

AI VS. THE LAW

 JSConf 2025



The background of the image is a photograph of a marina at sunset. On the left, there is a large, multi-story white building with a prominent tower and several smaller buildings attached. The water in the foreground is calm, reflecting the warm orange and yellow hues of the setting sun. In the distance, a line of trees is silhouetted against the sky. The overall atmosphere is peaceful and scenic.

JSConf

Hi!

👋 I'm Ryan Roemer

N_- I lead technology & OSS at Nearform

💻 I'm normally a geek...



nearform.com/open-source

... but today

⚖️ Former IP & patent attorney

 I was a MoFo lawyer → 

🔥 Keep an eye on code vs. law...

Roadmap

© Copyright

→] Inputs

[→ Outputs

🚀 Future

Admonitions & disclaimers

- IAAL but IANYL (and even there, IAAIL)
- Raise awareness, not provide answers or advice
- We'll talk about US law and computer code
- Talk to your own legal team

A wooden gavel and an open book are positioned on a light-colored surface against a dark background. The gavel is on the right, with its head resting on the sound block. The book is on the left, its pages fanned out. The lighting creates strong shadows, emphasizing the textures of the wood and paper.

Law stuff

Copyright law

A valid copyright protects the original (creative) expression of a work.

Provides exclusive rights to: reproduction, distribution, preparation of "derivative works"

Fair use

A **defense** to copyright infringement. (17 U.S. Code § 107)

1. the purpose and character of the use
2. the nature of the copyrighted work
3. the amount and substantiality of the portion used
4. the effect of the use upon the market value of the copyrighted work

Inputs



Inputs

- What are you allowed to input into an AI system?
- How about for scraping?



Training data

Training data

What materials are you allowed to train on?

- Public domain works?
- Open source works?
- Private copyrighted works?
- Does how you collect the data matter?

Training data

Why this matters:

- Which **models** and tools you will be allowed to use.
- How you will be able to **gather** and **use** data for your own ML/AI projects.

Training data litigation

- *Thomson Reuters v. ROSS Intelligence* (D Del)
- *In re OpenAI Litigation* → OpenAI, MSFT.
- *Bartz v. Anthropic* (ND Cal) → Claude
- *Kadrey v. Meta Platforms* (ND Cal) → Llama

Thomson Reuters v. ROSS (D Del)

Facts



Unauthorized metadata

Holdings



Infringement



No fair use

In re OpenAI Litigation

Parties



Plaintiffs: News
companies, authors,
etc.



Defendants: OpenAI,
MSFT

Status



Ongoing

Bartz v. Anthropic (ND Cal)

Facts



Online sources



Scanned books



Pirated books

Holdings



Pirated = Infringing



Non-pirated + online = fair use



Settlement

Kadrey v. Meta (ND Cal)

Facts



Permitted sources



Pirated books

Holdings



All fair use



Even pirated!

Scraping



Scraping

- *Reddit vs. Anthropic* (ND Cal) → non-copyright claims, licensing path
- CloudFlare's AI bot protections
- Really Simple Licensing_(RSL): Reddit, Stack Overflow, Fastly, etc.



Inputs Takeaways

Inputs: Takeaways

- The courts are split on fair use and this is all going to evolve.
- The cautious course is to gather data without pirating.
- You don't necessarily need permission, but we're seeing more paths and programs.

Outputs

Outputs

- What happens when AI produces copyrighted content/code?
- Can AI-generated content be protected by copyright?

A weathered metal sign is mounted on a chain-link fence. The top half of the sign is red with the word "DANGER" in white, bold, sans-serif capital letters. The bottom half is white with the words "KEEP OUT" in large, black, bold, sans-serif capital letters. The sign shows signs of age, including rust and peeling paint. The chain-link fence in front of it has some dried vines or branches entangled in its wires.

Infringement

Infringing AI Outputs

- A big concern in the early days of GitHub Copilot.
 - *Doe(s) v. GitHub Inc.* (ND Cal)
 - Now has features to try and prevent.
- Separate tools for auditing and prevention. (Socket, Black Duck, etc.)

Infringement: Takeaways

- You do need to be careful with AI-generated code outputs.
- But there are guardrails at various levels.

A dark, moody background featuring a person's silhouette holding a guitar neck. The guitar is positioned vertically, with its headstock at the top and body at the bottom. The person's hands are visible, gripping the neck. The lighting is low, creating strong shadows and highlights on the guitar's body and the person's form. The overall atmosphere is somber and focused.

Ownership

Ownership of AI outputs

Is the code you create with AI assistance protected by copyright?

- If you use tab completions, inline chat?
- How about a full IDE chat or CLI tool?

Ownership of AI outputs

Why this matters:

- You might care about copyright ownership (OSS protections, etc.)
- Your **company** probably cares about it.

