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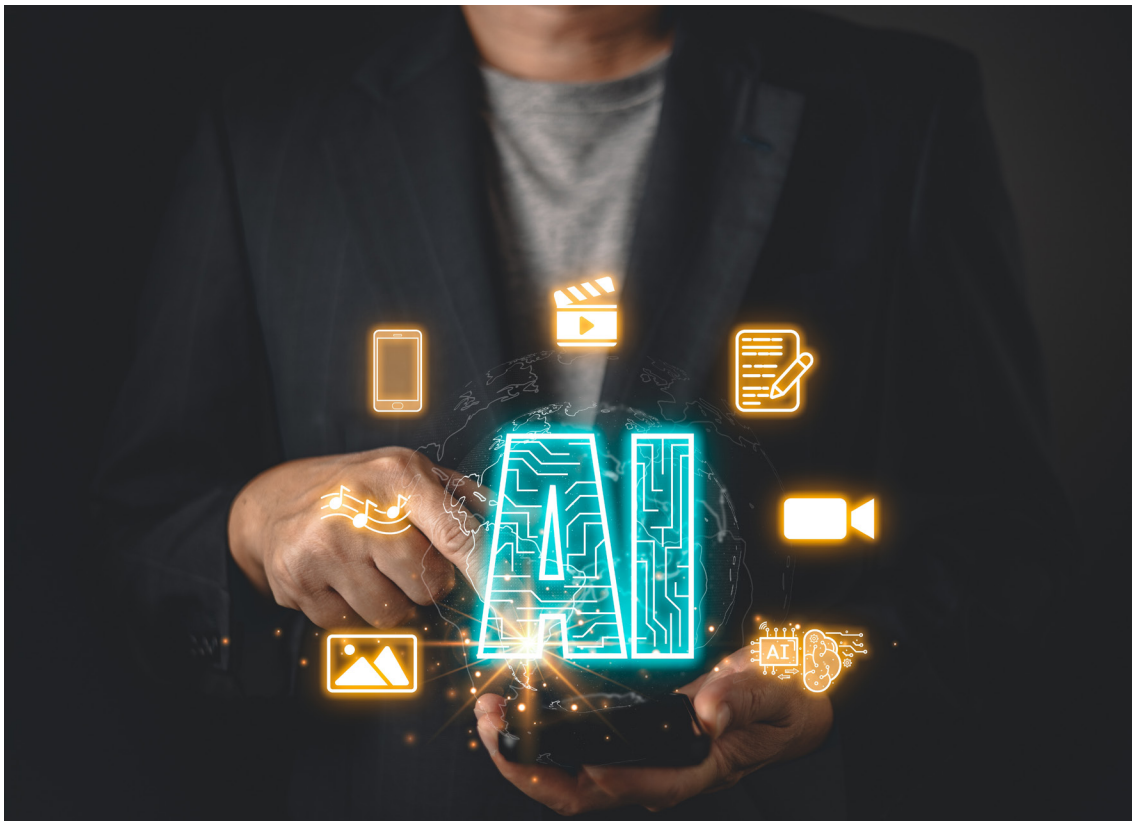
# AI-driven IP disputes: Own yourself and your strategy

**Federal courts are the right venue for IP disputes, but they are not well positioned for AI-driven conflicts. A mediator with deep industry knowledge can separate true exposure from leverage and structure solutions courts are not built to craft.**

By Stuart Shanus

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When Matthew McConaughey appeared on CNN recently to address a room full of young creatives, he delivered advice that sounded like career guidance but landed, to anyone who has spent decades in entertainment and technology disputes, as a legal forecast. His message was direct: in a world of deepfakes, synthetic performances and AI-generated likenesses, you better *own yourself* before someone else decides they can replicate it without asking.

He's right. And that wave of disputes is here.

The litigation cycles in entertainment and media have arrived in waves before, the home video battles, the MP3 wars, the early streaming rights conflicts, the cloud-computing contracts nobody fully understood when they signed them. What is building now around artificial intelligence is different in scale and speed. For IP and corporate counsel, the question is no longer whether these disputes are coming. It is whether you can resolve them.

