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Books, Baseball, and Berne: The Copyright Act Turns 50

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Fifty years after its enactment, the Copyright Act of 1976 (1976 Act) remains the statutory foundation of American copyright law.¹ It has fostered a spectacular universe of creative and intellectual authorship, as well as technologies that make the manner of experiencing such works a varied and personal experience. The drafters had some sense of the future. For example, they made the subject matter of copyright “illustrative and not limitative,” leaving room for new categories of authorship,² and they enacted a “transmit clause” providing that members of the public may receive transmissions at separate times and locations, paving the way for creators to authorize and be compensated for streaming.³

The 1976 Act’s defining architecture of rights and certain limitations on those rights has been key to its staying power, guiding subsequent lawmakers who enacted 79 amendments with creators, users, and the public in mind, including, most significantly, the Digital Millennium Copyright Act (DMCA) in 1998 and the Music Modernization Act in 2018. Likewise, judges have migrated the law by applying it to new technologies like Napster, which knowingly aided peer-to-peer infringement.⁴ They also developed consideration of “transformative use,” a fair use subfactor that is of heightened consequence today in litigation involving generative artificial intelligence (AI) models trained on copyrighted works.

The steep rise of copyright AI cases filed over the past three years (some 120 actions in the United States) reflects the rapid proliferation of AI in society more generally and conflicting views on how to regulate it. Debates call to mind the seminal science fiction series *I, Robot*, by Isaac Asimov, in which robots are programmed to abide by principled rules that will in theory promote positive robot behavior and prevent harm to humanity. There are fascinating developments but also a looming threat of bad actors.

Although the principles that govern copyright have likewise been tested along the way, they have had remarkable staying power for two and a half centuries. Codified in the copyright clause of the Constitution in 1787, these principles authorize Congress to secure to authors the exclusive rights to their creative works, as incentive and reward, for the benefit of their livelihoods and the overall public good.⁵ This master bargain was top of mind for the architects of the 1976 Act, as they worked with purpose toward a clearer, fairer, and more modern statute.

The Architects

Deliberations for the 1976 Act began as early as 1955 with the American Bar Association (ABA) providing strong encouragement.⁶ When finally completed everyone called it the “new law,” and a few people still do. They should be forgiven because the revision was no simple set of updates. Rather, it was a complete restructuring and redrafting of the inflexible 1909 statute, which sometimes rigidly injected works into the public domain with harsh consequences for creators.

The 1909 Act was also at odds with the Berne Convention, the 1886 copyright treaty adopted under Victor Hugo’s leadership.⁷ In addition to establishing minimum protections, Berne mandates national treatment, which requires each member state to protect the works of authors of other member states as they would their own authors.⁸ Of importance as the United States grappled with a rule-laden statute is that Berne requires automatic protection that may not be conditioned upon compliance with any formality.⁹ Thus, to gain stronger protections abroad, the United States needed to make systemic changes at home, a journey that began with the 1976 revision but would take until 1988 to substantially complete.

Many luminaries contributed to the 1976 Act, but key among its architects were Barbara Ringer, an attorney from Indiana who spent almost her entire career at the Copyright Office and was Register of Copyrights from 1973 to 1980 (and again from 1993 to 1994), and Robert Kastenmeier, a congressman from Wisconsin who served 32 years in the House of Representatives and chaired copyright issues from 1969 to 1990. They worked very closely with Senator John L. McClellan of Arkansas, who chaired the Senate Judiciary Committee’s crucial counterpart deliberations for many years before his death in 1977.

