AI and Intellectual Property

https://mindmatters.ai/podcast/ep242

Robert J Marks:

Welcome to Mind Matters News. I'm your illegal paralegal host, Robert J. Marks. There are bunches of lawsuits now against so-called generative AI, like ChatGPT and DALL-E. But what is generative AI? Well, it turns out generative AI learns from training data how to generate new and unique outputs. Think of the training examples as being sparsely populated in a silo. Generative AI begins to populate the silo with things close to and resembling the examples. ChatGPT takes the writings of humans and generates writings that mimic these writings. DALL-E is trained with thousands of images, and generates images that are in some sense close to the so-called training data. But here's the rub. Much of the data used to train generative AI is protected by copyright. This includes both pictures and writing, both of which could be copyrighted. Does the use of this material constitute copyright infringement?

That's the question now being litigated in the courts. For example, Getty Images has a collection of copyrighted pictures. Getty Images is notorious for protecting its collection. If you use a Getty image on your website, be prepared to pay either voluntarily or in court. Getty is suing generative AI company Stability AI. The company generates AI images based on generative AI trained with images. In the lawsuit that Getty has brought forward, Getty claims that Stability AI has copied more than 12 million photographs from Getty Images. That's a lot of photographs to use. But they copied them without permission or compensation to Getty Images. These were the original images scattered around the silo in my description. Stability AI looked at those images and generated similar images in the silo using so-called generative AI. Here's another case before the courts. If generative AI is trained on human written computer code, it can generate similar code.

A lawsuit brought by computer programmers was filed against "GitHub, its parent company, Microsoft, and its AI technological partner OpenAI." The suit alleges that "this case represents the first major step in the battle against intellectual property violations in the tech industry arising from artificial intelligence systems." Now, big AI's counter in these suits relies on the fair use provisions of copyright law. Fair use allows copyrighted material to be used by others in certain cases. Big AI in their defense says that they are protected by this fair use allowance. What is the fair use allowance? Well, the Supreme Court said they have "repeatedly made clear... The court has repeatedly made clear that a work of art is transformative for purposes of fair use under the Copyright Act, if it conveys a different meaning or message from its original material." So the big word here is transformative.

In order to use copyright material, the end result in the copy of the copyright material must be transformative. That's the reason, for example, copyright material and images can be used in satire. It's transformative. So, do those suing have a leg to stand on? A recent ruling by the US Supreme Court bolsters their chances, I think. It isn't immediately obvious that this ruling has an impact on lawsuits against big AI. I believe that Mind Matters is the first to recognize the link between the Supreme Court ruling and the cases against big AI. And this is what we'll talk about today. But I wanted somebody in here that knew what they were talking about and that's who our guest today is. Our guest is Richard W. Stevens. Richard is an attorney and fellow of Discovery Institute's Bradley Center. He has written extensively on how code and software systems evidenced design in biological systems.

He holds a JD with high honors from the University of San Diego Law School, and a computer science degree from UC San Diego. Richard has practiced civil and administrative law litigation in California and Washington DC. He's taught legal research and writing at George Washington University Law School and George Mason University Law School, and he now specializes in writing dispositive motion and appellate briefs. He has authored and co-authored four books, and has written numerous articles. And spoken on subjects including legal writing, economics, the Bill of Rights, and Christian Apologetics. He is a common contributor to Mind Matters news at mindmatters.ai. His fifth book, Investigation Defense is forthcoming, we are promised. Richard, welcome.

Richard Stevens:

Thank you very, very much. Thank you for having me today.

Robert J Marks:

First, let's talk about the Supreme Court ruling that just came out not too long ago. Can you kind of tell us what it was about? And what were the key findings from an attorney's perspective?

Richard Stevens:

Sure. I think you're probably referring to the Andy Warhol Foundation versus Goldsmith case.

Robert J Marks:

Yes, exactly.

