UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Lisa J. Cisneros, Magistrate Judge

ANDERSEN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. C 23-00201-WHO
	)	
STABILITY AI LTD.,	)	
	)	
Defendants.	)	
_____	)	

San Francisco, California
Tuesday, September 16, 2025

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND RECORDING 1:40 - 1:56 = 16 MINUTES

APPEARANCES:

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

For Midjourney Inc.:

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Tuesday, September 16, 2025 1:40 p.m.

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(Call to order of the Court.)

THE CLERK: We are calling civil matter 23-CV-00201, Andersen v. Stability AI Ltd., et al.

Counsel, please state your appearance for the record, beginning with Plaintiff.

MR. SAVERI (via Zoom): Good afternoon, your Honor. Joseph Saveri for the Plaintiffs.

THE COURT: Good afternoon.

MR. GRATZ (via Zoom): Good afternoon, your Honor. I don't know if -- is that -- is that it for Plaintiffs? I don't want to jump in.

THE COURT: Yes.

MR. SAVERI: No.

THE COURT: No.

MR. SAVERI: Mr. Creutz is appearing as well. He's going to be handling the hearing. I think he's on mute.

MR. CREUTZ (via Zoom): Apologies. Good afternoon, your Honor. Evan Creutz for Plaintiffs.

THE COURT: Good afternoon.

MR. GRATZ: Good afternoon, your Honor. Joe Gratz for Defendants Stability AI.

THE COURT: Okay. Good afternoon.

MR. MALHOTRA (via Zoom): Good afternoon, your Honor. Paven Malhotra, on behalf of Defendant Runway from the law firm, Keker Van Nest and Peters.

THE COURT: Good afternoon.

MR. MALHOTRA: Good afternoon.

MS. DUNNING (via Zoom): Good afternoon, your Honor. Angela Dunning from Cleary for Defendant Midjourney. With me is my colleague Sam Blankenship, who will handle any arguments for Midjourney. Thank you.

THE COURT: Okay.

MS. LOVEJOY (via Zoom): And Britt Lovejoy of Latham and Watkins for Defendant Deviant Art.

THE COURT: Okay. Good afternoon.

All right. I have your joint status report that you all prepared a few days ago and submitted and I had a chance to look that over and, we have a -- I mean, I think a principle concern, we have an upcoming substantial completion deadline of October 3rd, 2024. One thing though, in terms of managing discovery, I don't think there was necessarily a specific target that was articulated, either between the parties or with the Court or ordered by me, as far as what exactly needed to be completed by October 3rd. But I think generally that milestone was set, kind of as an interim deadline, with an eye towards making sure that we're

on track to complete discovery by March 13th, 2024 -- excuse me 2026.

So, it was helpful to get the detailed update, as far as where the Plaintiffs are at with each of the Defendants. I think overall my takeaway though is that there is still quite a lot of document discovery that will happen -- need to happen after October 3rd, though some progress has been made. But I'm starting to get a little bit concerned about how long it will take to actually complete all of the discovery that's necessary by March.

And, so, what I was thinking of doing today was setting some deadlines for at least the disputes that have been surfaced, or seem to be percolating, to get those either resolved by way of agreement between the relevant parties or teed up in a discovery letter and presented to me so that I can resolve those disputes, like, such as, the custodians. And so that seems to me like the low-hanging fruit, like, let's just figure that out, either by way of negotiated agreement or bring it to me and I will look at the issues and resolve it.

So, as kind of an initial matter, I wanted you all to kind of identify what, if any -- you know, which of the disputes that have been referenced here would make sense, as far as setting a deadline perhaps two weeks out, for you all to finish the meet and confer process on it and then perhaps

a week thereafter file the letter if it's not resolved by that date.

So, you know, I -- between Plaintiffs and Midjourney, for example, there were -- are two proposed custodians, but there isn't necessarily an agreement yet on those two disputed custodians. And, then, for Deviant Art, there's one custodian. So that, to me, should be -- you know the meet and confer should be completed and the -- and if it's not resolved by way of agreement, a discovery letter filed by October 1.

Are there other types of disputes along this line where you think that we should -- it would make sense to have a deadline of October 1 to focus the parties' attention and get those issues resolved so we can really move forward with discovery?

MR. MALHOTRA: Your Honor, on behalf of the Defendants -- there's a couple of interrogatory responses that we are waiting for the Plaintiffs to supplement. That's rog three and rog seven. They have agreed to supplement but haven't provided a date certain for doing so. So we would request, if your Honor would indulge us is, setting a date for the supplemental response and, you know, if there's disputes following that, then we could also tee that up in this process.

THE COURT: Okay. Yeah, I saw that in the joint

status report. I wanted to hear from Plaintiffs their perspective on it. I don't know if these interrogatories are like contention interrogatories, which tend to get resolved later in the discovery process, but let's hear from Mr. Creutz. I'm sorry if I mispronounced your name.

MR. CREUTZ: Thank you, your Honor. Evan Creutz for Plaintiffs.

We -- we are working diligently to complete those amended or supplemental responses. We had intended to do so this week, which is what we had communicated to Defendants. So that continues to be our intention.

THE COURT: So this week by Friday you'll --

MR. CREUTZ: Yes.

THE COURT: -- submit --

MR. CREUTZ: Yes, your Honor.

THE COURT: Okay. So September 19th is when I'm ordering the deadline for the supplemental interrogatory responses. Okay.

Are there any other --

MR. CREUTZ: There's -- your Honor --

THE COURT: For example, there was a format in which some of this training data is presented.

