

# DEVELOP-FAIR USE: A NEW COPYRIGHT FRAMEWORK FOR GENERATIVE AI

## Reframing Fair Use as a Dynamic Tool for Judicial Balancing in the Age of AI

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### THE CORE CONFLICT



#### TRADITIONAL FAIR USE IS TOO RIGID FOR AI.

The static doctrine of fair use cannot effectively respond to the challenges posed by dynamic, data-hungry generative AI.

#### NATIONAL POLICIES LINK FAIR USE TO AI COMPETITIVENESS.

Both China's "AI" action and the U.S. "AI Action Plan" connect a more flexible approach to fair use with strengthening the national AI industry and global competitiveness.

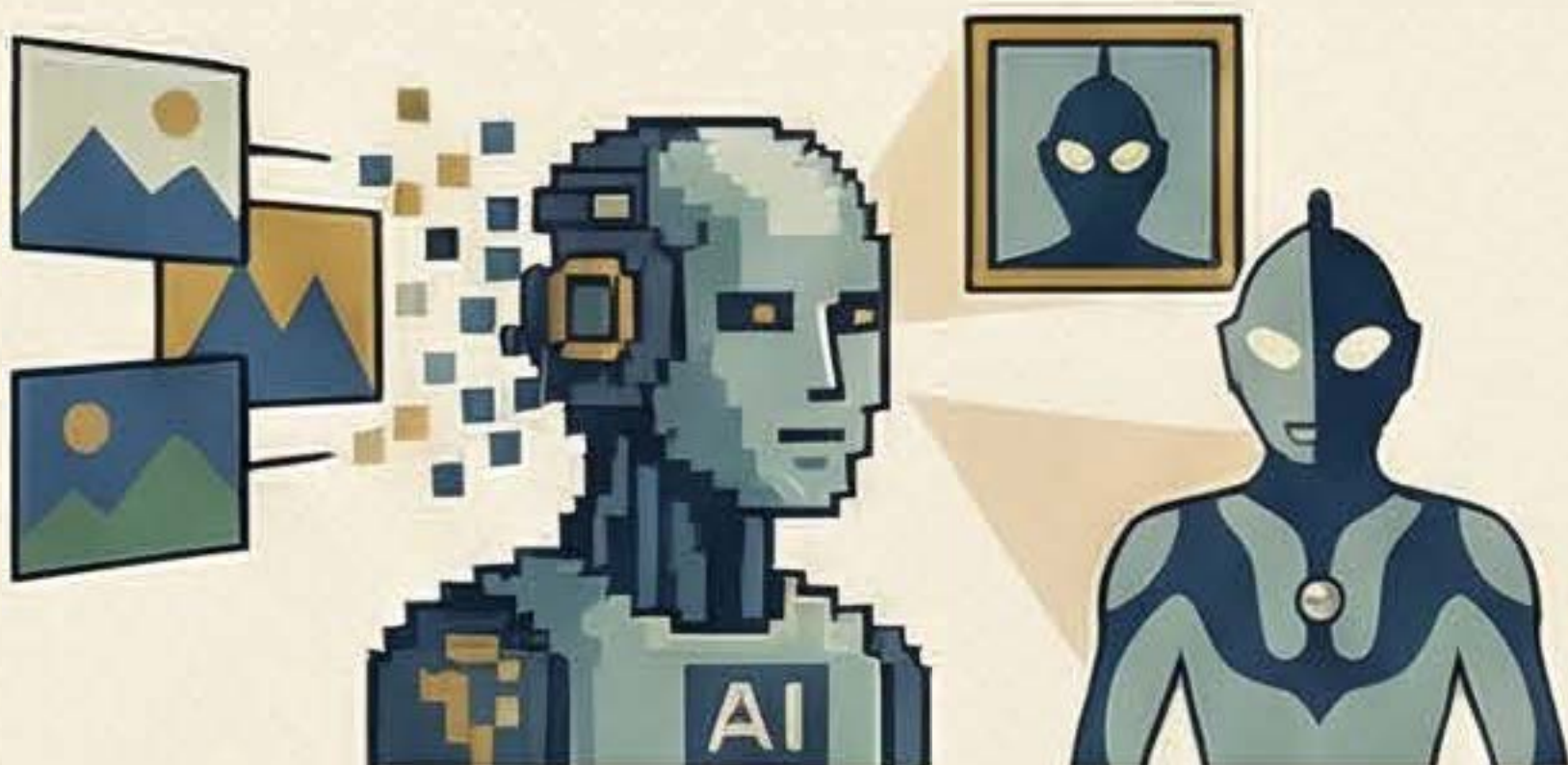


#### DEVELOP-FAIR USE (DFU)

DFU is a proposed theory where fair use is a dynamic tool for judicial balancing, shifting the focus from closed scenarios to the realities of market competition.



