EXHIBIT 32

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Concord Music Group, Inc., et al.,	)	
	)	No. 5:24-cv-03811-EKL
Plaintiffs,	)	
vs.	)	Phoenix, Arizona
	)	March 26, 2026
Anthropic PBC,	)	11:02 a.m.
Defendant.	)	

BEFORE: THE HONORABLE EUMI K. LEE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

Official Court Reporter:
Christine M. Coaly, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc 37
Phoenix, Arizona 85003-2151
(602) 322-7248

Proceedings Reported by Stenographic Court Reporter
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A P P E A R A N C E S

For the Plaintiffs:

OPPENHEIM AND ZEBRAK, LLP
By: **Mr. Matthew J. Oppenheim, Esq.**
Mr. Corey Miller, Esq.
4530 Wisconsin Ave., NW, 5th Flr.
Washington, DC 20016

OPPENHEIM AND ZEBRAK, LLP
By: **Mr. Timothy S. Chung, Esq.**
461 5th Ave., Ste. 19th Flr.
New York, NY 10017

For the Defendant:

WILMER CUTLER PICKERING HALE AND DORR, LLP
By: **Ms. Sonal N. Mehta, Esq.**
2600 El Camino Real, Suite 400
Palo Alto, CA 94306

WILMER CUTLER PICKERING HALE AND DORR, LLP
By: **Mr. Louis W. Tompros, Esq.**
60 State Street
Boston, MA 02109

P R O C E E D I N G S

COURTROOM DEPUTY: United States District Court for the Northern District of California is now in session. The Honorable Eumi K. Lee presiding.

We're on today in case number 5:24-cv-3811-EKL, Concord Music Group, Inc., et al. versus Anthropic PBC, status conference, among other matters to address.

Counsel, please state your appearances on the record, starting with counsel for the plaintiff.

MR. OPPENHEIM: Good morning -- or afternoon for us, Your Honor. Matt Oppenheim, Corey Miller, and Tim Chung on behalf of the plaintiffs.

THE COURT: Good morning, slash afternoon, to you both.

MS. MEHTA: Good morning, Your Honor. Sonal Mehta and Louis Tompros for Anthropic. And we have in-house counsel from Anthropic also on the line.

THE COURT: Okay. Good morning.

All right. So, as mentioned, we're here to discuss the motion for relief from the magistrate judge order, and then I'm planning to go into closed session for the last part of it to discuss any of the outstanding sealing orders.

But today my focus is truly the magistrate judge -- relief to the magistrate judge orders. And this is a series of orders that have occurred over the last year. And I've gone

through the papers. I have some questions. And so I'm going to start with the questions, sort of tell you what I'm thinking, and then we'll hear from counsel.

So let me begin. Mr. Oppenheim, talk to me about how plaintiff is planning to use, or whether it's planning to use prompt output pairs in terms of proving their -- from unidentified users in terms of proving their claims. Is this going to go toward the secondary infringement claims, or is this going to go towards direct infringement claims? Talk to me about what you are thinking.

MR. OPPENHEIM: Yes, Your Honor. With your permission, I'll allow my partner Corey Miller to argue this issue --

THE COURT: Oh, wonderful.

MR. OPPENHEIM: -- before you this morning.

THE COURT: Okay. All right. Mr. Miller.

MR. MILLER: Hello, Your Honor. Corey Miller on behalf of the plaintiffs.

So we intend to use prompts and outputs from both plaintiffs' investigation and from the database of prompts and outputs that Anthropic has produced to prove Anthropic's direct infringement. We do not intend to distinguish, for purposes of proving direct infringement, between those two categories. And my understanding is that Anthropic does not dispute that there is no -- for purposes of Anthropic's direct infringement, there

is no distinction between those.

For purposes of --

THE COURT: So let me just -- I just want to make sure I'm following this fully.

So there is no distinction between the plaintiffs' investigators and other third parties, correct?

MR. MILLER: For purposes of proving Anthropic's direct infringement, that is correct, yes.

THE COURT: And then has that -- has the delineation, so, for example, the prompts and the outputs outside the statistical information, what information does Anthropic have?

MR. MILLER: The plaintiffs have produced all of the prompts and outputs from our investigation on which we intend to rely to prove infringement. So every prompt and output that resulted from our investigation that we intend to use as proof of infringement at trial has been produced to Anthropic with a plaintiffs' Bates number on it.

THE COURT: Okay. Term secondary.

MR. MILLER: For secondary liability, the parties dispute whether prompts and outputs from plaintiffs' investigators are legally sufficient to establish the underlying predicate direct infringement on which secondary liability would be based. Our view, which is supported by the case law we cited in our papers, and which I'm happy to discuss with you, is that direct infringement resulting from

plaintiffs' investigator's conduct is a sufficient predicate for secondary liability.