Ringer was the first woman to serve as Register, which required suing the Library of Congress for discrimination.¹⁰ By then, she was an eminent authority on domestic and international copyright issues, respected for her legal mastery, prolific drafting, and fair-minded service, much of it alongside the equally influential Abraham Kaminstein, Register from 1960 to 1971. When Ringer later reflected on the long revision process, which was replete with changing technologies, judicial developments, and numerous compromises that had “to be kept in equilibrium,” she said it was “a source of wonder that somehow all of this succeeded in the end.”¹¹

The timing of Ringer’s leadership meant that she and her distinguished team—including general counsel Jon Baumgarten, policy expert Lew Flacks, and future Register Marybeth Peters—performed double duty to both finalize and implement the law before its effective date of January 1, 1978. To appreciate implementation is to appreciate the extraordinary breadth of administrative, regulatory, and educational activity that was necessary, including an audit of every Copyright Office function and correlating doctrine; review and revision of public documents, practices, and regulations; time-sensitive notice and comment proceedings; comprehensive training for examiners and other staff; intergovernmental meetings; and an extensive public outreach campaign for creators, users, and the bar.

A Creative Backdrop

Fitting for the 1976 Act's birthday is a look back at the era's authorship, including famous derivative works. For such investments, the 1976 Act's drafters provided long-overdue legal clarity by expressly confirming that any of the exclusive rights that comprise the author's copyright may be divided, subdivided, transferred, owned, and enforced separately, thereby making the author's transferees, including exclusive licensees, the legal copyright owners of the particular right or rights they acquire.¹²

Movies are an excellent example of how copyrights divide and inspire. At the 1976 Academy Awards, the film *One Flew Over the Cuckoo's Nest*, adapted from Ken Kesey's novel, won five Oscars, including Best Picture for producers Michael Douglas and Saul Zaentz, Best Actor for Jack Nicholson, and Best Director for Miloš Forman, who later received the 1985 Academy Award for directing *Amadeus*, adapted from a play.

In music, composer John Williams won Best Original Dramatic Score in 1976 for his enthralling soundtrack to *Jaws*, instantly recognizable 50 years later. That tectonic movie was directed by a young Steven Spielberg, who adapted it from Peter Benchley's best-selling novel, with Benchley both cowriting the screenplay and making a cameo as a reporter on the beach. In 1978, Williams won another Oscar for his interstellar *Star Wars* music, which is ranked first on the American Film Institute's greatest film scores of all time.

Another 1976 movie, *All the President's Men*, starring Dustin Hoffman and Robert Redford, is respected for its portrayal of journalistic integrity. Directed by Alan Pakula, it depicts Carl Bernstein and Bob Woodward as reporters at The Washington Post investigating Watergate under editor Ben Bradlee, played by Jason Robards, who received Best Supporting Actor. The movie adapts the reporters' nonfiction book of the same name, based on their newspaper articles. While protection does not extend to ideas or facts, which lack requisite expression and originality and cannot be owned,¹³ *All the President's Men* and subsequent works about Watergate show that common information can be given new creative life by more than one kind of creator working across more than one medium, including new generations that are free to express their own original stories. Pakula went on to adapt other writings to the big screen, including *Sophie's Choice* by William Styron, *Presumed Innocent* by Scott Turow, and *The Pelican Brief* by John Grisham, raising the perennially important question, "Which was better, the movie or the book?"

Statutory Highlights

It is a tenet of copyright that creativity and innovation are two sides of the same coin, with technology both driving and disrupting creative markets. In 1976, there were no laptops or mobile phones, but enormous change was coming, as Steve Jobs, Steve Wozniak, and Ronald Wayne founded the Apple Computer Company. They helped to ignite an era of personal computing and consumer electronics that would eventually revolutionize how works of authorship are created, experienced, and legally protected.

The 1976 Act's architects could not see the entire horizon, but their accomplishments both supported and informed a more sophisticated copyright landscape. They created a uniform federal law by abolishing common law copyright and made protection automatic upon the author's creation if fixed in a tangible medium of expression.¹⁴ A new exclusive right, the right "to display" a copy of a work publicly (either directly or using technology) was added to the statutory bundle.¹⁵ Additionally, the 1976 Act folded the previously codified right "to publish" into the broader and arguably clearer right "to distribute," and it broadened the 1909 principle of work made for hire to cover not only works performed within the scope of employment, but also works prepared by special order or commission, for example, as part of a motion picture.¹⁶

