023–2026)

*Mata v. Avianca, Inc. — S.D.N.Y. 2023 (the original)*

- Attorneys submitted AI-generated “case law” that did not exist; sanctions imposed

## The Trend Has Accelerated Through 2026:

- Fifth Circuit (Feb. 2026): Appeals court ordered lawyer to pay \$2,500 — first appellate-level AI sanction
- Class Action (Feb. 2026): AI-hallucinated citations caused multi-month delay in class action proceedings
- Federal courts across the country are imposing sanctions for AI citation errors at a growing rate
- Multiple federal courts now require disclosure of AI-generated content in filings — check local rules

## Practical Implication for Law Firms:

- No AI-assisted filing goes to court without a human cite-check against primary sources
- Firms need a written verification protocol — professional responsibility exposure now extends to circuit level
- California (2025) and other state bars require competence in AI tools used in practice

► *This is no longer a district court curiosity — appellate sanctions are here*

## II. Copyright & AI — The 2025–2026 Landscape

### A. Copyrightability: Human Authorship Still Required

- March 2026: Supreme Court denied cert in Thaler v. Perlmutter — D.C. Circuit ruling stands
- AI alone cannot be a copyright author under U.S. law
- Copyright Office Jan. 2025 report: registration requires meaningful human creative control — not just prompt input

### B. Training Data: The 2025 Fair-Use Fracture

- Three landmark rulings (Feb.–June 2025) drew a clear doctrinal line
- The dividing factor: non-generative vs. generative AI
- Bartz v. Anthropic settled for \$1.5B — largest copyright settlement in U.S. history
- NYT v. OpenAI: active MDL; output “regurgitation” evidence is the key variable

► *Don’t assume “we own it.” And don’t assume your vendor’s training data is clean.*

## II-A. Copyrightability: What the 2025–2026 Guidance Requires

### Supreme Court & Copyright Office: The Rule Is Settled (For Now)

- March 2026: SCOTUS denies cert in *Thaler v. Perlmutter* — AI cannot be a copyright author
- Follows consistent signal: *Thaler v. Vidal* (Fed. Cir. 2022) on patents; same logic applied to copyright

### *Zarya of the Dawn* — Copyright Office (2023, still controlling)

- AI-generated images: registration canceled
- Text and arrangement: protected only where human creativity existed

### Copyright Office Jan. 2025 AI Copyrightability Report:

- Registration requires “meaningful human creative control” — prompt input alone is not enough
  - Feb. 2025 Part 2 Report: existing fair use framework “adequate” for AI training disputes — no statutory licensing recommended
  - Vague AI disclosures in registration applications will not hold up
- Practical implications:
    - AI-assisted works: document exactly what the human contributed
    - Marketing materials, packaging, software docs, deal deliverables — all at risk
    - M&A: IP ownership reps may be inaccurate if AI-generated content not audited

## II-A. Copyright Ownership: Practical Scenarios

### Packaging / Marketing (Copyright Registration)

- Illustrator used AI-generated image as inspiration, then redrew elements
- Must identify what AI-generated content remains in final design before registering
- Track: what was AI-generated, what was hand-drawn, what was modified
- Copyright Office is actively reviewing AI disclosures — vague filings risk cancellation

### M&A Due Diligence (Buy-Side & Sell-Side)

- Buy-side: Who created content? Was AI used? Is there a human authorship audit?
- Reps & Warranties: “Company owns all IP” may be false if AI-generated works not disclosed
- Sell-side: Audit AI use in creative and technical deliverables before reps are made
- Treat training dataset documentation as a Tier 1 diligence item in AI company acquisitions

► *IP ownership assumptions in deals may be wrong — the 2025 case law raises the stakes*

## II-B. Training Data: The 2025 Fair-Use Fracture

### The Dispositive Split: Non-Generative vs. Generative AI

#### *Thomson Reuters v. ROSS Intelligence — D. Del. Feb. 11, 2025*

- Non-generative AI (legal research retrieval); Westlaw headnotes used as training data
- Held: NOT fair use. Not transformative — same purpose as plaintiff's product
- Factor 4: Even a nascent, unlicensed market for AI training data qualifies as protectable market harm
- Cabined explicitly to non-generative AI; Third Circuit appeal pending

