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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-SVK

**ANTHROPIC PBC'S MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO PUBLISHERS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Hearing Date: July 15, 2026
Time: 10:00 AM
Judge: Hon. Eumi K. Lee

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1 *VHT, Inc. v. Zillow Grp., Inc.*,
2 918 F.3d 723 (9th Cir. 2019) *passim*

3 *White v. West Publ’g Corp.*,
4 29 F. Supp. 3d 396 (S.D.N.Y. 2014).....19

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5 17 U.S.C. § 107 *passim*

6 17 U.S.C. § 1201 *et seq.*, Digital Millennium Copyright Act (“DMCA”)..... *passim*

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9 4 Nimmer on Copyright § 12A.10[B][1][a]33

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12 3 *Patry on Copyright* § 9:5.50 (Mar. 2026 Update).....24

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14 Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (1990)15, 16

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 15, 2026 at 10:00 AM, Defendant Anthropic PBC will and hereby does move the Court for an order granting Anthropic’s Motion for Summary Judgment. Anthropic’s motion is based on this Notice of Motion, the supporting Memorandum, and the Declaration of Robin Burrell filed herewith. Counsel for Anthropic met and conferred with Publishers’ counsel regarding the bases for this motion on April 13, 2026.

Anthropic requests that the Court grant Anthropic summary judgment on each of Publishers’ claims and deny Publishers’ Motion for Partial Summary Judgment in full.

MEMORANDUM OF POINTS AND AUTHORITIES

Anthropic’s use of lyrics to Publishers’ 499 songs (along with billions of other copyrighted works) to train Claude is “transformative” fair use. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 531 (2023). Anthropic trains Claude on written text—much like a human learns from “read[ing] and re-read[ing] books,” poems, stories, lyrics, and other materials and then “internaliz[ing]” the themes, substance, and style of these materials. *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1021 (N.D. Cal. 2025). This training endows Claude with capabilities that stretch far beyond the text on which Claude was trained: it can reason, explain, code, and create. The result “adds something new, with a further purpose or different character” than the original work. *Warhol*, 598 U.S. at 533; *accord Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994). Musicians write lyrics for artistic expression. Anthropic uses that same material to help Claude understand human language and enable progress and productivity in science, business, and education.

The only two courts to consider the issue have both held that using copyrighted text to train a generative AI model, like Claude, is “among the most transformative [uses] many of us will see in our lifetimes.” *Bartz*, 787 F. Supp. 3d at 1033; *see also Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026, 1035-36 (N.D. Cal. 2025). Claude can assist people with projects from the miraculous to the mundane. It can help identify and fix cybersecurity vulnerabilities before they are exploited, accelerate groundbreaking drug discoveries, process prior authorizations more quickly to speed up patient care, and plan a family vacation or design a chore schedule. Artists too can use Claude for tasks as varied as helping create entirely original works or managing the administrative

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1 aspects of a music career. *See, e.g.*, Ex. 145 (Meek Mill X (Apr. 12, 2026)).

2 Claude, in short, is the kind of “new idea[]” that the Copyright Act not only allows, but
3 “encourages” as a “necessary counterbalance” to prevent ““stifl[ing] the very creativity which that
4 law is designed to foster.”” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1166 (9th Cir.
5 2007) (quoting *Campbell*, 510 U.S. at 577). Allowing copyright holders to veto such a
6 transformative technology would ignore the Supreme Court’s mandate that the primary objective of
7 copyright is not to reward the author, but to serve the public. *Sony Corp. of Am. v. Universal City*
8 *Studios, Inc.*, 464 U.S. 417, 429 (1984). And it would frustrate, rather than fulfill, the constitutional
9 command to “promote the Progress of Science and useful Arts.” U.S. Const. art. I, § 8, cl. 8.

10 Because Publishers cannot seriously contest that training is transformative, they largely rely
11 on the fourth statutory factor, which weighs harm to the rightsholder. But Publishers cannot
12 manufacture harm by claiming lost revenue from LLM training: Courts have long recognized that
13 the transformative use of a copyrighted work does not, by definition, require a license. *See, e.g.*,
14 *Tresona Multimedia v. Burbank High Sch. Vocal Music Ass’n*, 953 F.3d 638, 652 (9th Cir. 2020).

15 And Publishers’ claim that they will (purportedly) face competition from people using
16 Claude to create original lyrics is legally irrelevant. The fair use inquiry is anchored on “the problem
17 of substitution”—not competition. *Warhol*, 598 U.S. at 528. It asks if the defendant used an “original
18 work to achieve a purpose that is the same as, or highly similar to, that of the original work,” *id.*,
19 not whether a transformative use “facilitat[ed] the entry of a new competitor,” *Sega Enters. Ltd. v.*
20 *Accolade, Inc.*, 977 F.2d 1510, 1523 (9th Cir. 1992), such as a musician writing original lyrics.

21 Publishers fare no better in seeking to hold Anthropic liable for the vanishingly small
22 number of instances where someone asked or manipulated Claude to reproduce lyrics and Claude
23 actually complied. Publishers attempt to shoehorn this outputs-focused theory into the framework
24 of direct liability. But Ninth Circuit case law limits direct liability to the entity that “instigated” the
25 copying—here, the person who prompted Claude—and channels claims against others (such as
26 Anthropic) into a secondary liability framework. *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731-
27 732 (9th Cir. 2019); *see also Cartoon Network LP, LLLP v. CSC Holdings, Inc.*, 536 F.3d 121, 130-
28 133 (2d Cir. 2008). Making Anthropic directly liable for a third party’s efforts to circumvent

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1 copyright law would create perverse incentives for content owners to manufacture infringement (as
2 Publishers' agents repeatedly did here). It would also fail to distinguish between companies that
3 actively but imperfectly seek to avoid infringement and those that aggressively promote it.

4 Nor can Publishers succeed under the proper secondary liability framework.¹ Publishers fail
5 to show that any of the prompts that generated the few purportedly infringing outputs were
6 submitted by bona fide third parties as opposed to Publishers' agents. But as a matter of law,
7 rightsholders cannot infringe their own copyrights. And there is no evidence suggesting Anthropic
8 took steps to encourage its users to infringe Publishers' purported copyrights or tailored Claude for
9 infringement. To the contrary, Anthropic has long had guardrails protecting against reproduction of
10 copyrighted text, and it further strengthened those guardrails [REDACTED]

11 [REDACTED] as soon as it learned of Publishers' machinations. Publishers also cannot prevail under a
12 vicarious liability theory. Nothing in the record shows that Anthropic benefitted financially from
13 the specific third-party prompts that yielded Publishers' lyrics. And for good reason: It makes no
14 sense for a user to pay Anthropic for a Claude account and then work to jailbreak its guardrails to
15 obtain song lyrics that are available for free on the internet.

16 Finally, Publishers' Digital Millennium Copyright Act (DMCA) claim fails as a matter of
17 law. The DMCA is narrowly tailored to bar the removal of copyright management information
18 (CMI) where the removal is done to enable or conceal infringement. Even after almost two years of
19 discovery, Publishers have not identified a single work in suit from which Anthropic removed CMI.
20 Nor have they shown that Anthropic did so with the double scienter the DMCA requires.

21 The points above resolve this case in Anthropic's favor. But even if the Court disagrees,
22

23 ¹ On the evening before the filing deadline for this brief, Publishers informed Anthropic that after
24 two and a half years of litigation, they "do not intend to proceed" on their claims for contributory
25 and vicarious infringement. Anthropic requested that Publishers stipulate to judgment with
26 prejudice on these claims so that Anthropic would not need to brief them. Publishers initially
27 refused. Then, the morning of this filing, Publishers agreed to a dismissal with prejudice, but refused
28 to agree to entry of judgment which will ensure that Anthropic is not subjected to serial litigation
on these issues. Anthropic thus seeks judgment on both claims. The night of Anthropic's filing,
Publishers filed a "Notice of Voluntarily Dismissal" which acknowledges that Publishers do not
have the ability to unilaterally dismiss their claims at this stage. Dkt. 685. Anthropic will continue
to confer with Publishers and notify the Court if the parties resolve these claims.

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1 judgment should not be granted to Publishers on any of the three issues they identify.

2 *First*, as to the fair use of Claude’s training, Publishers do not meaningfully dispute that
3 training on lyrics (and other copyrighted text) is transformative. And even if Publishers’ theories of
4 market harm were legally viable (they are not), Publishers have not met their burden to show
5 undisputed market harm. Indeed, just last month, Universal Music Group (UMG)—the parent of
6 two Publishers who collectively assert 448 of the 499 works in suit—admitted that “we’re seeing
7 no indication that AI royalty dilution is a material issue for UMG from a revenue perspective.” Ex.
8 136 (UMG Earnings Call), 23:37 (Mar. 5, 2026).

9 *Second*, as to the fair use of outputs, the record shows that many of Publishers’ supposedly
10 “verbatim” reproductions are in fact instances of commentary, parody, criticism, or novel creations.
11 Whether those outputs are fair use is a fact-heavy question best left for the jury.

12 *Third*, there is a material factual dispute as to whether Anthropic engaged in “copying” under
13 all Publishers’ direct infringement theories because Publishers fail to establish the precise,
14 authoritative language of the copyrighted lyrics for each of the works.²

15 **BACKGROUND**

16 **A. Anthropic And Its Mission**

17 Anthropic is an AI safety and research company. It was founded by a group of seven
18 scientists, engineers, and AI safety and policy experts with the goal of building AI that acts safely
19 and ethically. MSS #2. Anthropic began as a research company, not a commercial business. MSS
20 #3-5. But as AI began to develop in the commercial sphere, Anthropic’s founders eventually
21 determined that the best way to show that AI safety and commercial success were compatible was
22 to participate in the commercial market and attempt to spark a race to the top for safe commercial
23 AI. MSS #6. Reflecting these founding principles, Anthropic is incorporated as a public benefit
24 corporation, which allows it to balance financial returns with the responsible development and
25

26 _____
27 ² Unless otherwise noted (1) “Ex.” citations reference exhibits to the Burrell Declaration filed
28 herewith; (2) “MSS” citations are to Anthropic’s moving separate statement of undisputed facts and
“RSS” citations are to Anthropic’s responsive separate statement; (3) “Ad.F” citations reference
additional material facts in Anthropic’s RSS; (4) emphasis is added; (5) objections are omitted from
any deposition quotes; and (6) internal quotation marks and citations are omitted.

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1 maintenance of AI for the long-term benefit of humanity. MSS #7-8.

2 Anthropic furthers its mission by building AI models that serve humanity in a helpful,
3 honest, and harmless way. MSS #9. For example, Anthropic pioneered a technique called
4 “Constitutional AI,” which provides a set of ethical principles and behavioral guidelines to follow.
5 Anthropic trains its models to adhere to these guidelines, including through training designed to
6 teach the model not to generate copyrighted content. MSS #110. This approach helps both enhance
7 safety and instill values, such as respect for intellectual property rights. MSS #138-139.

8 **B. Claude’s Purposes And Uses**

9 Anthropic develops large language models, or LLMs, a term that refers to AI systems trained
10 to both understand language and generate new text. MSS #10-13. Anthropic first released its
11 commercial AI service, Claude, to the general public in July 2023. MSS #13.

12 As Publishers’ own expert acknowledged, LLMs like Claude have “near[] infinite” uses.
13 MSS #144-145. Anthropic’s research has found that people most commonly use Claude to help
14 write computer code or accomplish other business tasks, like analyzing data or drafting professional
15 emails. MSS #16. Claude has also been used for a wide range of other tasks—by pharmaceutical
16 researchers to accelerate clinical trials, by scientists to further conservation, and by government
17 agencies for everything from national security to summarizing vast archival records. MSS #14-15.

18 **C. Claude’s Design And Training**

19 LLMs like Claude start as a “neural network,” a kind of synthetic brain fed an enormous
20 amount of text called a “training corpus.” MSS #19-20. Engineers created Claude by repeatedly
21 analyzing the training corpus to build a map of how humans use language and understand concepts.
22 MSS #10, 21-22, 32-33. Claude’s analysis of the explicit and implicit connections within the text
23 of its training corpus are translated into statistical representations within the model, which are used
24 to respond to user prompts based on repeated predictions of what word should come next. MSS #10,
25 19, 24, 33.