MR. CREUTZ: Yes. So there is a lingering dispute with Stability regarding format of production of training data. Stability produced in an Amazon S3 bucket, and we had

requested that they do so on hard drive. So I think there perhaps there is still some room for discussion there, but aside from that, Plaintiffs are also exploring alternatives that would allow us to proceed without seeking court intervention. We're hopeful we can find an alternative like that, so we're working on that right now.

THE COURT: Okay. Does Stability AI want to respond to that?

MR. GRATZ: Happy to, your Honor. We have been in communication with the Plaintiffs on this question. They in fact had a question just sort of in the last week saying, "Hey, we looked at the material and we couldn't find this file and was that file supposed to be there?" And we explained to them that file was not supposed to be there. And so it seems like things are -- we had thought things were sort of moving forward there. So, happy to talk about anything else that the Plaintiffs want to talk about about that though.

MR. CREUTZ: Your Honor, Evan Creutz again.

We are moving forward. It has been -- on August 29th Judge Orrick issued his order granting Defendants' request that Doctor Zhao (phonetic), our proposed machine learning expert, not be allowed access to AEO, or highly confidential materials, in that order. He recognized that it was going to be a set back for Plaintiffs and it might ultimately

require some relief in the schedule. Plaintiffs aren't there yet, with what -- we think we need relief, but we're working extremely hard to try and find a replacement expert. It has slowed things up a little bit for us, because the expert is who we will be relying on to analyze training data, analyze source code and help us understand, you know, what other additional discovery we might need as a result of that.

In the course of our search, we have -- it's a very difficult search because it's a very small pool of individuals who have this expertise. And within that pool, many of them have prior histories with Defendants, or Defendants' competitors, that make it so they're not suitable experts for this case. Also, in some cases people are just unavailable or unwilling. We found two individuals that can help us with some preliminary analysis. Unfortunately, they're not going to act as testifying experts for us, but they are helping us stay moving on this issue while we secure a -- our training data expert -- or, I'm sorry, machine running expert.

THE COURT: Okay. Well, thank you for that update. I did see some of those developments on the docket.

In terms of moving the discovery forward though, I wanted to hear from the parties what other, like, interim deadline should be set here to -- I mean, there's quite a

lot of production that still needs to happen. Maybe -- certainly on Stability AI's side. There was very few commitments, as far as completing production before October 3rd. So, is it that you need some sort of extension or -- I can hold the reins -- hold the reins more tightly on this process, if it's not moving forward sufficiently.

So, what do you have to say about that Mr. Gratz?

MR. GRATZ: Certainly, your Honor. So, with respect to, in particular, the production of custodial documents, it's moving along, but it is not -- I mean, there's -- it is not moving along at a rate that will complete it by October 3rd, largely because we sort of -- there was an almost two month delay between us proposing search terms and us receiving the Plaintiffs' response to the search terms, which may have been an avoidable delay, but that -- we didn't -- we -- you know, the meet and confer has not sort of proceeded in -- did not proceed in earnest until fairly recently.

So, while we are not -- while we are not like in a position to finish this by October, we are -- we don't think that the ultimately fact discovery date is in jeopardy. And it may be that an interim date to address and resolve and disputes about custodians and search terms may sort of get that on track. Whether the search term -- whether all custodian and search term meet and confer can get done to

like tee this up in two weeks, like, maybe it can, but I'm not sure it can.

That's -- so that's the update from our end, your Honor. I know that's -- that's not -- perhaps not 100-percent satisfying.

THE COURT: All right. So, well we definitely need to have another discovery status conference in November and then in the interim, what I would like to know and get a status report in October, a month from now, about whether or not all of the Defendants, across all Defendants we have, the custodians resolved. It seems like mostly they are, but if there's any outstanding disputes, I think particularly on Stability AI's response with respect to search terms, I want to know that by mid-October, so then I'll set a deadline and -- but, to understand the scope of what remains unresolved, I'll need to know that from the status report.

So, there should be a status report that's filed by October 16th that addresses any outstanding unresolved issues related to custodians or search terms, either on the Defendants' side -- I mean, this is principally a concern for producing -- Defendants that are producing in response to Plaintiffs' requests.

And then -- and then our next discovery status conference will be --

THE CLERK: You have no -- oh, I'm sorry, your

Honor.

THE COURT: What did you want to say?

THE CLERK: I didn't know if you wanted to do November 18th, so it would be almost a month -- two months from now and a month after you want the status report.

THE COURT: I was thinking sooner on the 11th, but we can do November 18th.

THE CLERK: I only said that just because November 11th is Veterans Day.

THE COURT: Okay. I thought it was the 10th. So -- okay. November 18th and then just submit a joint discovery report on November 11th.

Before we finish up today though, are there any other concerns that the parties want to raise about how discovery is moving along? Or any specific suggestions or milestones that we can set or interim deadlines?

MR. MALHOTRA: Nothing from Runway at the moment, your Honor.

THE COURT: Okay.

MR. GRATZ: Nothing further from Stability.

THE COURT: Okay.

MS. LOVEJOY: Nothing from Deviant Art.

MS. DUNNING: And I'll -- ditto for Midjourney, your Honor. Thank you.

THE COURT: Okay.

MR. CREUTZ: And I'll echo that for Plaintiffs, your Honor.

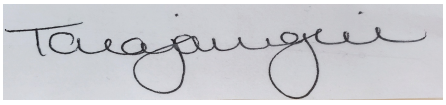
THE COURT: Okay. All right. Well, with that, then we're -- we're done for the day. And you'll see a minute order that reflects these deadlines that I've said.

(Proceedings adjourned at 1:56 p.m.)

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I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



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Monday, October 5, 2025