

Litigators of the Week: Thomson Reuters Wins Key Fair Use Fight With AI Start-Up

By Ross Todd

February 14, 2025

Our Litigators of the Week are **Dale Cendali**, **Joshua Simmons** and **Miranda Means** of **Kirkland & Ellis**, who represent Westlaw owner Thomson Reuters in a test case for copyright holders bringing claims related to content used to train artificial intelligence

The Kirkland team was gearing up for a trial against defunct AI-backed startup ROSS Intelligence set for last August, when Third Circuit Judge Stephanos Bibas, who has been overseeing the antitrust and copyright fight between TR and ROSS, pumped the brakes. The judge asked for additional summary judgment briefing both on Thomson Reuters' contention that ROSS infringed on its copyrighted headnotes and Key Number System and on ROSS's fair-use defense.

This week, Bibas issued a summary judgment ruling finding ROSS Intelligence infringed 2,243 Westlaw headnotes. Bibas further found TR's copyrights for headnotes and its Key Number System are presumed valid. The decision comes after the judge previously granted TR summary judgment on ROSS's antitrust claims in October—a win that yielded Litigator of the Week honors for Kirkland partners **Daniel Laytin**, **Christa Cottrell** and **Cameron Ginder**.

Lit Daily: What was at stake for Thomson Reuters here?

Dale Cendali: This case is about protecting a platform that most of us lawyers know, love and



Courtesy photos

(l-r) Dale Cendali, Joshua L. Simmons, and Miranda Means of Kirkland & Ellis.

use every single day: Thomson Reuters' Westlaw. The case involves a competing legal research platform and company

called ROSS. The court held that ROSS copied editorial content from Westlaw to train its AI model. Thomson Reuters asserted that this was copyright infringement, and the district court agreed.

Joshua Simmons: What has captured the attention of most of the copyright community is that the court found that it was not fair use for ROSS to copy Thomson Reuters' content to train its model. The court found that doing so was not transformative and that ROSS's competitive purpose weighed against fair use and harmed the market for Westlaw.

Miranda Means: The other key aspect of the court's opinion is that it held that Thomson Reuters owns valid copyrights in its editorial content. Creating

editorial content on Westlaw takes a lot of creativity, and West has an incredible group of attorney-editors who are dedicated to writing editorial content like headnotes and synopses and organizing everything in the West Key Number System. The opinion vindicates protecting investment in human creativity.

How did this matter come to you and the firm?

Cendali: Our team is well-known for our success in large-scale copyright cases, particularly for media companies. Just focusing on fair use cases alone, we won the AP's case concerning the Obama Hope poster, Fox's case against TVEyes' unauthorized use of Fox's news clips and Take-Two's case opposite Solid Oak, where the court found at summary judgment that it was fair use to depict athletes with their tattoos in video games. I think all of this led to our being contacted.

Simmons: And don't forget Dale winning J.K. Rowling and Warner Bros.' case concerning the Harry Potter Lexicon!

Means: Guys, the three of us also won two weeks ago a Ninth Circuit appeal for Astronics concerning its military and aerospace software.

Simmons: We do like to keep busy!

Means: We are so lucky to have worked with Thomson Reuters and its amazing team. We worked closely with Chief Legal Officer **Norie Campbell**, who is an incredible champion for her company. And Deputy General Counsel **Jeanpierre Giuliano**, Deputy General Counsel **Katharine Larsen**, Assistant General Counsel **Anne Barnard** and Associate General Counsel **Alex Blanchard** are a brilliant group of lawyers who played a key role in this win. We want to make sure they get their share of the glory here, because they really deserve it.

Who all is on your team and how have you divided the work?

Means: Dale and Josh expertly argued our motions for summary judgment on fair use and infringement in front of Judge Bibas. Dale teaches at Harvard Law School, and I always love to see her get into professor mode and really explain the ins and outs of copyright law in an oral argument. It's something to see.

Cendali: Miranda was actually my student at Harvard!

Means: Not surprisingly, Dale's copyright class was my favorite.