### THE CHINESE APPROACH: THE ULTRAMAN CASE



#### THE ULTRAMAN CASE TESTED AI'S USE OF COPYRIGHTED IMAGES.

The lawsuit involved an AI platform that allowed users to train custom model using images of the "Ultraman" character, raising direct questions about copyright infringement.



#### LEGAL SHIFT

#### THE COURT CREATED A "FOUR-CONTEXT ANALYSIS".

Instead of a simple yes/no, the court disaggregated AI processes, suggesting that data training could be considered fair use even if generating infringing content is not.

#### THE RULING CREATED SPACE FOR AI INDUSTRY DEVELOPMENT.

By proactively analyzing fair use and dictating between different contexts, the Chinese court carried out institutional room for AI innovation to proceed.



#### A COPYRIGHT AWARD OF RMB 30,000 (~\$4,200) WAS SET.

This figure provides a concrete data point for assessing market impact and comparing to similar cases in other jurisdictions.

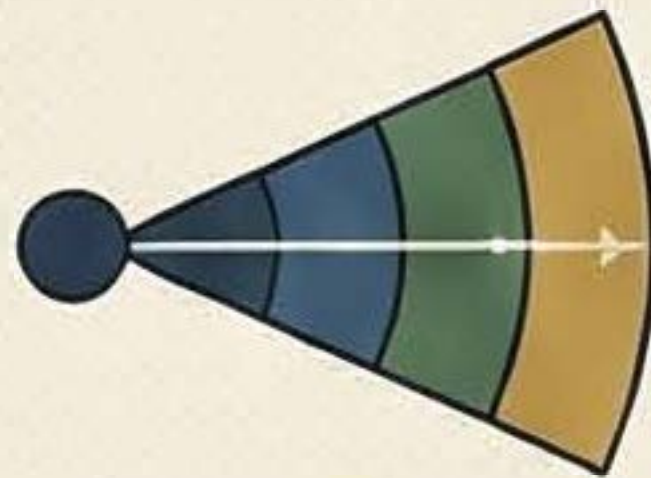


### THE U.S. APPROACH: BARTZ & KADREY CASES



#### U.S. CASES FOCUS ON THE MARKET IMPACT OF AI TRAINING.

The Bartz v. Anthropic and Kadrey v. Meta cases centered the fair use debate on the fourth factor; the effect of the use on the potential market for the copyrighted work.



#### LEGAL SHIFT

#### THE "MARKET DILUTION THEORY" WAS INTRODUCED.

The Kadrey deviation expanded the scope of judicial review from direct substitution (e.g., AI work replacing an artist's work) to the wider dimension of industrial competition.

#### COURTS ARE DEFINING A NEW "TRAINING-LICENSE MARKET".

The legal battles and proposed settlements are effectively shaping a new market where copyright holders can license their works for AI training.



#### THE BARTZ SETTLEMENT PROPOSED A BASELINE PRICE FOR DATA.

A proposed \$1.5 billion settlement included a price of three thousands USD per work, establishing a tangible value for a training-license market.

### SYNTHESIS: TWO PATHS, ONE DESTINATION

#### BOTH NATIONS ARE ADOPTING A "WAIT-AND-SEE" APPROACH.

Rather than passing broad laws, both China and the U.S. are allowing fair use jurisprudence for AI to develop on a case-by-case basis through the courts.

#### THE FOCUS IS SHIFTING FROM LEGAL FORMALITY TO MARKET REALITY.

Both legal systems are moving beyond traditional copyright frameworks to address the substantive competition between the emerging AI industry and the established copyright industry.

#### "AI COMPETITION IS THEREFORE A COMPETITION OVER INDUSTRIES AND OVER RULES."

The core of the DFU paradigm is that the battle over fair use is fundamentally an economic and regulatory struggle shaping the future of both industries.