#### *Bartz v. Anthropic — N.D. Cal. June 23, 2025 (settled Aug. 2025)*

- Generative LLM (Claude); lawfully acquired books = fair use (“quintessentially transformative”)
- Pirated copies from shadow libraries = NOT fair use
- Settlement: \$1.5 billion — largest copyright settlement in U.S. history

#### *Kadrey v. Meta Platforms — N.D. Cal. June 25, 2025*

- Generative LLM (Llama); summary judgment for Meta — “highly transformative”
- Key warning: “In most cases, training LLMs on copyrighted works without permission is likely infringing” — but plaintiffs lacked market harm evidence

# III. Trade Secrets & AI — 2025–2026 Developments

## AI as a Trade Secret Risk (Samsung Remains the Cautionary Tale)

- Uploading confidential data into public AI tools destroys trade secret protection
- Loss of secrecy can occur without malicious intent — one prompt can waive years of protection
- Remote work + high turnover + AI adoption = record DTSA motions to compel AI-related discovery in 2025

## Fine-Tuned Models & Curated Datasets as Trade Secrets

- Courts increasingly applying the Waymo v. Uber framework to AI-specific assets
- Fine-tuned model weights, prompt libraries, and curated training datasets protectable as trade secrets
- 2025: DTSA generated a record number of motions in AI-related trade secret cases

## Employment Agreement Essentials (2026 Standard):

- Who owns prompt libraries and fine-tuned model weights?
- Flat prohibition on feeding confidential data into public AI tools
- Return or destruction of AI training artifacts at offboarding

► *AI assets can be trade secrets — but only if you protect them like trade secrets*

## III. Trade Secret Risk in Practice: Key Cases

### *Samsung Internal Investigation — 2023 (still the anchor)*

- Employees uploaded confidential source code to ChatGPT for debugging
- Triggered potential trade secret exposure; company-wide AI bans implemented
- Lesson: No malicious intent required to cause a trade secret loss

### *Waymo v. Uber — N.D. Cal. (2017 settlement, framework still cited in 2025)*

- Autonomous driving technology; proprietary model and training data as trade secret
- Courts in 2025 apply this framework directly to fine-tuned AI models and curated datasets

### **2025–2026 Litigation Trend:**

- AI-related trade secret claims have multiplied significantly through 2025
- Key discovery battleground: who had access to model weights at employee departure?
- Preservation and chain-of-custody for AI training artifacts now a litigation readiness issue

► ***Build AI-specific trade secret protections before the incident — not after***

## IV. Patents & AI — Inventorship, Ownership & Eligibility

### The Door Is Closed: AI Cannot Be a Named Inventor

- Thaler v. Vidal (Fed. Cir. 2022): DABUS cannot be named inventor
- SCOTUS cert denial (2023) on patent inventorship
- March 2026: SCOTUS also denies cert in Thaler v. Perlmutter (copyright) — consistent signal across IP
- Current U.S. law is clear: only natural persons can be inventors

### USPTO Revised Inventorship Guidance — November 2025:

- A natural person must have conceived the claimed invention — AI cannot be sole conceiver
- Human inventors using AI in R&D must document the specific human creative contribution at each stage
- Standard: “significant contribution” per Pannu v. Iolab Corp. — AI assistance alone is not enough
- The guidance does not bar AI-assisted inventions; it requires tracing the human contribution

► ***Build inventor-identification protocols that document human contribution at every AI-assisted step***

## IV. Counseling R&D Clients on AI-Assisted Inventions

### Post-USPTO Nov. 2025 Guidance: What Clients Need Now

- Document every stage of AI-assisted development — who directed what, when, and how
- Human inventors must identify their specific creative contribution (not just “we used AI”)
- Skip documentation = validity challenges in later litigation or licensing disputes

### Patentability Strategy:

- Focus claims on concrete technical improvements over prior art
- Tie to specific applications — avoid abstract AI-process claims (Alice/Mayo risk remains high)
- Section 101 eligibility uncertainty has not resolved; prosecute defensively