The term of copyright was rewritten, replacing a duration tied to publication or registration with life-of-the-author-plus-50 years for works created on or after January 1, 1978.¹⁷ In 1998, Congress extended the term to life-plus-70 years, spurring a constitutional challenge because the extra 20 years applied backward as well as forward.¹⁸ Unconcerned, the U.S. Supreme Court upheld the dual application as a reasonable congressional prerogative.¹⁹ For

pre-1978 works, term continues to depend on fact-based rules, with many works subject to a duration of 95 years from publication.²⁰ Today, as of December 31, 2025, works published in 1930 or earlier have entered the public domain, including, for example, George Gershwin's composition *Rhapsody in Blue*, published in 1924 (but not all sound recordings), and Ernest Hemingway's *A Farewell to Arms*, published in 1929.

The 1976 Act also specified exceptions and limitations, including important exemptions for libraries and a compulsory license for secondary transmissions by cable operators, thereby ensuring just compensation for creators for a new exploitation of their works as well as efficiencies for cable companies and their customers.²¹ For the first time, Congress codified the four balancing criteria of fair use as developed at common law by the judiciary since 1841, underscoring, however, that fair use is an "equitable rule of reason" that courts must be free to further adapt on a case-by-case basis.²² Unquestionably, the new law brought exponentially more works under protection, smoothed the practical operation of transfers and limitations, and moved the United States toward the international norms that underpin our markets today.

Technology Tug-of-War and Protecting Moral Rights

After *Star Wars*, George Lucas continued to do his part for the copyright galaxy by creating three prequels and two sequels, as well as books, toys, art, soundtracks, and video games that continue to captivate new generations. Indeed, the people who are building rocket ships and robots today may have been so inspired. Copyright and technology are like this, forever pushing and pulling.

President Ford made the new law official on October 19, 1976. That evening, he may have watched game three of the World Series on NBC, as the Cincinnati Reds defeated the New York Yankees en route to a four-game sweep. In the 1970s, sports fans couldn't check scores on an app or send live telecasts to a DVR service to watch from the cloud at a more convenient time, but perhaps they copied the broadcast onto videotapes using video cassette recorders (VCRs). These analog recorders, especially Sony Betamax machines, became available in the United States around 1975. In 1976, studios sued Sony, arguing that Sony's sale of the devices made it liable for contributory infringement, or as the Ninth Circuit ruled, the recorders were sold "for the primary purpose of reproducing television programming."²³ By the time the "Betamax case" reached the Supreme Court in 1984, we were in an era of acclaimed broadcasts like *The Cosby Show* (1984–1992) and *Cheers* (1982–1993), and VCRs were vastly popular. Reversing the circuit court, the Supreme Court found time-shifting to be noninfringing and the copying equipment to be "capable of substantial noninfringing uses," a distinction it would later refine for digital technologies.²⁴

Meanwhile, Kastenmeier was putting a capstone on his leadership by preparing for U.S. adherence to Berne, which at long last was official on March 1, 1989.²⁵ To get there, Congress rendered copyright notices permissive not mandatory, meaning that the omission of a notice no longer divests the owner of copyright protection.²⁶ (Nevertheless, copyright notices are widely elected today.) Moral rights (*droit moral*) proved more confounding, namely how to protect the noneconomic or personal rights of an author to be credited for their work (the attribution right), and to object to any distortion, mutilation, or other modification that would be prejudicial to their honor or reputation (the right of integrity).²⁷ Declining to legislate, Congress concluded that a combination of common law and statutory protections, including the Copyright Act and Lanham Act, were adequate.²⁸ Shortly after, Congress adopted a mini and very limited moral rights amendment, the Visual Artists Rights Act,²⁹ which some regard as a step in the right direction but others find anathema to supporting art. Moral rights have reemerged in AI debates.

The Digital Millennium Copyright Act

When President Clinton signed the DMCA into law on October 28, 1998, there were no baseball games to watch or record, as the Yankees had clinched the World Series the previous week in a four-game sweep of the San Diego Padres broadcast by Fox. But he may have been watching *Titanic*, Best Picture that year, or *Good Will Hunting*, Best Original Screenplay, or preparing to bypass long lines at the National Gallery of Art to see the spectacular *Van Gogh's Van Goghs* paintings on loan from Amsterdam.

