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### Operating Internationally under the Current Patchwork of National Exceptions and Limitations to Copyright (with an AI Angle) Plus: Nevada IP Statistics

Marketa Trimble

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# Operating Internationally Under the Current Patchwork of National Exceptions and Limitations to Copyright (with an AI Angle)

## Plus: Nevada IP Statistics

Marketa Trimble

Samuel S. Lionel Professor of Intellectual Property Law  
William S. Boyd School of Law, University of Nevada, Las Vegas  
[marketa.trimble@unlv.edu](mailto:marketa.trimble@unlv.edu)

2024 Intellectual Property Conference | Intellectual Property Law Section of the State Bar of Nevada  
September 13, 2024

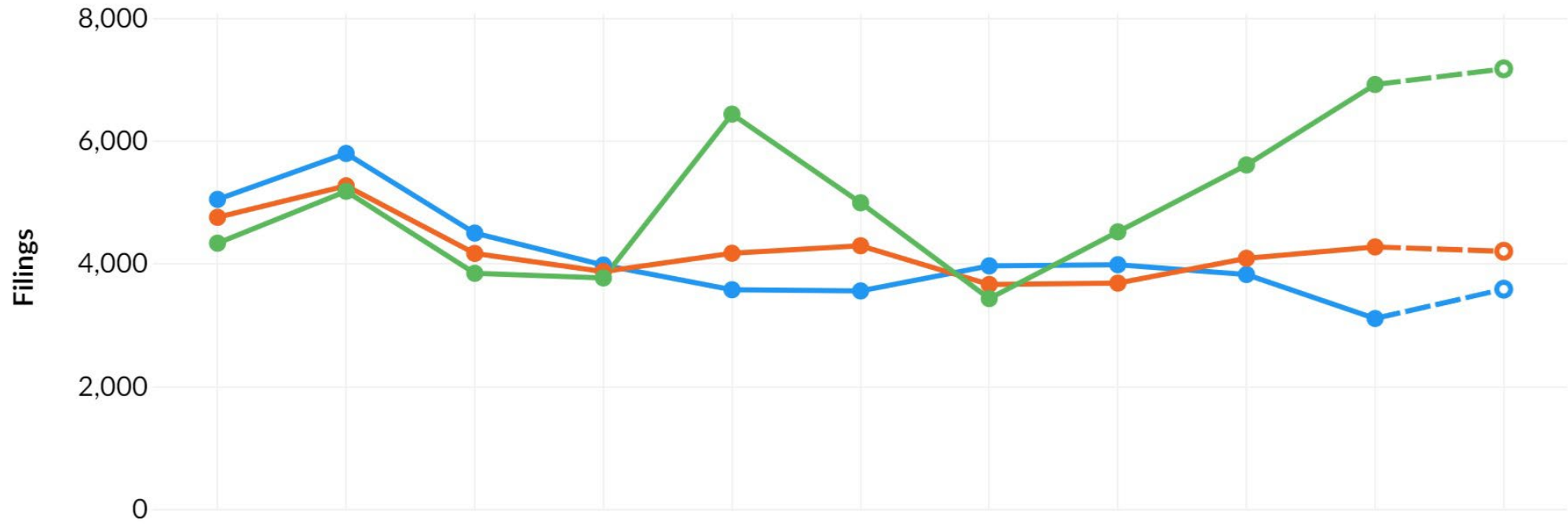
# NEVADA IP STATISTICS

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# Patent, Trademark, and Copyright Cases Filed in All U.S. Federal District Courts Between January 1, 2014, and August 31, 2024

