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18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 CONCORD MUSIC GROUP, INC., et al.,
22
23 Plaintiffs,
24
25 v.
26 ANTHROPIC PBC,
27
28 Defendant.

Case Number: 3:24-cv-03811-JSC
Hon. Jacqueline Scott Corley
**BRIEF OF THE RECORDING
INDUSTRY ASSOCIATION OF
AMERICA, NATIONAL MUSIC
PUBLISHERS' ASSOCIATION, THE
ASSOCIATION OF AMERICAN
PUBLISHERS, INC., NEWS/MEDIA
ALLIANCE, SONGWRITERS OF
NORTH AMERICA, BLACK MUSIC
ACTION COALITION, MUSIC
ARTISTS COALITION, ARTIST
RIGHTS ALLIANCE, AND
AMERICAN ASSOCIATION OF
INDEPENDENT MUSIC AS *AMICI
CURIAE* IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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INTERESTS OF AMICI CURIAE¹

Amici curiae submitting this memorandum (“*Amici*”) are trade groups representing owners and authors of some of this country’s most valuable creative content. Many of the *Amici* have previously submitted comments to the U.S. Copyright Office on artificial intelligence (“AI”) issues,² and many are members of the Human Artistry Campaign.³

RIAA is a nonprofit trade organization that supports and promotes the creative and financial vitality of recorded music and the people and companies that create it. RIAA’s several hundred members – ranging from major American music companies with global reach to artist-owned labels and small businesses – make up this country’s most vibrant and innovative music community. RIAA’s members create, manufacture, and/or distribute sound recordings representing the majority of all legitimate recorded music consumption in the U.S., and own the copyrights and/or other exclusive rights in sound recordings embodying the performances of some of the most popular and successful recording artists of all time. RIAA has been actively involved in representing the interests of its members as they relate to AI issues.

NMPA is the principal trade association representing the U.S. music publishing and songwriting industry. NMPA’s membership includes publishers of all sizes, from “major” music publishers to independently owned and operated publishers, who represent musical works of all genres. Taken together, compositions owned or controlled by NMPA’s hundreds of members account for the vast majority of musical compositions licensed for commercial use in the U.S. NMPA has been actively engaged in the conversation around generative AI and its relationship with, and impact on, the creative economy, and has participated in numerous panels, roundtables and other industry discussions.

The Association of American Publishers, Inc. (“AAP”) represents book, journal, and education

¹ No counsel for any party authored this brief in whole or in part, and no entity or person other than amici, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Certain of the plaintiff music publishers in this lawsuit are among the members (or affiliates of such members) of amici the National Music Publishers’ Association (“NMPA”) and the Recording Industry Association of America (“RIAA”), each of whom also represents the interests of hundreds of other companies in the music industry.

² See <https://www.regulations.gov/docket/COLC-2023-0006/comments>.

³ See <https://www.humanartistrycampaign.com>.

1 publishers in the U.S. on matters of law and policy, including major commercial houses, small and
2 independent houses, and university presses and other noncommercial scholarly publishers. AAP seeks
3 to promote an effective and enforceable framework that enables publishers to create and disseminate a
4 wide array of original works of authorship to the public on behalf of their authors. AAP members
5 support and embrace innovation, including responsibly designed AI tools that are accountable,
6 transparent, and respect copyright protections. The works AAP members publish are especially
7 valuable to training generative AI systems, including because they provide high quality expression that
8 results in commercially valuable, expressive output. AAP has been actively involved in representing
9 the interests of its members as they relate to AI issues.

10 The News/Media Alliance (the “Alliance”) represents over 2,200 diverse publishers in the U.S.
11 and internationally, ranging from the largest news and magazine publishers to hyperlocal newspapers,
12 and from digital-only outlets to papers who have printed news since before the Constitutional
13 Convention. Its membership creates quality journalistic content that accounts for nearly 90 percent of
14 daily newspaper circulation in the U.S., over 500 individual magazine brands, and dozens of digital-
15 only properties. The Alliance diligently advocates for newspapers, magazine, and digital publishers,
16 and like the other *Amici*, has been active on AI issues, such as publishing a White Paper documenting
17 systemic uses of media content in generative AI training, leading the development of global publisher
18 AI principles, and participating in numerous discussions, including the U.S. Senate’s AI Insight Forum.