## The liability is already embedded

Most companies deploying AI today are not starting from a clean slate. They are working with vendor tools trained on datasets assembled months or years ago, incorporating AI-generated outputs into products already shipping, and operating under agreements drafted before the current regulatory and litigation environment existed. The exposure is not theoretical. It is baked into contracts, content libraries and model architectures that are in production *right now*.

On the input side, the core unresolved question is whether ingesting copyrighted works at scale to train a generative model constitutes fair use or infringement. Courts have reached different conclusions on different facts, and each record turns heavily on technical details: what was scraped, how the training pipeline worked, whether the model can reproduce identifiable portions of source material. If your client's products were built on a third-party foundation model, they may not know the answers to those questions, and their vendor agreements may not grant the access needed to find out.

On the output side, the questions multiply. When does AI-assisted creative work contain enough human authorship to qualify for copyright protection? When is an AI output substantially similar to a human work in a way that creates liability? Who owns the output: the developer, the deployer or the end user? Does the answer shift depending on how much creative direction went into the prompt? In entertainment and advertising, right-of-publicity claims over synthetic likenesses, voices and performances are moving from theoretical to filed cases faster than most general counsel anticipated. McConaughey's warning to creatives is, for IP counsel, a description of active litigation.

**Why courts alone are not enough**

Federal courts are the right venue for IP disputes. They are not well positioned, however, as the primary forum for AI-driven IP conflicts. These cases turn on technical facts that require genuine fluency in how machine-learning systems are built and trained, a depth of expertise that is expensive and slow to develop through a generalist proceeding. Meanwhile, the AI products at issue are updating on quarterly cycles. By the time a summary judgment motion is fully briefed, the technology may be two or three product generations old.

Confidentiality compounds the problem. AI disputes often require examination of training datasets, model architecture and proprietary licensing terms. Litigating those facts in open court, with public filings accessible to competitors and regulators, carries a cost that frequently dwarfs the underlying dispute. And for matters with international dimensions, the jurisdictional complexity of sequential litigation across the U.S., EU and Asia-Pacific markets is not a strategy. It is a drain.

**Where ADR fits — and why it fits better**

The ADR community has moved quickly to address this gap. JAMS released AI-specific arbitration rules designed to address algorithmic transparency, expert evidence and technical confidentiality. WIPO's ADR center reports meaningful growth in mediation and arbitration for high-stakes international IP matters. These developments reflect where sophisticated parties are already routing their most complex AI conflicts.

In arbitration, parties select a neutral who already understands how licensing structures work in entertainment and technology, how training data is documented and acquired, and what substantial similarity means when the allegedly infringing party is an algorithm. Proceedings are private, so training datasets, source code and deal economics can be examined without creating a public record that invites further exposure. Rules can be tailored: staged discovery targeted at specific technical issues, structured expert presentations, mediated teach-ins that give both parties a shared factual foundation before legal positions harden. And arbitration awards are enforceable across jurisdictions under the New York Convention in ways that court judgments often are not.

*The most underutilized tool in these disputes is early, well-structured mediation, not as a preliminary settlement gesture, but as a genuine mechanism for identifying real exposure before discovery transforms a manageable dispute into something neither party controls.* A mediator with deep industry knowledge can help counsel distinguish which claims represent genuine business risk from those that represent leverage and can facilitate forward-looking resolutions that courts are structurally unable to craft: revised licenses addressing AI training use and output ownership, co-existence frameworks, indemnity structures that allocate future risk rather than only adjudicating past conduct.

**Own your dispute strategy**

McConaughey told a room full of creatives to own themselves before the technology makes that choice for them. For IP counsel and their clients, the equivalent advice is this: *own your dispute strategy before the dispute owns you.*

Counsel advising clients on AI-related agreements, whether vendor contracts, talent deals, content-licensing arrangements or data acquisition, should be addressing dispute resolution architecture before a dispute arises. Mediation and arbitration clauses specifically designed for AI and IP matters, with provisions for technical confidentiality, expert evidence and neutral selection, are becoming standard practice among sophisticated parties. Their absence is increasingly a negotiating vulnerability; their presence is increasingly a meaningful protection.

AI is not a future problem. The disputes it generates are already testing the limits of forums, doctrines and agreements that were not built for it. The companies and counsel who treat dispute resolution as a strategic decision will be better positioned when those cases arrive. And they will.

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