### Transactional Lawyer Implications:

- Patent portfolio valuations may overstate protectable IP — inventorship audits needed
- Freedom-to-operate opinions carry more uncertainty in AI-assisted R&D contexts
- Representations about patent ownership require confirmation of proper inventorship documentation

► ***The Nov. 2025 USPTO guidance creates a documentation standard — not just a best practice***

## II-B. NYT v. OpenAI & the Unifying Framework (2025–2026)

### *New York Times v. Microsoft / OpenAI — S.D.N.Y. MDL (Active)*

- Times alleges ChatGPT reproduces near-verbatim NYT articles — documented regurgitation evidence
- Dec. 2025: Judge ordered OpenAI to produce 20 million anonymized ChatGPT chat logs
- No trial date set; dispositive motions not yet ripe as of April 2026
- Why it's different: generative AI + documented output harm = may overcome the Bartz/Kadrey fair use shield

### **The Unifying Framework:**

- ROSS: Non-generative AI replicating plaintiff's market → No fair use
- Bartz/Kadrey: Generative AI; no output harm evidence → Fair use (for lawfully acquired data)
- NYT: Generative AI + regurgitation evidence → Unresolved; the key test case

### **Practical Implications (Section II):**

- Training data provenance is a material contract term — the \$1.5B Bartz settlement proved it
- Audit AI outputs for near-verbatim reproduction of third-party content
- In M&A: Bartz-style piracy liability does not transfer with the fair use shield

► *Winning the fair use battle on training does not close the door on output-based infringement*

## V. Open Source Meets AI — A Compliance Trap

- AI models frequently rely on:
  - Open-source code incorporated in training pipelines
  - Open datasets with varying, often incompatible license terms
  - Pre-trained models released under open licenses with downstream obligations
- Key risks:
  - “Viral” copyleft licenses (GPL/LGPL) can infect proprietary AI systems and model weights
  - Disclosure obligations triggered upon commercial distribution
  - License compatibility failures common when components are combined without review

*Artifex Software v. Hancom — N.D. Cal. 2017 (GPL enforcement; still cited in AI pipelines)*

### 2026 Update:

- OSI and Linux Foundation working on AI-specific license categories covering training data use, model weight distribution, and fine-tuning rights
- As of April 2026: no consensus standard has landed — enterprise AI deployments remain in a gray zone

► *AI teams move fast; open-source legal review often comes too late — require SBOMs in every AI contract*

# V. Open Source AI — Why Every Deal Lawyer Must Care

- Compliance failures surface at the worst possible moments:
  - During financing rounds: investors flag unresolved open-source obligations
  - In M&A transactions: open-source issues can kill or restructure deals
  - During audits or regulatory reviews under the EU AI Act

## Practical Requirements for AI-Related Transactions (2026 Standard):

- Require a Software Bill of Materials (SBOM) — schedule of all open-source components and applicable licenses
- License compatibility review before any commercial deployment
- Confirm no GPL/LGPL contamination of proprietary model weights
- AI model development agreements must include SBOM as a deliverable

## Key diligence questions:

- What open-source components are in the AI stack?
- Has a Software Composition Analysis (SCA) been run?
- Are there unresolved license conflicts or disclosure obligations?

► *A product built on GPL-licensed code may not be proprietary at all*

## VI. Branding & Trademarks in an AI World

### Can AI Create Protectable Brands?

- USPTO: Marks must function as source identifiers — human control over selection required
- AI-generated marks evaluated under the same standards as human-created marks
- Practitioners must document the human oversight exercised throughout brand development

### AI-Generated Branding Risks (2025–2026):

- Automated clearance searches using AI produce false negatives — miss phonetically similar or visually confusable marks, especially in non-English scripts and niche categories
- Clearance failures: automated selection does not equal legally cleared mark
- Unintentional copying: AI trained on existing brands can replicate them
- Company deploying the AI tool bears liability — not the AI developer