Case Filings

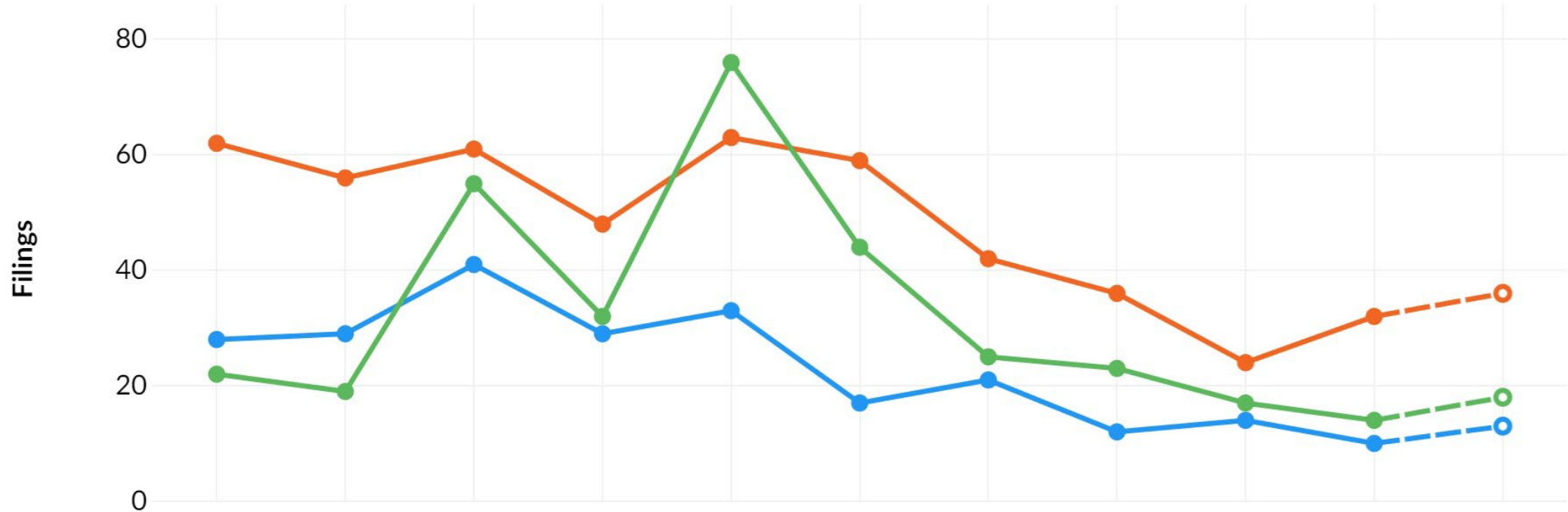


	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024*
● Patent	5,056	5,805	4,507	3,985	3,583	3,564	3,972	3,991	3,831	3,114	2,465
● Trademark	4,764	5,277	4,175	3,879	4,178	4,300	3,669	3,691	4,095	4,281	2,815
● Copyright	4,342	5,188	3,851	3,775	6,446	5,001	3,439	4,527	5,617	6,929	5,062

\* 2024 numbers are year-to-date. Open dots are full-year estimates.

# Patent, Trademark, and Copyright Cases Filed in the U.S. District Court for the District of Nevada Between January 1, 2014, and August 31, 2024

Case Filings



	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024*
● Patent	28	29	41	29	33	17	21	12	14	10	9
● Trademark	62	56	61	48	63	59	42	36	24	32	26
● Copyright	22	19	55	32	76	44	25	23	17	14	13

\* 2024 numbers are year-to-date. Open dots are full-year estimates.

## Nevada only

Patent, Trademark, and Copyright Cases Filed in the U.S. District Court for the District of Nevada Between January 1, 2014, and August 31, 2024

Case Filings

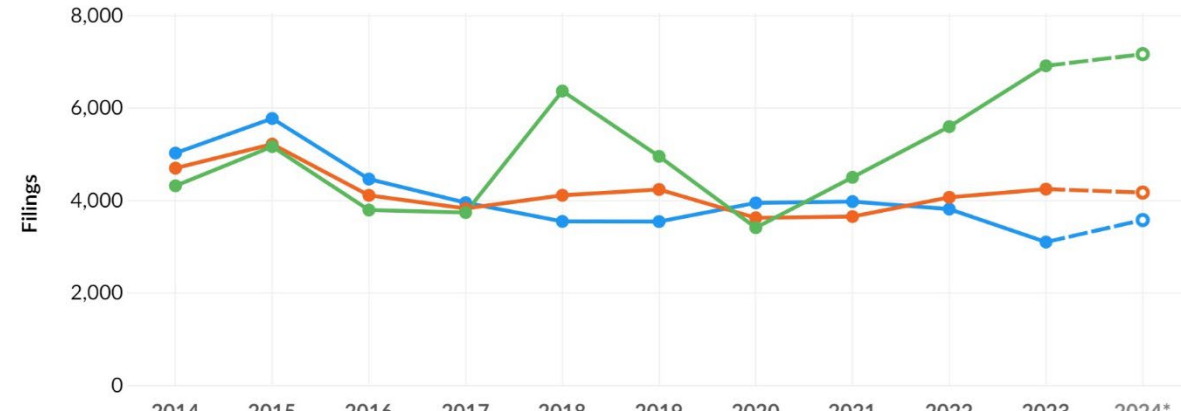


\* 2024 numbers are year-to-date. Open dots are full-year estimates.