19 Songwriters of North America (“SONA”) is a membership-based advocacy organization
20 formed by and for professional songwriters in 2015. SONA advocates on behalf of songwriters’
21 interests before legislative bodies, administrative agencies, and the courts. SONA is an open and
22 diverse community that unites enthusiastic music creators and thoughtful business leaders to create a
23 unified voice to protect artistic expression, compensation, and the rights of songwriters in North
24 America. Regarding AI, SONA represented its members by participating in the recent U.S. Copyright
25 Office Listening Sessions, and continues to advocate for and educate songwriters about AI
26 developments.

27 Black Music Action Coalition (“BMAC”) works to create a unified force of action for racial
28 equity and justice within the music industry and to use the power of its collective voice to improve

1 communities and drive systemic change. BMAC advocates on behalf of Black artists, songwriters,
2 producers, managers, agents, executives, and lawyers to create access, equity and opportunity for Black
3 artists and industry professionals. BMAC works together with business leaders to hold companies
4 accountable and ensure change takes root. BMAC works to drive policy change around social and
5 racial justice and protection of artists with a focus on causes that directly impact Black people and
6 Black communities. Regarding AI, BMAC advocates on behalf of a network of music managers,
7 entertainment attorneys, and Black creatives, and participated in the U.S. Copyright Office’s Listening
8 Sessions. In its ongoing fight for economic justice, AI is at the forefront of BMAC’s agenda.

9 The Music Artists Coalition (“MAC”) was founded by music creators and industry leaders to
10 advocate on pressing topics that impact music creators. MAC represents artists’ and songwriters’
11 interests without compromise because music creators should be driving the conversation about the
12 issues that shape their lives. MAC believes artists should have the opportunity to decide how best to
13 protect the fate of their music, and that the advancement of AI can be a benefit to music creators and
14 music lovers, but only if properly regulated so that artists’ interests are protected.

15 The Artist Rights Alliance (“ARA”) is an artist-run, non-profit organization fighting for the
16 rights of working musicians in the modern music economy. Co-founded by a group of dedicated artists
17 including GRAMMY winner Rosanne Cash, ARA’s Board of Directors includes award-winning
18 producer/songwriter/engineer Ivan Barias, music manager Thomas Manzi, John McCrea of CAKE,
19 critically acclaimed singer/songwriter Tift Merritt, guitar innovator Matthew Montfort, and Indie label
20 executive and musician Maggie Vail.

21 The American Association of Independent Music (“A2IM”) is a not-for-profit organization that
22 exists to support and strengthen the independent recorded music sector and the value of recorded music
23 copyrights. Membership currently includes a broad coalition of hundreds of independently owned
24 American music labels. A2IM represents these small and medium-sized enterprises’ interests in the
25 marketplace, in the media, on Capitol Hill, and as part of the global music community. In doing so, it
26 supports a key segment of America’s creative class that represents America’s diverse musical and
27 cultural heritage. Billboard Magazine identified the independent music label sector as over 40% of the
28 music industry’s global recorded music revenue in 2020 based on copyright ownership.

1 **PROCEDURAL HISTORY**

2 *Amici* sought leave to file an amicus brief in support of the plaintiffs’ (“Publishers”) motion for
3 a preliminary injunction against Anthropic PBC (“Anthropic”) in the U.S. District Court, Middle
4 District of Tennessee. *Amici’s* motion was pending when this case was transferred. In their prior brief,
5 *Amici, inter alia*, responded to various erroneous arguments made by Anthropic and putative *amici*
6 supporting Anthropic, Chamber of Progress and NetChoice, LLC (together, “COP”). *Amici* now
7 submit this brief, which incorporates and supersedes their prior brief, and which is offered in support
8 of Publishers’ preliminary injunction motion filed in this Court on August 1, 2024 (ECF No. 179,
9 *et seq.*).

10 **PRELIMINARY STATEMENT**

11 AI programs that generate text and other media depend on the copying, on a massive scale, of
12 existing works, which are then used to generate other works that substitute for and compete with the
13 works that were copied. Many of those copied works are under copyright, including Publishers’
14 protected lyrics, as well as works by many of *Amici’s* constituents. Copying such copyrighted works
15 without permission is illegal.