► *AI speeds up brand creation — and increases infringement risk simultaneously*

# VI. Deepfakes, False Endorsement & the NO FAKES Act

## AI-Generated Deepfakes: The Fastest-Moving Area of Brand Law in 2026

- AI-generated voices and likenesses of real people without consent
- Existing claims: Lanham Act false endorsement, right of publicity (state law varies), FTC scrutiny

### *Grammarly Lawsuit — April 2026*

- Demonstrates existing IP and consumer protection laws can reach AI deepfake conduct
- No federal legislation required — existing theories are being deployed now

## NO FAKES Act (Reintroduced 2025 — Pending as of April 2026):

- Would create a federal right of publicity specifically targeting AI voice and likeness clones
- Debate ongoing over constitutional scope; not yet enacted
- If enacted: federal private right of action with real damages on top of existing state claims

## Practical Implication for Law Firms:

- Clients rolling out AI-generated marketing must obtain explicit consent for any voice or likeness use — including synthetic personas
- Without consent: Lanham Act + right of publicity exposure today; federal damages if NO FAKES Act passes

► *Don't wait for federal legislation — the exposure exists under current law*

## VII. Licensing & Contracting for AI: 10-Clause Framework (2026)

**The \$1.5B Bartz settlement and NYT v. OpenAI have reshaped AI vendor agreements**

- Most AI disputes are contract disputes first — not IP lawsuits

### **10 Critical Clauses for AI Vendor Agreements (2026 Practice Standard):**

- 1. Training data provenance warranty — vendor represents data was lawfully acquired (no shadow-library exposure)
- 2. IP ownership of outputs — who owns AI-generated work product?
- 3. Fine-tuned model ownership — client data used to improve model: who retains rights?
- 4. Indemnification for training data infringement — vendor indemnifies client for third-party copyright claims
- 5. Output audit rights — client's right to test for verbatim reproduction of third-party content
- 6. Confidentiality / no-training restriction — prohibits vendor from using client inputs to train further
- 7. Open-source SBOM — schedule of all open-source components and applicable licenses
- 8. Regulatory compliance — EU AI Act transparency and training data documentation obligations
- 9. Data breach and trade secret protocol — what happens if client's confidential data is exposed
- 10. AI billing transparency — clients may require disclosure of AI use in billing (see Section X)

## VII. AI Indemnification: The 2026 Market Split

AI indemnity negotiations are now a standard flashpoint in vendor contracts

### Enterprise-Tier Vendors (Microsoft/OpenAI Copilot, Google Gemini Enterprise):

- Offering contractual copyright indemnities with caps tied to subscription revenue
- Coverage typically: third-party IP claims arising from vendor's training data
- Exclusions: client-generated content, client-directed fine-tuning, misuse of outputs

### Mid-Market Vendors:

- Resisting broad indemnities — citing unresolved fair use doctrine
- Indemnity scope often limited to output-based claims only, not training data
- Negotiate: require training data provenance warranty as a minimum

### The Bartz Lesson:

- Winning the fair use battle on legitimately acquired training data does NOT close all liability
- \$1.5B settlement was driven by piracy in the training pipeline — a separate independent risk
- “We used lawfully acquired training data” is now a contract representation, not just a legal defense

► *Treat AI indemnity scope as a real deal term — not standard boilerplate*

## VIII. Regulatory & Policy Overlay (2025–2026)

### EU AI Act — Copyright Compliance Obligations: Now In Force

- GPAI (General-Purpose AI) provider obligations took effect through 2025
- Must publish a summary of training data, including copyrighted content used
- Must honor opt-out requests from rightsholders under the EU's Text and Data Mining exception
- Non-compliance: fines up to 3% of global annual turnover

### EU vs. U.S.: Running in Opposite Directions

- EU: proactive transparency required — disclose training data, honor opt-outs
- U.S.: nothing comparable required — litigation-driven, sector-specific rules
- Clients operating in both markets are running two separate compliance programs

### European Parliament (Feb. 2026 Proposals):

- Would strengthen copyright for rightsholders in AI training context
- Potentially require licensing for commercial GPAI training regardless of opt-out status
- Not yet enacted; watch for 2026 development

► ***EU AI Act compliance is not optional — and U.S. clients with EU operations must act now***