26 LLMs like Claude require a massive amount of unique, useful data from diverse sources to
27 learn to reason, generalize, and produce useful outputs. For example, the Claude models at issue in
28 this case were trained on trillions of words—more than twice the amount of words in every book

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1 ever written. MSS #22, 65-67, 71. Anthropic obtained this data from public web pages and other
2 publicly available data, among other sources. MSS #59-60. Song lyrics were in Claude’s training
3 corpus because such lyrics are freely available on the internet. MSS #68-69.

4 **D. Anthropic’s Defenses To Prevent Users From Misusing Claude**

5 Anthropic implements a multi-layered approach to prevent misuse of Claude. These
6 defenses complement one another so that Anthropic can better mitigate unwanted behavior. MSS
7 #102. At the outset, Anthropic uses a variety of pre-training techniques to remove low quality and
8 potentially dangerous materials and transform raw data into a format that can be used for training.
9 This includes substantial efforts to deduplicate raw training materials to reduce the likelihood of
10 regurgitation. MSS #103-106.

11 On top of these pre-training techniques, Anthropic has applied a new and intentionally
12 holistic approach referred to as “Constitutional AI,” which embeds models with a constitution or set
13 of core operating principles. For example, Claude’s Constitution directs the model to choose
14 responses that are “less existentially risky for the human race” and that “discourage[] and oppose[]
15 torture, slavery, cruelty, and inhuman or degrading treatment.” Ex. 45. And, as most relevant here,
16 it directs the model to avoid “reproduc[ing] portions of copyrighted text in a way that could infringe
17 on copyright.” Ex. 30 (11/12/25 Anthropic’s Suppl. R&Os to 1st Set of ROGs) at 12; *see also* MSS
18 #107, 111. To further reduce the risk of infringement by users, [REDACTED]

19 [REDACTED]
20 [REDACTED] MSS #110.

21 As a further line of defense, Anthropic developed two technical systems to detect and stop
22 the generation of copyrighted content in response to user prompts. MSS #111-112. The first of these
23 two “guardrails” is known as “Prompt Shield.” Prompt Shield attempts to detect when a user’s
24 prompt might be asking for an output that could include copyrighted material and—if such a prompt
25 is detected—modifies the prompt in a way that is invisible to the user but that seeks to prevent the
26 actual output of copyrighted content. MSS #113-115. The second set of guardrails is known as the
27 “Content Compare System,” or “CCS.” CCS checks [REDACTED]
28 [REDACTED] MSS #116, 118-119. If CCS determines the output would reproduce a copyrighted work

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1 [REDACTED] (e.g., 15 words for lyrics), it stops the output. MSS #118-119.

2 On top of all of these safeguards, Anthropic’s “Usage Policy” (fka “Acceptable Use Policy”)
3 requires users to agree to abide by Anthropic’s terms, which expressly prohibit using Claude to
4 “[i]nfringe, misappropriate, or violate the intellectual property rights of a third party.” MSS #120.

5 **E. Publishers Bring Suit**

6 Anthropic first learned that Publishers’ purported lyrics had been reproduced in Claude
7 outputs when Publishers filed their complaint in October 2023. MSS #121. [REDACTED]

8 [REDACTED]. MSS #122-125.

9 Once Anthropic received notice, it took immediate action that included strengthening existing
10 guardrails and implementing new ones. MSS #121.

11 Even before these new measures were implemented, people rarely prompted Claude for
12 copyrighted lyrics—and even more rarely obtained them. In the sample of 5 million prompts and
13 outputs produced during discovery from a six-month period pre- and post-suit, *over 83%* of the
14 prompts that resulted in reproduction of lyrics to the works in suit were generated by Publishers
15 themselves or their agents and often in an attempt to circumvent Claude’s guardrails or simply trick
16 them. MSS #126-130. Many of the remaining 17% of prompts that resulted in outputs with lyrics to
17 the works in suit are entirely consistent with fair use. For example, one user uploaded notes from a
18 music class and asked Claude to generate a study guide. MSS #147. Another user uploaded an article
19 about “How to Make an Album” and asked Claude to provide a summary. MSS #148.

20 It is undisputed that Claude no longer produces full verbatim lyrics to Publishers’ claimed
21 works—except for where (1) a user attempts to circumvent Claude’s restrictions (through
22 “jailbreaking”) or (2) a user accesses Claude’s functionality through a limited number of third-party
23 applications where Anthropic [REDACTED]. MSS
24 #131-134. A test of Anthropic’s current models designed to try and elicit song lyrics using three
25 different types of prompts demonstrated that nearly 95% of responses reproduced no “match” to
26 lyrics (defined as greater than five consecutive words), and none produced more than 25% of the
27 lyrics to a work. MSS #154. Even in the rare instances where Claude did respond to a user request
28 by reproducing some lyrics, Claude typically did so in the context of refusing to provide all the

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1 lyrics. For example, when prompted for the full lyrics to “Thirteen” by Big Star, Claude responded:

2 I can’t reproduce the full lyrics to “Thirteen” by Big Star as they’re copyrighted.
3 However, I can tell you that it’s a beautiful, tender song written by Alex Chilton and
4 Chris Bell, featured on their 1972 album “#1 Record.” The song is about young love and
5 adolescent romance, with themes of innocence and asking someone to go steady. It
6 includes memorable lines about walking home from school and asking **“Won’t you let
me walk you home from school?”** If you’d like to read the full lyrics, I’d recommend
7 checking out licensed lyrics websites like Genius, AZLyrics, or the official Big Star
8 releases. The song has been covered by many artists including Elliott Smith and Garbage,
9 speaking to its enduring appeal as one of the great teenage love songs in rock history.

10 MSS #155.

ARGUMENT

11 **I. ANTHROPIC’S USE OF LYRICS AS INPUTS TO TRAIN CLAUDE IS FAIR USE AND THERE IS
12 A GENUINE QUESTION AS TO WHETHER NON-VERBATIM OUTPUTS ARE FAIR USE**

13 Publishers assert that Anthropic has infringed by using their purportedly copyrighted lyrics
14 in two distinct ways: (1) as an input to the training process for Claude and (2) as a rare output in
15 response to user prompts. *E.g.*, First Am. Compl. (“FAC”) ¶¶ 60, 77. As to the first theory, the use
16 of copyrighted text to train LLMs is fair use as a matter of law—as two courts in this district have
17 already rightly held. *See Bartz*, 787 F. Supp. 3d at 1033; *Kadrey*, 788 F. Supp. 3d at 1036. *Bartz*
18 and *Kadrey* are consistent with a long line of precedent holding that copying of information to
19 develop new digital technologies with uses distinct from the original works is fair use as a matter of
20 law. *See, e.g., Authors Guild v. Google, Inc.*, 804 F.3d 202, 214-25 (2d Cir. 2015) (“*Google Books*”);
21 *Perfect 10*, 508 F.3d at 1163-68; *A.V. ex rel. Vanderhye v. iParadigms, LLC*, 562 F.3d 630, 638-45
22 (4th Cir. 2009); *Sega Enters.*, 977 F.2d at 1523; *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 26-40
(2021). The undisputed record in this case compels the same conclusion.

23 To be clear, Anthropic is not seeking summary judgment on fair use for Publishers’ second
24 infringement theory based on rare outputs from Claude that reference Publishers’ claimed lyrics.
25 Fair use requires “an analysis of the specific ‘use’ of a copyrighted work that is alleged to be ‘an
26 infringement.’” *Warhol*, 598 U.S. at 533. The record on Publishers’ infringing-outputs theory is
27 factually complex, as many of the specific outputs Publishers challenge are not verbatim recitations
28 of the 499 songs’ lyrics and instead constitute parody, commentary, or other types of expression

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1 protected by fair use. Ultimately, it is not necessary to reach that question to fully resolve this case
2 because Publishers’ output theory fails for the reasons in Part II. But if this case goes to trial, the
3 fact-intensive question of whether particular outputs are fair use is for the jury in the first instance.

4 **A. The Use Of Lyrics As Inputs Is Fair Use As A Matter Of Law**

5 Copyright law is grounded in the constitutional principle of “promot[ing] the [p]rogress of
6 [s]cience and useful [a]rts.” U.S. Const. art. I, § 8, cl. 8. It is hard to imagine a better way to advance
7 that purpose than to affirm that fair use protects access to the trillions of words of text needed to
8 train an LLM. LLMs are perhaps the biggest technological advancement of the century precisely
9 because they turbocharge human ingenuity. People rely on Claude to do everything from writing
10 computer code to proposing policy solutions for aging populations in an efficient and effective
11 manner. MSS #16. Researchers have used Claude to analyze massive clinical trial datasets and help
12 draft clinical study reports as they transform basic science into tangible medical treatments. MSS
13 #17. And composers use Claude to brainstorm new songs by generating lists of interesting word
14 pairings. MSS #18. Claude’s applications are limited only by the expanse of human imagination.

15 A holding that LLM training on copyrighted material is not fair use would threaten these
16 applications and a galaxy of others—“stifl[ing] the very creativity which [the] law is designed to
17 foster,” *Campbell*, 510 U.S. at 577. The law requires no such thing. Courts evaluate fair use based
18 on four non-exhaustive factors: (1) “the purpose and character of the use;” (2) “the nature of the
19 copyrighted work;” (3) “the amount and substantiality of the portion used in relation to the
20 copyrighted work as a whole;” and (4) “the effect of the use upon the potential market” for the
21 copyrighted work. 17 U.S.C. § 107. All four factors support Anthropic.

22 **1. The First Factor Favors Fair Use: Training LLMs Is Transformative**

23 The first fair use factor asks whether the alleged copier’s use of a work is “transformative”—
24 that is, whether it “adds something new, with a further purpose or different character.” *Warhol*, 598
25 U.S. at 528-29. A transformative use avoids “the problem of substitution,” *i.e.*, the “use of an
26 original work to achieve a purpose that is the same as, or highly similar to, that of the original work.”
27 *Id.* The only two courts to consider this factor when applied to LLM inputs have both rightly held
28 that using copyrighted material to train an LLM is transformative—and in fact may be “among the

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1 most transformative many of us will see in our lifetimes.” *Bartz*, 787 F. Supp. 3d at 1021, 1033; *see*
2 *also Kadrey*, 788 F. Supp. at 1044, 1047 (“no serious question” use was “highly transformative”).

3 Anthropic’s use of freely available lyrics from the internet to train Claude is no different.
4 Anthropic uses text collected from the internet to train Claude to understand the interrelationships
5 between words and concepts in human language. MSS #10, 19, 22-24, 26. No musician writes lyrics
6 to train a large language model. Rather, musicians compose music for artistic expression: to
7 entertain, to inspire, to grieve, or to hope. MSS #25-26. Anthropic’s use of lyrics to train Claude
8 unquestionably “adds something new, with a further purpose or different character.” *Warhol*, 598
9 U.S. at 528-29.

10 Claude’s design and function confirm that the use of copyrighted lyrics for training is
11 transformational. Publishers’ expert conceded that Claude’s “training corpus is decoupled from the
12 model once the model is trained;” that Anthropic does not have Claude “stor[e] an exact copy of
13 that text;” and that “the model does not scan for the text from its training corpus.” Ex. 139 (Pltfs.
14 Exp. Zhao Dep.), 177:2-4, 178:6-18, 179:9-10; MSS #27-28, 36. Instead, Anthropic designed
15 Claude to use the text to build a statistical map of how humans use language and understand
16 concepts and the connections across words and concepts. *See supra* p. 5; MSS #10, 19, 22, 29-31.
17 In this map, statistical relationships between words and concepts become numerical weights,
18 representing the likelihood that a word is associated with all other words and concepts. MSS #19,
19 32-33. When a user prompts Claude, it generates a response by drawing on these statistical patterns
20 to predict which word should come next in the sequence to appropriately respond to the user prompt.
21 *Id.* Because this process relies on probabilities, and is not deterministic like a database query,
22 repeating the same prompt even at the same moment in time will frequently generate different
23 responses. MSS #34-35. In short, Anthropic trained Claude to draw upon its analysis of the
24 relationships between words and concepts to generate intelligent and unique outputs in response to
25 user requests. MSS #10, 24, 36.