But that question is not necessary -- resolving that legal question here is not necessary to resolve the work product issue that's before the Court today. Because even if that question were resolved in Anthropic's favor, such that only what Anthropic calls true third-party infringements are sufficient predicate for secondary liability, Anthropic is able to determine which infringements are from plaintiffs or which ones are from third parties, because we have produced all of the infringements from plaintiffs' investigators that we would be relying on.

So if they are in plaintiffs' production of prompts and outputs from our investigation, they are prompts and outputs from the plaintiffs. And they have all of that information.

THE COURT: Is there any information which is missing from that?

So you're saying they have all the information regarding from the plaintiffs' -- prompts and outputs from the plaintiffs' investigators, which --

MR. MILLER: I don't think the prompts and outputs we have produced all identify which of plaintiffs' investigators prompted the model to produce that specific prompt and output, but that information isn't relevant. All that matters for the

purposes of their secondary liability issue that they've raised today is whether it came from our side or not. Which investigator on our side it came from shouldn't make a difference one way or the other.

THE COURT: And when you're saying they're clearly -- I haven't looked at these documents. I haven't seen these. I don't -- so I'm just trying to -- so what information is at issue which is not included within -- and I'll ask, as well, from Anthropic's counsel this question, but let me just, from your perspective, what's not been included, like what has -- in terms of that information?

MR. MILLER: My understanding, and this may be a question better addressed to Anthropic's counsel, but is -- information in the prompts themselves is not -- the way the document looks is it says -- it has a timestamp on it, and then it says human, and says what the human prompted the machine -- or the model with, and then there is a line that says AI assisted and has the output in response.

THE COURT: Uh-huh.

MR. MILLER: My understanding is that there is not any information within there, within the prompt and output itself that is missing. What Anthropic is seeking is the ability to identify the specific individual who prompted the model to produce that output, which is not necessarily contained within the prompt and output record itself.

THE COURT: Okay. Let me get a little clarification now from Anthropic, and then I'll tell you all what I'm thinking, and then I welcome argument.

Well, Ms. Mehta, are you --

MS. MEHTA: I'll be.

THE COURT: Let's say the Court agreed with Anthropic, or may agree, I don't know, but I think it's a question probably best suited for summary judgment motion, that the investigator's prompts and such could not serve as the factual predicate for a secondary infringement. But I don't think that question is what's before the Court. I agree with the plaintiffs, to that extent. I don't think that Judge van Keulen, the magistrate judge, had made that ruling in terms of the legal question yet. I think she left that, as I'm trying to walk the balance here, and in terms of weighing work product verses.

But let's say if the Court were to agree with you, or be so inclined down the road when we're dealing with this with motion for summary judgment or the like, at that point, does Anthropic have concerns in terms of what remains outstanding, based on what has been produced?

MS. MEHTA: Yes, Your Honor, we do. And I tend to agree with Your Honor that you don't need to decide the legal issue now. Because the question is, subject to a ruling on the legal issue, what is the appropriate scope of discovery? And

when there is still an open question, at a minimum, as to whether or not they're going to be able to rely on this information, discovery should allow us to have the facts that we can then present to Your Honor on summary judgment, so I agree with that.

But the question and the issue that remains, the concern that remains is they have a cherry picked subset of prompts and outputs on which they intend to rely, and they intend to rely on them -- and it's actually now even more clear than it was even a week ago, because we have their summary judgment papers -- they intend to rely on them for a few different things, not limited to just direct infringement and secondary infringement. So I'll just quickly tick through them.

The first thing is, with respect to direct infringement, Mr. Miller said they're going to rely on them whether they come from a third party or from their investigators or not.

With respect to secondary infringement, they have expressly relied on the distinction between what they say is a bona fide third-party prompt and output pair, and what they say is their own prompt and output pair, but where they ask us and the Court to take their word for it as to which ones are bona fide third parties and which ones are not.

So, for example, in their statement of undisputed

facts that they submitted on Monday with their summary judgment brief, one of the facts that they claim is undisputed is that there are at least 11 pre-suit and 93 post-suit instances in which Claude allegedly output publishers' lyrics in full or substantial part in response to direct third-party requests for those lyrics. They say in their brief that there were at least 144 instances spanning 82 works in which Claude reproduced lyrics to third parties.

The only way that we have to know whether or not those were actually sent to bona fide third parties or not is to take their word for it. There is no way for us to test, or Your Honor to independently evaluate whether those prompts and outputs were actually to third parties or they were to people associated with the publishers.

And this is not just a hypothetical or speculative concern. There is a concern because their prompts and outputs that they claim are third party, the prompts verbatim match prompts that their investigators made. So there is at least a high suspicion that some of what they're counting as third party may, in fact, not be true third party. Because it would be quite a coincidence if the prompt formulation that their investigators used to try to generate evidence of infringement also just happened to be verbatim the same prompt formulation that was used by third parties.

