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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CONCORD MUSIC GROUP, INC. et al,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case No.: 5:24-cv-03811-EKL

NOTICE OF MOTION AND MOTION BY CHAMBER OF PROGRESS AND NETCHOICE, LLC FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Before: Hon. Eumi K. Lee

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 7 and Local Rule 7-1, Chamber of Progress and NetChoice ("*Amici*") respectfully move the Court for leave to file the attached brief (Exhibit A) as *amici curiae* in opposition to Plaintiffs' Motion for Preliminary Injunction (ECF No. 179). Counsel for *Amici* conferred with counsel for the parties regarding this motion. Defendant consents to the filing of the proposed amicus brief. Plaintiffs do not object to the filing of the proposed amicus brief.[1]

INTRODUCTION AND INTERESTS OF AMICI CURIAE

Chamber of Progress is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that will build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect Internet freedom and free speech, to promote innovation and economic growth, and to empower technology customers and users. Many of Chamber of Progress' partners currently use, develop, and provide generative AI products and services.[2]

NetChoice is a national trade association of online businesses that works to protect free expression and promote free enterprise online. NetChoice's members rank among the world's most innovative companies, including Meta, Amazon, Etsy, Google, Pinterest, Netflix, Nextdoor, Snap, and X (formerly known as Twitter). *See* NetChoice, Association Members, https://netchoice.org/about/#association-members. NetChoice advocates for free speech and a competitive online ecosystem by challenging laws that subject online businesses to disfavored treatment, and by filing *amicus curiae* briefs in cases that, like this one, could shape the way

[1] Given that *Amici*'s motion is unopposed, *Amici* have not noticed the motion for a hearing date. But if the Court so directs, *Amici* would be happy to notice this motion for a separate hearing and/or appear at the hearing on Plaintiffs' Motion for Preliminary Injunction.

[2] Chamber of Progress's partners include Airbnb, Amazon, Apple, Automattic, Byte, Chime, Circle, CLEAR, Coinbase, Cruise, DailyPay, DoorDash, Earnin, Filecoin Foundation, Google, Grayscale, Grubhub, Instacart, Intuit, Klarna, Kraken, Lyft, Meta, Midjourney, Paradigm, Pindrop, Ripple, StubHub, Turo, Uber, Vivid Seats, Waymo, and Zoox.

businesses operate and innovate on the internet. Many of NetChoice's members currently use, develop, and provide generative AI products and services.

Amici represent a broad set of stakeholders and offer distinct and useful perspectives on litigation involving technology. They regularly file amicus briefs, submit public comments, and publish reports and articles on issues involving artificial intelligence and copyright. *E.g.*, Carl Szabo, *AI Innovation Is Headed Toward A Litigation Iceberg* (Jan. 2, 2024), https://netchoice.org/how-lawsuits-could-destroy-ai-innovation-in-2024/; *Comments of Chamber of Progress in the Matter of Artificial Intelligence and Copyright*, U.S. Copyright Office Dkt. No. 2023-6 (Oct. 30, 2023), https://downloads.regulations.gov/COLC-2023-0006-8583/attachment_1.pdf; James X. Dempsey, *Generative AI: The Security and Privacy Risks of Large Language Models* (April 2023), https://netchoice.org/generative-aithe-security-and-privacy-risks-of-large-language-models/.

Amici previously sought leave to file an amicus brief in opposition to Plaintiffs' motion for a preliminary injunction when this case was pending in the Middle District of Tennessee. *See* ECF No. 75. *Amici*'s motion was pending when this case was transferred. In light of the case's transfer and the renewed briefing on Plaintiffs' motion, *Amici* respectfully request leave to submit the attached brief in support of Defendant's opposition to Plaintiffs' motion for a preliminary injunction, which incorporates and supersedes their prior brief.

ARGUMENT

"The district court has broad discretion to appoint *amici curiae*," *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), and generally courts have exercised "great liberality" in permitting *amicus* briefs. *California v. U.S. Dep't of the Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019). By "assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration," *Miller-Wohl Co. v. Comm'r of Lab. & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982), *amici curiae* can help district courts navigate novel and complex issues, including in cases concerning technology and the internet. *See, e.g.*, *NetChoice, LLC v. Bonta*, 2023 WL 6131619 (N.D. Cal. Sept. 18, 2023).

Amici's proposed brief will assist this Court in understanding the substantial public interest in generative artificial intelligence, as well as the potential far-reaching impact of a decision on the merits. As explained in the brief: (1) generative artificial intelligence ("AI") tools are already providing substantial public benefit and hold immense promise to further benefit the public; (2) the preliminary relief requested by Plaintiffs poses a substantial threat to the public interest in development and availability of generative AI technology; and (3) the novel and complex factual and legal issues raised in Plaintiffs' motion are ill-suited for preliminary determination on a limited record, especially in light of the numerous other cases raising similar issues that are proceeding through fact and expert discovery that will elucidate the issues in this developing area. The proposed submission is particularly appropriate and helpful because it does not speak to the merits of the dispute, but rather its stakes and the implications of its procedural posture. Additionally, this motion is timely and will not delay the proceedings. With the Court's permission, it will be filed promptly after Defendant's opposition brief, leaving Plaintiffs with ample opportunity to address it in their reply.

CONCLUSION

For these reasons, *Amici* respectfully request that the Court grant leave to file the attached brief.

Respectfully submitted,

Dated: August 29, 2024

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