Richard Stevens:

Yeah. And that one, it's got... I'm a little bit of a stickler for getting the facts exactly right. But in a podcast you kind of have to just gestalt the whole thing. So to boil this down, a situation was this. A woman by the name of Lynn Goldsmith, a professional photographer, took a photo of the musician named Prince. Later, Andy Warhol was paid to produce an orange silkscreen portrait of the musician, Mr. Prince. Or actually his first name is Prince, as it turns out. And Andy Warhol made 16 different versions of this portrait using the original Goldsmith photo as the source. So you can kind of see what happened. You had a photo and then Warhol did his specialized work with it. Now, Goldsmith had given Vanity Fair Magazine a license to use her original photo as an artist reference for illustration. That's actual terminology.

Robert J Marks:

What does it mean, an artist reference?

Richard Stevens:

Well, if someone's going to do... For example, you can do a caricature of somebody, but you start off with a real photo.

Robert J Marks:

I see. Okay.

Richard Stevens:

That kind of thing. So here's a picture of the person, now draw what you want from it, that kind of thing. And you can do things like that. So that's what they did here, is she gave the magazine that. And it was a one time only license. She did not give a license to make a bunch of copies of this thing. And so that's kind of how it left. Well, down the road, years later, what happened was Goldsmith found out that the Andy Warhol Foundation had actually 16 of these Warhol prints made that were specialized, by Mr. Warhol himself. And she sued everybody involved. Andy Warhol, we'll just say for simplicity. And sued them for making unauthorized copies with slight changes. And then publishing them and using them.

And she alleged that these were derivative works. We'll talk about what that term means as it has a special meaning. Now, the Andy Warhol people said, "No. What they did was fair use." They had the photograph, but they were engaged in fair use. And fair use allows a person to use an otherwise copyright protected thing for special kinds of uses. And it's not considered an infringement of the copyright. So that was a situation, she said, "You made 16 copies of my work, and sold them and used them." And the other side says, "Well, we are allowed to because we have fair use." So the question that the court addressed was very narrow, if you read the decision, they expressly say, "We're addressing one issue only." So for example, in the fair use situation, in order to figure out whether someone has fair use, there are a number of different factors that you can consider.

But there's kind of like the main one, well, I'll tell you what they are. The first one is, you look at what the purpose and the character of the use of the copy is going to be. Is it going to be commercial, or nonprofit, or educational? Second one is, what kind of product it is. For example, is it a photograph? Is it music? That kind of thing. It can have an effect on the decision. How much of the original is used in the copy? If you use a tiny little fragment versus the whole thing. Example of that would be, for example, if you use two seconds from a song, have you in infringed on the copyright just two seconds? Probably not, because it's too small. But that's the arguable sort of thing. And also an important part of infringement, or fair use problem, is whether your use of the copy damages the market for the original. Or for the rights to the original.

So for example, if you were to create a portrait that was really terrific and you wanted to sell it. And you wanted to have autographed copies and someone else makes thousands of them, and then they sell them for 15 cents. And you were going to sell them for a $1,000, well, you've just lost your market. And, so it wouldn't be fair use for somebody to use your product in some way and destroy your market, or damage your market for it. So those are the four big things. But the only one really concerned here in this case, was the purpose and character of the use. That's the first fair use factor. And this is kind of a complicated thing. And it's actually really interesting to what we talk about when we talk about AI, and we talk about mind matters and the nature of thought and all the rest.

Because what we get down to is distinguishing between two things, a "derivative work" or a "transformative work". And these are terms that only a lawyer could love. Truly, it's really mind-bending. So a derivative work, and this is going to make a difference in the case. But if it's a derivative work, that means it's basically this. In this situation, we'll just talk about photographs. It's Goldsmith's photograph exactly the same, or approximately the same. Just, it's real similar to the original. A transformative work is where you've taken the photograph and really modified it so much, used it in a totally or very different way. Instead of as a photograph, you're using it in some other sort of context. And if it's far enough away from just being a simple copy, then it's called a transformative work. Well, it turns out the copyright law protects the owner against people infringing through derivative works. Because it allows the owner to retain their rights to derivative works. That's basically copies and close copies, close reproductions. But they don't necessarily have rights over transformative uses.