The 1998 DMCA implemented two internet treaties, the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, which the U.S. delegation helped to lead.³⁰ The DMCA is often described as a digital overlay to the 1976 Act because it confirmed the application of existing exclusive rights while instilling balancing provisions that are a familiar aspect of the U.S. tradition. For example, it prohibits the circumvention of technological measures that control access to works, subject to a qualifying rulemaking, and makes it unlawful to intentionally remove copyright management information.³¹

The DMCA's most public face is a notice-and-takedown system, which Congress established in balanced measure to both promote legal certainty for a then-nascent internet industry and give efficient and effective enforcement tools to copyright owners. In sum, Congress created four safe harbors for online service providers that act in good faith to remove infringing content expeditiously when notified, subject to maintaining repeat offender policies and other conditions.³² Unfortunately over time, as the internet has grown in scale and complexity, the once innovative system has faltered, rendering the takedown (and takedown again) process ineffective for virtually everyone and overwhelming for authors.³³ Relatedly, the Supreme Court's 2026 holding in *Cox Communications, Inc. v. Sony Music Entertainment* unexpectedly restated and narrowed the scope of contributory infringement, calling into question whether the safe harbor immunities so carefully legislated by Congress will remain relevant or important to intermediaries.³⁴

The DMCA did not codify every treaty mandate, including the right of authors to authorize "the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them."³⁵ Some countries enacted a new right of communication, but the United States concluded instead that the exclusive rights enacted in 1976 were already collectively sufficient to provide the protection, a position it repeatedly affirmed in executive branch statements, trade agreements, and congressional testimony, although the courts have been less consistently on message.³⁶ The Supreme Court had occasion to address and affirm certain "on-demand" treaty requirements in *ABC, Inc. v. Aereo, Inc.*, holding that a company retransmitting broadcasts over the internet in nonsimultaneous streams to individuals in disparate locations was not a mere equipment provider but publicly performing the work under the 1976 transmit clause.³⁷ Plenty of copyright was yet to come for the courts and Congress alike.

Copyright Review

In 2013, the House Judiciary Committee, under then-Chairman Bob Goodlatte of Virginia, launched a new review of existing and emerging copyright questions as well as structural and resource challenges facing the Copyright Office.³⁸ In support, the Copyright Office commenced multiyear studies for Congress on corresponding legislative and regulatory questions.³⁹ It also completed a comprehensive revision of the *Compendium of U.S. Copyright Office Practices*, updating and hyperlinking more than a thousand pages of administrative and legal authority to provide dynamic, detailed guidance to both examiners and the public.⁴⁰ Relatedly, it published independent recommendations to modernize the public recording of transfers, security interests, and other copyright documents through online filings, with some such filings available today.⁴¹

During Goodlatte's review, the House held 20 hearings over two years with 100 witnesses, requesting testimony from the Register, industry experts, and scholars, and it separately convened field hearings outside of Washington to permit less-formal conversations with stakeholders, creating a record of both ripe and percolating issues.⁴² From this process, with corresponding Senate leadership, three significant amendments were enacted: the Music Modernization Act (improving compensation for music creators and legacy artists and recasting statutory licensing to address digital delivery); the Felony Streaming Act (providing criminal remedies for deliberate, commercial infringement via streaming, consistent with such remedies for the reproduction and distribution rights); and the Copyright Alternative in Small-Claims Enforcement (CASE) Act (creating a voluntary alternative to federal court for low value disputes).⁴³ In this work, lawmakers honored the past and looked to the future.