THE COURT: Let me ask a question.

Is there something which has been redacted from the documents? Is there something which has -- what are -- what is the -- let's peel, take apart, like separate out right now the 30(b)(6) request, but in terms of what other documentary information has been excluded or redacted.

MS. MEHTA: Yes, Your Honor. So the prompts and outputs that they produced don't always have any information about who they came from. So sometimes it will just say, you know, agent, and then it will have a prompt, and it will have an output, and there will be no identifying information.

And what Mr. Miller is saying is, well, if we produced it, we're telling you it came from us. Again, we have no way to test that, and we shouldn't have to take their word for it. But there is also other instances in which there are datasets or samples of prompts and outputs in the record which the experts analyzed, for example, where we have no way of knowing whether in the 5 million sample, any of those prompts and outputs came from them, their investigator, the publishers' own witnesses, the lawyers, because we don't have the account information and there is no way for us to match that up.

There is also the separate question of what are the prompts and outputs that they're not relying on but that would be evidence that would undermine their allegations in the case that we are entitled to. Because by relying on part of the investigative record, part of their prompts and outputs, they

cannot, based on the sword and shield doctrine, put at issue the prompts and outputs they cherry pick while withholding the rest. So there is really two elements.

We need to know the account information associated with their investigation so that we can figure out, not only in the 5,000 they produced, but in the 5 million sample -- and there were other data samples too. There was a sample of 15,000 records, a sample of 100-and-something-thousand records -- in each of those datasets, which ones came from them and which ones didn't. We need that.

We also need to know, Your Honor, the full scope of what they did in terms of their pre-suit prompting. And that goes to the other two ways in which they are -- or three ways, I should say, in which they're attempting to rely on the cherry picked subset of their prompts and outputs. So we talked about direct infringement. We talked about secondary infringement.

They also have a data science expert who, looking at different datasets, including that 5 million sample, has drawn sweeping conclusions and extrapolations about the frequency of lyric-related prompts and outputs, lyric regurgitation. What he did was receive from publishers' counsel a set of prompts and outputs that they handed him that he does not know how they came up with them. He doesn't know how they selected them. They just represented to him that those did not include any of their own prompts and outputs. And then on the basis of that

sample that he just took from counsel, he's making a huge number of conclusions and extrapolations that they, presumably, intend to offer both at summary -- they are offering at summary judgment and are offering at the trial, presumably.

Again, we don't know, and we have no way of testing, Your Honor has no way of testing, and if it gets to a jury, the jury has no way of testing whether or not those prompts and outputs that he's saying are all third-party prompts and outputs, in fact, are, because we're just taking the word of the lawyers for that.

They also have their -- both that expert, the data science expert, as well as their technical expert, making conclusions about the effectiveness or ineffectiveness of Anthropic's guardrails on the basis of these very prompts and outputs from the investigative firm and from the publishers pre-suit.

And, again, what we have is the subset of those that they wanted to produce and they want to rely on. And what we don't have, and Your Honor won't have, and if we get to a jury, the jury won't have, is the instances in which their investigators and their own witnesses didn't receive, for example, any lyrics even though they tried to get them. They ran into the guardrails.

How can an expert be allowed to opine on the effectiveness of guardrails on the basis of a cherry picked

subset, cherry picked by counsel, subset of prompt and output pairs, while shielding from the jury and shielding from our ability to cross examine those experts, instances that show that the guardrails were working just as they were, and then use that all to try to argue willful infringement, which is what they're doing here.

THE COURT: Ms. Mehta, let's -- I want to break this up, because it's a lot of different -- because I do have -- I mean, let's start with the -- what you have in terms of these predesignated, what you're describing, Anthropic is describing as cherry picked prompts and outputs which are de facto ones which the investigator had done, which are being relied on both for, it appears, secondary and for direct infringement. And then we'll get to the guardrails and the bigger subset of those which aren't included.

Because my inclinations as to that set, and this is to both counsel, is that if the publishers are relying on it for trial or for -- and I'm thinking this through in terms of the summary judgment motion -- then Anthropic should have access to the information, period, or if you're not relying on it, that's fine, and, you know, Anthropic will have the statistics and so forth. But, to me, I mean -- so with that said, I'm trying to figure out exactly what's missing.

MS. MEHTA: Yes, Your Honor. So I can try to be more clear about exactly what's missing.

The problem with what you just said as a premise is -- I agree that, as a baseline, that absolutely has to be true. If they're relying on it, we should have it.

What we don't have and what we need is identifying information about who was doing the investigation, because it's not just investigators. There was a third-party investigation firm. There were individuals associated with the publishers themselves, and then there was the lawyers. All of those people collectively conducted this investigation.