So, that's kind of what the Supreme Court looked at was, well, is Andy Warhol's very stylized use of the photograph of Prince from 1981? And if you go to the decision itself, you can actually see the

photographs. It's fun to look at. It's one of the very few cases that actually has pictures in it. And you can see what Warhol did. And if you know Warhol's work, you're not surprised by what he did. But it's Prince in a stylized way using the original photograph. And the question is, well, was that derivative? Or did Warhol transform it enough so that it's no longer something that's protected by the original copyright? Or it's considered a fair use because you changed it so much, you're not using it any more, just exactly the way the person who created it did. You're using it in a very, very different way. And in this case, the court held, "Nope, they made copies."

Robert J Marks:

I see.

Richard Stevens:

And the fair use defense did not work for them on that issue. Now, there are three other issues they didn't even touch. But on that issue.

Robert J Marks:

Okay. A lot of law is based on kind of fuzzy terms like transformative.

Richard Stevens:

Yup.

Robert J Marks:

Everybody has to agree on that. I was involved in a patent litigation one time when they had something called a Markman hearing. And before the patent litigation started, the two sides had to get together and define what they meant by specific terms. And the judge would kind of rule on, "Yeah, we can use your definition, but not yours." The one that I had interestingly was, does magnification correspond to magnification less than one? I said, "Yeah, magnification can correspond to magnification less than one." And I used the example of imaging Jupiter, are you making a magnification of that? Yeah, you are, because it's so small. I said, "No, it's a de-magnification because Jupiter is a thousand times the diameter of Earth, or whatever is." And so I said it was a de-magnification. But the judge ruled against us and it hurt the patent litigation that was going on.

And that was an interesting phenomena. You mentioned, this was interesting, you mentioned the product in music. There was a recent copyright case with Vanilla Ice who was a rap musician. He did a song called Ice Ice Baby. And he was sued by Queen and David Bowie because they lifted, I think it was a baseline, from the original song. And the litigation went on, and on, and on. And finally Vanilla Ice said, "No, I'm not going to do this anymore." So he bought the rights to the song. He bought the song, so he doesn't have to go through any more litigation. He said it was cheaper for him to buy the song than it was to go through litigation. So that's interesting.

Richard Stevens:

Well, that's an interesting thing for people to think about. And so when people talk about, "Well, if we're going to use a fair use, a small part of a copyright work." Well what's small? And what's distinctive? And that's really a challenge, isn't it? What is small? What is distinctive? And so for me, this raises some very interesting questions because I know you and I have talked in the past. And I've written on the subject of whether AI can make judicial decisions.

Robert J Marks:

Oh yes.

Richard Stevens:

And okay. So how does AI, for example, decide that the baseline of a particular rock song is sufficiently distinctive, sufficiently copyrightable or not? I mean it's a human decision. It could go any way you want. Some people don't even believe in copyright. So how do you compute that particular one? Speaking of Non-Computable You, your book, right?

Robert J Marks:

Yeah. Yeah. And I think a lot of the litigation in copyright and patent cases is basically a match, like a competitive match, about what different words mean in the patent, or in the copyright. And what corresponds to the word transformative. What does that mean? Now, I didn't have the patience to read the whole decision. But one of the things the Supreme Court said is that a work is not transformative if it, and this is a quote, "recognizably derives and retains the essential elements of the source material, that it is not transformative if it recognizably derives from and retains the essential elements of the source material." There is this one website called this-person-does-not-exist.com. It's a wonderful site. If you go to this-person-does-not-exist.com, you can click on the pictures and just refresh it. And you get pictures of people that sure look like people, but they're not. They were generated by generative AI.