## U.S. without Nevada

Patent, Trademark, and Copyright Cases Filed in All U.S. Federal District Courts except for Nevada Between January 1, 2014, and August 31, 2024

Case Filings

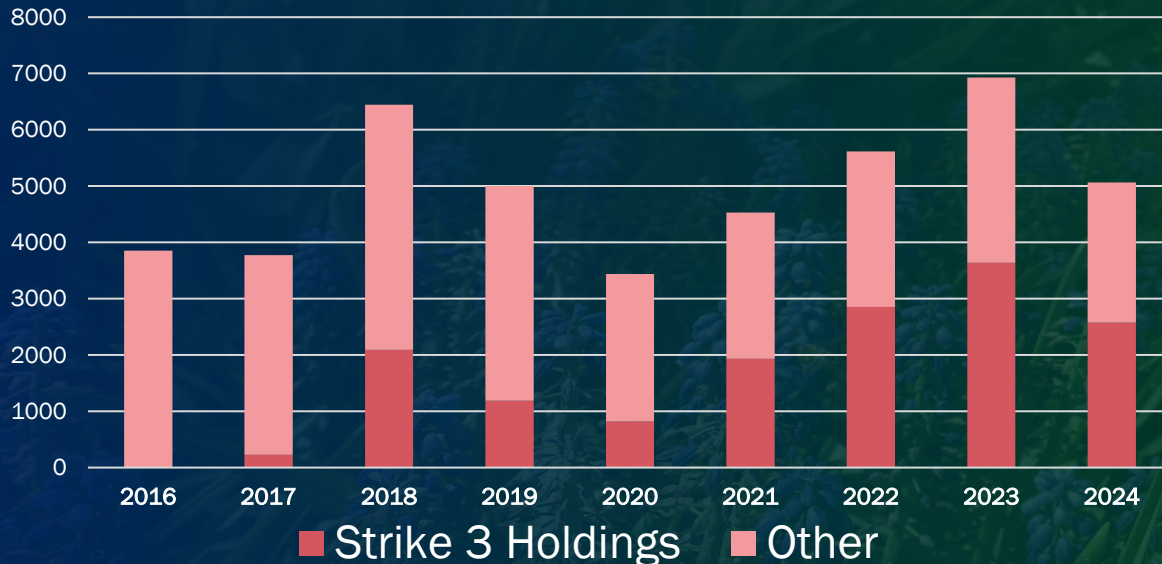


\* 2024 numbers are year-to-date. Open dots are full-year estimates.