What we do not have is the identifying information that would allow us to figure out from both the documents they produced, but also the broader samples which are being analyzed in the case and relied on in the case by their experts, which ones actually came from the publishers and which ones didn't. And we should not have to take their word for it that when they gave their expert a subset of 7,000-something records from 5 million, they only gave him the ones that were true third party, and everyone should just assume that that's right. We shouldn't have to take their word for that.

And that's what they're doing, both with respect to what they've given us, the 5,000, and with respect to the broader samples where there may be records that are not, in fact, third party, but that they are asserting are third party, and they're just asking all of us to take their word for it.

They chose to put this set of prompts and outputs,

meaning their own, what they're claiming to be work product, directly at issue in the case by relying on them for infringement, direct and secondary, and relying on them for their experts to make these broader extrapolations and arguments about the effectiveness of guardrails. That is classic waiver. You don't get to say: Rely on these. You only get to look at these.

THE COURT: So what about a declaration or a stipulation, or are they establishing that everything was done by the investigators to, basically, try to get something which is more concrete than just simple?

MS. MEHTA: That doesn't help us because that won't tell us what, in the broader samples, came from them.

As I mentioned, when you look at the broader samples, that 5 million sample, for example, there are prompts in there that match verbatim the prompts that are from their investigator. I don't have a way of knowing based on an RFA or a declaration, even if it's signed under oath, which of the sample -- which of the prompt and output pairs in that sample came from people associated with publishers.

That's why we've asked for, from the beginning, the account information. That's the only way we would be able to figure out, disentangle, so to speak, what came from them and what is bona fide third party in these different datasets that are in the record here.

THE COURT: And, obviously, Judge van Keulen, in terms of the order, was weighing that versus sort of where that account information will lead, sort of the way of thinking the sort of scope and the thought process behind the prompts and so forth and the investigation.

So why don't -- since you've gone this far anyway, why don't you go ahead and address the rest of your argument, I assume, and then we're going to come back. Because I still do think there is some distinctions to be drawn, and I think they're all being smooshed together right not, but I do think there is some distinctions to be drawn between these different sets.

MS. MEHTA: Yes, Your Honor. So there is -- so we talked about the infringement, direct and indirect infringement, or secondary infringement, and what they're relying on there.

They're also -- and this is, I think, a big difference between where the record was when Judge van Keulen looked at this and where we are now. Since that time, we have their expert reports and have taken their expert depositions. We also have their summary judgment motion. Their experts are relying on this cherry picked subset of these prompts and outputs to make assertions about, as I said, the breadth or scope of supposed lyric-related tasks.

So, for example, their data science expert,

Mr. Dennis, he even asserts in his report that if you look at this subset -- which, again, he just took at face value that that was third party. He has no -- he admitted in his deposition he did no independent verification of that. He was handed a set. The lawyers told him it was third party. He assumed that was true, and then he ran a number of different analyses over that.

And he makes assertions about how many song and lyric-related prompts exist in the sample; how many additional lyric and song-related prompts exist outside of the sample, so an extrapolation to beyond that. And then he draws a conclusion about how Anthropic's guardrails were largely ineffective -- that's his language, largely ineffective -- at preventing users from producing lyric-related songs. All of that based on a sample that the lawyers just represented to him was third party. And we have no way of testing that.

Their technical expert, Dr. Zhao, also makes conclusions about the ineffectiveness of Anthropic's guardrails. He did not, himself, do any empirical testing of the guardrails. He said in his deposition that he drew those conclusions on the basis of the investigative work, and the prompts and outputs that were relied upon by the publishers at the preliminary injunction stage. So exactly this cherry picked subset of prompts and outputs that they're relying on is the basis for his opinion that the guardrails are ineffective.

When we deposed their investigator, he acknowledged that in the documents they submitted to Your Honor, when they said we submitted this prompt and this is the output we got, they had the same prompt. And there were instances in which they actually hit the guardrails and didn't get any lyrics in response. And they withheld those from the declaration that went in at the preliminary injunction stage. They withheld them from the record in this case. And Dr. Zhao, nonetheless, the technical expert, nonetheless, is offering opinions that Anthropic's guardrails were inadequate.

So over, and over, and over again, not just in terms of their reliance on specific instances for infringement, but in terms of the overall conclusions that their experts are drawing in this case, they are relying on the cherry picked subset of these prompts and outputs, and shielding from us the ability to test whether or not those are even actually third-party prompts and outputs or not, and shielding from us the ability to present the full picture to Your Honor and to the jury what did they actually do or get when they made these prompts.

Let's say one time they ran into or got lyrics, and that's what they're relying on. What about the 500 times they ran into the guardrails? That's what's missing.

THE COURT: You've made your point, Counsel, in terms of --

MS. MEHTA: Thank you, Your Honor.

