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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 Number: 5:24-cv-03811-EKL-SVK

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO PARTIALLY EXCLUDE THE OPINIONS OF DR. ABHISHEK NAGARAJ

REDACTED

Judge Eumi K. Lee
Magistrate Judge Susan van Keulen
Hearing Date: October 21, 2026
Time: 10:00 AM
Courtroom 7

As Publishers forewarned in their Motion to Partially Exclude the Opinions of Dr. Abhishek Nagaraj, ECF No. 659 ("Mot." or "Motion"), Anthropic improperly seeks to make this case into a referendum on generative AI, writ large, rather than address its copying of Publishers' copyrighted song lyrics actually at issue in this case. Anthropic's arguments in defense of Dr. Nagaraj's irrelevant and unreliable testimony fail. *See* ECF No. 752 ("Opp.").

I. Dr. Nagaraj's primary proposed market is irrelevant for the purpose of fair use.

Fair use requires this Court to consider "the effect of [Anthropic's] use upon the potential market for or value of [Publishers' lyrics]." 17 U.S.C. § 107(4). The point of this inquiry is to determine whether Anthropic's use "supersedes the objects of the original and serves as a market replacement for it," including in "the market for potential derivative uses," which necessarily ties the Court's analysis to the markets for Publishers' lyrics. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 591–93 (1994) (cleaned up). Dr. Nagaraj's opinions about a "market to assemble all of the data needed to train a general-purpose LLM," Opp. 1, are not relevant to the Court's inquiry because they are entirely untethered from the various markets for Publishers' lyrics. Indeed, Dr. Nagaraj admitted that he analyzed "the most relevant market for LLM developers." Opp. 3 (quoting Rpt. ¶ 34[1]). But whether a market is relevant for LLM ***developers*** has nothing to do with whether Anthropic's use harms the markets for ***lyrics***. Markets for high-end computer chips or data centers are similarly important to LLM developers but equally irrelevant here.

Campbell's guidance to avoid bright-line rules in fair-use adjudication does not license courts to depart from the statutory four-factor framework and consider irrelevant markets, and Anthropic cannot identify any court ever doing so. *See* Opp. 3–4. Anthropic points to only a single decision observing "the scope of the relevant market is an 'unsettled area of law' in fair use." Opp. 4 (quoting *In re Mosaic LLM Litig.*, 2025 WL 2294910, at *4 (N.D. Cal. Aug. 8, 2025)). But in that discovery dispute the court held only that the "market for licensing [the plaintiffs'] copyrighted works for the purpose of AI training" was a relevant market for purposes of discovery. *In re Mosaic*, 2025 WL 2294910 at *3–4. Nothing in *Mosaic* endorsed a boundless market harm inquiry unrelated to the markets for the copyrighted works at issue.

[1] "Rpt." and "Reply" are defined in Publishers' Motion.

Anthropic downplays Dr. Nagaraj's admission that general-purpose LLM developers, [redacted], sometimes license copyrighted works to use as AI training data in so-called "last mile" and "gap-filling" deals. These deals highlight the irrelevance of Dr. Nagaraj's market because they exist even if Dr. Nagaraj's "market to assemble all of the data needed to train a general-purpose LLM" does not. The pertinent question is whether a developer of such LLMs will license ***lyrics*** in similar deals. Thus, the absence of a market for ***all*** the data that a general-purpose LLM needs does not, as Dr. Nagaraj contends, negate the existence of a licensing market for Publishers' lyrics as training data, let alone the clear harm Anthropic's use inflicts on that market.

Anthropic also fails to address the unreliability of Dr. Nagaraj's market analysis. While Anthropic claims that "Dr. Nagaraj's market definition was premised on a qualitative economic assessment of the business models of the parties to this case and the nature of digital licensing," Opp. 5, its Opposition fails to actually define this market. That is because, across his many reports, Dr. Nagaraj never defines it. Anthropic relies on *Teradata Corp. v. SAP SE*, which held that an expert may define the relevant market in qualitative terms. 124 F.4th 555, 566 (9th Cir. 2024). But Dr. Nagaraj failed to do even that: he refused to define his market in ***any*** terms, qualitative or otherwise, admitting, "I don't want to offer an opinion. And my job in this case doesn't involve offering an opinion on that question." ECF No. 651-3 at 19:20–24 ("Nagaraj Tr.").