They took thousands, maybe millions of faces. They put them in this silo that I talked about. And then they kind of generated faces that kind of look something like human beings. And they all had lips and noses and eyes. And every training image was that of a human being. And all of the images generated were that of a human being. So there were no images of say, soup cans, or toe fungus, or automobiles, which were used in the training of this generative AI. They were all human faces. And what did the generative AI give you? It gave you a new human face. So that to me, in the regular English use, looks to be not transformative. Because it recognizably derives from, and retains the essential elements of the source material. They use source material, which was a face. And then the output of the generative AI was a face. So again, I don't have a legal background, but that sure seems to be pretty transparent to me.

Richard Stevens:

Well, this is what law school used to be for. Nowadays, I think it's doing other things. But actually what you do in law school is learn how to wrestle exactly with the issue you've raised. And basically in law school, what you learn how to do is argue both sides.

Robert J Marks:

Okay?

Richard Stevens:

So seriously, I mean that's what you do. And one of the funnest things ever, is to take one side and then turn around and take the other side yourself in a debate, or in a class situation. So your situation, so what you've done here is to say, "Okay, we put facial characteristics in, we got facial characteristics out. Isn't that derivative?" Well, if you define your reference as face in the most macro sense, well, you could say that. But then if you're on the other side of that argument, the other side would say, "Well, wait a second, do they have a Caucasian eyes or Asian eyes?

Do they have a Roman nose? Do they have a Norwegian nose? Okay, right. Do they have thick lips, thin lips? How are we doing on facial hair?" Okay, all those kind of things. Color of eyes. So what we do as lawyers is, if you're on the other side, is you look at all the differences. "Well, this is very different eyebrows." So how would you say that's derivative? How is the output retaining the essential elements? What constitutes essential elements? Which goes right back to your earlier question, or your earlier point, that a lot of things in the legal system, or in a legal analysis, are these very fuzzy terms. Essential elements is in the eye of the beholder in some ways, isn't it?

Robert J Marks:

Yeah, it is. It is. Okay. Yeah, that's interesting. See, but in this case, I would say that if you had somebody with thin lips that was a Caucasian female, you could certainly find a scad of people with thin lips that were Caucasian females in the training data.

Richard Stevens:

Sure.

Robert J Marks:

Yeah. So I guess that would be my counter argument. The big question though is getting down to AI. We have all of these litigations, for example, from Getty Images. And this lawsuit against GitHub and Microsoft. How does this Supreme Court ruling relate to this current litigation brought on by creative artists? And these creative artists, by the way, say that, "They're stealing our stuff. And because they're stealing our stuff, we don't have the income that we used to have. Because they no longer have to hire us." So, does it relate to the current litigation by these creative artists against big generative AI?

Richard Stevens:

I think that this particular case, the Andy Warhol case, is not going to be much of a signpost. I think what it does is it helps a little bit. If I'm litigating a copyright case on either side, it's going to help a little bit in understanding the way the Supreme Court wants us to think about the difference between derivative works and transformative works. And it gives us an example. A lot of what the law is, and when people do legal research, legal research is oftentimes looking for precedent cases or comparable cases. Analogous cases say, "Okay, in these other cases, this is how the court's operated. You should do this in our case." That's the kind of reasoning we do by analogy. And by precedent. So this particular case is going to help perhaps most directly with people who make stylized reproductions of somebody else's work.

That's what its most direct application's going to be. It won't have a lot of other application on its facts. Now, Supreme Court cases tend to be used for more than just their narrow facts though. So as you point out, for example, where the Supreme Court gives a definition of what a transformative work is versus a derivative work. Okay, now that language will get used, but it'll be used in some other context. So it'll be very case by case. And that's how the system operates is very case by case. So you'll have a generalized principle now that people can go out and argue both sides of. Similarly, there are statements in this Andy Warhol Foundation case that reflect what we lawyers would call "the law". That is if the Supreme Court said it, it must be true, that type of thing. So if they have a holding and they say, "Okay, this is the view that we want you to take, these are the considerations we want you to consider, judges." Because the Supreme Court is talking to judges.