Transformative Use

In 1994, in the parody case *Campbell v. Acuff-Rose Music, Inc.*, the Supreme Court addressed the concept of “transformative use,” citing to a seminal law review article by Judge Leval.⁴⁴ In *Campbell*, the Supreme Court concluded that 2 Live Crew’s mocking version of Roy Orbison’s signature song “Oh, Pretty Woman” was fair use, but in addressing factor one under the statute—the purpose and character of the use—asked if the use was transformative, specifically, a use that “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.”⁴⁵ Eventually, courts began to apply transformative use to a variety of uses, both expressive and nonexpressive, not always clearly. A few seemed to treat it as a fair use conclusion, ignoring other equities as well as relevant precedent.⁴⁶ Others expressed skepticism about a transformative analysis, concerned that it could replace the statutory factors and override derivative works.⁴⁷

In 2015, Judge Leval returned to the concept of transformative use in *Authors Guild v. Google, Inc.*, the “Google Books” case that addressed Google’s mass reproduction of millions of literary works to create search engine snippets, at the time the largest act of mass copying in copyright history.⁴⁸ The court found the use to be fair, explaining that Google showed only snippets publicly, stored digital materials on secure servers, sometimes provided links to booksellers or libraries, and did not display advertising or solicit payment for providing these links.⁴⁹ As contours, the court noted that the author’s exclusive right to derivative works cannot be evaded by converting the work to another format, but found that Google’s use, which produced information about the work, was too small an expression to be a substitute.⁵⁰ Judge Leval warned, however, that a transformative purpose is not the entirety of a fair use analysis, as an author’s exclusive rights may still be harmed if copying “results in widespread revelation of sufficiently significant portions of the original as to make available a significantly competing substitute.”⁵¹

The Supreme Court has twice sought to clarify the importance of transformative use and will undoubtedly do so again in AI cases. In 2021, it held that Google’s copying of declaring source code for use in Android phones was transformative, based on facts that are not broadly applicable outside the software environment.⁵² But in 2023, in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, a case involving professional photographs of the musician Prince, it rejected transformative arguments and fair use.⁵³ In that case, the Court spoke directly to the inherent tension between transformative use and the architecture of the 1976 Copyright Act, specifically the author’s exclusive right to exercise or license derivative works. The Andy Warhol Foundation’s sale of silkscreen copies, created by Warhol from Goldsmith’s photography, was not a fair use even though the images carried a different purpose or meaning. Rather, the Court stressed, the photographer’s copyright includes the exclusive right to authorize “derivative works that transform the original.”⁵⁴

Artificial Intelligence

Today, questions of what constitutes transformative use are extremely consequential as copyright owners challenge big tech companies for copying and using millions of literary, pictorial, audiovisual, and musical works to train and engender outputs in commercial AI models. These cases, both individual actions and class actions, generally focus on the model’s retention, memorization, and substantial similarity of protected human expression, and whether such uses are fair use.⁵⁵ Some cases have revealed that AI developers copied works from notorious piracy sites via torrenting.⁵⁶

Meanwhile, licensing collaborations between copyright owners and technology companies present promise, consistent with the premise that the copyright system works best when stakeholders work together, and because new and better generations of AI will require clean, safe, and accurate content as well as appropriate regulation. Relatedly, such safeguards may help to address heightened calls from authors about attribution and integrity, manifesting in campaigns across the creative sectors that call for “consent, credit, and compensation” and in federal transparency bills that would require AI companies to disclose what they ingested.⁵⁷

Last year, in considering harm under the fourth fair use factor, the Copyright Office suggested that courts could consider the impact of AI-generated content that has begun to flood the marketplace and will likely diminish the value

of human authorship due to sheer volume or stylistic imitation.⁵⁸ There is nothing preventing the courts from doing so, for the same reason courts were free to introduce, and continue to develop, the subfactor of transformative use within the statutory framework. In fact, Congress expressly declined to freeze fair use when it codified the equitable doctrine in 1976, instead granting courts flexibility to address new situations arising from new technologies as they emerge.⁵⁹

Certainly today, as the world grapples with misinformation, deepfakes, security challenges, and other looming threats that have the potential to cause harm to humanity, the stakes are high. The talents of authors and innovators will remain indispensable to informing and inspiring people. And lawyers, guided by the enduring, governing principles of the copyright clause, will be called upon to resolve new and difficult issues for humans, robots, and the overall public good.