THE COURT: But, given all of this, so all the things that you're presenting in terms of the changed circumstances, based in part on the expert reports and the way the summary judgement motions, now that we have the benefit of that -- the magistrate judge did not have the benefit of that, correct? She is making these rulings both in October and December trying to slice through before the end of discovery.

Is this -- is it proper -- well, first of all, I'm questioning without having the benefit of some of what's being discussed in writing. Is it proper even procedurally, is this appropriate procedural posture right now for me to be considering this? And then -- brief answer, and then I want to turn over to Mr. Miller, since you've touched upon many issues.

MS. MEHTA: Yes, Your Honor. Thank you.

So the brief answer is I think it is. And I think, you know, obviously, Judge van Keulen didn't have the benefit of all of this. Although a lot of these points and these, what we thought were expectations about how they would use this information is now borne out in the record. We now have actual evidence that they're using it exactly the way that we suspected they would.

If Your Honor would like to see, of course, any of this underlying evidence, we would be happy to brief the issue. This just happened to come up in this posture because this was

an objection that had been pending for a while, and based on an order that, obviously, took place a while ago. If Your Honor would like updated briefing or an updated submission or any of the underlying evidence, we'd be happy to provide it.

This is really important, Your Honor. It really goes to the heart of what they are going to try to present, both at summary judgment, and if the case gets to trial, to the trial, and the fundamental unfairness of asking us to defend on a partial record.

THE COURT: Mr. Miller, let's turn to you, both in terms of -- why don't we begin with the procedural posture question. And if I did have concerns based off of what is unfolding now within the summary judgment briefing and the expert reports, does this go back to Judge van Keulen for reconsideration or does it come here for more briefing?

Let me hear from you on that, and then I want you to go back through the points which have now been raised by Anthropic's counsel substantively.

MR. MILLER: Thank you, Your Honor, for raising the procedural posture point, because it was something I was about to bring up in response to Ms. Mehta's argument.

This does not need to go -- so, first of all, 95 percent of what Ms. Mehta is arguing is not in the papers in the appeal of the magistrate judge's ruling. And --

THE COURT: I think the concern -- I agree with

Ms. Mehta that the concerns -- all these concerns of, okay, well, a partial record on the negative outputs, the -- all these concerns were underlying, though, right? So even though --

MR. MILLER: Yes.

THE COURT: -- now we're factually at a different point two months later, three months later, so...

MR. MILLER: All of these concerns were underlying the decision, but Anthropic chose not to appeal those portions of Magistrate Judge van Keulen's decision. All these same arguments you're hearing today about the need for the negative prompts and the number of -- and the failed testing that plaintiffs did in order to test the -- in order to challenge plaintiffs' arguments about the effectiveness of the guardrails, these were all arguments that were raised to Magistrate Judge van Keulen, and that were resolved by her in the order from which Anthropic appealed.

But Anthropic didn't appeal those parts of the order. They only appealed the part of the order related to the account information for the specific purpose of challenging the -- of challenging the ability to discriminate between first and third-party prompts for secondary liability purposes.

THE COURT: Well, they did ask for specifically the account information. And I think I agree with you that if it's suddenly revisiting all that they did not directly take on the

negative outputs, the negative -- yeah, the negative prompts and outputs and so forth, that wasn't directly addressed, but what they did say was -- and so, perhaps, that can be carved out in terms of scope -- but what they did say in their papers was account information.

MR. MILLER: They said account information. They said there were two errors. The first error was that they didn't get account information, and they needed it specifically for the purpose of discriminating between first -- or between plaintiffs' investigators and third parties for the purpose of secondary liability. All these other issues they are now raising were never raised in their appeal. And it's improper for them -- and those issues were before Magistrate Judge van Keulen. It's entirely improper for them to show up now and start arguing issues that Judge van Keulen resolved and that they did not address in their appeal. So that would be my response on the procedural posture issue.

I don't think this needs to go back to Magistrate Judge van Keulen, because she already resolved these issues. They already made all these same arguments to her before, and she denied their request for this information. And they have not appealed that part of her order.

As Ms. Mehta admitted when she was arguing before, what they are seeing in the expert reports now are what they expected to see in the expert reports. And they made the

arguments before Judge van Keulen at a hearing in December based on what they expected to see. Judge van Keulen resolved that issue. There is no need to reopen that issue at this time.

I want to address several other things that Ms. Mehta said. First of all, she raised this issue that they found prompts that are substantially identical to the prompts that we have identified as coming from our investigators. That is not at all surprising, because many of those prompts are the simple form: What are the lyrics to X song? That our investigators would use that prompt, and that third parties using Claude would also use that prompt, is entirely to be expected.

