

Q&A: What Hollywood's Copyright Attack Against Midjourney Really Means

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Patrick Hughes

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Artificial intelligence systems are capturing the world's imagination with their capacity to create works of art, but the relatively young startups that operate these systems are catching flack from more established owners of creative works protected by copyright law.

These disgruntled participants now include two Hollywood big shots: Disney and Universal.

Disney Enterprises Inc. and affiliates, including Marvel Characters Inc. and Lucasfilm Ltd. LLC, joined Universal City Studios Productions LLLP and subsidiary DreamWorks Animation LLC in filing copyright infringement claims against AI platform Midjourney Inc. on June 11 in the U.S. District Court for the Central District of California.

Unlike some other parties that have complained of AI companies copying works to use in training models, Disney and Universal say Midjourney "illegally and unfairly competes" with companies that obtain legitimate licenses to create derivative works.

And the AI startup, which has been offering image-creation services since February 2022, violates copyright law in numerous ways, according to the lawsuit.

"Midjourney directly reproduces, publicly displays, and distributes reproductions and derivative works of Disney and Universal content," the suit says.

McKool Smith's Avery Williams, an intellectual property attorney who frequently represents clients in disputes involving AI, holds an enlightened perspective on litigation against AI startups.

Westlaw Today asked him to shed some light on just what the media giants' suit symbolizes and what the future could hold for other potential copyright plaintiffs.

Westlaw Today: A slew of copyright infringement suits have been filed against AI startups based on the data these companies have gathered to train their systems. In what ways is the lawsuit that Disney and Universal have filed against Midjourney different from those previous suits?

Avery Williams: The lawsuit by Disney and Universal is different because it marks the first time the major studios have waded into these lawsuits. This lawsuit also stands out because of its focus on infringing outputs, rather than the more frequent focus on infringement through acquisition and training.

WT: Disney and Universal call the Midjourney system a "bottomless pit of plagiarism." In what ways is this description accurate? Or is it not accurate?

AW: While that statement is clearly hyperbole, Midjourney users can easily replicate copyrighted works and create clearly derivative works that infringe on copyrighted materials. The lawsuit makes a rather compelling case that Midjourney not only knows about that capability, but advertises it. While Midjourney can be put to other uses, replicating copyrighted characters appears to be a feature, not a bug.

WT: If the District Court interprets the alleged "plagiarism" to mean Midjourney is liable for willfully infringing copyrighted content, the damages could amount to \$150,000 per work infringed plus attorney fees. Do you see a large settlement in the future if Midjourney is to avoid such damages?

AW: I think the more likely settlement scenario is that Midjourney updates its model to prevent or greatly reduce the ability to recreate specific copyrighted characters. There may be a substantial monetary component of the settlement as well, but I think what Disney and Universal really want is for Midjourney to stop knocking off their copyrighted characters. I do not think the studios want Midjourney out of business. The studios have been keeping out of the AI copyright wars for a reason: in my opinion, because they want the technology to exist for their own future use. But Disney and Universal have to protect their IP. They can't just sit by while someone effectively sells copies of their copyrighted characters.

WT: Even if the plagiarism accusation were appropriate, direct copying can legally be excused by defenses provided under copyright law. What possible defenses could Midjourney assert if the litigation goes forward?

AW: It is not clear what defense Midjourney might raise to justify advertising to users that they can use Midjourney to create pictures of Darth Vader and other copyrighted characters. Most of the AI cases have focused on the fair-use defense, but the fair-use argument has generally been limited to acquisition of copyrighted works and copies made during training, not to infringing outputs. If Midjourney were to stop marketing its capability to recreate copyrighted characters, and were to put safeguards in place to prevent users from replicating copyrighted characters, then Midjourney could more reasonably argue that it was not contributing to copyright infringement.

WT: The lawsuit that Disney and Universal filed says Midjourney has already copied copyrighted works as part of a training process. The U.S. Copyright Office conducted an assessment into AI training systems, research that culminated in a preliminary report on May 9 that said the fair-use exception to copyright infringement might not apply to training systems. How do the results of the Copyright Office's research help or hurt Disney and Universal's case?