Thaler v. Perlmutter (D DC)

Facts



AI image tool



AI is the "author"

Holdings



No copyright



Only human
authorship is
protected

US Copyright Office - 2nd report

- Purely AI-generated content is not protected
- Prompts & instructions alone are not sufficient
- Human control of "selection and placement" of the "creative elements" may be

A black and white photograph of a person's hands typing on a vintage typewriter. The typewriter is dark-colored with a visible keyboard and a carriage return lever. A sheet of paper is inserted, showing some handwritten text that appears to be encoded or ciphertext. The background is slightly blurred, focusing on the hands and the typewriter.

A coding break

High level

Write a JS CLI tool to translate a package.json license field to a full license name.

Full SPDX JSON data is available [on GitHub](#).

Detailed task description on [slide 40](#).

Example 1

```
1 import { readFile } from "fs/promises";
2
3 async function findLicense(packageJsonPath) {
4   const packageJson = JSON.parse(await readFile(packageJsonPath, "utf8"));
5   const license = packageJson.license;
6   const response = await fetch(
7     "https://raw.githubusercontent.com/spdx/license-list-data/main/json/licenses.json",
8   );
9   const data = await response.json();
10  const found = data.licenses.find((l) => l.licenseId === license);
11  return found
12    ? `Found ${license}. Full name: ${found.name}`
13    : `Could not find ${license}.`;
14 }
15
16 const packageJsonPath = process.argv[2];
17 console.log(await findLicense(packageJsonPath));
```

Example 2

```
1 import fs from "fs/promises";
2
3 async function findLicense() {
4   const packagePath = process.argv[2];
5   const license = JSON.parse(await fs.readFile(packagePath, "utf8"))?.license;
6   const licenses = await fetch(
7     "https://raw.githubusercontent.com/spdx/license-list-data/main/json/licenses.json",
8   ).then((res) => res.json())?.licenses;
9
10  const licenseName = licenses.find((l) => l.licenseId === license)?.name;
11  if (licenseName) {
12    console.log(`Found ${license}. Full name: ${licenseName}`);
13  } else {
14    console.log("Could not find license.");
15  }
16}
17
18 findLicense();
```

Example 3

```
1 import { readFile } from "fs/promises";
2
3 async function findLicense(packagePath) {
4   const packageJson = JSON.parse(await readFile(packagePath, "utf8"));
5   const response = await fetch(
6     "https://raw.githubusercontent.com/spdx/license-list-data/main/json/licenses.json",
7   );
8   const spdxData = await response.json();
9   const license = packageJson.license;
10  const match = spdxData.licenses.find((l) => l.licenseId === license);
11  if (match) {
12    console.log(`Found ${license}. Full name: ${match.name}`);
13  } else {
14    console.log(`Could not find ${license}.`);
15  }
16}
17
18 findLicense(process.argv[2]);
```

You guessed it...

Task Description

- 1 Create a JS file "index.js" that:
 - 2 - Runs: `node /PATH/T0/index.js /PATH/T0/package.json`
 - 3 - Reads `package.json` license field
 - 4 - Fetches SPDX data from
`<https://raw.githubusercontent.com/spdx/license-list-data/refs/heads/main/json/licenses.json>`
 - 5 - Matches license against `licenseId` in `licenses` array
 - 6 - Outputs: `Found {license}. Full name: {name}` or `Could not find {license}.`
- 7
- 8
- 9 Requirements:
 - 10 - ESM with `import`
 - 11 - No extra logging or error handling
 - 12 - Use `async/await`, `fetch`, `fs/promises`
 - 13 - One `findLicense` function (max 10 lines).
 - 14 - ALL code logic inside `findLicense` function
 - 15 - Call `findLicense` in script

Human vs. AI code

- What are the differences between these?
- Extrapolate to larger pieces of code?

Spec-driven development?

We're moving from "code is the source of truth" to "intent is the source of truth." With AI the specification becomes the source of truth and determines what gets built. ☺

```
1 // GENERATED FROM SPEC - DO NOT EDIT
2 // @generated with <TOOL> v0.22.1 from ./web-app/backend-api.spec.md
3 // (spec:b499c242) (code:ab3f180f)
```

Ownership: Takeaways

- Collision between the lawyer and the engineering worlds
- The cautious approach is involve and bias *direct* human creation of code
- Assess if it's OK to have some of your code lack copyright protection



The future

Just the beginning

- Open source vs. open weights
- AI beyond code (images, video, etc.)
- AI in other IP areas (patents, trademarks, etc.)

References

- ❑ See the deck at:

ryan-roemer.github.io/ai-vs-the-law

- 🐱 ...and check out the code at:

[ryan-roemer/ai-vs-the-law](https://github.com/ryan-roemer/ai-vs-the-law)



Thanks!

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