Then the judges will, supposedly anyway, look at that and say, "Okay, this is how I'm supposed to think about the problem." And then proceed from there on your individual case. So to me, the case, it's very

narrow. It only deals with one of the four fair use exceptions to copyright protection. It does it only really in a photographic context. And so, it's only kind of going to be useful for photographs that get stylized and reproduced. Or reproduced in various ways. But it does talk about these policy considerations. For example, as you pointed out, that is, "Are you taking away my market?" That's an important aspect of it. And it talks about that very briefly, but it's not part and parcel of the case. So I would use, as a lawyer on either side of one of these, I would use this particular case as guidance. But whether it actually changes the outcome of very many cases, I'm not sure.

Robert J Marks:

Yeah. Okay. Interesting. The Supreme Court decision aside, have you had a chance to look at any of these cases against AI generated by the original artists?

Richard Stevens:

Well, I haven't studied them all. I have to say I have not. What I've been looking at is in general, looking at what people are trying to do. And it seems to me that the concern is that some party somewhere wants to be able to retain the financial benefits, or making data available. And the other side wants to say, "Well, you made it available publicly, why can't I read it?" And that's really it. "You made it available, why can't I read it?" Because a lot of what the concerns are like, for example, using a database to get information to then develop an AI set of constructs, well, all they did was read it. How is that copying it? How is that displaying it? How is that publishing it? How is that, what? But then again, the owner of the database is going to say, "Yeah, but you're profiting from something I put up." Well, I could write a terrific article about Dostoevsky. I'm profiting from his work, but I'm not copyright violating am I?

Robert J Marks:

No.

Richard Stevens:

So that's kind of it. It seems to me that that's a lot of the argument, is really about whether the people who have done the work, or put up the resources to make databases available, can maximize their profits on it. I'm not against that. I could be on either side of some of these. My bigger sort of passion is to look at AI as an institution, or AI as an effect. How it's going to affect decisions that affect people. So this is part and parcel of the process, certainly, trying to figure out who has the rights to various elements, and how can they use these various data items. But I think ultimately over time, whether it's by legislation or court decision, it'll probably get resolved where the property rights are defined. A lot of the trouble here is really a basic property rights definition situation. We didn't have this in the 1800s or the 1700s. We do now. So how do you define the property right in information? And it's got ragged edges, it's fuzzy as you say.

Robert J Marks:

Yeah, that's very interesting. And I think sometimes ChatGPT generates stuff where some of it is obviously not transformative. I asked, for example, make up an original, a paraprosdokian joke. Now paraprosdokian, that's a big long word. And I think I'm saying it right, but probably not. But it's a joke where you tell it and then there's kind of a twist at the end. A classic one is the Groucho Marx quip that he said, "I once shot an elephant in my pajamas. How he got in my pajamas, I'll never know."

Richard Stevens:

That's right.

Robert J Marks:

So what it does, it takes you down a logical path and then it switches. Another Groucho Marx one is, "Outside a dog, a man's best friend is a book. Inside a dog, it's too dark to read." So again, it takes you down a road and then it turns wonderfully. A great one by Emo Phillips is he said, "I don't swim now as well as I used to, thanks to evolution." Okay. So they take these lines and they do a switch at the end.

Anyway, I asked ChatGPT for some original paraprosdokian jokes, and they just generated these things, pure plagiarism. Now these are just open humor. They're not protected by copyright. But nevertheless, I think there's clear cases like this where there is outright plagiarism. I think in other cases it might get a little more fuzzy, so it might boil down to a case by case. One of the guys that's suing ChatGPT, or I don't know if it's ChatGPT, it's one of the large language models. Is a guy that did a prompt on the large language model that generated a response and he says, "Oh my gosh, this looks exactly like something that I wrote." And he went back and yeah, it was a very close resemblance to what he wrote.

