NO. 25-2153

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

THOMSON REUTERS ENTERPRISE CENTRE GMBH AND
WEST PUBLISHING CORPORATION
Plaintiffs-Appellees
v.
ROSS INTELLIGENCE INC.
Defendant-Appellant

On Appeal from the United States District Court
for the District of Delaware
Civ. Action No. 20-613 (Hon. S. Bibas)

MOTION OF RANDY GOEBEL FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF REHEARING

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UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF REHEARING

Randy Goebel respectfully moves under Federal Rule of Appellate Procedure 29(b) for leave to file the accompanying brief as *amicus curiae* in support of Defendant-Appellant ROSS Intelligence Inc.'s petition for rehearing or rehearing en banc. Counsel for *amicus* contacted counsel for the parties regarding their positions on this motion. No party opposes this motion.

Professor Goebel is a professor of Computing Science at the University of Alberta in Edmonton, Alberta, Canada. He has researched artificial intelligence (AI) and its applications for several decades, including 13 years focused on AI and legal reasoning. With colleagues in Japan, he co-leads an international legal-reasoning competition consortium, the Competition on Legal Information Extraction and Entailment (COLIEE). He has published more than 200 peer-reviewed papers on AI and has supervised more than 80 graduate degrees. He is also a co-founder of the Alberta Machine Intelligence Institute, one of Canada's three federally funded AI institutes.

Professor Goebel's interest in this case is straightforward. How courts define types of AI, and how they treat the use of information to

build AI systems under the fair-use doctrine, will shape technical and business innovation in his field for years to come. He filed a brief as amicus curiae at the merits stage of this appeal, which the Court accepted. He submits the accompanying brief to help ensure that the Court's consideration of the petition rests on an accurate understanding of how AI systems actually work.

Leave to file an *amicus* brief should be granted if the proposed *amicus* shows "(a) an adequate interest, (b) desirability, and (c) relevance." *Neonatology Associates, P.A. v. Commissioner*, 293 F.3d 128, 131 (3d Cir. 2002) (Alito, J.). With respect to these requirements, "a broad reading is prudent," and "it is preferable to err on the side of granting leave." *Id.* at 132–33. *Amicus* briefs can provide "important assistance to the court" by, among other things, supplying "expertise not possessed by any party" or explaining "the impact a potential holding might have." *Id.* at 132 (citation omitted).

Each requirement is met here. First, Professor Goebel has an adequate interest. He is an AI scientist whose research, teaching, and entrepreneurial work are directly affected by the legal framework

governing how AI systems are built and trained, including AI systems designed for legal research like the one at issue in this case.

Second, the brief is desirable because it offers technical expertise that the parties do not possess. The panel's fair-use analysis rested in significant part on its characterization of ROSS's system as "not a generative AI." Panel Op. 5. The panel then relied on that characterization to distinguish decisions recognizing that AI training can be a transformative use. *See id.* at 17 n.7. The accompanying brief explains, from the perspective of a computer scientist, that the generative/non-generative distinction is not one that AI scientists recognize; that AI systems can be classified along many different dimensions, including technology, capability, function, and purpose, none of which tracks the line the panel drew; and that AI systems like ROSS's substantially transform their input data through processes that are not visible in the output the end user sees. That is precisely the kind of "expertise not possessed by any party" that *amicus* participation is meant to supply. *Neonatology*, 293 F.3d at 132.

Third, the brief is relevant. It addresses a premise central to the panel's decision and bears directly on whether rehearing is warranted.

It also explains "the impact a potential holding might have," *id.*, well beyond this case. A fair-use rule that turns on whether an AI system's output is "generative" would reach a broad range of AI systems in research and industry, many of which, like ROSS's, perform substantial transformative work that is not apparent from their final output. That consequence underscores the exceptional importance of the question presented.

This motion and the accompanying brief are timely under Federal Rule of Appellate Procedure 29(b)(5) because they are filed within seven days after the petition for rehearing was filed on November 3, 2026. The accompanying brief also complies with the length limit of Rule 29(b)(4).

For these reasons, Professor Goebel respectfully requests that the Court grant leave to file the accompanying brief as *amicus curiae* in support of rehearing.

