May 2026

Fair Use and Artificial Intelligence: Policy Recommendations for Global AI Leadership

Summary

U.S. leadership in artificial intelligence (AI) depends on maintaining a legal environment that enables large-scale data use for model training. This requires both preserving the flexibility of fair use domestically and proactively advancing interoperable text-and-data mining (TDM) frameworks abroad to reduce legal fragmentation and support the global deployment of U.S. AI technologies. This approach is consistent with protecting copyright and the opportunity of rightsholders and AI developers continuing to negotiate mutually beneficial arrangements, where appropriate, to help sustain a healthy ecosystem for the content that drives AI innovation.

Background

Given how AI models and applications are developed, copyright frameworks play a central role in determining whether and how these systems can be trained, scaled, and commercialized across jurisdictions. In the United States, the codification of fair use has provided a flexible legal foundation that enables large-scale, non-expressive analysis of data, an essential component of modern AI development. Provisions in the Berne Convention[1] provide a foundation in international law for explicit copyright exceptions (e.g., news reporting and quotation). Accordingly, fair use permits the unlicensed use of copyright-protected material for purposes deemed transformative.[2] This flexibility is at the heart of the U.S. culture of innovation, and a growing body of developers, researchers, and other experts hold that robust legal protections for training AI models are essential to maintain American competitiveness.[3] In this context, fair use and analogous exceptions and limitations in foreign markets must be viewed not merely as a doctrinal intellectual property policy, but as a vital component of a national AI export strategy.

Recent U.S. policy makes clear that preserving the ability to train AI models on large-scale data is a national priority. The July 2025 White House AI Action Plan[4] and the December 2025 Executive Order on *Ensuring a National Policy Framework for AI*[5] emphasize that effective AI training is central to U.S. economic and national security objectives. The March 2026 White House National AI Legislative Framework[6] goes further, clarifying that AI training on copyrighted material does not inherently violate copyright law, while acknowledging that courts are determining the application of fair use to AI training on a case-by-case, factual

[1] https://www.wipo.int/wipolex/en/text/283698
[2] A use is transformative if it repurposes data for a new functional objective, like model training or indexing, rather than simply distributing the original expressive content.
[3] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4976393
[4] https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf
[5] https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/
[6] https://www.whitehouse.gov/articles/2026/03/president-donald-j-trump-unveils-national-ai-legislative-framework/

basis. As President Donald Trump has stated, requiring developers to obtain licenses for "every single article, book, or anything else" would make successful AI development infeasible.[7] By addressing the practical impossibility of work-by-work licensing for massive datasets, including the exabytes of data publicly available on the internet, the fair use doctrine ensures that U.S. firms can develop competitive models domestically— a critical enabler of U.S. leadership in AI that must be preserved.

While a robust and flexible fair use framework is a foundational driver of U.S. AI innovation, sustaining that leadership also depends on the adoption of interoperable legal frameworks abroad that permit large-scale, non-expressive data analysis. While jurisdictions such as Japan,[8] Singapore,[9] Israel,[10] and the European Union[11] have adopted text-and-data mining (TDM) exceptions or similar legal bases for AI training, other markets, including the United Kingdom, Australia, and India, are considering more restrictive or uncertain approaches that may inhibit AI development and access to knowledge, contributing to a fragmented global landscape.[12]

The absence of clear and flexible copyright frameworks increases legal uncertainty, raises compliance costs, and risks limiting the cross-border development and deployment of AI systems, while also creating incentives to shift innovation and deployment to more permissive jurisdictions. In this context, innovation-supportive rules are not only an advantage U.S. firms have in their domestic market, but a determinant of global competitiveness. Promoting interoperable approaches through TDM exceptions or comparable legal mechanisms can reduce legal friction, facilitate the deployment of U.S. AI tools abroad, and ensure that American firms are not disadvantaged in key markets. To the extent that the United States wants to support a global landscape where U.S. firms can build, thrive and achieve the global scale necessary to support the immense investment needed to advance this technology, supportive copyright regimes will be essential.