So sometimes that mixing up of the words in these large language models for generative AI doesn't do so well. And sometimes things come through, which are, I think, clear plagiarism. In other cases it's not quite as apparent. So I think that that's interesting. I also think, and I think you agree, that if big AI loses these cases that are being brought against GitHub and Microsoft. That the impact on generative AI like ChatGPT, Bard, DALL-E is going to be enormous. Because they're not going to be allowed to use copyrighted material in training their stuff. And like Getty Images said, one of the generative AI companies plagiarized or looked at millions of its images, all of which were copyrighted. So all of a sudden those are going to have to be removed from the mix if they find out indeed, that this is plagiarism. So it's going to be interesting to watch. And I'm not sure how it's going to turn out. Depends how good the lawyers are, I suppose. Because as you say, these are attorneys arguing against each other.

Richard Stevens:

Well, that and actually one of the things I always try to remind people whenever they read about a crazy case, who actually made the decision folks? It's called a judge. And who affirmed it on appeal, folks? Judges. So people want to blame the lawyers, and maybe. But actually it's judges who decide these things one way or the other. Or legislators if they decide to pass laws. But what you're sketching out here with respect to using people's data, it really is a property rights definition problem. And if ultimately the courts or legislatures come up with the notion that, well, actually a person's database is their personal property, because it's not real property. Personal property, and you don't get to trespass against it without... You know, you have to have permission. You have to have a license. You have to have something. Otherwise, you can't use it at all. Well, now if they say that, then what happens to libraries?

Robert J Marks:

I don't follow.

Richard Stevens:

Well, libraries are where you get to go use people's stuff without a license.

Robert J Marks:

Right?

Richard Stevens:

So how is a database online different from a physical library?

Robert J Marks:

Well, I would say the argument is, is that the libraries in some way had to pay for those books, which reimbursed the originator of the intellectual property. So they've been compensated with that in mind, that this would be an end use. They're indirectly licensing it for end use because they sold it to the library and made their books.

Richard Stevens:

But they made the retail price. They didn't make a thousand user price.

Robert J Marks:

Yeah, that's true.

Richard Stevens:

See the difference. Yeah. And so that's one of the issues is for how many users are going to be using it. I think you probably know that, for example, the royalties paid for music broadcast on radio are different depending on the size of the audience.

Robert J Marks:

Yes.

Richard Stevens:

So similarly here. These very large database people, whoever own them, one user would pay one price. But if you're going to provide all this material to a million users, then that'd be a different price. And that's why I say it's really a property rights problem in a lot of ways. In a lot of ways it's that. And yeah, I think it can eventually get solved. The problem to me, the bigger problems are, what is AI going to do with it? And how is it going to affect how people think and what they do? And I think that's, of course, something you and I are always working on.

Robert J Marks:

So this is something interesting. I used to work for a radio station. This was before the days of high automation. And we would have, I think, one day every year, every six months for example, where we would have to make a catalog of all the music that was played. And this catalog of music went to, I think, there were three companies, CISAC, BMI, and ASCAP. And they were the ones that collected revenue from the radio stations, which they distributed to the originators of the song. And that was their compensation for playing the music on the radio. Today I'm sure it's much more sophisticated than that. But that's what we used to do. I just wonder if something like a ASCAP or a BMI can be, I think it was BMI, could be used, for example, a way of distributing profits to people whose original artwork were used, for example, in a generative AI computer program.

Richard Stevens:

Well, yeah, in fact, I rather think that in the modern era, the possibilities for that are so much greater than they were back in the day, when you had to keep paper records of what you broadcast. Today, for example, I use Lexus and Westlaw, the two biggest online legal research systems. And if you buy a subscription, you pay a certain price. If you're a certain size law firm, you pay a higher price. If you're just a off the street person, you can actually buy access on a one Z basis, one thing at a time. It's all very automated. You go in there and go for it. Similarly, with Uber, for example. Uber is another model of that, where it's now very electronic, very computerized. And in, as you may know, the charge to take you by Uber depends on when you want to go and what the demand is.

And it's a very dynamic minute by minute price changing, and availability of service changing all the time. On and off. And it's dynamic, three-dimensional. So because of that, it seems to me possible, once you've defined where the property rights are, to license them out or allow use of them, whatever makes sense. I think the other direction which would say, "Nobody can have property rights in written material online." If you went that far, some people want to, well now there's no incentive to do it, to make this stuff available, certainly not publicly. Now you're going to put up a paywall and people will individually put up paywalls. And there we go again. So it's still going to get monetized, just how do you want to do it.