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Endnotes

1. Copyright Act of 1976, Pub. L. No. 94-553, § 302(a), 90 Stat. 2541, 2572 (codified as amended in 17 U.S.C.).
2. H.R. REP. NO. 94-1476, at 53 (1976).
3. *See* 17 U.S.C. § 101 (defining “transmit”).
4. *See* A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001).
5. U.S. CONST. art. I, § 8, cl. 8 (empowering Congress “[t]o promote the Progress of Science . . . by securing for limited Times to Authors . . . the exclusive Right to their respective Writings”).
6. *See* U.S. COPYRIGHT OFF., FIFTY-EIGHTH ANNUAL REPORT OF THE REGISTER OF COPYRIGHTS FOR THE FISCAL YEAR ENDING JUNE 30, 1955, at 5 (1955).
7. Berne Convention for the Protection of Literary and Artistic Works, Sep. 9, 1886, S. TREATY DOC. NO. 99-27, 1161 U.N.T.S. 3 (revised at Paris July 24, 1971, and amended 1979) [hereinafter Berne Convention].
8. *Id.* at art. 5(1).
9. *Id.* at art. 5(2).
10. *See* Ringer v. Mumford, 355 F. Supp. 749 (D.D.C. 1973).
11. MARYBETH PETERS, GENERAL GUIDE TO THE COPYRIGHT ACT OF 1976, at 1:2–1:3 (1977).
12. *See* 17 U.S.C. §§ 101 (defining “copyright owner” and “transfer of copyright ownership”), 106, 201(d)(1)–(2), 204.
13. *See id.* § 102(b); Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 347–48 (1991).
14. *See* 17 U.S.C. § 102(a).
15. *Id.* §§ 101 (defining “display”), 106(5). Congress later codified a public performance right for sound recordings transmitted digitally. Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, § 2, 109 Stat. 336, 336 (codified as amended at 17 U.S.C. § 106(6)).
16. *See* 17 U.S.C. §§ 101 (defining “publication”), 106(3); Harper & Row, Publishers, Inc. v. Nation Enters., 471 U.S. 539, 552 (1985) (citing H.R. REP. NO. 94-1476, at 62 (1976)). In 1992, Congress codified the U.S. Supreme Court’s holding that the unpublished nature of a work is not fair use determinative but a factor for consideration. *See* 17 U.S.C. §§ 101 (defining “work made for hire”), 107, 201(b); H.R. REP. NO. 102-836, at 9 (1992).
17. 17 U.S.C. § 302(a).
18. Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, § 102(b), 112 Stat. 2827, 2827 (1998) (codified as amended at 17 U.S.C. § 302(a)).
19. *See* Eldred v. Ashcroft, 537 U.S. 186, 204–08 (2003).
20. *See* 17 U.S.C. §§ 303, 304; U.S. COPYRIGHT OFF., COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §§ 2102–2109 (3d ed. 2021) [hereinafter COMPENDIUM].
21. 17 U.S.C. §§ 107–112, 115–117, 119, 121–122. Section 111 overturned the Supreme Court’s interpretation that retransmitting distant signals is not a performance. *See* Teleprompter Corp. v. Columbia Broad. Sys. Inc., 415 U.S. 394 (1974); Fortnightly