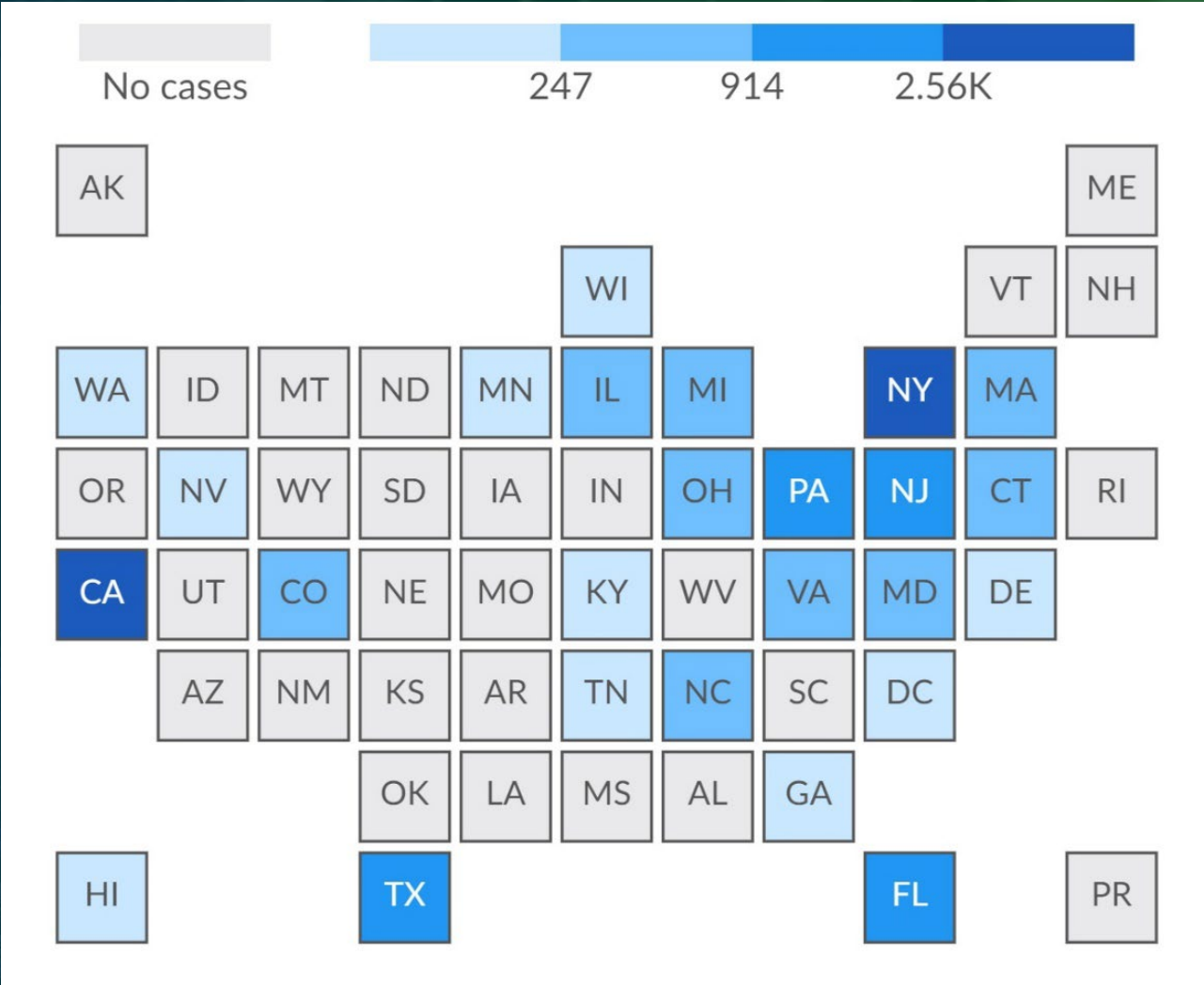
Copyright Cases Filed by **Strike 3 Holdings, LLC** in All U.S.  
Federal District Courts  
Between January 1, 2014, and August 31, 2024



Copyright Cases Filed in All  
U.S. Federal District Courts  
Between January 1, 2016,  
and August 31, 2024



# Copyright Cases Filed in All U.S. Federal District Courts by **Strike 3 Holdings, LLC**, Between January 1, 2016, and August 31, 2024