Robert J Marks:

Exactly. It seems in the settlement of these lawsuits that the skill of the attorneys in arguing their side and convincing the judge is going to be paramount. I was raised, or I lived in Seattle. I wasn't raised in Seattle, I lived in Seattle during the explosion of Microsoft. When Microsoft became the big kahuni on the block. Not a lot of people realized, but a lot of their success was not due to innovation. I would argue that Microsoft never in their history has done anything innovative. They have either copied it, they have stolen it, or they have litigated over it. And Bill Gates' father was a partner in Preston, Ellis & Gates. Or Preston Gates & Ellis, I believe it was, which was a Seattle law firm. So Bill Gates had a lot of legal background. And they copied, and purchased, and litigated all of their software.

And even today they copy stuff. They're never the first out of the gate. They're always doing something else. But they went to trial for Netscape. This was the big, big fight over the web browser, and Windows sued them. And Windows Explorer won. They took Lotus 1-2-3, which was the motivation for Excel. There was a litigation there, Lotus 1-2-3 won in court as I understand, but Excel clearly has dominated. And then there was Apple who sued Microsoft because they swiped Windows from the Macintosh operating system. So it looks like these litigants are going to be really, really skilled in arguing their sides. And I don't know, it's going to be interesting. If you were a betting man, whose side would you bet on in these big lawsuits?

Richard Stevens:

If I were a betting man.

Robert J Marks:

And I know you're not, but maybe if you even give odds that...

Richard Stevens:

Yeah. Actually, well, I don't think it's going to be something that'll be as black and white as that. I don't think it's going to be easily defined what the solutions are going to be. Because we have a lot of money, and a lot of interest, on both sides of all of these questions. And the judges are not necessarily influenced by what the lawyers write. I mean, they're influenced in the sense they see it, but whether

that's actually how they want to play it, is another thing. And so predicting what judges are going to do is a true fool's errand. We try to do it as lawyers, it's one of our jobs. But one of the things I've learned in 33 years is, you pretty much can't. I don't know how many times I've lost cases or won cases, and the judge's reasoning doesn't reflect either side's view.

Robert J Marks:

Wow. Okay.

Richard Stevens:

Well, where'd that come from? So predicting that is very tough. And so I don't really want to try to predict what... I guess what I want to think about is to help people grasp what the legal problems are. And to understand what's at stake, and how it matters. And then people could kind of follow along. But the average person isn't going to have much effect on it. And a lot of us lawyers aren't either.

Robert J Marks:

Okay. Well we'll see what happens. And this is really going to determine the future of this generative AI. And what can and can't be used to train the generative AI. I think that's the bottom line. And these are going to be interesting lawsuits to follow.

Richard Stevens:

Indeed.

Robert J Marks:

Interesting for us as outsiders, but not interesting for the litigants. Being a litigant is a terrible place to be.

Richard Stevens:

Oh my. Absolutely right.

Robert J Marks:

I think it was Abraham Lincoln that said, "Avoid litigation at all costs." Because everybody comes out thinking that they lost in litigation. So that's really rough.

Richard Stevens:

Yeah, I guess the good news is that litigation is sort of the more peaceful way to resolve some of these issues. The other one being violence.

Robert J Marks:

Yeah, it's better than finding a dual, I suppose. Right? Okay. Well, thank you Richard. These were fascinating discussions. We've been talking to Richard W. Stevens. He's an attorney and fellow of Discovery Institutes Bradley Center, about US copyright laws' potential impact on big AI. Really interesting stuff. So until next time on Mind Matters News, be of good cheer.

Announcer:

This has been Mind Matters News, with your host Robert J. Marks. Explore more at mindmatters.ai. That's mindmatters.ai. Mind Matters News is directed and edited by Austin Eggbert. The opinions expressed on this program are solely those of the speakers.