16 Recognizing that the law requires them to obtain such permission, many companies in the AI
17 field have obtained licenses to use copyrighted content for AI model training and other purposes. These
18 companies are willing and able to comply with the law as they develop generative AI software. But
19 not Anthropic. In order to obtain an advantage over its competitors, Anthropic has refused to license
20 or compensate the authors and owners of the highly creative, copyrighted works that it copies and uses
21 to generate competing works. Anthropic has argued this is a “fair use.” It is not.

22 *Amici* respectfully submit this brief to offer the Court context concerning, *inter alia*, the
23 licensing marketplace that reveals the hollowness of Anthropic’s arguments, including its arguments
24 that technological novelty and the inconvenience of licensing excuse its infringement. These are the
25 same tired (and rejected) arguments made by others who have used technology to infringe creative
26 works on a massive scale.

27 AI can reach its full potential and respect the rights of creators at the same time. The arguments
28 that no one in the AI field, including Anthropic, can or should have to license copyrighted works before

1 copying and exploiting them are a pretense belied by industry practice and well-established legal
 2 principles. Anthropic’s infringement is harming copyright owners such as those represented by *Amici*,
 3 and their licensees, and if unchecked that harm will be irreparable.

4 ARGUMENT

5 **I. ACCEPTING AI TECHNOLOGY’S BENEFITS DOES NOT** 6 **REQUIRE ABANDONING COPYRIGHT LAW PRINCIPLES.**

7 Copyright law, “the engine of free expression,” incentivizes and advances individual creativity
 8 and the public interest in the creation and distribution of new expressive works. *See Harper & Row,*
 9 *Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985). To do so, the Copyright Act requires that
 10 those who wish to use such works obtain necessary authorizations, usually in the form of licenses that
 11 compensate the author or owner, prior to exploiting the works.

12 These principles have coexisted with technological progress for well over a hundred years.
 13 Anthropic has, however, contended that its product, which concededly copies protected works on a
 14 massive scale, should be exempt from complying with copyright law. (ECF No. 67 (“Def. Br.”) at 28
 15 (arguing compliance would “subvert the public interest by hampering access” to AI.) Anthropic and
 16 COP have touted the potential of AI technology and suggested that an injunction against infringers
 17 such as Anthropic would supposedly threaten technological progress. (*See id.*; Putative *Amici Curiae*
 18 Brief of Chamber of Progress and NetChoice, LLC, ECF Doc. 75-1 (“COP Br.”) at 3-10.)

19 These are scare-tactic arguments. Publishers’ Motion (and this case) is not a referendum on
 20 the technology or the field of generative AI. Rather, it concerns only the particular acts – the unlicensed
 21 reproduction and distribution of lyrics to musical works – by one party, Anthropic. Enjoining
 22 Anthropic from copying the lyrics to Don McLean’s “American Pie” will not hamper the development
 23 of technology that may someday help mitigate climate change or bring about a medical breakthrough.
 24 (*See id.*) The choice presented by Anthropic and COP between realizing the benefits of technology
 25 and enforcing copyright law is a false one. Technology companies, like all others, must follow the law.

26 **A. Anthropic Must License The Copyrighted Works** 27 **That It Uses, Like Its Competitors Do.**

28 Anthropic’s defense has been that supposedly AI technology is too important, and licensing is

1 too difficult, to require Anthropic to comply with the law. (*E.g.*, Def. Br. at 6-7, 26.) This argument
 2 is meritless. There is no such thing as “fair use by reason of necessity.” *See, e.g., Basic Books, Inc. v.*
 3 *Kinko’s Graphics Corp.*, 758 F. Supp. 1522, 1535 (S.D.N.Y. 1991) (rejecting fair use argument that
 4 requiring licenses to reproduce excerpts of books in course packs would “halt the educational process”).
 5 And Anthropic ignores that many of its competitors *are* obtaining licenses.