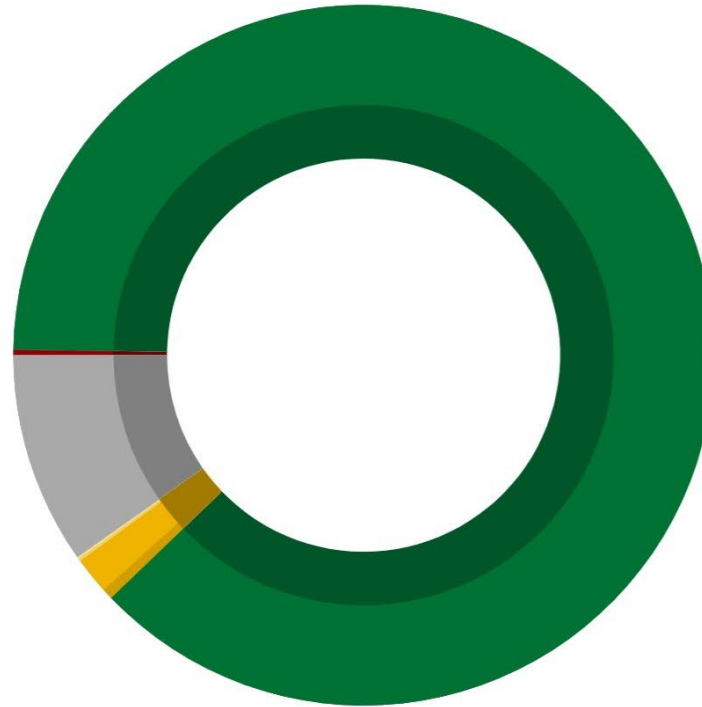




# Case Resolutions in Copyright Cases Filed in All U.S. Federal District Courts

by **Strike 3 Holdings, LLC**,  
Between January 1, 2016, and August 31, 2024

<b>Claimant Win</b>	40	0%
Default Judgment	36	0%
Consent Judgment	4	0%
Judgment on the Pleadings	0	0%
Summary Judgment	0	0%
Trial	0	0%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%
<b>Claim Defendant Win</b>	1	0%
Default Judgment	0	0%
Consent Judgment	0	0%
Judgment on the Pleadings	0	0%
Summary Judgment	1	0%
Trial	0	0%
Judgment as a Matter of Law	0	0%
Decision on Bankruptcy Appeal	0	0%



<b>Likely Settlement</b>	13,416	88%
Likely Settlement	13,415	88%
Class Action Settlement	1	0%
<b>Procedural Resolution</b>	370	2%
Contested Dismissal	0	0%
Dismissal	73	0%
Consolidation	260	2%
Severance	0	0%
Interdistrict Transfer	16	0%
Intradistrict Transfer	18	0%
Stay	2	0%
Multidistrict Litigation	1	0%
<b>No Case Resolution</b>	1,496	10%
Open Cases	1,492	10%
Remaining Federal	0	0%
Other	4	0%

# Patent, Trademark, and Copyright Cases Filed in the U.S. District Court for the District of Nevada Between January 1, 2022, and August 31, 2024

## District Judges

James C. Mahan (D.Nev.)	36	25%
Gloria Maria Navarro (D.Nev.)	27	18%
Cristina Dionne Silva (D.Nev.)	19	13%
Richard Franklin Boulware II (D.Nev.)	18	12%
Jennifer Anna Dorsey (D.Nev.)	15	10%

5 Other Judges

## Top Law Firms Representing Plaintiffs

Dickinson Wright

Lewis Roca Rothgerber Christie

Snell & Wilmer

Holley Driggs

Harris Law Office (702law.com)