Nor can Anthropic explain away Dr. Nagaraj's fatal admission that GPT-3 is a general-purpose LLM. While Anthropic argues that GPT-3 was a research model that was not economically viable, Dr. Nagaraj did not define the relevant market as "the market to assemble all of the data needed to train an economically viable non-research general-purpose LLM." Indeed, Anthropic's Opposition describes Dr. Nagaraj's market without qualification "as the market to assemble all of the data needed to train a Large Language Model." Opp. 1. And for good reason: there is an enormous difference between an LLM requiring trillions of tokens as a technical necessity and an LLM developer seeking that much data for purely commercial purposes.

Finally, Anthropic fails to overcome the obvious circularity of Dr. Nagaraj's market definition. *See* Mot. 5; Opp. 5–6. Anthropic claims as fact that "general-purpose LLMs require trillions of words in order to be adequately trained." Opp. 6. But, to the extent he defined a general-

purpose LLM at all, Dr. Nagaraj admits that "the way that I have defined a general purpose LLM is . . . one that relies on a large number of tokens in order to train." Nagaraj Tr. 38:23–39:3. Once so defined, Anthropic's so-called "fact" is an obvious tautology: a model that relies on a large number of tokens to train requires a large number of tokens to train. As a result, Dr. Nagaraj's conclusion that no market exists for all of the data to train a general-purpose LLM because a general-purpose LLM requires a large number of tokens to train reflects only how he defined his market, not any actual facts relevant to this case.

II. Anthropic fails to dispel the underlying absurdity of Nagaraj's lyrics market.

Dr. Nagaraj opines that Anthropic gets to use Publishers' lyrics for free because the costs of licensing those lyrics exceed Anthropic's willingness to pay for them. That is the upshot of Dr. Nagaraj's opinion that there is no market for licensing lyrics to train general-purpose LLMs and therefore no harm when Anthropic copies Publishers' lyrics to train its LLM. *See* Mot. 6–8.

Anthropic has no defense for Dr. Nagaraj's illogical conclusion. First, Anthropic confuses Publishers' reliability argument as one about relevance by arguing that courts consider only "traditional, reasonable, or likely to be developed markets." Opp. 7. Second, Anthropic mischaracterizes Publishers' argument. Dr. Nagaraj's opinion is absurd, not because he concludes "that Anthropic can use copyrighted works as training data without having to pay," Opp. 7, but because he bases that conclusion on the cost of licensing exceeding Anthropic's willingness to pay.

Third, Anthropic's defense of Dr. Nagaraj's opinion introduces a new circularity. Dr. Nagaraj cannot ***assume*** that the challenged use in this litigation is transformative as a basis to claim that Anthropic "should not be required to pay for the use of a copyrighted work when that use is for a transformative purpose." Opp. 7. Whether a defendant must pay to use a copyrighted work is precisely what fair use addresses and the issue to which Dr. Nagaraj's analysis purports to speak. In any event, transformativeness alone does not prove fair use: it is only one part of one of the four fair use factors and must be weighed against the other factors like market harm. *Campbell*, 510 U.S. at 578 ("All [four factors] are to be explored, and the results weighed together . . . .").

Fourth, Dr. Nagaraj's invocation of transaction costs is a canard. His opinion that "the value of lyrics in general-purpose LLM training is 'minimal'", Opp. 7, does all the analytical work: if

lyrics have minimal value, then ***any*** transaction costs would purportedly defeat licensing. But the transaction cost barriers that he claims prevent market development—[redacted], Rpt. ¶¶ 42–46—do not apply to Publishers' lyrics. Moreover, Anthropic's [redacted] shows that transaction costs do not stop Anthropic [redacted]. This distinguishes the one case Anthropic cites, which based its fair use determination, in part, on the "prohibitively high" transaction costs of licensing the many attorney works needed to build a database of legal briefs. *White v. W. Pub. Corp.*, 29 F. Supp. 3d 396, 400 (S.D.N.Y. 2014).

