EXHIBIT 10

(FILED UNDER SEAL)

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-SVK

DESIGNATED HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

Judge Eumi K. Lee
Magistrate Judge Susan van Keulen

EXPERT REPLY OPINION OF PROFESSOR MICHAEL D. SMITH

Dated: February 13, 2026



Michael D. Smith

unquestionably cannibalized demand on other platforms and became a one-to-one substitution." Nagaraj Rebuttal ¶ 93 (emphasis added).

B. Anthropic Does Not Dispute that Claude is Capable of Creating Damaging Derivative Works

124. Dr. Nagaraj contends that there is no evidence that Anthropic's Claude has generated derivative lyrics that are offensive and reputationally damaging. Nagaraj Rebuttal ¶ 149. He does not, however, dispute my conclusion that Anthropic's unlicensed and unrestricted use of Publishers' lyrics in training enables the creation of such reputationally damaging derivatives.[96] Removing Publishers' right to control the production of derivatives to works that they own is a harm, and a harm discussed in the final report of the ad hoc committee of economic scholars convened by the U.S. Copyright Office.[97]

125. As Dr. Nagaraj notes, I also used Mr. Dennis's analysis of Anthropic's sample production to demonstrate how Anthropic's users are prompting Claude to create lyrical derivatives. *See* Smith Report ¶ 171. Notwithstanding Dr. Nagaraj's assertion to the contrary, *see* Nagaraj Rebuttal ¶ 151, these *are* "real-world" examples of Claude producing mashups and derivatives that are completely outside of a rightsholder's control. To that end, this past year there have been several high-profile instances of offensive AI-generated derivatives in the news,[98] and Publishers' in

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[96] Dr. Nagaraj notes that I did not include a definition of "derivative" in the Smith Report. *See* Nagaraj Rebuttal ¶ 150. For purposes of my opinions in this case, by "derivative," I refer to the definition of "derivative work" set forth in the U.S. Copyright Act. *See* 17 U.S.C. § 101.

[97] *See, e.g.*, Jia & Nagaraj, *Cloze Encounters, supra*, n. 77, at pp. 24 & 34.

[98] *See, e.g.*, Joe Coscarelli, *An A.I. Hit of Fake 'Drake' and 'The Weeknd' Rattles the Music World*, THE N.Y. TIMES (updated Apr. 24, 2023), https://www.nytimes.com/2023/04/19/arts/music/ai-drake-the-weeknd-fake.html) (last visited Feb. 13, 2026).

this case have explained how damaging it can be to their relationships with artists, who have entrusted them to steward and administer their works.[99]

126. The "safeguards" that Dr. Nagaraj refers to are pertinent with respect to exact lyric match and regurgitation, but not to derivative lyric creation. Moreover, even with safeguards and guardrails, Publishers are without any ability to ensure their effectiveness and application, leaving them at the mercy of Anthropic's future largesse to keep them working and in place. This is a costly risk that Publishers alone must bear while Anthropic reaps the benefit of their works.

127. Dr. Nagaraj points to an instance where Claude ostensibly rejects a user's request to produce a parody of the "star spangled banner" (not a work-in-suit). *See* Nagaraj Rebuttal ¶ 154. Dr. Nagaraj claims this demonstrates Claude's ability to refuse generating "offensive" outputs, which, even if we accept that this is an offensive request, misses the point. What counts as "offensive" is subjective, and the *rightsholder*, not Anthropic, should get to make that subjective determination. For example, a religious or conservative songwriter may object to their song being adapted to include more sexual content, whereas a more sex-positive artist may not care in such a circumstance. The loss of control to Anthropic is the harm, and Dr. Nagaraj does not dispute that Anthropic's unlicensed consumption of Publishers' works has resulted in a loss of control over their right to make derivative works.