## Top Law Firms Representing Defendants

Greenberg Traurig

Weide & Miller

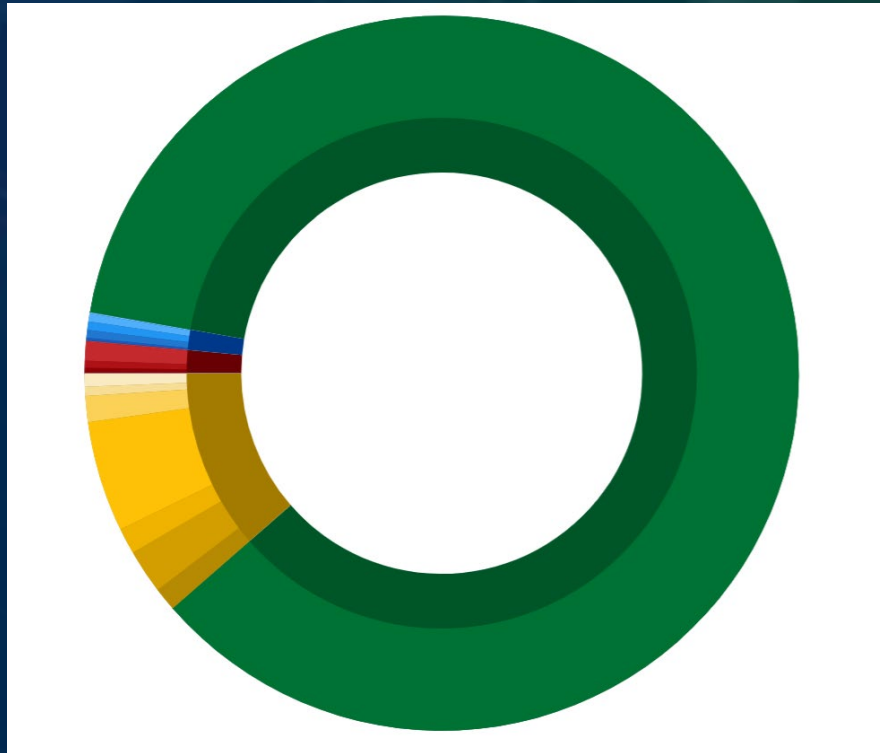
Howard & Howard

Brownstein Hyatt Farber Schreck

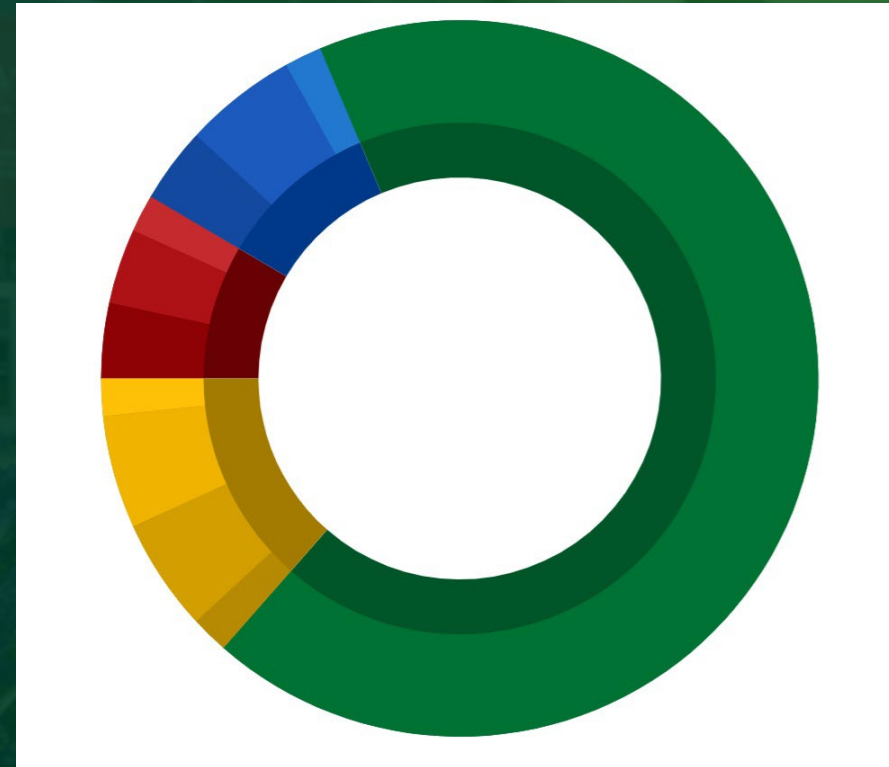
Dickinson Wright

# Patent Cases Terminated Between January 1, 2021, and August 31, 2024

## Eastern and Western Districts of Texas



## District of Nevada



Claimant Win



Claim Defendant Win



Likely Settlement



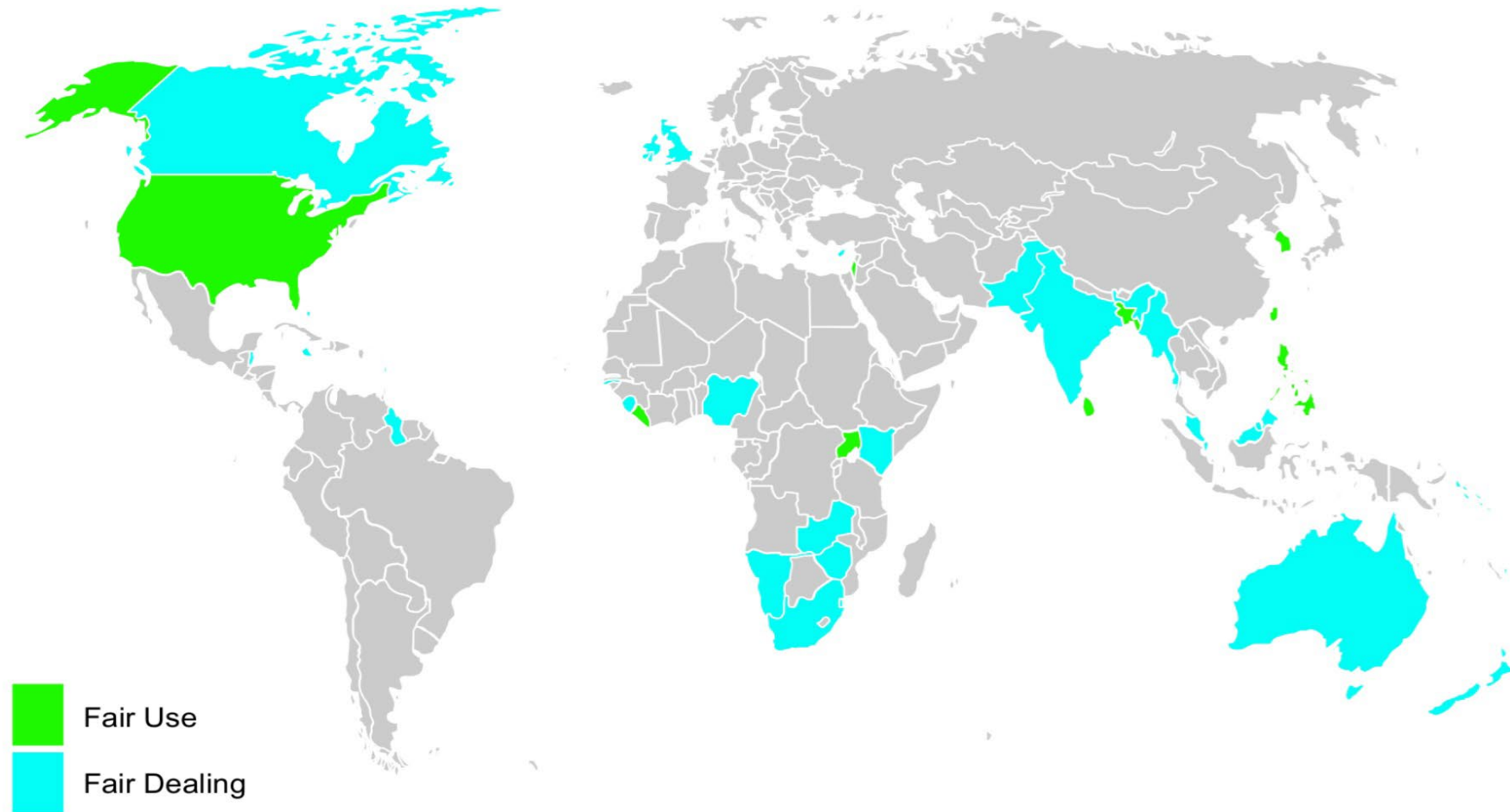
Procedural Resolution



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**OPERATING INTERNATIONALLY UNDER THE CURRENT PATCHWORK  
OF NATIONAL EXCEPTIONS AND LIMITATIONS TO COPYRIGHT  
(WITH AN AI ANGLE)**

# Fair Use and Fair Dealing Around the World



Based on Band & Gerafi, *The Fair Use/Fair Dealing Handbook*; map prepared by Amy Bulgrien.

# EXCEPTIONS AND LIMITATIONS TO COPYRIGHT

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- The application of exceptions and limitations in single-country transactions
  - A library in country A wants to reproduce a scientific article and provide the reproduction to a researcher in country A
  - **Is there an exception to copyright in A that covers the acts?**
- The application of exceptions and limitations in multi-country transactions
  - A library in country A and a library in country B each wants to reproduce and provide a reproduction of a scientific article to researchers in A and B, respectively
  - **Are there identical or similar exceptions to copyright in A and B that cover the acts in the same manner?**

# EXCEPTIONS AND LIMITATIONS TO COPYRIGHT

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- The application of exceptions and limitations in cross-border transactions
  - A library in country A wants to reproduce and provide a reproduction of a scientific article to researchers in country B
  - **Which exception to copyright applies – country A's or country B's – if any?**
  - **Does it address the issue if the exceptions in A and B are identical?**
- AI as an example
  - A company obtains copyrighted works in country A and then trains its AI and/or deploys its AI tool in another country (or other countries, or globally)
  - Even if any of the acts are copyright-infringing in any of the countries, licensing could address the issue
  - But it is unlikely that licensing could resolve all of the issues, particularly retrospectively