## IX. Litigation Trends to Watch (2026 and Beyond)

### Active Dockets to Monitor:

- ROSS v. Thomson Reuters (3rd Cir.): Will non-generative/generative distinction hold? Pending.
- NYT v. OpenAI (S.D.N.Y. MDL): Regurgitation evidence — first real test of output-based generative AI infringement
- Google AI Training Cases (N.D. Cal.): Expected to reach summary judgment in 2026; tests Bartz/Kadrey framework against different architecture

### Emerging Doctrinal Frontiers:

- Output-based infringement: courts increasingly face claims about infringing outputs, not just training inputs
- AI “authorship” misrepresentation: false claims of originality in registered or marketed works
- AI trade secret discovery: model weights, training artifacts, and prompt libraries as disputed assets

### Legislative Watch:

- NO FAKES Act: federal right of publicity for AI voice/likeness clones — pending as of April 2026
- EU: Parliament proposals to require licensing for GPAI commercial training (2026)

► *The ROSS-to-Bartz spectrum offers limited guidance on output-based claims — that frontier is being mapped now*

# X. Professional Responsibility & Firm-Level AI Policy (2026)

## State Bar Guidance: Fragmented But Accelerating

- Virginia Ethics Opinion 1901 (Nov. 2025): AI billing — fees must be reasonable; AI efficiency gains may require reductions; client disclosure may be required
- California AI Ethics Guidelines (2025): Competence in AI tools, confidentiality protections for client data, supervision of AI output
- 50-state survey (Justia, June 2025): Most states have issued or are developing AI ethics guidance; no uniform standard yet
- Multiple federal courts now require disclosure of AI-generated content in filings — check local rules

## Firm-Level AI Policy Checklist (2026):

- Acceptable Use Policy: approved tools, approved use cases, prohibited inputs (client data, PII, trade secrets)
- Verification Protocol: mandatory human cite-check for all AI-assisted legal research before filing
- Client Disclosure Policy: when and how to disclose AI use (matter-type dependent)
- Billing Transparency Policy: consistent with Virginia / California guidance
- Data Residency Review: confirm vendor data processing agreements are consistent with confidentiality obligations
- AI-Privilege Protocol: attorney-client privilege may not protect AI tool outputs shared with third-party vendors
- Training Program: AI hallucination risks, citation verification, ethics obligations
- Vendor Vetting: due diligence on training data provenance and indemnification posture

# X. Key Questions to Ask Before Using AI on Any Matter

## Before deploying AI on any client matter, ask:

- What data is going in — does it include confidential client information?
- Do the vendor's terms permit using inputs to train the model further?
- Who owns the output — does the engagement letter address AI-assisted work product?
- Has the output been verified against primary sources?
- Does the jurisdiction or court require disclosure of AI use?
- Does the client engagement require disclosure under applicable ethics rules?

## The Biggest Risks Today — A Summary:

- Contractual: AI vendor agreements favor vendors on output ownership; indemnities may exclude training data infringement
- Operational: Employee AI use without guardrails destroys trade secrets; open-source creates undisclosed license obligations
- Disclosure: Failure to disclose AI in registered works; inaccurate IP ownership reps in transactions; regulatory non-compliance
- Professional Responsibility: Hallucination sanctions now reach circuit level; billing and disclosure obligations emerging in every state

► *IP lawyers need to be looped in before launch — not after the lawsuit. AI magnifies existing risks faster than the law catches up.*

# Questions & Discussion

## Key themes from today's session:

- Copyright: 2025 fair-use fracture — non-generative vs. generative AI; \$1.5B Bartz settlement
- Trade Secrets: AI tools can destroy protection instantly; DTSA motions at record levels in 2025
- Patents: USPTO Nov. 2025 guidance requires documentation of human contribution at every AI-assisted step
- Open Source: SBOMs now a standard AI contract requirement; no consensus AI license standard yet
- Trademarks: NO FAKES Act pending; deepfake liability exists under current law today
- Contracts: 10-clause framework is the 2026 practice standard; indemnity scope is a real deal term
- Ethics: Sanctions now appellate-level; firm AI policies are a professional responsibility requirement

## Contact the Speakers:

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