

Two Court Cases, Two Headlines, One Outcome - Fair Use Wins

A closer look at *Bartz v. Anthropic* and *Kadrey v. Meta Platforms, Inc.*

In June, judges in two cases ruled that AI training qualifies as fair use under the Copyright Act’s traditional four-factor test. Although the judges disagreed on subsidiary issues like shadow libraries and “market dilution,” they were united on the fair use fundamentals. **Let’s break down how both of these judges come to a similar conclusion using the four factors:**

First Factor: The purpose and character of the use

Bartz v. Anthropic: Judge Alsup

AI training is “spectacularly transformative.”
“Like any reader aspiring to be a writer, Anthropic’s LLMs trained upon works not to race ahead and replicate or supplant them – but to turn a hard corner and create something different.”



Kadrey v. Meta: Judge Chhabria

“[T]here is no serious question that Meta’s use of the plaintiffs’ books had a ‘further purpose’ and ‘different character’ than the books – that it was highly transformative.”



Conclusion: AI training is highly transformative, favoring fair use.

Why it matters: Both judges recognize that AI training is highly transformative because it results in entirely new creative and informative tools and works. The first factor is about justification and transformative uses are the most strongly justified fair uses. This factor also influences factors three and four below.

Second Factor: The nature of the works used

Bartz v. Anthropic: Judge Alsup

“The second factor points against fair use for all copies alike.” But “[t]he main function of the second factor is to help assess the other factors.”



Kadrey v. Meta: Judge Chhabria

“[T]here is no serious question that Meta’s use of the plaintiffs’ books had a ‘further purpose’ and ‘different character’ than the books – that it was highly transformative.”

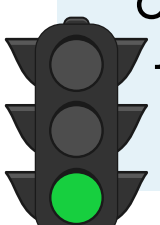


Conclusion: The second factor favors plaintiffs whose works are creative, but this factor on its own carries little weight.

Why it matters: Both judges recognize that this factor rarely plays an important role compared to the others because all works are subject to fair use, regardless of their creativity.

Third Factor: The amount and substantiality of the use

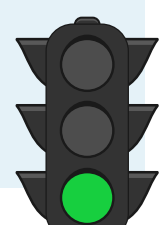
Bartz v. Anthropic: Judge Alsup



“Was all this copying reasonably necessary to the transformative use? Yes. ‘What matters is the amount and substantiality of what is thereby made accessible to a public.’[...] [T]here is no allegation of any traceable connection between the Claude service’s outputs and Authors’ works. The copying used to train the LLMs underlying Claude was thus especially reasonable.”

Kadrey v. Meta: Judge Chhabria

“[T]he amount copied doesn’t seem especially relevant in this case....given that Meta’s LLMs won’t output any meaningful amount of the plaintiffs’ books.” “[T]his factor favors Meta, even though it copied the plaintiffs’ books in their entirety. The amount that Meta copied was reasonable given its relationship to Meta’s transformative purpose.”



Conclusion: AI training uses appropriate amounts for its new purpose and does not reveal meaningful amounts of training data to the public, favoring fair use.

Why it matters: Both judges recognize that the third factor is about two things: whether the amount used is justified by the user’s purpose, and the amounts made available to the public.

Fourth Factor: The effect of the use on the market for the original work

Bartz v. Anthropic: Judge Alsup

“The copies used to train specific LLMs did not and will not displace demand for copies of Authors’ works, or **not in the way that counts under the Copyright Act.**”

“Authors next contend that training LLMs displaced (or will) an emerging market for licensing their works for the narrow purpose of training LLMs.[...] **[T]hat use is not one the Copyright Act entitles Authors to exploit.**”

“Authors’ complaint is no different than it would be if they complained that training schoolchildren to write well would result in an explosion of competing works. **The Act seeks to advance original works of authorship, not to protect authors against competition.**”



Kadrey v. Meta: Judge Chhabria

“Llama’s ability to regurgitate miniscule portions of the plaintiffs’ books if manipulated into doing so **does not threaten to have a meaningful or significant effect** upon the potential market for or value of the plaintiffs’ books.”

“[T]o prevent the fourth factor analysis from becoming circular[...], harm from the loss of fees paid to license a work for a transformative purpose is not cognizable.”

“[B]ooks on the same topics or in the same genres, can still compete for sales with the books in the training data. [T]hose outputs would reduce the incentive for authors to create—the harm that copyright aims to prevent.”



Conclusion: Copyright does not protect a market for licensing transformative uses. An AI tool that doesn’t output copies of works does not harm the market by satisfying consumer demand for those works. Courts disagree about whether competition from non-infringing competing works created with AI should count as market harm.

Why it matters: The judges agree that AI tools do not cause any market harm that copyright has regulated in the past. Judge Chhabria endorses a novel theory of “market dilution,” but Judge Alsup strongly rejects it.