26 Claude’s transformative training creates a flexible, general-purpose model that can be used
27 in myriad beneficial ways—the vast majority of which are wholly unrelated to lyrics or music. *Supra*
28 p. 5. Although this case focuses on Anthropic’s consumer chatbot interface, Claude.ai, Anthropic’s

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1 primary business is to deploy Claude as an AI agent to business and enterprise customers to help
2 them increase their operational productivity and efficiency. MSS #41-43. Claude’s most common
3 agentic use case is code-writing for software engineering, and newer models are capable of
4 autonomously completing complex coding tasks that might take a full day of human work with little
5 human prompting or oversight. MSS #38-40. But Claude is also commonly used for original-content
6 creation, academic research, communications and writing assistance, business strategy development
7 and execution, and data analysis. MSS #16.

8 Even in the rare occurrences involving song lyrics, Claude’s outputs result from a
9 transformative use of its training data. When Anthropic co-founder Tom Brown asked Claude for
10 its “favorite Pearl Jam tracks,” it replied with an analysis of the song “Black,” explaining that the
11 song “captures that devastating moment when you realize someone you love has moved on
12 completely while you’re still consumed by the relationship,” and “[t]he raw emotion in Vedder’s
13 voice during the outro (‘I know some day you’ll have a beautiful life...’) creates one of rock’s most
14 heartbreaking moments.” Ex. 92 (original alteration). Other examples abound. MSS #44, 46-50.

15 Courts have repeatedly found fair use in far less transformative circumstances. *Perfect 10*
16 held that Google’s copying and display of millions of copyrighted thumbnail images as part of
17 search engine results was “highly transformative” because “a search engine provides an entirely
18 new use for the original work”—“improving access to information” versus “artistic expression.”
19 508 F.3d at 1165. *Authors Guild, Inc. v. HathiTrust* held that digitizing millions of copyrighted
20 books to provide information about the frequency and locations of words within those works was
21 transformative. 755 F.3d 87, 91, 97-98 (2d Cir. 2014). *Google Books* found transformativeness in
22 the creation of a searchable database of books that displayed snippets from the underlying works.
23 804 F.3d at 217. And *A.V. ex rel. Vanderhye v. iParadigms, LLC* concluded that it was a
24 transformative use to scan copyrighted material to produce plagiarism-detection software. 562 F.3d
25 at 638-40. If these uses (which include simply re-displaying the same content) are transformative,
26 then surely using text to build a model that maps human language is too.

27 Publishers offer four meritless responses. *First*, Publishers argue (at 3, 22) that “the
28 transformativeness inquiry is limited to Anthropic’s use of Publishers’ lyrics specifically and the

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1 purpose of that particular use,” which they claim is “precisely to reproduce” the lyrics to the 499
2 works. Wrong on both counts. The focus and import of the fair use analysis sweeps far broader than
3 lyrics to 499 works. Anthropic collected and used lyrics in precisely the same way that it collected
4 and used millions of other copyrighted texts that are freely available on the internet, and all of that
5 information *together* was used to train Claude. As Publishers’ own experts acknowledged, every
6 piece of data that an LLM is trained on “ha[s] some impact” on the LLM’s reasoning. Ex. 131 (Pltfs.
7 Exp. Shan Dep.), 226:9-229:18; Ad.F #20. Publishers themselves argue (at 18) that training on lyrics
8 helps Claude produce new and original “AI generated song lyrics.” Put simply, all of the training
9 inputs—including lyrics to the works in suit—contribute collectively to Claude’s capabilities.

10 To the extent Publishers’ argument is that Anthropic’s objective was to design a tool that
11 would reproduce lyrics to these 499 songs, that assertion is illogical and legally irrelevant. Anthropic
12 had no incentive to build the world’s most complex and expensive regurgitator of lyrics to these 499
13 songs, or songs in general, when song lyrics are freely available online. Ad.F #21. Regardless, under
14 *Warhol*, it does not matter if Anthropic intended to build a lyric reproduction machine (it did not).
15 See 598 U.S. at 544-45. What matters is that Anthropic trained a revolutionary assistant with
16 Publishers’ lyrics—a purpose entirely distinct from Publishers’ original use. *Id.*

17 *Second*, Publishers wrongly suggest (at 25-26) that Claude’s commercial uses undermine
18 Anthropic’s position. “Commercialism isn’t dispositive of the first factor and tends to be less
19 important when the secondary use is highly transformative.” *Kadrey*, 788 F. Supp. 3d at 1046; see
20 *Bartz*, 787 F. Supp. 3d at 1024. In *Google LLC v. Oracle America, Inc.*, for example, Google’s
21 commercial use of copyrighted code was “not dispositive of the first factor” because the technology
22 Google developed using the code was “inherently transformative.” 593 U.S. at 32. Likewise, in
23 *Campbell v. Acuff-Rose Music, Inc.*, the Court explained that “the more transformative [a] new [use],
24 the less will be the significance of other factors, like commercialism.” 510 U.S. at 579. Because
25 Anthropic’s use is highly transformative, its commercial nature should not change the analysis. See
26 *Kadrey*, 788 F. Supp. 3d at 1046.

27 *Third*, Publishers incorrectly claim (at 21-22) that *Warhol* and *Thomson Reuters* require their
28 preferred result. Far from “signal[ing] a sea change in the first-factor analysis,” as Publishers claim

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(at 21), *Warhol* reaffirmed that the key inquiry is whether the use in question has “a further purpose or different character” than the copyrighted work and thus is “transformative.” 598 U.S. at 509. It also reiterated that “commerciality” of a use is not dispositive but instead must be weighed against the degree of transformation. *Id.* at 510. In *Warhol*, the purposes of the original and secondary works were the same—both were “portraits of Prince used to depict Prince in magazine stories about Prince” and were thus direct market substitutes for one another. 598 U.S. at 526; *see also id.* at 545-47. Likewise in *Thomson Reuters*, the defendant copied works from one legal research tool to make another legal research tool—again, an identical purpose to that of the original work. *Thomson Reuters Enter. Ctr. v. Ross Intel. Inc.*, 765 F. Supp. 3d 382, 399 (D. Del. 2025). Here, using lyrics as part of a vast collection of text to train an LLM to understand human language is a fundamentally different purpose than the original. *See supra* pp. 9-10; Ad.F #22.

Fourth, Publishers erroneously contend (at 26) that *Kadrey* and *Bartz* would have reached a different result as to inputs if those cases had involved infringing outputs. Neither case says that. At most, the cases stand only for the unremarkable proposition that the plaintiffs there could have brought **additional** infringement claims if there had been any verbatim reproduction in outputs. *See Bartz*, 787 F. Supp. 3d at 1031 (explaining that plaintiffs did not bring output-infringement claims but could “in the future should such facts develop”). Because *Warhol* requires the fair use analysis to turn on the “specific use” alleged, 598 U.S. at 549, any fair use defense asserted in response to output-based infringement claims would have to be analyzed independently from—and thus would not have affected Anthropic’s defenses to—the input-based claims. *Supra* p. 8.

2. The Second Factor Favors Fair Use Because Publishers Make Their Claimed Song Lyrics Broadly Available To The Public For Free

The second fair use factor looks to “the nature of the copyrighted work.” 17 U.S.C. § 107(2). This factor “typically has not been terribly significant in the overall fair use balancing.” *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 803 (9th Cir. 2003). Anthropic does not dispute that musical compositions are expressive works and that some (although not all) lyrics are creative. MSS #51. Here, however, the second factor favors Anthropic because broad, public dissemination of a copyrighted work weighs in favor of a finding of fair use. *See, e.g., Universal City Studios, Inc. v.*

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1 *Sony Corp. of Am.*, 480 F. Supp. 429, 453 (C.D. Cal. 1979) (second factor favored fair use because
2 plaintiffs chose to have their works broadcast to the public for free); *Bell v. Moawad Grp., LLC*,
3 326 F. Supp. 3d 918, 927 (D. Ariz. 2018) (second factor favored fair use where plaintiff authorized
4 his work to be widely available on the internet). It is undisputed that Publishers’ claimed lyrics are
5 made widely available to the public for free on third-party websites. MSS #52-53.

6 **3. Anthropic Only Uses The Portion Of The Works Reasonably Necessary**
7 **To Achieve Its Transformative Purpose**

8 The third factor asks whether “‘the amount and substantiality of the portion used in relation
9 to the copyrighted work as a whole’” are “reasonable in relation to the purpose of the copying.”
10 *Campbell*, 510 U.S. at 586 (quoting 17 U.S.C. § 107(3)). If the defendant “takes no more than is
11 necessary for his intended use,” this factor “will not weigh against an alleged infringer, even when
12 he copies the whole work.” *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1178 (9th Cir. 2013).

13 To begin, Anthropic used only a portion of Publishers’ works. It is undisputed that
14 Publishers have not separately copyrighted the lyrics to their musical compositions, but instead
15 copyrighted only the entire musical compositions. MSS #54-58. Anthropic used just the lyrics text
16 for its training corpus. See FAC ¶ 6; MSS #61-64.

17 In all events, courts have found even wholesale copying reasonably necessary where the
18 works are used for a transformative purpose. See, e.g., *Bartz*, 787 F. Supp. 3d at 1030; *Kadrey*, 788
19 F. Supp. 3d at 1050. In *Bartz*, the court found that Anthropic’s wholesale copying of books for LLM
20 training was reasonably necessary, explaining that because “the volume of text required to train an
21 LLM is monumental,” “using so many works was reasonably necessary,” and so “using any one
22 work for *actually training* LLMs was about as reasonable as the next.” 787 F. Supp. 3d at 1030.

23 Here too, Anthropic’s use of Publishers’ claimed lyrics was reasonably necessary to train a
24 transformational general-purpose LLM. Publishers do not dispute that building a general-purpose
25 LLM requires training on hundreds of billions or trillions of words of text—which for recent models
26 exceeds twice the combined number of words in every book ever written. MSS #19, 22, 67. Nor do
27 they dispute that to assemble this volume of data, Anthropic (like other LLM developers) widely
28 collected text from public web sources. MSS #69-71. And it is undisputed that because Publishers’

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1 lyrics are broadly available for free on many websites, those lyrics were swept up and included in
2 Claude’s vast training corpus along with other public web data. MSS #72-74.

3 Publishers’ sole response (at 25) is that Anthropic has “no need” for the lyrics from the 499
4 specific songs at issue in this case. But Judge Alsup correctly rejected that logic in *Bartz*, explaining
5 that “‘reasonably necessary’ does not mean ‘strictly necessary.’” 787 F. Supp. 3d at 1030. No
6 particular work is strictly necessary to build an LLM. Ad.F. #1. Rather, an AI developer needs to
7 acquire a sufficiently massive and diverse mix of text. Ad.F. #2; *see supra* p. 5. Because that amount
8 is reasonably necessary to train an LLM, all the works within that corpus are reasonably necessary
9 to that goal. *See Bartz*, 787 F. Supp. 3d at 1030.

10 **4. The Fourth Factor Favors Fair Use Because Anthropic’s Use of Lyrics**
11 **To Train LLMs Does Not Harm Any Cognizable Market**

12 The fourth factor considers “the effect of the use upon the potential market for or value of
13 the copyrighted work.” 17 U.S.C. § 107(4). This factor “focuses on actual or potential market
14 substitution” between “[the] original work and secondary use.” *Warhol*, 598 U.S. at 536 n.12; *see*
15 *HathiTrust*, 755 F.3d at 99. It “protects against a republication which offers the copyrighted work
16 in a secondary packaging, where potential customers, having read the secondary work, will no
17 longer be inclined to purchase again something they have already read.” *iParadigms*, 562 F.3d at
18 643. Where—as here—the allegedly infringing use does not replace sales of the original work, this
19 factor weighs in favor of fair use. *Seltzer*, 725 F.3d at 1179.