Dated: November 10, 2026

Respectfully submitted,

/s/ Michael P. Abate

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CERTIFICATE OF SERVICE

I certify that on November 10, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.

I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Michael P. Abate

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REQUIRED CERTIFICATION OF BAR MEMBERSHIP

Pursuant to 3d Cir. L.A.R. 28.3(d), I hereby certify that I am a member in good standing of the bar of the Third Circuit.

s/Michael P. Abate

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INTEREST OF AMICUS CURIAE[1]

Randy Goebel is a professor of Computing Science at the University of Alberta in Edmonton, Alberta, Canada. He has worked on Artificial Intelligence (AI) research for several decades, and on a variety of its applications, including 13 years on AI and legal reasoning. He co-leads an international legal reasoning competition consortium (Competition on Legal Information Extraction and Entailment or COLIEE) with colleagues in Japan. He has published more than 200 peer-reviewed papers on AI and has supervised more than 80 graduate degrees. He's also a co-founder of one of Canada's three federally funded AI institutes, the Alberta Machine Intelligence Institute.

How courts legally define types of AI and the fair use of information that goes into building AI foundations will have sweeping implications for technical and business innovation for years to come. Thus, it is hard to overstate how important it is for courts to base their

[1] Pursuant to Fed. R. App. P. 29(c)(5), amicus certifies that: (1) no party's counsel authored the brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

rulings on an accurate understanding of this new and rapidly evolving technology. *Amicus* is well-equipped to contribute to that understanding.

ARGUMENT

The panel's fair-use analysis rests on a faulty premise: that AI is defined by what it outputs. The panel began by noting that "ROSS's AI was not a generative AI, meaning it would not create any new expression; it would only return text passages from preexisting judicial opinions." Panel Op. 5. It then relied on that characterization to distinguish cases that have recognized that AI training can be a transformative—and therefore fair—use, such as *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1014, 1021-22 (N.D. Cal. 2025), and *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026, 1043, 1047 (N.D. Cal. 2025). *See* Panel Op. 17 n.7. According to the panel, ROSS's AI-training uses cannot be transformative because the platform ultimately does not "generate original expression." *Id.*

As *amicus* explained at the panel stage, the generative/non-generative distinction is a red herring. It does not accurately reflect how AI systems actually work "under the hood." Like the trial court, the

panel unfortunately appeared to misunderstand the technology that its opinion threatens to stifle.

"Generative" AI is not a distinction recognized by AI scientists. Rather, it is a term invented by marketing professionals to try to explain—and sell—a product to the general public. In reality, all AI systems, regardless of construction methods, are "generative" in the sense that they all take data as input and transform it to provide users with a given set of outputs.

Take ROSS's AI model, for example. ROSS developed an algorithm, trained on legal memos, to facilitate legal research. Instead of the prompt "create an image of a frog riding a bicycle" that returns an image, the prompt "provide relevant case law surrounding…" returns a returns a considered list of directly relevant case quotations (and surrounding passages of the opinion for context).

For this even to be possible, the ROSS AI first generated an expert "brain" that stores case history in a semantically meaningful way. This is fundamentally the same application of technology as used by ChatGPT or Siri (among other tools). Thus, ROSS does not just "spit back" caselaw, as the trial court—and the panel—believed; it uses the

complex brain it has built to contextually identify and present caselaw relevant to a query.

As ROSS's merits brief explained (ROSS Br., p. 41), when a user inputs a query, ROSS's system first analyzes that question using its AI "brain" to reach a "semantic understanding" (ROSS Br., p. 41) of the question involved. Then, it goes out and "search[es] across actual caselaw rather than editorial content" to find relevant cases responsive to the query. *Id.* To the undiscerning user, it might seem like the ROSS search results are similar to the results you might get on Westlaw, but that is not the case. ROSS first translates the query into an understanding of what a user is really asking, and then goes out and finds cases that address that topic—*whether they use the same search terms or not*. Put differently, even if the user-facing output looks similar, the process by which ROSS returns search results is quite different from Westlaw; thanks to AI, it is able to find cases that express the same concept, even if they use different terms that would not be "hits" in a traditional Boolean search.