6 For example, Adobe has stated a commitment to training its Firefly AI model solely on licensed
 7 and public domain content.⁴ NVIDIA has partnered with Getty Images to develop fully licensed
 8 generative AI models.⁵ Google has entered into a license with Reddit to use text on Reddit for training
 9 Google’s AI models.⁶ YouTube is seeking to license songs to use to train its music-generating AI
 10 products.⁷ OpenAI, while seemingly having trained on some unlicensed data, nonetheless has entered
 11 into licensing deals with the Associated Press, Vox Media, News Corp, Dotdash Meredith, Time, The
 12 Atlantic, Financial Times, Le Monde, Prisa Media, Axel Springer, Reddit, and Shutterstock.⁸

13 These examples belie Anthropic’s claim that its purported need to copy millions of works
 14 renders compliance impossible. So too does technology companies’ licensing of copyrighted works in
 15 similar contexts. In music streaming, on-demand services including Spotify and Apple Music have

17 ⁴ *Adobe Firefly*, ADOBE, <https://www.adobe.com/products/firefly.html>.

18 ⁵ *Moving Pictures: NVIDIA, Getty Images Collaborate on Generative AI*, NVIDIA (Mar. 21, 2023)
 19 <https://blogs.nvidia.com/blog/generative-ai-getty-images/>.

20 ⁶ Anna Tong, Echo Wang, Martin Coulter, *Exclusive: Reddit in AI content licensing deal with Google*,
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 28 deal with OpenAI* (May 7, 2024); TIME, *TIME and OpenAI Announce Strategic Content Partnership*
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 (Mar. 14, 2024); Helen Coster, *Global news publisher Axel Springer partners with OpenAI in landmark
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 (May 16, 2024); Press Release, SHUTTERSTOCK, *Shutterstock Expands Partnership with OpenAI, Signs
 New Six-Year Agreement to Provide High-Quality Training Data* (July 11, 2023).

1 negotiated and entered into licenses for tens of millions of sound recordings.⁹ Audiovisual services
 2 such as YouTube, and fitness services like Peloton, have licensed millions of recordings and songs.¹⁰
 3 Lyrics services have likewise licensed the lyrics to millions of songs – the very same works that
 4 Anthropic used but chose not to license – a fact that was admitted by Anthropic’s own witness.¹¹

5 Anthropic’s refusal to comply with copyright law is thus not representative of all of its
 6 competitors’ practices, and so compelling Anthropic to cease infringing Publishers’ copyrights does
 7 not threaten non-infringing competitors. To the contrary, an injunction will help level the playing field
 8 for Anthropic’s competitors that pay for copyrighted content that Anthropic takes for free, and
 9 encourage AI development in a sustainable manner. And while Anthropic has previously admitted that
 10 its concern is that, by having to pay to use copyrighted works, it may lose the competitive “advantage”
 11 it currently enjoys (Hall Decl. ¶ 68), courts do not dignify the argument that a defendant should be
 12 allowed to continue infringing because ceasing such practices would harm its business interests. *See,*
 13 *e.g., Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 829 (9th Cir. 1997), *cert. denied*, 523
 14 U.S. 1118 (1998); *BGC Inc. v. Robinson*, No. 22-cv-01582-JSW, 2022 WL 2915703, at *5 (N.D. Cal.
 15 July 25, 2022); *2Die4Kourt v. Hillair Cap. Mgmt., LLC*, 692 F. App’x 366, 369 (9th Cir. 2017).

16 Moreover, to be clear, Anthropic cannot plausibly claim that it lacks the means to license the
 17 creative content on which its technology depends. It is a highly capitalized venture funded by some of
 18 the largest companies in the world – including Google and Amazon, two trillion-dollar companies that
 19 are themselves significant players in the AI space.¹² Anthropic itself is valued in the tens of billions

20 _____
 21 ⁹ *See, e.g.,* Tim Ingham, *Spotify and Warner Music Group Agree New Global Licensing Deal*, MUSIC
 22 BUSINESS WORLDWIDE (Apr. 1, 2020); *Apple Music strikes new multiyear deals with major record
 labels*, FINANCIAL TIMES (Mar. 12, 2020).

23 ¹⁰ *Music Rights Management on YouTube*, YouTube,
 24 <https://support.google.com/youtube/answer/7071269>; *Music in the Air*, GOLDMAN SACHS (June 13,
 2022), at 32, [https://www.goldmansachs.com/intelligence/pages/gs-research/music-in-the-
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25 ¹¹ (Declaration of Dawn R. Hall, ECF Doc. 67-17 (“Hall Decl.”), ¶ 41.) *See also MusicXMatch for
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 LyricFind*, LYRICFIND, <https://www.lyricfind.com/publishing>.