20 ***a. Because Training Claude With Lyrics Does Not Substitute For***
21 ***Publishers’ Uses Of Them, Factor Four Supports A Finding of Fair***
22 ***Use As A Matter of Law***

23 Anthropic’s highly transformative use of vast amounts of text, including lyrics, to train a
24 general-purpose LLM to understand human language does not create a substitute in the market for
25 Publishers’ claimed works. Publishers claim (at 34-35) they are harmed because Anthropic did not
26 pay to license their works, but that argument proves too much. “By definition every fair use involves
27 some loss of royalty revenue because the secondary user has not paid royalties.” *Bill Graham*
28 *Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 614 (2d Cir. 2006) (quoting Pierre N. Leval,

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1 *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1124 (1990)).

2 Factor four requires a far more nuanced analysis. “[A]ny economic ‘harm’ caused by
3 transformative uses” does not “count” for factor four purposes because, by definition,
4 transformative uses “do not serve as substitutes for the original work.” *HathiTrust*, 755 F.3d at 99;
5 *see also Tresona*, 953 F.3d at 651-52. Indeed, as Judge Chhabria explained, crediting Publishers’
6 theory would make the fourth factor circular. Treating unpaid license fees as fourth-factor harm
7 would assume the answer to the fair use question and would let the copyright owner prevail in every
8 case, because “‘the theoretical market for licensing’” exists in “[i]n every fair use case.” *Kadrey*,
9 788 F. Supp. 3d at 1052 (quoting *Tresona*, 953 F.3d at 652). Put differently, the “only market harms
10 that count are the ones that are caused because the secondary use serves as a substitute for the
11 original, not when the secondary use is transformative.” *HathiTrust*, 755 F.3d at 99; *see also Seltzer*,
12 725 F.3d at 1179.

13 Publishers also argue (*e.g.*, at 31-34) market harm based on new and original lyrics created
14 in response to user prompts, claiming those “competing” lyrics “dilute and disrupt” the market for
15 Publishers’ asserted works. But competition from entirely novel works is irrelevant to the fair use
16 question. This “erroneous” approach has never been endorsed by the Supreme Court, the Ninth
17 Circuit, or any other appellate court. *See 4 Patry on Copyright* § 10.155.40 (Mar. 2026 update).
18 Factor four considers only market harms derived from reproductions of a “*protected aspect*” of a
19 copyrighted work. *Google Books*, 804 F.3d at 224. Because, by definition, new and original lyrics
20 do not reproduce any protected aspect, competition created by those novel works cannot establish
21 market harm. Edward Lee, *Copyright Dilution Under Constitutional Scrutiny*, 25 Chi.-Kent J. Intell.
22 Prop. 1, 2, 18 (2026). To hold otherwise would be tantamount to granting Publishers monopoly
23 rights over an entire genre or style, radically upending the careful balance that copyright law strikes
24 between competition and protection. Lee, *supra*, at 2; *Herbert Rosenthal Jewelry Corp. v.*
25 *Kalpakian*, 446 F.2d 738, 742 (9th Cir. 1971). Under copyright law, an expansion in the number of
26 original works is a benefit—not a market harm. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 524 (1994).

27 The Ninth Circuit has accordingly concluded that factor four favors the defendant even
28 where the defendant’s transformative use of the work “facilitat[ed] the entry of a new competitor”

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1 and therefore “undoubtedly ‘affected’” competition in the market for the plaintiff’s works. *Sega*
2 *Enters.*, 977 F.2d at 1523-24. A copyright owner’s “attempt[s] to monopolize the market by making
3 it impossible for others to compete run[] counter to the statutory purpose of promoting creative
4 expression.” *Id.* And the Supreme Court itself has long recognized that secondary works that reduce
5 demand for an original work—*e.g.*, through criticism or parody—do not create a cognizable harm.
6 *See Campbell*, 510 U.S. at 591-92. Put simply, the Copyright Act “seeks to advance original works
7 of authorship, not to protect authors against competition.” *Bartz*, 787 F. Supp. 3d 1032.

8 Publishers also argue (at 29) that rare (~0.01%) Claude outputs that reproduce portions of
9 their lyrics harm the existing market for licensing the right to display those lyrics online. This theory
10 targets the “use” of lyrics in Claude outputs responding to user requests—not the use of lyrics as
11 inputs to training. It is thus irrelevant to whether Anthropic should be granted summary judgment
12 on fair use for training. *Supra* p. 8. As *Warhol* explained, fair use must be considered on a use-by-
13 use basis. 598 U.S. at 533. Hanging the Prince portrait in a museum would have been analyzed
14 differently than using the photograph on the cover of a magazine. *See id.* at 557-58 (Gorsuch, J.,
15 concurring). This remains true even when the uses at issue are different features of the same
16 technological system. *See, e.g., HathiTrust*, 755 F.3d at 87 (separately analyzing (1) search function
17 returning page and frequency results and (2) full-text access for patrons with print disabilities);
18 *Google Books*, 804 F.3d at 202 (separately analyzing (1) search function that identified books
19 containing terms and (2) “snippet view” function displaying excerpts of text); *Splunk Inc. v. Cribl,*
20 *Inc.*, 2025 WL 3768665, at *2, *4 (N.D. Cal. Dec. 31, 2025) (separately analyzing four different
21 secondary uses). Publishers do not get to build a fair use Frankenstein by mixing and matching
22 different uses and then asserting that supposed harm from one undermines fair use for the other.

23 In any event, even if the Court considers Anthropic’s training on inputs and generation of
24 outputs as one single use, Anthropic’s highly transformative use of training data to build Claude
25 and Claude’s vast number of novel, transformative outputs outweigh as a matter of law the minimal
26 marketplace harms Publishers assert from the miniscule fraction of outputs that include verbatim
27 lyrics to the works in suit. *Google Books*, for example, concluded the defendants were entitled to
28 summary judgment on fair use despite the possibility that “snippet function” could “cause *some* loss

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1 of sales” of the plaintiff’s works because that theoretical market harm was not “meaningful or
2 significant.” 804 F.3d at 223-25. And *Red Label Music Publishing, Inc. v. Chila Productions* found
3 that the defendant’s transformative use of snippets of plaintiff’s music video in a documentary was
4 fair use, despite damage to the licensing market for the clips. 388 F. Supp. 3d 975, 986-89 (N.D. Ill.
5 2019). The fair use showing here is much stronger. Publishers’ own expert identified only 655
6 outputs containing lyrics out of a sample of 5 million (0.013%). MSS #75. Only 2 outputs after
7 [REDACTED] (when Anthropic strengthened its guardrails in response to this lawsuit) were
8 related to the works in suit, both of which are only lyric fragments. MSS #76. And within the set of
9 prompts that sought reproduction, 83.33% belonged to Publishers’ *known* investigator; and more
10 might belong to the undisclosed accounts of Publishers’ other agents. MSS #77. In short, even if
11 these supposed “harms” were relevant, there is no evidence that they are meaningful or significant.
12 Anthropic’s undeniably transformative use of text to train LLMs and the numerous transformative
13 novel outputs Claude is capable of producing because of that training confirm that, even under
14 Publishers’ theory, Anthropic is entitled to judgment of fair use as a matter of law.

15 Although the Court can resolve the fourth factor in Anthropic’s favor without reaching it,
16 the undisputed “public benefits the copying will likely produce” also support fair use. *Oracle*, 593
17 U.S. at 35; *see Perfect 10*, 508 F.3d at 1166. Publishers’ experts and witnesses repeatedly
18 acknowledge that “AI has a lot of beneficial applications,” Ex. 121 (Pltfs. Wit. Kokakis Dep.),
19 337:10-11, and that “multiple types of AI,” including “generative AI,” have “applications” that are
20 “positive and useful,” Ex. 139 (Pltfs. Exp. Zhao Dep.), 399:23-400:2, 401:5-8; *see* MSS #80-82.
21 UMG agrees: AI presents “significant opportunities” for “new products and services” such that “the
22 impact AI will have on [their] business will be overwhelmingly net positive.” Ex. 136 (UMG
23 Earnings Call), 23:37.

24 To take a few examples, Claude has significantly accelerated the research process of the
25 Tahoe Lead Removal Project, helping the group achieve the removal of six miles of lead-clad cables.
26 MSS #84. Pfizer and Novo Nordisk have integrated Claude into their core research infrastructure
27 and thereby saved thousands of hours navigating time-consuming research tasks and producing
28 clinical report data, speeding up the discovery and approval process for new drugs. MSS #85-86.

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1 And the European Parliament used Claude to improve access to 2.1 million archived government
2 records dating back to 1952. MSS #87. Finding fair use here would therefore foster innovation,
3 expand access to knowledge, and create powerful tools for human creativity—precisely the
4 outcomes copyright law was designed to encourage.

5 ***b. At Minimum, The Record On Factor Four Bars Summary***
6 ***Judgment For Publishers***

7 Because none of Publishers’ theories of market harm is legally cognizable, factor four favors
8 Anthropic as a matter of law. But even if Publishers’ theories were viable (they are not), genuine
9 fact disputes certainly preclude granting Publishers summary judgment.³

10 **i. No Market For Licensing Training Data.** Even if lost licensing revenue for
11 transformative uses could be considered a relevant “harm,” Anthropic’s economic expert Dr.
12 Abhishek Nagaraj demonstrated that no market exists or is likely to form to license training data for
13 general-purpose LLMs. Dr. Nagaraj explained that no LLM developer would license lyrics
14 specifically without a market for the vast quantity of other diverse data needed to build a high-
15 performing general-purpose LLM. Ad.F #23. And he explained that no market for general training
16 data exists or is likely to form because (1) the number of potential rights holders is enormous and
17 highly distributed, and (2) the incremental value of any individual work is marginal. Ad.F #24; *see*
18 *also White v. West Publ’g Corp.*, 29 F. Supp. 3d 396, 397-98, 400 (S.D.N.Y. 2014) (finding no
19 market due to high transaction costs where works made up small fraction of database). Indeed,
20 Publishers have offered no evidence that these high transaction costs could be overcome so as to
21 permit formation of any general market for training data. Ad.F #25.

22 Even accepting the possibility of a market for only lyrics, Dr. Nagaraj explained that no
23 market for using lyrics to train general-purpose LLMs exists, or is likely to form, because lyrics are
24 of such low training value that even moderately high transaction costs (as exist here) prevent
25 licensing. Ad.F #26. Moreover, the volume of text provided by lyrics is also exceptionally low. The
26 works here would amount to around [REDACTED] of text needed to train Claude—and the full

27
28 ³ Publishers’ factor four showing relies heavily on their expert, Michael Smith. Anthropic has
moved to exclude Smith’s conclusions. *See* Dkt. 680. Should the Court grant Anthropic’s motion,
Publishers’ factor four showing would collapse, even under their (mis)understanding of the law.

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1 catalog of Publishers’ songs would make up only around [REDACTED]. Ad.F #27.

2 [REDACTED]
3 [REDACTED] Ad.F #28-29. That admission alone—combined with Publishers’ failure
4 to demonstrate any functioning market for training data generally—supports summary judgment for
5 Anthropic. But at a minimum, there is a genuine factual dispute about whether any actual or potential
6 market exists to license lyrics to train a general-purpose LLM. *See Bartz*, 787 F. Supp. 3d at 1032
7 (noting genuine dispute over formation of a market before finding the issue legally irrelevant).

8 Publishers’ counterarguments simply underscore why *they* are not entitled to summary
9 judgment. Publishers claim (at 34) that “copyright owners have already entered into hundreds of
10 agreements with AI developers to license their content in connection with AI models.” But Dr.
11 Nagaraj explained that these arrangements look nothing like this case. Some “include advertising,
12 display, and AI integration rights” and thus encompass a larger scope of rights than just training.
13 Ad.F #30.