Cendali: To be clear, we couldn't do it without our incredible team of Kirkland's finest copyright geeks. Miranda played a critical role on the overall strategy and, importantly, was the primary drafter of our fair use summary judgment brief. Along with Miranda, **Eric Loverro** has been working on this case from the very beginning, playing a key role at every stage of the case and helping crystalize our arguments. As we approached trial and the second round of summary judgment, other team members joined, including **Yungmoon Chang**, **Jeremy King** and **Allyn Belusko**.

Simmons: It also should not go unnoticed that our Delaware council **Michael Flynn** at **Morris, Nichols, Arsht & Tunnell** played a critical role throughout the case. And, let's not forget, that in response to our case, ROSS brought antitrust counterclaims, which our antitrust partners **Dan Laytin**, **Christa Cottrell** and **Cameron Ginder** expertly knocked out on summary judgment.

There was an earlier round of summary judgment and I motions on the copyright issues in this case and you were teed up for trial back in August. What happened to spur on this additional round of summary judgment briefing and argument?

Means: We were in Delaware preparing for trial to start the next day when the court told us he was postponing the trial so the parties could rebrief summary judgment. I think we were as surprised as everyone else.

Simmons: But now that we have the court's thinking, we know what happened. In the opinion, Judge Bibas explained that as the case moved ahead towards trial and with the benefit of the second round of briefing, he concluded that his prior summary judgment ruling had not gone far enough. I think the bench and the bar could take a page from Judge Bibas' willingness to reevaluate his prior opinion.

Cendali: There was no oral argument on the first round of summary judgment motions. I think all the

back and forth at the pre-trial conferences helped crystallize some of the issues.

The judge points out here: “As a lawyer and judge, I am myself an ordinary user of Westlaw headnotes.” What is it like trying a copyright case to the regular consumer of the copyrighted material at issue?

Simmons: This was one of the really fun parts of this case. I remember during oral argument when Judge Bibas and I shared a eureka moment, where it crystallized that what ROSS was taking from Thomson Reuters was the judgment and creative decisions in deciding how to frame the headnotes. The opinion makes clear that he really got it!

The unauthorized use of copyrighted material to train an AI tool is at the center of many high-profile legal disputes in the courts now. Fair use is usually a fact-intensive question and Judge Bibas points out explicitly that ROSS’s AI is not generative AI. Still, what might be useful in this decision for parties in generative AI copyright cases?

Cendali: We view the decision as a critical step towards resolving one of the biggest copyright issues being litigated today. Copyright holders, including authors, artists, musicians and software developers, have brought dozens of lawsuits claiming that the use of their content to train AI models is infringing. Meanwhile, AI companies have argued that their training is protected by the doctrine of fair use. Although this case may have differences from generative AI cases, we think this decision provides a useful framework for how to think about whether a company’s training of its AI is permitted under the fair use doctrine. Each case, however, presents different facts relating to whether there was a valid transformative purpose and the potential effect on the market.

What’s important in this decision for copyright holders like TR?

Simmons: The opinion reinforces two important principles. First, creativity and judgment is

protected by the Copyright Act, including an original selection and arrangement. Second, copying that original material to compete and substitute in the marketplace is not fair use. Copyright owners face those issues on a daily basis, and this opinion underscores that they are protected against this type of appropriation.

What’s left of the case? What comes next?

Means: Thomson Reuters has asserted another claim, tortious interference with contract, that was not before the court in this latest round of briefing, so that will need to be decided by a jury. And we can’t forget damages. That will also be a key part of the trial too.

What will you remember most about reaching this milestone in the case?

Cendali: Two things: First, I really enjoyed having an academic debate with Judge Bibas about what *Feist* teaches us about selection and arrangement and how the fair use factors apply. He gave us all a lot of time. The case is a key precedent and that means a lot. And second, I loved that the opinion happened to come down on my birthday! It was a great birthday present!

Simmons: You could feel everyone in the copyright community—copyright owners and users alike—holding their breath waiting to see what the court would do. When the opinion came down, you could feel the collective exhale. I’m sure both camps will try to read the tea leaves of what this means for other cases, including those involving generative AI, but the framework that Judge Bibas articulated is incredibly helpful in providing guidance for future cases (and those attorneys just trying to figure out what is permitted and what is not). Stay tuned!

Means: My family takes a really strong interest in my work, especially my grandmother, Dorothy. When she found out we won this decision, I think she was more excited than even I was! I’ll certainly remember that reaction.