128. Dr. Nagaraj claims that Publishers are nevertheless able to submit "takedown requests" to prevent reputational or financial harm. Nagaraj Rebuttal ¶ 156. Even if this is true, it does not fully redress the loss of control suffered by Anthropic's unlicensed taking of Publishers' works (*i.e.*, Publishers must still rely on Anthropic to act) and, if anything, imposes an additional cost on Publishers to monitor for damaging derivatives that would not exist but for Anthropic's

[99] *See* Smith Report ¶ 181.

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SUPPLEMENT TO DECEMBER 19, 2025 EXPERT OPINION OF

PROFESSOR MICHAEL D. SMITH

Dated: February 13, 2026

Michael D. Smith

160. On December 19, 2025, I issued an initial expert report in this case. *See* Expert Report of Michael D. Smith (Dec. 19, 2025) (hereinafter the "Smith Report"). On the same day, Defendant Anthropic PBC ("Anthropic") served a series of expert reports from Dr. Abhishek Nagaraj (hereinafter the "Nagaraj Report"), Julie L Davis (hereinafter the "Davis Report"), Dr. Andrew Bray, Collin Stokes, Dr. Jeff Bilmes, and Russ B. Altman. Also on December 19, 2025, Publishers served several other expert reports, including from Joshua Dennis (hereinafter the "Dennis Report"), Benjamin Zhao, Shawn Shan, and Hal Leonard.

161. The Smith Report contained certain analysis that relied on the findings contained in "Exhibit 8" of the Dennis Report, which in turn relied on certain information produced by Anthropic (the "Source File"[115]). Specifically, the Smith Report relied on the Dennis Report to conclude that "48 Unique IDs (the 'Paying Accounts') were responsible for paying Anthropic a total 'amount' of [redacted] between April 2023 and February 2024." *See* Smith Report ¶¶ 204–05. The Smith Report separately concluded that these Paying Accounts were collectively responsible for a list of "Works-in-Suit Records," which appear on their face to include the lyrics to Publishers' Works-in-Suit.[116] As described in more detail in the Smith Report, from these findings, I concluded that "Anthropic received some fraction of the total [redacted] paid by the Paying Accounts as a result of generating the Works-in-Suit Records." Smith Report ¶ 205.

162. I understand that, after the issue date for the Smith and Dennis Reports, counsel for Anthropic informed counsel for Publishers that the Source File contained a "data join error" that

[115] *See* Anthropic_0000524085.

[116] I have not reviewed the Works-in-Suit Records that Mr. Dennis analyzed, but I rely on his findings for purposes of the following.

"resulted in errors in the billing information."[117] I understand that Anthropic subsequently produced a corrected version of the file on February 4, 2026.[118] I also understand that Mr. Dennis has subsequently updated Exhibit 8 from the Dennis Report to reflect changes contained in the updated Source File, which I have reviewed. Upon my review of the updated Dennis Report Exhibit 8, it appears that the total number of Unique IDs identified by Mr. Dennis has increased from 48 to 185, and that the final "amount" paid by these Unique IDs has been revised to [redacted] during the period between September 7, 2023, and October 21, 2025.

163. Given that this "amount" revision and the total number of relevant Paying Accounts appear to be the only material changes as a result of the updated Source File, I maintain my opinion that Anthropic received some fraction of the total amount [redacted] paid by the Paying Accounts (185) between September 7, 2023, and October 21, 2025, as a result of generating the Works-in-Suit Records.

164. To the extent that Anthropic serves additional expert reports or supplements any of the reports it has already served, I reserve the right to supplement my analyses and opinions.[119]

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[117] Email, R. Burrell to Publishers (Feb. 4, 2026); *see also* Supplement to Rebuttal Expert Report and Disclosure of Julie L. Davis (Feb. 10, 2026).

[118] *See* Anthropic_R_0000524085.

[119] I continue to reserve the right to supplement or modify my analyses based on recent or forthcoming discovery provided by Anthropic, including newly discovered information as it becomes available.