26 ¹² Ingrid Lunden, *Anthropic is expanding to Europe and raising more money*, TECHCRUNCH
 27 (May 13, 2024) (Lunden) (identifying Amazon, Google, Salesforce, SAP and Zoom as among
 28 “Anthropic’s list of nearly 60 current investors”); *Amazon and Anthropic announce strategic
 collaboration to advance generative AI*, AMAZON (Sept. 25, 2023),

1 of dollars.¹³ There is no reason why Anthropic cannot pay the authors and owners of the works that it
 2 uses, and no public policy reason to create legal immunities for such a company. *Cf. Andy Warhol*
 3 *Found. for the Visual Arts, Inc. v. Goldsmith* (“*Warhol*”), 143 S. Ct. 1258, 1286 (2023) (“It will not
 4 impoverish our world to require AWF to pay Goldsmith a fraction of the proceeds from its reuse of her
 5 copyrighted work.”).

6 **B. Requiring Anthropic to License the Copyrighted Works**

7 **That It Uses Will Not Stifle Technological Progress.**

8 Anthropic is also incorrect to portray copyright law as a supposed obstacle to innovation. In
 9 fact, copyright is responsible for incentivizing creative expression to society’s great benefit, and
 10 serving as a key driver for the American culture and economy.

11 The false choice that Anthropic and COP have presented between compliance with copyright
 12 law and technological progress is a well-worn, losing policy argument previously made by other mass
 13 infringers such as Napster and Grokster in their heyday. Anthropic and COP even employ the same
 14 rhetoric as those pirate sites. *Compare, e.g.,* Opposition of Defendant Napster, Inc. to Plaintiffs’
 15 Motion for Preliminary Injunction in *A&M Recs., Inc. v. Napster, Inc.*, Nos. C 99-5183 MHP (ADR),
 16 C 00-0074 MHP (ADR), 2000 WL 34016494 (N.D. Cal. July 26, 2000) (contending that Napster’s
 17 file-sharing service “has ignited a revolution” and that “extend[ing] judicially copyright protection
 18 [would] stifle a new technology”) *with* Def. Br. at 1, 28 (contending AI is “revolutionary” and that an
 19 injunction would “hamper[] access to this highly useful, general-purpose technology”) & COP Br. at 1
 20 (arguing that an injunction “would stifle the promise and potential of this new technology”). *Compare*
 21 *also, e.g.,* Brief for Respondents in *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, No. 04-480,
 22 2005 WL 508120 (U.S.), at *8 (Mar. 1, 2005) (“[P]eer-to-peer file-sharing software has obvious
 23 benefits.... Condemning its distribution as unlawful ... would cause real social harm.”) (internal
 24 citation omitted), *with* Def. Br. at 1, 3 (touting the “innumerable legitimate uses” and “applications” of

25 <https://www.aboutamazon.com/news/company-news/amazon-aws-anthropic-ai>; *Google Invests In*
 26 *Anthropic For \$2 Billion As AI Race Heats Up*, FORBES (Oct. 31, 2023); *Alphabet A (Ex Google)*,
 27 MARKETS INSIDER, <https://markets.businessinsider.com/stocks/googl-stock>; *Amazon*,
 28 MARKETS INSIDER, <https://markets.businessinsider.com/stocks/amzn-stock>.

¹³ Lunden; *see also* Marlize van Romburgh, *Anthropic Reportedly In Talks To Raise \$750M At \$18B-Plus Valuation*, CRUNCHBASE NEWS (Dec. 21, 2023) (“Romburgh”).

1 Anthropic’s tool and of AI more generally that could supposedly be lost through an injunction), COP
2 Br. at 14 (arguing an injunction would “deprive the public of generative AI’s substantial benefits”).