That is why the panel erred by focusing solely on the output of the AI model. Models like ROSS's rely on substantial transformation of the

inputted data—even if that transformation is not always obvious to the user based upon the end product.

The panel's error is in many ways understandable. After all, the modern world equates the concept of "AI" with large language models (LLMs) that generate new text in response to a prompt. But that is an oversimplification—and a scientifically unjustified one at that. AI as a category is so much broader than LLMs. Indeed, every software system that has ever attracted the label as an "AI system" does so only because *the outputs are not merely resynthesized versions of the inputs* (*i.e.*, in this case, the headnotes of Westlaw).

The reality is that generative AI is but one type of AI, even if currently the most commonly known. For example, AI can differ by technology. Some systems use Machine Learning (ML). Others use Natural Language Processing (NLP). Still others use Knowledge Representation and Reasoning (KRR). And some are Robotics systems.

Or, you could classify AI systems by capability. For example, AI could be "weak" or "narrow." Alternatively, it could be "broad" or "shallow." AI could be considered "strong" or "general." Or it could be "superintelligent."

AI could also be classified by its function. It could be reactive. It could be used for decision support instead of decision making. It could be a limited-memory system. It could rely on what's known as the "theory of mind." It could even be self-aware.

Finally, AI could be classified by its purpose. It could be considered "generative," "predictive," "assistive," or "conversational."

These sample groupings, while useful, aren't even an accepted universal standard. These are just four lenses that provide useful ways to think about and examine AI technology. Others may categorize them slightly differently. *See, e.g.*, Gosearch AI, The Ultimate Breakdown of Different AI Types and Models.[2]

In reality, "generative" AI could fit into multiple frameworks outlined above. Clearly it's one sub-type of Purpose. It's also a subset of Narrow AI, when focusing on AI types by Capability. But regardless of what lens one uses to view AI, does the panel's (and trial court's) reasoning mean that everything that's not "generative" counts as non-generative, and therefore not transformative? As an AI scientist, writer,

[2] https://www.gosearch.ai/blog/breakdown-of-different-ai-types-and-models/

and entrepreneur, that distinction makes no sense to me. But according to the opinion of the panel and the district court, that's what the Copyright Act requires.

However one categorizes it, truly generative AI is far more than user-driven, dynamic, manufactured output. Using Siri (on Apple devices) or Alexa (on Amazon devices) to set timers or play music is also an example of "generative" AI. Machine learning, which consolidates data into knowledge, is generative as well. What all these applications have in common isn't their output. It's the behind-the-scenes effort that makes the output possible.

Simply put, what makes AI truly "generative" is its ability to examine vast amounts of data, apply pattern recognition and other human-like learning techniques, and build a virtual encyclopedic "brain" of expertise in a given field. This brain can then be used, among other things, to create new content within that field: an image, a poem, a recipe. But—here's the key—the generative aspect includes creating the brain, which is done outside the view of the eventual end user. As explained above, that's precisely what ROSS's AI does.

In summary, even under the generative/non-generative dichotomy the panel and trial court created, the methods by which the ROSS system captures and uses public legal case information can be casually labeled as "generative." But as experts in the field with a vested interest in the intersection between copyright law and AI development, we urge the Court to eschew simple distinctions like this, whose unintended consequences could stunt the growth of transformative industries. *See, e.g.*, *Northwest Airlines v. State of Minnesota*, 322 U.S. 292, 300 (1944) (when considering emerging technologies, courts "ought not to embarrass the future by judicial answers which at best can deal only in a truncated way with problems sufficiently difficult even for legislative statesmanship"). Instead, the Court should refocus the fair use analysis on what the AI system does with the copyrighted material—not on what it ultimately provides the user.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation in Fed. R. App. P. 29(b)(4) because it contains 1,508 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, Century Schoolbook, in 14-point font.

3. The electronic copy of this brief has been scanned for viruses and none were detected.

/s/ Michael P. Abate

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I hereby certify that the text of the electronic brief filed through the CM/ECF system is identical to the text in the paper copies dispatched on November 10, 2026, by Federal Express to the Clerk of the Court of the United States Court of Appeals for the Third Circuit.

/s/ Michael P. Abate