It creates no problem of identification because they can see which prompts are ours in the data that we have produced. They have not tried, as far as I know, in any of their expert reports, to do any matching between the data that we produced and the sample of prompts that they produced. None of their experts opined that it's impossible to do that exercise. It seems they didn't even try.

They could have tried to figure out, based on the prompts that we produced, which ones in their sample came from us and which didn't. They haven't even tried to do that. And for them to now say, here, we need to pierce your privilege in order to obtain information necessary to defend our case, they haven't done the --

THE COURT: You mean in terms of the ones which are being -- let's take the specific example which was raised of within the separate statement that there are 11 pre-suit, 93 post-suit which were supposed to be based on third-party requests, or 144 instances where the statistics or the facts from the separate statement which were cited by Anthropic's counsel. I mean, I'm concerned that, like the information regarding that is not being provided. I mean, that is basically where I was -- if there is some information which is missing as to those which plaintiff is squarely relying on, even assuming that in the balance of privilege that the Court -- and recognizing that it is a deferential standard which I am reviewing the magistrate judge opinion on, she explicitly -- and I agree with, in terms of balancing that sword and shield, the need to say: If you're relying on this -- which now it is very clear that you are -- then turn over the information about it.

So what information is missing from those?

MR. MILLER: Nothing is missing, Your Honor. If they want to know if those prompts were -- came from us, they can check to see whether we produced them or not. They have that entire set. And if those -- the prompts that we have cited as third-party prompts are not in our production, then they are not our prompts. They have -- they are just as capable as us of doing that analysis.

THE COURT: So why shouldn't they get the information of who or which accounts those came from?

MR. MILLER: Because it's irrelevant whether it came from Investigator 1, Investigator 2, Mr. Oppenheim, myself, Universal's in-house counsel. For their purposes, none of that makes any difference. It only matters whether it came from somebody on our side or not. And giving them that information would be giving them the keys to access everything which Magistrate Judge van Keulen determined they are not entitled to access, because they could use those e-mail addresses to look up all of the prompts we are not relying on, including prompts and outputs for works not at issue in this case, for investigation not related to this case, for --

THE COURT: I'm sorry. Repeat the last two sentences.

MR. MILLER: Sure. If we had to provide Anthropic with all of the e-mail addresses for everybody who participated in --

THE COURT: Just the ones you're relying on.

MR. MILLER: Which includes individuals at our firm, individuals at the investigator we used for preparing this case, potentially individuals at our -- in-house attorneys that are clients. If they have all of those e-mail addresses, they can then search their database of prompts to identify all of the prompts anyone on our side has ever tried to use with Claude.

And Magistrate Judge van Keulen determined, first of all, that all of those prompts are opinion work product, and, second of all, that they are not entitled to our opinion work product, that there has been no waiver, broader waiver of opinion work product for the pre-suit investigation. Magistrate Judge van Keulen correctly determined that giving Anthropic those e-mail addresses would be giving Anthropic the keys to reverse engineer our entire pre-suit investigation, including the prompts and outputs we are not relying on, and including the prompts and outputs that don't even have anything to do with this case.

If our firm and our investigators, hypothetically, had done research for different clients that aren't involved in this case, they would be able to reverse engineer those investigations and determine what other investigations for other clients we have done. All of that is -- Magistrate Judge van Keulen determined is strictly off limits. And they have not appealed the part of her order that determined -- that concluded that Anthropic is not entitled to our broader pre-suit investigation. They shouldn't be able to get around that part of Magistrate Judge van Keulen's order by seeking the account information that will allow them to access the exact same information that has already been determined they are not entitled to.

THE COURT: Is there a distinction when plaintiff

decides to rely on it?

MR. MILLER: Well, we have --

THE COURT: In terms of establishing liability, at what point does plaintiff open the door?

MR. MILLER: We have produced all of the information that we will be relying on, so I don't think there has been any opening of the door to any further waiver.

THE COURT: So that -- let's --

MR. MILLER: I also want to respond that it's not the case that they just have to take our word for it. Obviously, in order to use this evidence at summary judgment and at trial, we have to lay a foundation for it. We have done that. As part of our summary judgment motion for all of the evidence we are relying on, we have submitted declarations laying the foundation for all of the evidence we are submitting, explaining for the first-party and third-party prompts the basis for which -- by which the evidence is admissible.

It's not just the lawyer's word in an e-mail that they rely on -- that we're asking the Court to rely on, there is testimony under oath. And they've had a chance to cross examine those witnesses. If the case proceeds to trial, they'll have a chance to --

THE COURT: Have they had the opportunity to cross examine the attorneys who are declaring, and the investigators, all the investigators?

MR. MILLER: They took a 30(b)(6) deposition of the investigator firm that we used, and also a personal deposition of the lead investigator.

They deposed several of the in-house counsel of the plaintiffs. They didn't depose anyone from O and Z, but -- and O and Z -- but they have taken several depositions of people who -- and, particularly, of the lead investigator who performed most of the testing that is at issue here.