3 In the file sharing cases, the courts (including the Supreme Court) rightfully rejected those
4 arguments; indeed, in *Napster* this Court granted a preliminary injunction to the plaintiffs. *A&M Recs.,*
5 *Inc. v. Napster, Inc.*, 114 F. Supp. 2d 896, 911-25 (N.D. Cal. 2000), *affirmed in part, reversed in part,*
6 *and remanded for modification of injunction* by 239 F.3d 1004 (9th Cir. 2001); *MGM Studios Inc. v.*
7 *Grokster, Ltd.*, 545 U.S. 913 (2005); *Basic Books*, 758 F. Supp. at 1535. Far from stifling growth,
8 prohibiting bad actors from engaging in illegal practices while file downloading technology developed
9 helped the responsible, licensed business models employing that technology to flourish – such as
10 Apple’s iTunes store, which paid for the content it offered.¹⁴

11 Anthropic’s suggestion that a Court decision enforcing well-established copyright principles
12 and requiring it to license the copyrighted works that it copies would jeopardize its operations is also
13 belied by the market response to this lawsuit. In October 2023, one week after this case was filed,
14 Google reportedly agreed to invest up to \$2 billion in Anthropic, on top of the \$4 billion Amazon had
15 already committed to invest. In December, Anthropic was engaged in yet another funding round.
16 Anthropic reportedly “more than triple[d] its valuation” over the course of 2023, reaching \$15 billion
17 in value in December 2023, the month *after* Publishers filed their original preliminary injunction
18 motion in Tennessee.¹⁵ By early 2024, Anthropic had reportedly raised \$8 billion, at an \$18.4 billion
19 valuation.¹⁶

23
24 ¹⁴ Jeff Goodell, *Steve Jobs: Rolling Stone’s 2003 Interview*, ROLLING STONE (Oct. 6, 2011) (quoting
25 Steve Jobs: “If copyright dies, if patents die, if the protection of intellectual property is eroded, then
26 people will stop investing. That hurts everyone. . . . It is corrosive to one’s character to steal. We
27 want to provide a legal alternative.”).

26 ¹⁵ Berber Jin, Miles Kruppa, *Google Commits \$2 Billion in Funding to AI Startup Anthropic*, WALL
27 STREET JOURNAL (Oct. 27, 2023); Tom Dotan, Berber Jin, Deepa Seetharaman, *Amazon to Invest Up*
28 *to \$4 Billion in Anthropic as AI Arms Race Escalates*, WALL STREET JOURNAL (Sept. 25, 2023);
Romburgh.

¹⁶ See Lunden.

1 **II. A PRELIMINARY INJUNCTION AGAINST ANTHROPIC IS APPROPRIATE**

2 *Amici* and their members have a significant interest in this Court applying well-settled copyright
3 principles to undisputed facts on this Motion, particularly where the infringement is on a massive scale.

4 **A. The Motion Entails Applying Well-Established**
5 **Copyright Principles to Admitted Facts.**

6 Anthropic previously admitted many facts that are fundamental to the Motion. It admitted its
7 AI platform is capable of generating reproductions or derivative works of copyrighted material, and
8 that its platform did so in the case of Publishers’ lyrics. (*See* Def. Br. at 7.) It did not deny that it
9 trained its AI model on Publishers’ lyrics. (Declaration of Jared Kaplan, ECF No. 67-1 (“Kaplan
10 Decl.”), ¶ 21 (acknowledging Anthropic may have done so via, *inter alia*, the Common Crawl
11 dataset).¹⁷ It has not claimed to have obtained a single license to undertake any copying.

12 Anthropic further admitted that it, not its users or another third party, trained its AI models, and
13 that it can exercise direct control over its platform’s output. (*See, e.g.*, Kaplan Decl. ¶ 21; Def. Br.
14 at 7.)¹⁸ Companies like Anthropic whose technology plays an active role in infringing are directly
15 liable just the same as if their flesh-and-blood employees performed such actions. *Cook v. Meta*
16 *Platforms Inc.*, No. 4:22-CV-02485-YGR, 2023 WL 6370891, at *4-5 (N.D. Cal. Jan. 4, 2023)
17 (rejecting Facebook’s claim that targeted advertising on its platform is non-volitional where Facebook
18 made user data available, monitored ads, and could change target audiences); *Stross v. Meta Platforms,*
19 *Inc.*, No. 2:21-CV-08023-MCS-AS, 2022 WL 1843129, at *3 (C.D. Cal. Apr. 6, 2022) (“There is no
20 basis in the law to conclude that active management of a website, which would constitute volitional
21 conduct if performed by a human, fails to meet that element because an algorithm designed by a human
22 engineer manages the website instead.”).