14 Others are “last mile” or “gap filling” transactions that cover a narrow set of unique data that
15 is particularly valuable to the model’s training. Ad.F #31. The only thing these transactions
16 demonstrate is that—after an AI developer has already amassed trillions of words of text—the
17 developer may discover gaps related to certain highly significant and valuable data. Ad.F #31. There
18 was nothing uniquely valuable about Publishers’ lyrics relative to other training data. Ad.F #32-35.
19 And in all events, one-off scenarios say nothing about the existence of a market for acquiring
20 trillions of words in the first instance.

21 Publishers also stress (at 34) they have entered into licensing deals with two music-
22 generation AI companies. But those deals occurred in a different market serving different needs and
23 involving different products: Udio and Klay are single-purpose music-generation LLMs that do not
24 compete with general-purpose LLMs like Anthropic, Ad.F #36-37, [REDACTED]
25 [REDACTED] Ad.F #36. They are thus irrelevant to the licensing market at issue,
26 again creating—at a minimum—a genuine dispute of material fact.

27 **ii. No Competitive Harm.** As discussed, Publishers’ competition-from-new-works theory
28 of harm is not cognizable. *Supra* p. 16. And in any event, the facts do not support it. Just last month,

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1 the Chief Digital Officer of UMG (parent of two Publishers who collectively assert 448 of the songs
2 at issue) rejected Publishers’ theory on the company’s earnings call, explaining instead that AI will
3 generate *benefits*: “We’re seeing no indication that AI royalty dilution is a material issue for UMG
4 from a revenue perspective ... [T]houghtful analysis will conclude that the impact AI will have on
5 our business will be overwhelmingly net positive.” Ex. 136 (UMG Earnings Call), 23:37. Consistent
6 with that statement, Publishers’ own economic expert could not identify a single songwriter that has
7 [REDACTED] Ex. 132 (Pltfs. Exp. Smith Dep. (Vol. 1)),
8 109:20-110:9, nor could he quantify any [REDACTED]
9 [REDACTED], *id.* at 115:21-116:3. And Dr. Nagaraj’s analysis confirms what Publishers’
10 experts could not find: There is no competitive harm from AI. Dr. Nagaraj’s regression analysis
11 showed no impact from Claude on Publishers’ revenues, even though every version of Claude in
12 the past three years could generate new, novel lyrics. Ad.F #38. He also opined that there is no
13 evidence AI-generated content will harm Publishers specifically or the music industry as a whole.
14 Ad.F #39. To the contrary, positive impacts are more likely—for example, songwriters using AI to
15 increase their productivity and generate new song ideas. Ad.F #40. Even if Publishers’ theory of
16 harm were to be accepted, Publishers’ admissions and lack of evidence should support summary
17 judgment *for Anthropic*. At minimum, it would preclude summary judgment for Publishers.

18 **iii. No Harm To Market For Licensing Lyrics For Display.** Publishers argue (at 29) that
19 the display of “Publishers’ lyrics in AI output substitutes for those lyrics” and thus harms their
20 ability to license their lyrics to websites like AZlyrics.com or Genius.com. As discussed above, this
21 evidence is not relevant to Publishers’ training claims and in any event cannot outweigh Anthropic’s
22 highly transformative purpose. *Supra* pp. 17-18. But even if the Court considers this issue,
23 Publishers’ theory finds no support in the record. Publishers’ expert could not identify a single lost
24 licensing deal or licensing negotiation in which Publishers had reduced bargaining power as a result
25 of AI or AI training, let alone Claude specifically. Ad.F #41. On the flip side, Dr. Nagaraj conducted
26 regression analyses and found that Claude usage has not reduced visits to lyric display websites or
27 Google searches for lyrics to the works at issue. Ad.F #42. And Anthropic’s damages expert found
28 no evidence that [REDACTED]. Ad.F #43.

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1 While the existence of this market is not disputed, Publishers have offered no evidence of any
2 negative “effect of the use” on the market—failing the relevant legal test. *See* 17 U.S.C. § 107(4).

3 **5. Claude And Its Outputs Are The Result of Expressive Human Activity**

4 Knowing they fight an uphill battle on fair use, Publishers resort to fabricating a new
5 requirement from whole cloth, insisting (at 19-20) that the fair use inquiry turns on whether the use
6 is made by a human or machine, or whether the use is itself expressive. But humans at Anthropic
7 invented Claude and continue to improve Claude every day. And humans prompt Claude for
8 assistance with countless projects, including creative ones. On both ends, it is the action of humans
9 that matters. Claude is nothing but a tool for humans.

10 In any case, the fair use statute simply contains no “human” or “expressive” activity
11 requirement. 17 U.S.C. § 107. Nor does the case law. The Supreme Court has held, for example,
12 that recording television shows so they could be watched later was fair use, even though such “time-
13 shifting” was not expressive and was carried out by a machine (the Betamax). *Sony Corp. of Am.*,
14 464 U.S. at 442, 449-50; *see also supra* p. 11 (discussing *Perfect 10*, *Google Books*, *HaithiTrust*,
15 and *iParadigms*). Publishers’ lone purported counter authority—*Thaler v. Perlmutter*, 130 F.4th
16 1039, 1041 (D.C. Cir. 2025)—does not even address fair use. That case considered an entirely
17 distinct question governed by a different statutory provision: whether a copyright may be registered
18 for a work of art if a machine is listed as the work’s sole author. *Id.* at 1041. At bottom, nothing in
19 the law categorically excludes AI activity, or human works created with the help of AI, from fair
20 use’s protection.

21 **B. There Is A Material Factual Dispute As To Whether Non-Verbatim Outputs**
22 **That Reference Publishers’ Claimed Lyrics Are Protected By Fair Use**

23 This Court need not reach the separate question of whether specific outputs generated at a
24 user’s request are fair use. Publishers cannot prevail on direct liability for their output-based theory
25 because Publishers cannot establish Anthropic engaged in volitional conduct. *Infra* pp. 24-29. Nor
26 can Publishers prevail on secondary liability. *Infra* pp. 29-33.

27 If this Court does reach the issue of whether specific outputs are subject to a fair use defense,
28 it should not grant Publishers’ motion in full. To be sure, Anthropic does not assert a fair use defense

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1 to any actual “verbatim ... cop[y] of lyrics,” which Publishers claim (at 14-15) exist for each song
2 at issue. But many examples that Publishers identify are not verbatim outputs, or anything close.
3 For instance, the output that Publishers rely upon for their claim that Claude reproduced the song
4 “Wannabe” by the Spice Girls merely displays twelve words of the over 500-word song (the line:
5 “Yo, I’ll tell you what I want, what I really, really want”)—and apparently did so as commentary,
6 in response to an innocuous request for examples of “cringeworthy 90s lyrics.” Chung Decl. Ex. 2
7 (Dkt. 611-1) at 307-09. Publishers also assert there can be no fair use, as a matter of law, for outputs
8 quoting short excerpts of lyrics (1) to explain a reference in a pun, *id.* at 37; (2) when analyzing
9 whether “Songbird [can] be a wedding song,” *id.* at 255-56; (3) when asked “what the song dog
10 days are over [is] about,” *id.* at 49-50, and (4) when answering whether a given lyricist and another
11 person wrote “tiny dancer” together, *id.* at 288-89. Publishers even point to an output that provides
12 a Christmas-themed parody of “Message in a Bottle” by The Police. *Id.* at 144-45.

13 Publishers cannot meet their burden because a reasonable fact finder could—and Anthropic
14 submits, would—conclude that each of these outputs is fair use. After all, the Copyright Act
15 specifically identifies “criticism,” “comment,” and “teaching” as examples of fair use. 17 U.S.C.
16 § 107. And the Supreme Court has recognized that “parody, like other comment or criticism, may
17 claim fair use under § 107.” *Campbell*, 510 U.S. at 579. Ultimately, whether any particular output
18 of this sort constitutes fair use turns on context-dependent “case-by-case analysis,” *id.* at 569—
19 precisely the kind of context Publishers have failed to provide. Because there is, at the very least, a
20 genuine fact dispute as to fair use, Publishers are not entitled to summary judgment on them.

21 **II. ANTHROPIC IS ENTITLED TO SUMMARY JUDGMENT ON PUBLISHERS’ OUTPUT CLAIMS**

22 Publishers’ copyright claims premised on the distinct use of their purported lyrics in outputs
23 also fail as a matter of law. *First*, Anthropic cannot be held directly liable for any outputs reciting
24 Publishers’ claimed lyrics because, as a matter of law, Anthropic did not act volitionally in
25 producing those outputs. Rather, it was users (mostly, if not always, Publishers themselves) who
26 directly caused the purportedly infringing outputs.

27 *Second*, Publishers have not and cannot establish secondary liability as a matter of law.
28 Secondary liability requires an infringement by a bona fide third party because Publishers and their

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1 agents cannot infringe their own works. Here, Publishers have failed to show that any of the prompts
2 that generated the purportedly infringing responses were submitted by bona fide third parties. In any
3 event, *Cox Communications, Inc. v. Sony Music Entertainment*, 146 S. Ct. 959 (2026), is fatal to
4 Publishers’ contributory liability claim because there is no evidence that Anthropic took steps to
5 encourage users to generate infringing outputs and because Claude has substantial noninfringing
6 uses. And Publishers cannot establish vicarious liability because, despite Publishers’ allegations to
7 the contrary, they have not adduced any evidence that the possibility of infringement served as a
8 draw for Anthropic’s customers, or that Anthropic profited from purportedly infringing outputs.

9 **A. Anthropic Cannot Be Held Directly Liable As A Matter Of Law**

10 Copyright law carefully distinguishes between two forms of infringement: direct and
11 secondary. The former applies when the defendant is “the *direct cause* of the infringement.” *VHT*,
12 *Inc.*, 918 F.3d at 731-32. When the defendant is not the direct cause, secondary liability applies
13 under two circumstances. Contributory infringement occurs when the defendant “actively
14 encourages” infringement by others “through specific acts” or “provide[s] [a] service [] tailored to
15 [] infringement.” *Cox*, 146 S. Ct. at 967. And vicarious infringement occurs when the defendant
16 “profit[s] from direct infringement while declining to exercise a right to stop or limit it.” *Metro-*
17 *Goldwyn-Meyer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005).

18 Secondary liability does not “excuse defendants from accountability,” but merely
19 “channel[s] the claims against them into the correct analytical track.” *Am. Broad. Cos., Inc. v. Aereo*,
20 *Inc.*, 573 U.S. 431, 455 (2014) (Scalia, J., dissenting); see *Perfect 10, Inc. v. Giganews, Inc.*, 847
21 F.3d 657, 667 (9th Cir. 2017) (noting Justice Scalia’s dissent is consistent with Ninth Circuit
22 volitional conduct law). The distinction ensures that direct infringement is limited to those who are
23 “sufficiently close ... to the illegal copying” that it can be said they have “trespassed on the
24 exclusive domain of the copyright owner.” *VHT, Inc.*, 918 F.3d at 732 (quoting *CoStar Grp., Inc. v.*
25 *LoopNet, Inc.*, 373 F.3d 544, 550 (4th Cir. 2004)). Secondary liability, by contrast, permits courts
26 to distinguish between good actors that invest in effective copyright protections and bad actors that
27 actively encourage infringement. See *Grokster*, 545 U.S. at 926.

28 The line between direct and secondary liability is operationalized through the “volitional

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1 conduct” requirement, which serves as “the Copyright Act’s version of proximate cause.” *Hunley*
2 *v. Instagram, LLC*, 73 F.4th 1060, 1074-75 (9th Cir. 2023); 3 *Patry on Copyright* § 9:5.50 (Mar.
3 2026 update). The Second Circuit’s decision in *Cartoon Network* demonstrates how the volitional
4 conduct requirement applies to automated systems. *Cartoon Network*, 536 F.3d at 130-33.