AW: The Copyright Office report is certainly interesting, but at this point the places to look for fair-use guidance in AI training are the two recent summary judgment decisions in the *Kadrey v.*

Meta and *Bartz v. Anthropic* cases. There are still lots of unanswered questions, but both cases suggest that training on copyrighted materials can be fair use under certain circumstances, but not all. [U.S. District Judge Vince] Chhabria's decision in *Kadrey* stressed that a "market substitution" argument (where similar yet noninfringing works damage the market for the copyrighted work) could prevail if a plaintiff could make a proper showing of damages caused by the AI model. Judge Chhabria's stance mirrors the position the Copyright Office took in suggesting that generative AI models that create highly expressive works (like art and music) may displace the demand for the very artists and musicians whose works were used for training data. It is interesting to see that argument emerge in a court decision after the Trump administration fired [Register of Copyrights Shira] Perlmutter immediately after the prepublication release of that report.

WT: The Copyright Office report also delves into licensing possibilities for the training of AI systems. And while Midjourney is accused of infringement through the training of its system, the suit also says Midjourney violates copyright law in other ways. Could Midjourney establish some sort of licensing arrangement with Disney and Universal as part of a settlement agreement? If so, what might that arrangement look like?

AW: There are plenty of examples of licensing arrangements for AI training. Reddit and Reuters are two among many content providers that have established licensing schemes for that purpose. So, Disney and Universal could theoretically agree to license their characters to Midjourney for AI training or even for output and could structure the agreement in whatever way suited the parties. Whether that's likely is another question. It's not clear that Disney or Universal is interested in licensing its copyrighted characters for that purpose. And it is not clear after the *Kadrey* and *Bartz* decisions that companies will actually need a license for AI training, at least when they have legitimately acquired the original source material.

WT: You mention *Bartz v. Anthropic PBC*, No. 24-cv-5417, 2025 WL 1741691 (N.D. Cal. June 23, 2025), in which U.S. District Judge William H. Alsup found that some uses of books to train Anthropic's Claude AI program were considered fair use, although the judge said creating "a permanent, general-purpose library" with pirated copies was not permitted under copyright law. Two days later, Judge Chhabria in *Kadrey v. Meta Platforms Inc.*, No. 23-cv-3417, 2025 WL 1752484 (N.D. Cal. June 25, 2025), dismissed some authors' arguments about the market harm to their books that an AI program posed. What kind of effect will these decisions have on the case Disney and Universal have brought against Midjourney?

AW: The thing that makes this case unique is also the thing that might make *Kadrey* and *Bartz* less relevant here. *Kadrey* and *Bartz* had one thing in common: Neither had any real "output" infringement claim. Disney and Universal do argue that Midjourney commits copyright infringement on the training side, but the real force behind the lawsuit is the output of clearly infringing derivative works. To that extent, *Kadrey* and *Bartz* don't really speak to the lawsuit from Disney and Universal.

WT: What kind of impact will Disney and Universal's suit have on Hollywood? Is there a chance the suit could have a chilling effect on any plans to use AI in the entertainment industries?

AW: The lawsuit may embolden other rights holders to sue Midjourney or other generative AI companies. We will have to see if other major studios follow suit. But I don't think there is much

of anything that will stop the entertainment industry from using AI. The ability to produce films and videos at such a tiny fraction of current production costs will be irresistible. We are already seeing AI commercials airing, and we will soon see longer form videos, TV shows and short films done completely on AI. Feature-length films may be further off, but they are coming.

Avery Williams is a principal in McKool Smith's Dallas office, specializing in complex commercial litigation and intellectual property matters. He is co-chair of the firm's trade-secret practice and focuses on representing clients in emerging copyright disputes concerning infringement and AI-generated images. He is also the author of the firm's AI Litigation Tracker, which provides weekly updates to monitor breaking developments on key generative AI-focused copyright infringement-related litigation affecting the media and entertainment sectors.