- Corp. v. United Artists Television, Inc., 392 U.S. 390 (1968).
22. 17 U.S.C. § 107; *Folsom v. Marsh*, 9 F. Cas. 342, 348 (C.C.D. Mass. 1841); H.R. REP. NO. 94-1476, at 65 (1976).
23. *Universal City Studios, Inc. v. Sony Corp. of Am.*, 659 F.2d 963, 975 (9th Cir. 1981), *rev'd*, 464 U.S. 417 (1984).
24. *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 456 (1984). *But see* *MGM Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 918–19, 934 (2005) (holding that *Sony* did not displace other theories of secondary liability and that the distributor of a technology capable of both lawful and unlawful use is liable for “promoting its use to infringe copyright”).
25. *See* Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853.
26. *See id.* § 7 (codified as amended at 17 U.S.C. §§ 401–406); COMPENDIUM, *supra* note 20, at ch. 2202.
27. Berne Convention, *supra* note 7, at art. 6bis(1).
28. *See* S. REP. NO. 100-352, at 9–10 (1988); H.R. REP. NO. 100-609, at 37–38 (1988). *But see* *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 32–37 (2003) (holding that Section 43(a) of the Lanham Act does not prohibit unaccredited copying of expressive works).
29. Visual Artists Rights Act of 1990, Pub. L. No. 101-650, tit. VI, §§ 601–610, 104 Stat. 5089, 5128–33 (codified as amended at 17 U.S.C. §§ 101 (defining a “work of visual art”), 106A, 113, 301).
30. WIPO Copyright Treaty, Dec. 20, 1996, S. TREATY DOC. NO. 105-17, 2186 U.N.T.S. 121; WIPO Performances and Phonograms Treaty, Dec. 20, 1996, S. TREATY DOC. NO. 105-17, 2186 U.N.T.S. 203.
31. 17 U.S.C. §§ 1201, 1202.
32. *Id.* § 512.
33. *See* U.S. COPYRIGHT OFF., SECTION 512 OF TITLE 17, at 2–7, 197–98 (2020) [hereinafter SECTION 512 OF TITLE 17].
34. 146 S. Ct. 959 (2026).
35. WIPO Copyright Treaty, *supra* note 30, at art. 8.
36. *See* U.S. COPYRIGHT OFF., THE MAKING AVAILABLE RIGHT IN THE UNITED STATES 2 (2016) [hereinafter MAKING AVAILABLE RIGHT].
37. 573 U.S. 431, 442, 447–48 (2014).
38. *See* Press Release, H. Comm. on the Judiciary, Chairman Goodlatte Announces Comprehensive Review of Copyright Law (Apr. 24, 2013), <https://judiciary.house.gov/media/press-releases/chairman-goodlatte-announces-comprehensive-review-of-copyright-law>.
39. *See, e.g.*, U.S. COPYRIGHT OFF., COPYRIGHT SMALL CLAIMS (2013); U.S. COPYRIGHT OFF., COPYRIGHT AND THE MUSIC MARKETPLACE (2015); MAKING AVAILABLE RIGHT, *supra* note 36; U.S. COPYRIGHT OFF., SECTION 1201 OF TITLE 17 (2017); U.S. COPYRIGHT OFF., AUTHORS, ATTRIBUTION, AND INTEGRITY: EXAMINING MORAL RIGHTS IN THE UNITED STATES (2019); SECTION 512 OF TITLE 17, *supra* note 33.
40. U.S. Copyright Office Releases the Compendium of U.S. Copyright Office Practices, Third Edition, U.S. COPYRIGHT OFF. (Dec. 22, 2014), <https://www.copyright.gov/newsnet/2014/564.html>; COMPENDIUM, *supra* note 20.
41. U.S. COPYRIGHT OFF., TRANSFORMING DOCUMENT RECORDATION AT THE UNITED STATES COPYRIGHT OFFICE (2014); Copyright Office Expands Recordation Access to the Public, U.S. COPYRIGHT OFF. (Aug. 1, 2022), <https://content.govdelivery.com/accounts/USLOCCCOPYRIGHT/bulletins/31fbc87>.
42. *See Register’s Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 1 (2015); Press Release, H. Comm. on the Judiciary, House Judiciary Committee Announces Next Step in Copyright Review (July 22, 2015), <https://judiciary.house.gov/media/press-releases/house-judiciary-committee-announces-next-step-in-copyright-review>.
43. *See* Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018) (codified as amended in scattered sections of 17 U.S.C.); Protecting Lawful Streaming Act of 2020, Pub. L. No. 116-260, div. Q, tit. II, § 211, 134 Stat. 1182, 2175–76 (codified as amended at 18 U.S.C. § 2319C); Copyright Alternative in Small-Claims Enforcement Act of 2020, Pub. L. No. 116-260, div. Q, tit. II, § 212, 134 Stat. 1182, 2176–2200 (codified at 17 U.S.C. §§ 1501–1511).
44. 510 U.S. 569, 576–78 (1994) (citing Pierre N. Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105 (1990)).
45. *Id.* at 579.
46. *See, e.g.*, *Cariou v. Prince*, 714 F.3d 694, 706–09 (2d Cir. 2013); *see also* PAUL GOLDSTEIN, GOLDSTEIN ON COPYRIGHT § 12.3 (3d ed. 2026) (explaining that “lower courts, and the Supreme Court, should look for guidance to precedents that present the same considerations of equity (principally social benefit) and efficiency (typically transaction cost) rather than to precedents possessing greater legal authority but less relevance to the facts at hand”).
47. *See, e.g.*, *Kienitz v. Sconnie Nation LLC*, 766 F.3d 756, 758 (7th Cir. 2014); *see also* 4 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 13F.10 (Matthew Bender rev. ed. 2025) (noting that court opinions have played “fast and