5 *Cartoon Network* held that Cablevision, which provided a remote DVR system through
6 which users could select a TV program to record, did not engage in volitional conduct because the
7 end users were the ones “who actually press[ed] the button” to cause an infringing copy to be made.
8 *Id.* at 131. The users “order[ed] th[e] system to produce a copy of a specific program” and the system
9 “automatically obey[ed].” *Id.* Cablevision’s “significant control over the content” available for its
10 users to copy made no difference because Cablevision’s control extended only to “the channels of
11 programming available to a customer,” and not to the specific programs that its users selected for
12 recording. *Id.* at 132. By holding that automated systems such as Cablevision’s could not face direct
13 liability, *Cartoon Network* did not suggest that those systems were entirely off the hook. Instead,
14 the court explained that in appropriate cases, “the doctrine of contributory liability stands ready to
15 provide adequate protection to copyrighted works.” *Id.*

16 Ninth Circuit case law follows the same basic principle. Just as *Cartoon Network* asks “who
17 actually presses the button,” 536 F.3d at 131, the Ninth Circuit asks who actually “cause[s] the
18 copying,” *Fox Broad. Co., Inc. v. Dish Network L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2014).
19 Specifically, the Ninth Circuit looks to who “instigate[s]” the copying and who “selects” the
20 copyrighted content that is copied. *VHT, Inc.*, 918 F.3d at 732. If the users “selected” the specific
21 works that were copied and “instigated” the copying process, the copying is attributable to the users
22 and not the system that “responds automatically to users’ input.” *Id.* at 737.

23 Under the *Cartoon Network/VHT* standard, Anthropic has not engaged in any volitional
24 conduct. Claude’s users, not Anthropic, “cause the copying” alleged. *Fox Broad.*, 747 F.3d at 1067.
25 It is undisputed that Claude produces outputs automatically in response to user requests: users “enter
26 a prompt,” and “Claude processes the users’ prompt and generates a response.” Ex. 10 (Pltfs. Exp.
27 Zhao Rpt.), ¶ 54; MSS #91-92. As Publishers’ technical expert admits, the user himself “type[s] ...
28 out” a prompt to “put into the system.” Ex. 131 (Pltfs. Exp. Shan Dep.), 97:11-99:6. Anthropic does

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1 not “limit what can be typed into the text box as long as it’s English words.” *Id.* at 99:25-100:13.
2 Users are therefore the ones who “actually press[] the button” or “instigate[]” copies to be made.
3 *Cartoon Network*, 536 F.3d at 131; *VHT, Inc.*, 918 F.3d at 734.

4 Prompts and outputs in the record further demonstrate that it was the user who asked for or
5 “instigate[d]” the lyric-related output. *VHT, Inc.*, 918 F.3d at 734. It was a user who decided to ask
6 Claude for an essay about the greatest love songs of all time (generating an analysis of why the
7 Beach Boys’ lyrics are uniquely moving), MSS #93, and another user who sought a playlist inspired
8 by women’s protest movements (generating a list of tracks with brief explanations of each song’s
9 message), MSS #94. It was Publishers’ own investigator who asked Claude for song lyrics and
10 requested that it “insert a space between every character” for the express purpose of trying to
11 jailbreak the system to output “with copyrighted lyrics guardrails removed,” MSS #95. Indeed,
12 Publishers’ expert appears to have resorted to trying to trick Claude into bypassing its guardrails by
13 claiming to be Anthropic’s CEO. MSS #96. As these examples illustrate, the user—not Anthropic—
14 is engaged in the volitional conduct that Publishers claim led to infringing outputs.⁴

15 The “inclusion of Publishers’ [claimed] lyrics in Claude’s training data” does not establish
16 that Anthropic was the cause of any infringing outputs. Mot. 17. It remains Claude’s users—not
17 Anthropic—who directly cause Claude to generate particular outputs. As Publishers’ expert
18 acknowledged, there are no “copies” of works in Claude models: Claude does not “stor[e] an exact
19 copy of th[e] text” used in training or “strictly refer back to and fetch that sequence from its training
20 corpus” when it responds to user prompts. Ex. 18 (Pltfs. Exp. Zhao Rebut.), ¶ 11; MSS #36, 97.
21 That alone distinguishes Claude from systems that face direct liability for storing copyrighted works
22 and transmitting them to users. *E.g.*, *Perfect 10*, 508 F.3d at 1160. Unlike the technology at issue in
23 *Perfect 10* (which involved storing and reproducing thumbnail images of copyrighted images),
24 Claude does not retrieve existing information from a database. Rather, Anthropic has trained Claude
25 to output new, contextually relevant text in response to user requests. MSS #33.

26
27 ⁴ Publishers (at 16) put undue weight on Anthropic’s acknowledgement that “Publishers can cite
28 their own prompt-output pairs as evidence of direct infringement.” The remainder of the sentence
(omitted by Publishers) explains, “Anthropic can defend against” Publishers’ direct infringement
claim “on the merits.” Dkt. 564 at 3 n.6. Anthropic does exactly that here.

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1 It is also undisputed that Anthropic did not select specific copyrighted works to include in
2 Claude’s training data. Just as Cablevision “aggregate[d]” TV programming from “a wide variety”
3 of channels, *Cartoon Network*, 563 F.3d at 124, Anthropic aggregated “large and diverse datasets
4 of preexisting human-written content when selecting training data” for Claude. Ex. 10 (Pltfs. Exp.
5 Zhao Rpt.), ¶ 55; *see also* MSS #99. Those datasets included publicly available text from the Internet
6 and free, open repositories of web crawl data, which happened to sweep in the purportedly
7 copyrighted works at issue due to their ubiquity across the internet. MSS #100. Anthropic no more
8 “selected” these lyrics by training Claude on webpages than a DVR provider (like Cablevision)
9 “selects” a *Law & Order* rerun by giving its users access to NBC, USA, and TNT.

10 In fact, the record demonstrates Anthropic did just the opposite. It is undisputed that
11 Anthropic put into place several systems to “detect *and prevent*” copyright infringement through a
12 multi-layered system of defenses. Ex. 10 (Pltfs. Exp. Zhao Rpt.), ¶¶ 120, 126. Well before this
13 lawsuit, Anthropic took steps to reduce the likelihood that Claude might reproduce copyrighted
14 material in response to user prompts. As Publishers’ own expert acknowledges, Anthropic uses
15 deduplication techniques to remove repetitive content from Claude’s training data, MSS #101, to
16 reduce the risk of regurgitation of texts from Claude’s training corpus, which “Anthropic do[es] not
17 desire,” *id.* Anthropic also pioneered Constitutional AI, a state of the art safety and ethics alignment
18 technique Anthropic uses before a Claude model becomes public, and which embeds a principle
19 against substantially reproducing copyrighted content within Claude’s character. MSS #108. And
20 Anthropic introduced a [REDACTED] to reinforce that principle. MSS #110.

21 Publishers also concede that Anthropic has strengthened its safeguards over time. MSS
22 #111-112. Anthropic’s Prompt Shield detects when a user’s prompt is likely to cause Claude to
23 generate reproductions of copyrighted content and modifies the prompt to avoid substantial
24 reproduction of copyrighted content. MSS #113-115. Anthropic’s Content Compare System checks
25 potential Claude outputs against a [REDACTED] to stop outputs. MSS #117, 119;
26 *supra* p. 6. And Anthropic’s Usage Policy expressly secures users’ agreement to use Claude in a
27 way that respects copyrights. MSS #120. Because Anthropic “actively designed its system to avoid
28 and eliminate copyright infringement,” it has not “engage[d] in volitional conduct necessary to

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1 support a finding of direct liability.” *VHT, Inc.*, 918 F.3d at 733.

2 Publishers claim that Anthropic “exercised volition” in the creation of infringing Claude
3 outputs in three other ways, all of which fail as a matter of law. *First*, Publishers assert (at 17) that
4 there would be no infringing outputs “but for Anthropic’s copying of Publishers’ Works as input.”
5 Direct liability requires *proximate cause*, not just but-for cause. *See Hunley*, 73 F.4th at 1074-75.
6 A system like Claude that “responds automatically to users’ input” does not engage in volitional
7 conduct, *VHT, Inc.*, 918 F.3d at 738, because its role is not “sufficiently proximate to the copying
8 to displace the customer as the person who ‘makes’ the copies,” *Cartoon Network*, 536 F.3d at 132.

9 *Second*, Publishers assert (at 17) that Anthropic engaged in volitional conduct by “train[ing]
10 Claude to respond to prompts seeking lyrics by outputting lyrics.” But the dataset Publishers cite
11 was used to train models that are entirely separate from Claude, called preference or reward models.
12 Ad.F #18; RSS #99-110. There is no record evidence that Anthropic taught Claude to perform
13 specific tasks, let alone regurgitate copyrighted song lyrics using this dataset. Quite the contrary.
14 Anthropic taught Claude *not to output copyrighted material*, including through its Constitutional
15 AI principles and a [REDACTED]. *Supra* pp. 5-6. No reasonable jury could find
16 that a handful of prompts, out of a dataset of over 169,000 conversations used to train an
17 intermediate model what it means to be “helpful,” amounted to volitional behavior. Ad.F #19.

18 Regardless, even if there were evidence in the record that Anthropic trained Claude that
19 regurgitation of copyrighted materials is the helpful response (there is not), it would not help
20 Publishers. That is because “designing, housing, and maintaining a system” to provide helpful
21 responses to user prompts does not establish volitional conduct. *Cartoon Network*, 536 F.3d at 131.
22 It remains the user who acts volitionally by “ordering that system to produce a copy of a specific”
23 lyric, *id.*, as Claude’s training allows it to “respond[] automatically to users’ input ... without
24 intervening conduct” by Anthropic, *VHT, Inc.*, 918 F.3d at 738.

25 *Third*, Publishers erroneously assert (at 17) that Claude outputs Publishers’ claimed lyrics
26 “even when users do not ask.” The only support for this argument is a handful of user prompts that,
27 under any reasonable interpretation, asked Claude for lyrics. In one example, the user identified a
28 song and asked if Claude “can sing a song.” Chung Decl., Ex. 36 (Dkt. 611-34). In another, the user

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1 asked if Claude is “familiar with the Lyrics” to a song. *Id.*, Ex. 37 (Dkt. 611-35). Publishers cannot
2 seriously contend that these prompts were not asking Claude for lyrics. The only thing these
3 examples show is that there are a variety of ways to make such a request. No matter what phrasing
4 someone uses, the user is the proximate cause of these outputs.

5 **B. Publishers’ Secondary Liability Claims Fail As A Matter Of Law**

6 The point of secondary liability is to punish only those who “consciously and culpably
7 participat[e]” in the unlawful acts of another. *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 506 (2023).
8 The doctrine seeks to identify bad actors—those who pursue a “patently illegal objective” to “cause
9 and profit from third-party acts of copyright infringement,” *Grokster*, 545 U.S. at 941. Ordinary
10 service providers like Anthropic—who do not want their services to be used for infringement but
11 might not always be able to prevent it—are not liable. *See Cox*, 146 S. Ct. at 967-68.

12 Publishers appear to recognize they cannot establish either of their secondary claims. After
13 *Cox* narrowed the standard for contributory infringement, Publishers dropped that claim against
14 Anthropic in *Concord II*. *Compare* No. 26-cv-880 (N.D. Cal.), Dkt. 1 at 39, *with* No. 26-cv-880,
15 Dkt. 75 at 41. And yet, they maintained it here. A week before this filing, Anthropic conferred with
16 Publishers and asked if they would drop their claim. Publishers stood by it. Anthropic followed up
17 by email. Ex. 146 (4/13 Email). Publishers did not respond. Then, the evening before this filing,
18 Publishers announced they would be dropping their contributory and vicarious infringement claims
19 “in light of a number of [unspecified] factors.” Ex. 152 (4/19 Email Chain). After nearly two and
20 half years of hard-fought litigation on these claims, Anthropic asked Publishers to stipulate to entry
21 of judgment *with prejudice* so Anthropic would not need to brief them here. *Id.* Publishers initially
22 refused. *Id.* Then the morning of this filing, Publishers agreed to dismissal with prejudice but refused
23 to agree to entry of judgment on the claims or to stipulate that they would not seek to litigate the
24 same issues in future cases. And finally, the night of Anthropic’s filing, Publishers filed a “Notice
25 of Voluntarily Dismissal” which acknowledges (in a footnote) that Publishers do not have the ability
26 to unilaterally dismiss their claims at this stage and must confer with Anthropic. Dkt. 685. Publishers
27 should not be allowed to abandon their claims to avoid an adverse judgment while holding open the
28 possibility of asserting these same (meritless) issues again in *Concord II* or some other future case.