THE COURT: Most, but not all?

MR. MILLER: I don't have before me at the tip of my fingers the precise breakdown of which person performed which testing that is included in our summary judgment motion. That should all be described in the declarations we submitted in connection with the summary judgment motion.

THE COURT: I'm troubled. Turn to the guardrails and the testing of the guardrails, and the discussion which -- so this goes more to -- I've been focusing more on those -- what has been turned over already, in terms of the prompts and outputs which don't specify, other than stating, okay, these were produced by -- these were created by plaintiffs, by either their agents, party, or investigators, this set.

So now turning to what I'm going to describe as the expert report and the notion of -- or just generally the ability to test the guardrail, the efficacy of the guardrails, and the -- and what's coming in now on summary judgment.

MR. MILLER: So Anthropic has everything it needs to test our arguments regarding the effectiveness of the guardrails. First of all --

THE COURT: How can one test without the negatives, the negative outputs, the overall? Like if you can incorporate that in, I just want to have a better understanding.

MR. MILLER: So, first of all, for the -- any investigation we did after filing the complaint regarding the effectiveness of Anthropic s guardrails, Magistrate Judge van Keulen ordered us to produce the entirety of the post-suit investigation, with the one exception of prompts -- prompting conducted specifically by counsel. But everything our investigators did, whether positive or negative, as part of the post-suit investigation, has been produced.

We have not appealed that part of the order. Obviously, we contested that motion. Magistrate Judge van Keulen ruled what she did. We accepted it. We made the production.

For the pre-suit portion of the investigation, again, they have what they need. That evidence is being relied on to prove not that the guardrail --

THE COURT: It's very odd to continue to hear like they have what they -- you know, they have -- basically, they have enough. This is as good as it gets, in terms of for --

MR. MILLER: Let me --

THE COURT: If it's something which plaintiff is relying on affirmatively at trial, or in its --

MR. MILLER: The evidence from plaintiffs' investigators that plaintiffs are relying on from the pre-suit investigation is to prove direct -- to prove that infringement occurred. And Magistrate Judge van Keulen heard argument on precisely this point. And she determined that the -- and this is in her December ruling that is the subject of this appeal. She determined that the evidence from the pre-suit investigation was being offered not to prove that the guardrails were or were not ineffective, but to prove the existence of the infringement.

And so, therefore, while there was a waiver for the post-suit investigation which went to the -- because that was relevant to the guardrails effectiveness -- there was not a waiver regarding the pre-suit investigation.

THE COURT: And with the post-suit investigation, you're saying everything was turned over in accordance with the order except for, but that none of the attorney -- is that what counsel -- what your representation is that the -- all which was excluded?

MR. MILLER: That we excluded prompting that was done solely by outside litigation counsel, which is what Magistrate Judge van Keulen ordered us to do. We complied with her order in full. And there has been no -- I don't think there has been

any -- we have not heard from Anthropic that we substantially failed to comply with that order in any way.

We even produced prompting, in accordance with Magistrate Judge van Keulen's order, prompting done by plaintiffs' investigators based on prompts that counsel provided. So where counsel instructed the investigator to test certain prompts, that was produced. What we withheld were the -- were any instances where litigation counsel ourselves did any prompting. And we're not relying on prompting from litigation counsel for any purpose.

We also provided updated interrogatory responses, which Magistrate Judge van Keulen ordered us to do, that provided statistics about what share of -- from our pre-suit and post-suit investigations, what share -- what percentage of the prompts produce different kinds of outputs, whether those produced verbatim, partially verbatim, non-verbatim outputs, et cetera. There were a number of different subcategories we were required to provide data about, and we did that.

THE COURT: In terms of the efficacy of the guardrails, is the focus for that just in the post-investigation time period after the stipulated interim measures were put into place -- or the lawsuit itself goes back, in terms of the guardrails, previous to that, correct? So it's both pre-suit and post-suit guardrails which are being tested.

MR. MILLER: It is correct that the effectiveness of the guardrails is relevant in both the pre-suit and post-suit periods. However, the distinction that Magistrate Judge van Keulen drew is that the evidence from plaintiffs' investigation of infringement is only -- is not being offered to show the effectiveness of the pre-suit guardrails. We did the pre-suit investigation to find evidence of --

THE COURT: I'm sorry. Could you repeat that again, Mr. Miller? I just want to make sure I'm fully appreciating what you're saying.

MR. MILLER: This is what Magistrate Judge van Keulen found was that the purpose of the pre-suit investigation was to develop evidence that infringement is occurring to prove the direct infringement claims. And depending on the outcome on summary judgment, potentially the predicate for the secondary infringement as well, that that evidence was not being offered to test -- that that pre-suit evidence was not being offered to test the effectiveness of the guardrails, it was being offered for the purpose of establishing the existence of infringement.