Last, because Dr. Nagaraj's opinion rests on his assumption about the value of lyrics, the circular reasoning underlying that assumption is fatal. Mot. 8. Specifically, his only basis for claiming that Publishers' lyrics have low value as training data is [redacted]. *Id.* 7–8. Thus, to support Anthropic's argument that it should be able to use Publishers' lyrics for free, Dr. Nagaraj relies on a valuation that assumes Anthropic can use Publishers' lyrics for free—which is precisely the central issue in this litigation. Anthropic does not dispute this. Opp. 8. That circularity is inherently unreliable.

III. Dr. Nagaraj's opinions regarding AI's benefits are irrelevant.

Dr. Nagaraj's discussion of AI's benefits must be excluded because he cannot tie those benefits to the use at issue: Anthropic's copying of Publishers' lyrics. Anthropic's claim that "Anthropic's use of Publishers' lyrics do [sic] in fact provide broad benefits to the public and the music industry," Opp. 9, contradicts Dr. Nagaraj's own opinions that "[redacted]" Rpt. ¶ 64, and that "[redacted]." Reply ¶ 47. Anthropic cannot both argue that Publishers' lyrics are worthless for AI training and easily replaced without loss ***and*** that those lyrics meaningfully contribute to ***all*** of AI's benefits.

Perfect 10 v. Amazon.com does not, as Anthropic contends, hold that all benefits of a "new technological tool" are relevant to fair use without any connection to the use of the copyright work.

Opp. 9 (citing 508 F.3d 1146, 1166 (9th Cir. 2007)). *Perfect 10* held that a search engine's use of copyrighted thumbnail images was transformative because "a search engine provides social benefit by incorporating an original work into a new work, namely, an electronic reference tool." 508 F.3d at 1165. *Perfect 10* connected the social benefit—electronic image search—to the use—copying thumbnails—observing that courts should "be mindful to the extent to which a ***use*** promotes the purposes of copyright and serves the interests of the public." *Id.* at 1165–66 (emphasis added). There is no such connection between Anthropic's use and the benefits of AI Dr. Nagaraj identifies.

Anthropic's argument that Dr. Nagaraj's opinions are proper rebuttal misreads Dr. Smith's opinions. Dr. Smith does not opine that "AI is uniformly bad for the economy." Opp. 10. Rather, he cites evidence of AI's harm to creative labor in various contexts to support his opinion that Anthropic's ***use of Publishers' lyrics*** harms Publishers. Opp. Ex. 3, ¶ 78 ("[redacted]."). Dr. Nagaraj's opinions that AI may have benefits unconnected to that use are not responsive. *See Abend v. MCA, Inc.*, 863 F.2d 1465, 1482 (9th Cir. 1988) (holding that "[i]t is irrelevant [to fair use] that the [infringing film adaptation] may have promoted sales of the underlying [book]"). Anthropic also misreads *Napster*: *Napster* affirmed the "reject[ion]" of evidence that Napster would increase music sales because a "positive impact in one market . . . [does not] deprive the copyright holder of the right to develop identified alternative markets . . . ." *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1018 (9th Cir. 2001).

IV. Dr. Nagaraj cannot opine on the appropriate scope of copyright protection.

Finally, Dr. Nagaraj's opinions on the scope of intellectual property law are improper legal opinions. Mot. 8–9. The impropriety of those opinions speaks for itself: that Dr. Nagaraj "expressly disclaimed that he is presenting a legal opinion," Opp. 10, does not magically convert obviously improper legal opinions into proper factual ones. Nor can Anthropic defend these opinions as "economic insights about intellectual property." *Id.* It is not an expert's place to lecture the jury about the appropriate scope of copyright protection.

CONCLUSION

For these reasons, Publishers respectfully request that the Court grant Publishers' Motion.

Dated: August 18, 2026

Respectfully submitted,

/s/ Bret Matera

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