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1 After defending against these claims for years, Anthropic is entitled to finality. Anthropic will
2 continue to confer with Publishers and notify the Court if the parties resolve these claims.

3 **1. There Is No Evidence Of Direct Infringement By True Third Parties**

4 “Secondary liability for copyright infringement does not exist in the absence of direct
5 infringement by a third party,” *Perfect 10, Inc.*, 508 F.3d at 1169, and a “copyright owner cannot
6 infringe against his own copyright,” *Richmond v. Weiner*, 353 F.2d 41, 42 (9th Cir. 1965). Thus, to
7 prevail on their secondary liability claims, Publishers must establish that a bona fide third party
8 generated the allegedly infringing output in question. Because the predicate act of direct
9 infringement cannot have been committed by Publishers themselves, any outputs generated in
10 response to queries by Publishers’ employees or agents cannot be the basis for holding Anthropic
11 secondarily liable. Anybody who is “authorized by the copyright owner to use the copyrighted
12 work” is “not an infringer of the copyright.” *Sony*, 464 U.S. at 433.

13 Here, Publishers assert (at 16) that they identified third-party outputs for only 82 works in
14 suit. Any secondary liability claim premised on the remaining 417 compositions necessarily fails.

15 As for the remaining 82 works, Publishers—citing work product protection—have refused
16 to produce evidence that would allow Anthropic to confirm whether in fact those outputs were
17 generated by a bona fide third party. Publishers ask the Court (and Anthropic) to simply take their
18 word that those outputs are not part of the nearly 10,000 prompts that Publishers submitted during
19 their pre- and post-suit investigation. MSS #135. But those self-serving representations (at 16) “are
20 not evidence and do not create issues of material fact.” *Barcamerica Int’l USA Trust v. Tyfield Imps.*,
21 *Inc.*, 289 F.3d 589, 593 n.4 (9th Cir. 2002). “[P]arties in litigation may not abuse the privilege by
22 asserting claims the opposing party cannot adequately dispute unless it has access to privileged
23 materials.” *Bittaker v. Woodford*, 331 F.3d 715, 719 (9th Cir. 2003) (en banc). By withholding
24 evidence that would allow Anthropic to assess Publishers’ factual assertions, Publishers
25 impermissibly use privilege “both as a sword and a shield.” *Columbia Pictures Television, Inc. v.*
26 *Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186, 1196 (9th Cir. 2001).⁵

27
28 ⁵ Since filing their motion, Publishers have admitted that one of the outputs characterized as an
“undisputed” third-party output was generated by their own expert. Dkt 678; MSS #136. Publishers
made this correction only after Anthropic identified the issue. *See* Dkt. 663 at 4-5; MSS #137.

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2. Publishers’ Contributory Infringement Claim Fails As A Matter Of Law

Under *Cox*, contributory infringement “can be shown only” in two ways: (1) if the defendant “actively encourages infringement through specific acts,” or (2) if the provided service is “tailored to” infringement such that it is “not capable of substantial or commercially significant noninfringing uses.” *Id.* at 967. Publishers fail to produce evidence of either.

a. There Is No Evidence That Anthropic Induced Infringement

A defendant who “distributes a device” capable of infringement “is liable for the resulting acts of infringement by third parties” if the defendant does so “with the object of promoting [the device’s] use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement.” *Grokster*, 545 U.S. at 936-37. The plaintiff must show “active[] encourage[ment]” though “specific acts,” *Cox*, 146 S. Ct. at 967; *see also Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1034 (9th Cir. 2013) (similar). Publishers cannot meet this high bar.

Publishers have pointed to no expression, let alone “clear expression,” from Anthropic that its goal in training Claude was to promote or foster infringement by third parties. *Grokster*, 545 U.S. at 937. For example, there is no evidence that Anthropic has ever advertised Claude as a tool for infringement or instructed users how to infringe copyrights using Claude. *See id.* at 936; *Cox*, 146 S. Ct. at 967-68. To the contrary, Anthropic made massive investments to try to prevent copyright infringement and adopted a Usage Policy that expressly prohibits it. *See supra* pp. 5-6.

Nor do Publishers have any evidence that Anthropic engaged in “specific acts” to encourage infringement, *Cox*, 146 S. Ct. 967, or that it has taken “affirmative steps” to “foster infringement,” *Grokster*, 545 U.S. at 937. Again, the undisputed record shows just the opposite: Anthropic implemented and improved guardrails and other techniques that reduce the likelihood that Claude might reproduce copyrighted material in response to user prompts—and continues to do so. *See supra* pp. 5-6. Those guardrails underscore the voluminous evidence in the record that Anthropic did not intend to permit infringing outputs or to foster copyright infringement. MSS #140-142. As Anthropic CEO Dario Amodei explained:

[T]his isn’t an intended output of Anthropic models. This is something we’re trying to prevent. This is something that happens either by accident—although over time the ... protections get better—or this is something that happens because someone is

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1 adversarially trying to get around the filters and extract content. Neither of those things
2 we want. And when they happen, we try to make them right.

3 Ex. 112 (Dario Amodei Dep.), 78:10-18. Publishers have identified zero evidence to the contrary.

4 ***b. There Is No Evidence That Claude Is Tailored To Infringement***

5 Nor could any reasonable jury find that Claude is tailored to infringement. *Cox*, 146 S. Ct.
6 at 967. “[A] service is tailored to infringement if it is not capable of ‘substantial’ or ‘commercially
7 significant’ noninfringing uses.” *Id.* Here, there is no dispute that Claude is “capable of substantial
8 lawful use.” *Grokster*, 545 U.S. at 933. As Publishers’ own expert put it, “the universe of different
9 kind[s] of queries that any one of us can ask” Claude is “potentially unlimited.” Ex. 139 (Pltfs. Exp.
10 Zhao Dep.), 307:7-11; MSS #146. Undisputed data show that Claude is most commonly used for
11 substantial, noninfringing purposes. MSS #16. This is no surprise, given that Anthropic focuses on
12 business and enterprise customers. MSS #149-151. Outputs even generally related to existing lyrics
13 (like those discussing the meaning of lyrics) make up 0.013% of Claude’s usage. *Supra* pp. 17-18;
14 MSS #152. In short, user requests for lyrics are rare, and lyric-related outputs are even rarer.

15 **3. Publishers Fail To Establish Vicarious Infringement**

16 Vicarious infringement requires the plaintiff to show “a causal relationship between the
17 infringing activity and any financial benefit a defendant reaps.” *Erickson Prods., Inc. v. Kast*, 921
18 F.3d 822, 829 (9th Cir. 2019). Publishers’ complaint alleges that (1) Anthropic is paid “every time”
19 “end users submit[] a request for Publishers’ song lyrics,” and it is “paid again every time its Claude
20 API generates output copying and relying on those lyrics,” and (2) the availability of Publishers’
21 lyrics draws customers to use Claude. FAC ¶ 142; *id.* ¶ 146. Notwithstanding this Court’s motion
22 to dismiss opinion, Anthropic maintains that the mere fact that Anthropic earns revenue from the
23 use of its services does not establish vicarious infringement. *See* Dkt. 205 at 16; *see, e.g.,*
24 *Annabooks, LLC v. Issuu, Inc.*, 2020 WL 6873646, at *4 (N.D. Cal. Sept. 24, 2020). Regardless,
25 even after 20 months of discovery, Publishers have failed to support either allegation.

26 Publishers cannot show that any user paid for Claude on a per-use basis. Some Claude
27 accounts are free, generating no financial benefit for Anthropic. MSS #156-157. And some Claude
28 accounts are flat-fee accounts that charge a monthly fee independent of usage volume. MSS #158.

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1 Publishers’ experts identified 185 “paid” user accounts that purportedly generated at least one
2 infringing output each and together paid a total of \$55,011. MSS #159-161. But Publishers concede
3 they cannot show that any of those “paid” accounts were paid on a per-use basis rather than a flat-
4 fee basis. MSS #162. “[F]lat periodic payments for service” are not sufficient to demonstrate a
5 causal connection between any alleged infringement and the financial benefit. *Louis Vuitton*
6 *Malletier, S.A. v. Akanoc Sols., Inc.*, 591 F. Supp. 2d 1098, 1110 (N.D. Cal. 2008) (quoting *Ellison*
7 *v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004)). Publishers therefore have no evidence that
8 Anthropic received a direct financial benefit from any specific allegedly infringing output.

9 Publishers likewise fail to identify any facts supporting their allegation that the availability
10 of Publishers’ purported lyrics “draw” customers to subscribe to paid Claude accounts. To prevail,
11 Publishers “must show that ‘customers either subscribed because of the available infringing material
12 or canceled subscriptions because it was no longer available.’” *Louis Vuitton*, 591 F. Supp. 2d at
13 1110 (quoting *Ellison*, 357 F.3d at 1079). Publishers have produced no evidence—no interviews,
14 surveys, or anything else—that so much as hints that a single user paid for Claude because of the
15 perceived availability of lyrics. That makes sense given Anthropic’s enterprise-focused business
16 model and how infrequently Claude is used for music-related tasks. *See supra* pp. 7, 10-12, 17-18,
17 32. Because Publishers fail to offer “any evidence showing that [Anthropic] made more money
18 when [it] allowed infringement to continue or less money when [it] did not,” *Louis Vuitton*, 591 F.
19 Supp. 2d at 1110, their vicarious liability theory cannot survive summary judgment.

20 **III. PUBLISHERS’ DMCA CLAIM FAILS AS A MATTER OF LAW**

21 The DMCA is a targeted statute that protects against manipulation of CMI such as “the title,
22 the author, [or] the copyright owner” that is “conveyed in connection with” an original work.
23 *Tremblay v. OpenAI, Inc.*, 716 F. Supp. 3d 772, 778 (N.D. Cal. 2024). The DMCA prohibits specific
24 acts of tampering with CMI—*i.e.*, removing CMI from a work or distributing a work knowing CMI
25 was impermissibly removed. 17 U.S.C. § 1202(b)(1), (b)(3). Accordingly, the paradigmatic DMCA
26 violation is intentionally “defacing or altering the title page of a book” while knowing that it will
27 induce, enable, facilitate, or conceal infringement. *See Falkner v. General Motors LLC*, 393 F. Supp.
28 3d 927, 939 (C.D. Cal. 2018) (quoting 4 Nimmer on Copyright § 12A.10[B][1][a]).

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1 The purpose of the DMCA is to heavily penalize those who make it easier for others to
2 infringe or to conceal their own infringement. *See Stevens v. Corelogic, Inc.*, 899 F.3d 666, 674-75
3 (9th Cir. 2018). The DMCA thus imposes steep statutory damages of up to \$25,000 per violation.
4 17 U.S.C. § 1203(c). To justify this level of punishment, Section 1202(b) of the DMCA includes an
5 exceedingly demanding double-scienter standard: a person must have (1) “intentionally remove[d]”
6 CMI, or “distribute[d]” copies of works knowing CMI was removed, and (2) done so while having
7 reasonable grounds to know their conduct would “induce, enable, facilitate, or conceal”
8 infringement. *Id.* § 1202(a)-(b). Publishers claim that Anthropic both intentionally removed CMI
9 from their works in violation of Section 1202(b)(1) and distributed their works knowing CMI had
10 been removed in violation of Section 1202(b)(3). Both claims fail for the same two reasons.