23 Although Anthropic has argued its model does not “store” copyrighted works, that is a red
24 herring. (*See* Def. Br. at 6, 15-16.) Publishers need not demonstrate storage in order to prevail on

25 ¹⁷ Anthropic has not offered any theory for how its large language model, Claude, is able to include
26 Publishers’ lyrics in its output other than by having previously been trained on those lyrics.

27 ¹⁸ Anthropic has claimed that the “mix” of content on which it has trained Claude is “*proprietary*” to
28 *it*. (*Id.* ¶ 22.) Not only is it audacious for Anthropic to claim a proprietary interest in content it argues
the content’s own creators have no right to protect, but its claim to an interest in its selection further
demonstrates volitional conduct and an ability to cease training on particular content.

1 claims of copying and distribution. That representation is also dubious. If Claude does not “store” the
2 lyrics to “American Pie,” for example, it would not be able to reproduce those lyrics in response to the
3 query, “Write me a song about the death of Buddy Holly.” (Complaint ¶ 73.)

4 What Anthropic is doing is also not “fair use” as it has claimed. (*See* Def. Br. at 22-27.) With
5 respect to the first fair use factor, Anthropic’s use is for a commercial purpose. By copying and
6 displaying lyrics on its own platform (rather than directing users to view the lyrics on licensed third-
7 party sites), Anthropic usurps those lyrics’ commercial value to both the licensed third-party sites and
8 to their copyright owners (whose ability to license and collect royalties from such sites is diminished).
9 *See Harper & Row Publishers*, 471 U.S. at 562 (“The crux of the [first factor’s] profit/nonprofit
10 distinction is not whether the sole motive of the use is monetary gain but whether the user stands to
11 profit from exploitation of the copyrighted material without paying the customary price.”). Anthropic
12 stands to profit from exploiting the very same lyrics it scrapes from websites that license those lyrics.
13 *See, e.g., Warhol*, 143 S. Ct. at 1274-80 (“[T]he first factor relates to the problem of substitution—
14 copyright’s *bête noire*. . . . If the secondary use “is of a commercial nature,” that “tends to weigh
15 against a finding of fair use.”).

16 Anthropic’s use of the lyrics is decidedly not “transformative.” Anthropic has not transformed
17 the lyrics themselves – it copied them verbatim in training, and copied them again in response to queries.
18 *See, e.g., Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 455 (9th Cir. 2020), *cert. denied*,
19 141 S. Ct. 2803 (2021) (defendant’s mere “repackaging, copying, and lack of critique of [the plaintiff’s
20 copyright works], coupled with its commercial use of [same], do not result in a transformative use”);
21 *Associated Press v. Meltwater U.S. Holdings, Inc.*, 931 F. Supp. 2d 537, 552-61 (S.D.N.Y. 2013)
22 (program that scraped news articles on the web and provided excerpts of same to end users was not
23 transformative nor a fair use). Nor is converting lyrics into “tokens” and then converting them back
24 into lyrics in response to queries a transformative use. *Napster, Inc.*, 239 F.3d at 1015 (“Courts have
25 been reluctant to find fair use when an original work is merely retransmitted in a different medium.”).

26 Anthropic’s purpose is also not “transformative.” It copies copyrighted content to provide that
27 content, or derivatives thereof, to its users. It wants to be the destination for getting any type of written
28

1 content, on demand.¹⁹ “The use of an original work to achieve a purpose that is the same as, or highly
 2 similar to, that of the original work is more likely to substitute for, or supplan[t], the work,” which
 3 “weigh[s] against a finding of fair use.” *Warhol*, 143 S. Ct. at 1274, 1280.²⁰

4 The other fair use factors also weigh heavily in favor of Publishers. Their works are expressive
 5 and creative (factor two), and they are copied in their entirety by Anthropic in its training and also
 6 verbatim or nearly so in Anthropic’s output (factor three). As for potential market harm (factor four),
 7 where the harm is to a licensing market, as Anthropic acknowledges, courts consider whether a
 8 licensing market exists or is likely to be developed. (*See* Def. Br. at 26.) As discussed *supra*, such a
 9 market already exists for training AI models, and its continued development must not be impeded by
 10 free riders. And music publishers and songwriters also license lyrics sites in exchange for royalties. If
 11 lyrics can be obtained from Anthropic, there will be no need for its users to go to those licensed sites,
 12 hindering copyright owners’ efforts to license in the future.²¹