loose” with the “significance and meaning” of transformative use and “the course remains uncertain”).

48. 804 F.3d 202 (2d Cir. 2015).

49. *Id.* at 208–10.

50. *Id.* at 225.

51. *Id.* at 223.

52. *See* Google LLC v. Oracle Am., Inc., 593 U.S. 1, 30, 40 (2021).

53. 598 U.S. 508 (2023).

54. *Id.* at 550.

55. *See, e.g., In re* OpenAI, Inc. Copyright Infringement Litig., No. 1:25-md-03143 (S.D.N.Y. consolidated Apr. 3, 2025); Disney Enters., Inc. v. Midjourney, Inc., No. 2:25-cv-05275 (C.D. Cal. filed June 11, 2025); Concord Music Grp., Inc. v. Anthropic PBC, No. 5:24-cv-03811 (N.D. Cal. transferred June 26, 2024); Justice v. Suno, Inc., No. 1:25-cv-11739 (D. Mass. filed June 14, 2025).

56. *See, e.g.,* Kadrey v. Meta Platforms, Inc., 788 F. Supp. 3d 1026, 1041 (N.D. Cal. 2025); Bartz v. Anthropic PBC, 791 F. Supp. 3d 1038, 1046 (N.D. Cal. 2025).

57. *See* Transparency and Responsibility for Artificial Intelligence Networks (TRAIN) Act, S. 2455, 119th Cong. (2025); Transparency and Responsibility for Artificial Intelligence Networks (TRAIN) Act, H.R. 7209, 119th Cong. (2026); Copyright Labeling and Ethical AI Reporting (CLEAR) Act, S. 3813, 119th Cong. (2026).

58. U.S. COPYRIGHT OFF., COPYRIGHT AND ARTIFICIAL INTELLIGENCE, PART 3: GENERATIVE AI TRAINING 73–74 (May 2025) (prepublication version); *see also* *Too Big to Prosecute? Examining the AI Industry’s Mass Ingestion of Copyrighted Works for AI Training: Hearing Before the Subcomm. on Crime & Counterterrorism of the S. Comm. on the Judiciary*, 119th Cong. 202 (2025) (statement of David Baldacci) (“AI will also allow anyone, with no effort at all, to order up a novel written in the vein of an established writer. And that book can be sold saying that it reads just like a David Baldacci novel. Yes, it does read like my novels. Because it is my novel. It is my imagination. . . . [W]e have cheap books being created by American technology flooding the market.”).

59. H.R. REP. NO. 94-1476, at 66 (1976); *see also* Jane C. Ginsburg, *Fair Use in the US Redux: Reformed or Still Deformed?*, 2024 SING. JLS 52, 89 (2024) (observing that courts could consider whether “the wholesale copying of an artist’s works into training data in order to enable stylistically similar outputs jeopardizes not only the artist’s future employment or commissions, but also devalues the actual works copied, because the image-generation program can produce outputs that compete with already-created works as well”).