11 *First*, the DMCA only prohibits removal of CMI from, or distribution of, copyrighted works
12 as a whole. *See* 17 U.S.C. § 1202(c) (CMI is information “conveyed in connection with” a “work”);
13 *id.* § 1202(b)(3) (no person shall distribute “works” knowing CMI has been removed). After all, the
14 statute was “intended to prevent the ‘defac[ing] or deform[ing]’ of protected works.” *Falkner*, 383
15 F. Supp. 3d at 938-39. Courts evaluating DMCA claims thus require evidence that CMI was
16 removed from a plaintiff’s complete “product or original work.” *See Dolls Kill, Inc. v. Zoetop Bus.*
17 *Co.*, 2022 WL 16961477, at *3 (C.D. Cal. Aug. 25, 2022); *Andersen v. Stability AI Ltd.*, 744 F.
18 Supp. 3d 956, 970 (N.D. Cal. 2024). Where a defendant never possessed the complete work to begin
19 with, there is nothing from which CMI could have been “removed.”

20 That principle is dispositive here. It is undisputed that Publishers’ purportedly copyrighted
21 works are “musical composition[s],” *supra* p. 14—not lyrics alone. It is also undisputed that
22 Anthropic only ingested lyrics from the internet and that Claude is incapable of reproducing a copy
23 of Publishers’ full compositions. MSS #163-167. Anthropic never possessed the copyrighted
24 “work” as a whole. The DMCA does not prohibit “merely omitting” CMI from lyrics extracted from
25 a larger musical composition that the defendant never possessed. *Tremblay*, 716 F. Supp. 3d at 779.

26 *Second*, Publishers do not even try to show that Anthropic removed CMI, or distributed
27 works that had been stripped of CMI, for any purpose other than fair use. Under Publishers’ own
28 theory, Anthropic removed CMI from their lyrics to train Claude. But Anthropic’s copying of

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1 Publishers’ purported lyrics to train Claude is fair use. *Supra* pp. 8-23. That forecloses DMCA
2 liability here. *See Kadrey v. Meta Platforms, Inc.*, 2025 WL 1786418, at *1 (N.D. Cal. June 27,
3 2025). The DMCA prohibits only the intentional removal of CMI with knowledge that “the removal
4 will ‘induce, enable, facilitate, or conceal infringement[.]’” *Id.* (17 U.S.C. § 1202(b)). Conduct that
5 is fair use cannot satisfy the DMCA’s double-scienter standard because “anything that is fair use ‘is
6 not an infringement of copyright.’” *Id.* (quoting 17 U.S.C. §107). Removal of CMI “in furtherance
7 of a noninfringing fair use”—like Anthropic’s alleged removal of CMI to train Claude—cannot
8 simultaneously “further[] an act of infringement” in violation of the DMCA. *Id.*

9 Even if Publishers could overcome these legal defects, they have not and cannot produce
10 sufficient evidence to create a genuine question of material fact to withstand summary judgment.
11 To begin, Publishers have not put forward any evidence that Anthropic removed CMI from any one
12 of the works at issue or distributed any work knowing CMI had been removed. They have not, for
13 example, pointed to documents or testimony showing that Anthropic removed CMI from any
14 specific work in suit. Nor have they pointed to evidence that Anthropic intentionally removed CMI
15 knowing that it would facilitate an infringement. For instance, they put forward no evidence that
16 Anthropic deleted a copyright notice from any work in suit as part of “pattern of conduct” or “modus
17 operandi” of encouraging infringement by Claude users. *Stevens*, 899 F.3d at 674.

18 Lacking any *evidence*, Publishers rely instead on Dr. Shan’s *conjecture* that Anthropic
19 removed CMI. Dr. Shan theorizes that, because he observed CMI in training data and outputs
20 without CMI, Anthropic must have removed CMI “at some point in the training process.” Ex. 24
21 (Pltfs. Exp. Shan Reply), ¶ 30; MSS #168-170. But Dr. Shan does not dispute that for every one of
22 the 499 works, there was at least one webpage (and often many more) in Claude’s training data that
23 lacked CMI. *See* MSS #171-172. Dr. Shan did not count the number of webpages that included
24 lyrics to the works without CMI in the training data. MSS #173. Dr. Shan did not even know whether
25 he analyzed pre- or post-processed data and could not say whether Anthropic removed CMI prior
26 to training or whether any alleged removal was deliberate or accidental. MSS #174-175. At most,
27 his analysis confirmed only the presence of some CMI in some subset of training data at some stage
28 of the process. MSS #176. That says nothing at all about whether Anthropic removed CMI from

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1 Publishers’ 499 works. Nor does it say anything about whether Anthropic did so “intentionally” and
2 with “reasonable grounds to know that it will induce, enable, facilitate, or conceal an infringement.”
3 17 U.S.C. § 1202(b)(1), (3). Dr. Shan also fails to demonstrate any unlawful distribution under the
4 DMCA. His analysis does not even attempt to show Anthropic added copies of Publishers’
5 purported lyrics to Claude’s training data “knowing” they lacked CMI because that CMI had been
6 removed, let alone “removed or altered without authority of the copyright owner.” *Id.* § 1202(b)(3).

7 The Court allowed Publishers’ DMCA claim to survive the motion-to-dismiss stage based
8 on Publishers’ allegations that Anthropic chose a tool called “Newspaper” to extract text from
9 webpages used to train Claude because Newspaper effectively removed CMI. FAC ¶¶ 72-74. But
10 even after 20 months of discovery, Publishers have not identified any evidence suggesting
11 Anthropic actually used Newspaper to remove their CMI from any one of the 499 works in suit. In
12 fact, the record demonstrates just the opposite. Publishers’ own experts recognized that Newspaper
13 extracts text from webpage headers and footers, not from the body of the webpage where Publishers’
14 claimed lyrics (and related CMI) appear. MSS #177-179. The mere “general possibility” that
15 Anthropic could have removed CMI, without any “affirmative evidence,” is not enough to go to the
16 jury. *See Stevens*, 899 F.3d at 673. And Publishers’ scant “evidence” does not show that Anthropic
17 was aware of the “possibility” that its conduct would “encourag[e] infringement”—let alone that
18 Anthropic had reason to know of “identifiable infringements,” as the DMCA requires. *Id.* at 674.

19 **IV. PUBLISHERS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON THEIR *DIRECT***
20 **INFRINGEMENT CLAIM FOR THE 499 SONGS AT ISSUE**

21 While this Court can resolve this case on the grounds addressed above, Publishers certainly
22 should not be granted summary judgment on the “copying” element of their direct infringement
23 claims. *Ambrosetti v. Oregon Cath. Press*, 151 F.4th 1211, 1218-19 (9th Cir. 2025).

24 Publishers (at 15) premise their direct infringement claim on the supposed “striking
25 similarity” between the works in suit and the allegedly infringing copies. This theory requires
26 Publishers to definitively establish the contents of the protected work. *See Skidmore as Tr. for Randy*
27 *Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1063-64 (9th Cir. 2020). And because “the scope
28 of the copyright is limited by the deposit copy,” *id.* at 1063, only the content that appears in the

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1 deposit copy is protected. But Publishers have failed to produce deposit copies for 486 works in
2 suit. *See* Dkt. 595 ¶ 8; Ad.F #3. Without a definitive set of lyrics to the 486 works, there is no
3 benchmark by which to measure the similarity of any purported copy of one of those songs, whether
4 in the training data or in an output. *See Skidmore*, 952 F.3d at 1063-64.

5 Publishers are not even entitled to summary judgment for the 13 works for which they *have*
6 produced deposit copies. Ad.F #4. Nowhere do Publishers compare purportedly infringing outputs
7 to the lyrics in the produced deposit copies. Instead, they rely on comparisons of purportedly
8 infringing outputs to lyrics from LyricFind.com. Mot. at 15-16; RSS #34, 36, 66, 68. Publishers
9 represent that “[t]he lyrics to [the compositions] available on the lyric aggregator LyricFind.com
10 are genuine and materially accurate.” RSS #4. Yet Publishers admit that they have never actually
11 compared LyricFind’s lyrics for the works in suit to any deposit copies. Ad.F #5. Instead, they assert
12 that LyricFind’s lyrics should serve as a proxy for the purportedly copyrighted song lyrics based on
13 declarations made with caveats like “reasonably reassured,” Pltfs. Wit. Coleman Decl. ¶ 12 (Dkt.
14 613), “typically” identical, Pltfs. Wit. Draughon Decl. ¶ 27 (Dkt. 619), and “same or nearly the
15 same,” Pltfs. Wit. Kokakis Decl. ¶ 142 (Dkt. 620).

16 In any event, Publishers’ “identical or nearly identical to the deposit copy” claim is
17 unsupported. Their theory is that LyricFind’s lyrics were generated from commercial sound
18 recordings and that those recordings match the deposit copies that define their rights. *See* RSS #4;
19 Ad.F #10. But they did not listen to the sound recordings, Ad.F #11, and they do not systematically
20 maintain the deposit copies, Ad.F #12. And where Publishers did produce the audio, it is undisputed
21 that the recordings do not always match LyricFind. Ad.F #13.

22 Publishers’ claim that LyricFind is sufficiently authoritative is also undermined by material
23 discrepancies between the few deposit copies Publishers have provided and the corresponding lyrics
24 on LyricFind. Analysis performed by Publishers’ linguistics expert, Dr. Leonard, confirms as much.
25 *See* Dkt. 600-8. For example, a whole stanza to Sweet Home Alabama can be found on LyricFind
26 but not in the deposit copy that Publishers’ 30(b)(6) witness identified as corresponding to
27 Publishers’ claimed work. Ad.F #14. When asked to identify which version of the lyrics to Sweet
28 Home Alabama was correct and protected by copyright, Mr. Kokakis bizarrely claimed “both.” Ex.

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1 121 (Kokakis Dep.), 129:3-130:1; Ad.F #15. As another example, the deposit copy for Brown Sugar
2 contains lyrics like, “scarred old slaver know he’s doing alright,” “all her girlfriends here sweet
3 sixteen,” and “Brown sugar, how come you taste so good.” Ad.F #16. Brown Sugar’s lyrics on
4 LyricFind, however, state “Skydog slaver knows he’s doin’ all right,” “all her boyfriends were sweet
5 sixteen,” and “Brown sugar, how come you dance so good, babe?” Ad.F #17.

6 Because Publishers failed to produce deposit copies for 486 works—and have not used the
7 deposit copy as the benchmark for the remaining 13 works—Publishers have not established the
8 “copying” element of their direct infringement claim beyond material factual dispute.

9 **CONCLUSION**

10 This case can and should be resolved at summary judgment. If the Court finds that (1)
11 Publishers’ training claims are barred by fair use, (2) Anthropic is not subject to direct or secondary
12 liability for Publishers’ user output claims, and (3) Anthropic has not intentionally removed CMI
13 within the meaning of the DMCA as a matter of law, this case is over. At minimum, the Court should
14 hold that genuine disputes of material fact preclude summary judgment in Publishers’ favor.
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1 Date: April 22, 2026

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CERTIFICATE REGARDING USE OF GENERATIVE AI

Pursuant to this Court’s Standing Order Regarding the Use of Generative AI Tools in Court filings, *see* Standing Order VIII(H), the undersigned notifies the Court that four expert reports served by Anthropic in this case and attached to the Burrell Declaration in support of Anthropic’s Motion for Summary Judgment and Opposition to Publishers’ Motion for Partial Summary Judgment, include “AI-generated content.” *See* Burrell Decl., Ex. 3 (Bray Report), Ex. 20 (Bray Reply), Ex. 2 (Bilmes Report), Ex. 11 (Bilmes Rebuttal). Dr. Bray and Dr. Bilmes’s use of generative AI tools in connection with their opinions in this case is disclosed in those reports. The undersigned has verified each expert’s use of generative AI as part of the expert’s methodology and certifies that Dr. Bray and Dr. Bilmes have “maintain[ed] records of all prompts or inquiries submitted to any generative AI tools.” *See* Standing Order VIII(H).

Dated: April 22, 2026

By: /s/ Sonal. N. Mehta
Sonal N. Mehta

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2026, I did cause this motion to be served on the following listed below and in the manner so indicated.

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Dated: April 22, 2026

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