Policy Recommendations

To sustain U.S. leadership in AI and support the global deployment of U.S. AI technologies, U.S. policymakers should take coordinated action across both domestic policy and international trade engagements:

1. Preserve and Affirm Fair Use Domestically

The United States should maintain and affirm a flexible fair use doctrine that supports open access to large-scale, non-expressive data analysis for AI training. It should also not preclude voluntary commercial agreements based on mutually beneficial exchange of value dependent upon use ascribed within the bounds of the agreement. This includes opposing legislative or regulatory efforts that would narrow fair use or impose de facto licensing requirements, and

[7] https://www.ipi.org/policy_blog/detail/president-trumps-comments-on-copyright-ai-excerpt
[8] https://www.cric.or.jp/english/clj/cl2.htmlJapan | Copyright Law公益社団法人著作権情報センター CRIChttps://www.cric.or.jp › english › clj
[9] https://sso.agc.gov.sg/Act/CA2021?ProvIds=P15-P28-
[10] https://www.gov.il/BlobFolder/legalinfo/machine-learning/he/18-12-2022.pdf
[11] https://digital-strategy.ec.europa.eu/en/library/digital-omnibus-regulation-proposal
[12] See https://www.bbc.com/news/articles/clyd032ej70o

promoting policy clarity across agencies through guidance, public statements, and, where appropriate, amicus briefs affirming that AI training can constitute lawful, transformative use. Maintaining this flexibility is essential to ensuring that U.S. firms can continue to develop competitive models without prohibitive legal or compliance burdens.

2. Advance the Fair Use Principle and TDM Exceptions Abroad and within Trade Agreements

The United States should advocate for the adoption of policies that provide greater clarity on text-and-data mining (TDM) exceptions or equivalent legal frameworks in key partner markets through bilateral engagement and, where appropriate, binding provisions of trade agreements. Foreign regimes should provide clear authorization for non-expressive copying in AI training, while allowing for appropriate voluntary safeguards such as rights reservation mechanisms and technical controls, which will reduce legal fragmentation, lower compliance costs, support the continued creation of high-quality datasets, and enable U.S. firms to develop and deploy innovative AI systems across jurisdictions with greater certainty.

One avenue for the U.S. is to incorporate principles like fair use and TDMs into trade agreements, particularly within digital trade chapters, and advance these priorities through bilateral and multilateral forums—specifically the Asia-Pacific Economic Cooperation (APEC), the Organisation for Economic Co-operation and Development (OECD), and the World Intellectual Property Organization (WIPO)—where high-level principles can be adopted to harmonize global standards.

Past efforts, such as the Trans-Pacific Partnership (TPP),[13] sought to promote flexible copyright exceptions but did not achieve broad adoption. Renewing this approach with an explicit AI focus, consistent with Pillar III of the White House AI Action Plan, would align trade rules with current technological realities. By negotiating commitments that recognize the legitimacy of large-scale data analysis for AI training, the U.S. can reduce legal fragmentation, address restrictive regimes as non-tariff barriers, and support the global deployment of U.S. AI technologies. Advancing clear and consistent rules internationally will help ensure that U.S. AI companies are not disadvantaged in key markets and will reinforce a durable global norm that learning from data is a lawful and socially valuable activity.

3. Support Market-Led and Technical Approaches

Policymakers should complement legal frameworks with advocacy for market-led and technical solutions that address rightsholder concerns without undermining robust access to data. This includes encouraging voluntary commercial agreements where appropriate, without mandating them as a prerequisite for AI training, and promoting the development and adoption of industry-driven consensus standards for technical safeguards such as opt-out mechanisms and rights reservation tools. Supporting interoperable, global standards for opt-outs, data access, and use can further enable scalable and transparent practices across jurisdictions, ensuring a balanced approach that fosters innovation while respecting the interests of content owners.

[13] https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Intellectual-Property.pdf#page=4

Conclusion

U.S. leadership in AI will ultimately be determined by whether its legal framework continues to enable large-scale, data-driven innovation. Fair use has historically provided the foundation for transformative technologies by recognizing that the computational analysis of data is distinct from the consumption of expressive content and can constitute a highly transformative use. Preserving flexibility is essential not only to sustaining domestic innovation, but also to ensuring that startups and new entrants, key drivers of U.S. competitiveness, are not excluded by prohibitive costs or legal uncertainty.

At the same time, domestic strength alone is insufficient. As global approaches to AI training diverge, the absence of interoperable legal frameworks risks fragmenting markets, raising compliance burdens, and incentivizing the relocation of innovation to more permissive jurisdictions. Embedding fair use principles at home and advancing TDM-compatible frameworks abroad, particularly through trade policy, will reduce these frictions and support the global deployment of U.S. AI technologies. Together, these steps reinforce a clear signal that learning from data is a lawful, transformative, and socially valuable activity essential to innovation.