13 **B. The Public Interest Is Best Served By Granting Publishers’ Motion.**

14 Any further delay in enjoining Anthropic’s misconduct may lead to its infringing models
 15 becoming ever more entrenched in our society, to the detriment of copyright owners as well as
 16 Anthropic’s competitors that pay to license the works for their AI platforms. If Anthropic is not
 17 enjoined immediately, it may be too late for AI models that avoided training on copyrighted works or

18 ¹⁹ *See Press Release, Introducing Claude*, ANTHROPIC (Mar. 14, 2023),
 19 <https://www.anthropic.com/news/introducing-claude> (“Claude can help with . . . summarization,
 20 search, creative and collaborative writing, Q&A, coding, and more.”); *Meet Claude*, ANTHROPIC,
 21 <https://www.anthropic.com/product> (“Claude has extensive general knowledge honed from its vast
 22 training corpus, with detailed background on technical, scientific, and cultural knowledge.”); *Claude*
 23 *Android app*, ANTHROPIC (July 16, 2024) (“Whether you’re drafting a business proposal between
 24 meetings, translating menus while traveling, brainstorming gift ideas while shopping, or composing a
 25 speech while waiting for a flight, Claude is ready to assist you.”).

23 ²⁰ In this respect, Anthropic’s copying of lyrics in training its model would not be fair use even if it did
 24 not (as the facts show) result in output that consists of verbatim or near-verbatim copies of lyrics, or
 25 derivatives thereof, but rather, new lyrics that compete with the originals. *See id.*

25 ²¹ Anthropic and COP previously pointed to other AI cases filed by different plaintiffs against different
 26 defendants with different facts to argue that Publishers are not entitled to an injunction. (Def. Br. at
 27 20-21; COP Br. at 13-14.) Many of those cases are class action lawsuits not conducive to preliminary
 28 adjudication and many have been bogged down by the defendants through motion practice. While
 Anthropic has claimed that the plaintiffs in certain of those actions purport to represent Publishers (Def.
 Br. at 2), Publishers did not bring those actions and are not bound by positions taken therein. The
 issues here are ripe for preliminary adjudication regardless of the posture and issues in other cases.

1 licensed such uses to “catch up.” Indeed, this appears to be Anthropic’s admitted strategy.²²

2 At the same time, copyright owners will suffer enormous damage from Anthropic’s ongoing
3 infringement. The full extent of such damage is incalculable, but very real. Anthropic’s infringement
4 imperils the fundamental manner by which content creators are compensated. By seeking to become
5 the destination for users to access (unlicensed) copies of copyrighted content, Anthropic unfairly
6 competes with and usurps those who pay copyright owners for the right to use protected content.

7 Development of AI cannot come at the cost of harming creators, rightsholders, or their licensees.
8 U.S. copyright industries contributed nearly \$3 trillion to GDP in 2021 and employed over 15 million
9 workers.²³ Protecting copyrights is also a Constitutional mandate, one that incentivizes the creation
10 and licensed dissemination of new works, with immense attendant public benefits. The Copyright Act
11 balances those benefits with the interests of those seeking to develop new technologies. Enforcing the
12 Copyright Act against Anthropic is necessary to ensure that the owners of copyrighted content do not
13 become casualties of the technology industry’s relentless pursuit of profits under the guise of so-called
14 “progress.”

15 **CONCLUSION**

16 For the foregoing reasons, *Amici* respectfully request that the Motion be granted.

17
18 Dated: August 5, 2024

Respectfully submitted,
PRYOR CASHMAN LLP

19
20 *s/ Benjamin S. Akley*

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26 ²² (Hall Decl. ¶ 67 (“particularly [for] AI, the importance of entering the market early is of utmost
27 importance, with all major technology companies clamoring to create a niche for themselves with
enhanced products and new product offerings, while the late entrants try to play catch-up.”).)

28 ²³ Robert Stoner et al., *Copyright Industries in the U.S. Economy, 2022 Report*, IIPA, at 8,
https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022_Interactive_12-12-2022-1.pdf.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send Notices of Electronic Filing to all counsel of record.

s/ Benjamin S. Akley

Benjamin S. Akley