# AI & COPYRIGHT IN THE UNITED STATES

## Copyright + Related Lawsuits v. AI Companies

### ND California



Kadrey v. Meta; Chabon v. Meta  
Huckabee v. Meta  
Judge Chhabria



In re OpenAI ChatGPT Litigation  
(Tremblay, Silverman, Chabon)  
Judge Araceli Martínez-Olguín



Nazemian v. NVIDIA Corp.  
Dubus v. NVIDIA Corp.  
Judge Tigar



O'Nan v. Databricks, Mosaic ML  
Makkai v. Databricks, Mosaic ML  
Judge Breyer



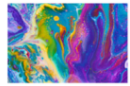
Bartz v. Anthropic  
Judge Alsup



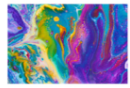
Concord Music. v. Anthropic  
Judge Lee



Doe 1 v. Github, Microsoft, OpenAI  
Judge Tigar



Sarah Andersen v. Stability AI,  
Deviant Art, Midjourney, Runway AI  
Judge Orrick



Zhang v. Google  
Judge Lee

### D. Mass.



UMG Recordings v. Suno, Inc.  
Chief Judge Saylor IV



### SDNY



Authors Guild v. OpenAI,  
Microsoft

Also: Alter, Basbanes

Judge Stein



Huckabee v. Bloomberg

Judge Garnett



New York Times v. OpenAI

Daily News v. Microsoft

Judge Stein



Center for Inv. Rep. v OpenAI,

Judge Stein



Raw Story v. OpenAI

Judge McMahon

Intercept v. OpenAI

Judge Rakoff



UMG Recordings v. Uncharted

Labs d/b/a Udio

Judge Hellerstein



Lehrman v. Lovo\* no (C) claim

Judge Oetken

### Delaware



Thomson Reuters v. ROSS Intell.

Judge Bibas



Getty Images v. Stability AI

Judge Hall



Vacker v. Eleven Labs

Judge Andrews



J.L. v. Alphabet, Google

Judge Lee



Millette v. OpenAI\* no (C) claim

Millette v. Google\*

Millette v. NVIDIA\*

Judge Donato

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prepared by [ChatGPTiseatingtheworld.com](https://chatgptiseatingtheworld.com)



# TDM EXCEPTION IN THE EUROPEAN UNION

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- DSM Directive
  - Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market
- Text & data mining (TDM) exception for scientific research (Art. 3)
- Exception or limitation for (any other) TDM (Art. 4)

# TDM EXCEPTION IN THE EUROPEAN UNION

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- Text & data mining (TDM) exception for scientific research (Art. 3)
- An exception to copyright
  - “for reproductions and extractions,”
  - “made by research organisations and cultural heritage institutions,”
  - “for the purposes of scientific research,” and
  - “works or other subject matter to which they have lawful access.”

# TDM EXCEPTION IN THE EUROPEAN UNION

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- Exception or limitation for (any other) TDM (Art. 4)
- An exception or limitation
- “for reproductions and extractions,”
- “lawfully accessible works and other subject matter,” and
- “for the purposes of text and data mining,”
- **UNLESS** “expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online.”

# CURRENT APPROACHES I

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- **An internationally uniform exception**
  - Marrakesh Treaty (national exception)
  - TDM exception in the EU DSM Directive
- **Mutual recognition of national exceptions**
  - EU Orphan Works Directive
- **Mutual recognition with national verification**
  - Marrakesh Treaty (cross-border exchange)

## CURRENT APPROACHES II

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- **Localization**
  - EU SatCab Directive
  - EU DSM Directive (cross-border teaching)
  - EU Portability Regulation
- **Private ordering**
- **Delocalization by brute force**
- **Technological solutions**

# INTERNATIONAL DEVELOPMENTS

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- Berne Convention, TRIPS, WIPO Treaties
- Marrakesh Treaty
- Global South countries' initiatives
- Libraries & archives
- 44<sup>th</sup> Session of WIPO's SCCR

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