Magistrate Judge van Keulen concluded that the post-suit investigation was conducted in order to test the efficiency of the guardrails, and so she required full production of that but not of the pre-suit investigation. And that is not --

THE COURT: Is any of the pre-suit -- in terms of the

efficacy of the guardrail, do any of the pre-suit investigation positive outputs, are any of those being included in terms of the analysis which the experts are relying on?

MR. MILLER: For which --

THE COURT: For the pre-suit, are any of the publishers --

MR. MILLER: Publishers' experts --

THE COURT: -- positive outputs being -- were any of those incorporated within the expert's analysis in terms of testing the guardrails, the efficacy of the guardrails?

MR. MILLER: There is general testimony from the expert, from plaintiffs' experts that Anthropic's pre-suit guardrails were not effective.

THE COURT: Were they using -- as part of their dataset to make that conclusion, were they using evidence of positive outputs which were derived from the publishers' investigators, agents, et cetera?

MR. MILLER: I do not believe that Dr. Zhao specifically relied on evidence -- I would have to go back and look at --

THE COURT: What do you mean by specifically?

MR. MILLER: I mean, he offered the opinion that infringement was occurring. I don't think he specifically cited evidence from publishers' investigation to establish that point in his report.

THE COURT: Was he relying on that in terms of the positive outputs?

MR. MILLER: I don't think so, but I would have to go back and look at his report to confirm.

THE COURT: So here's my concern. Because if you're saying, okay, well, Judge van Keulen drew this distinction -- which her distinction makes complete sense. I mean, let's take it outside of -- the magistrate judge decision and the delineation she was trying to draw on this ever -- cutting edge, ever-changing sort of area, like all made sense. But the logic, for example, which was just described, okay, well, the pre-suit investigation, this didn't have to do with the efficacy of the guardrails. This had to do with testing to see whether or not there was infringement or secondary infringement. That distinction makes sense.

But if that's not the reality of what's happening with plaintiffs' evidence, then it doesn't -- then that logic -- it's not a question of that the magistrate judge got it wrong, it's just that the state of what was being said, of what was being relied on was just not how plaintiff is choosing to litigate their case. And that's problematic.

MR. MILLER: So neither our statistical expert or our technical expert relied on the evidence we have produced from our investigation in offering any opinions regarding the effectiveness of the guardrails.

THE COURT: Unpack that for me.

MR. MILLER: Our expert --

THE COURT: When you say, "the evidence we have produced," what do you mean by that?

MR. MILLER: I mean that the plaintiffs produced -- all the prompts and outputs from plaintiffs' investigation pre-suit that we produced, our experts did not rely on or cite to any of that evidence in their guardrail analysis.

THE COURT: They didn't rely on the evidence that you produced?

MR. MILLER: No. They relied on the analysis of the sample that Anthropic produced.

THE COURT: Ms. Mehta, let me hear from you on just this point, just what the experts relied on, because I saw you shaking your head, and I just want clarification about what was being considered by the expert in terms of the guardrails and whether or not that incorporated pre-suit investigation materials.

MS. MEHTA: Yes, Your Honor.

So in Dr. Zhao's report, he says that the publishers were able to obtain the lyrics to all the works-in-suit after May 19th, 2023, and that's the date in which Anthropic implemented the constitutional AI principle, which is one of the guardrails. So they were able to obtain the lyrics to all the works-in-suit after May 19th, 2023, demonstrating the

ineffectiveness of the constitutional AI training as a functioning guardrail.

And when I asked him what the basis was for his testimony about the ineffectiveness of the guardrails, he acknowledged that he had not done his own empirical testing. Instead what he was relying on was academic literature that talks about ineffectiveness of AI guardrails generally.

The pre-suit investigation, or the investigation that was being done by the publishers that was submitted to Your Honor as part of the preliminary injunction record, that was the declaration from Mr. Seymour and Mr. Candore and that record, and then he said some ad hoc testing that he had done with Claude as part of his normal job that he didn't preserve the prompts and outputs for.

THE COURT: I'm positive that it is -- so about the last 30 seconds. So can you -- the last which I had what -- can you repeat beginning with: So Dr. Zhao, in terms of his testing, had said that he had not done his own empirical testing, that he relied on studies, the pre-suit investigation done by publishers, and then you cut out.

MS. MEHTA: Yes. And I'm sorry about that. I think that was on my end, Your Honor.

The third thing he said he relied on was he had done sort of ad hoc interactions with Claude in the ordinary course of his work, but he had not maintained any records of those

prompts and outputs. So academic literature, the publishers' own investigation that was submitted as part of the preliminary injunction, and then some ad hoc interaction.

And I have a specific citation for Your Honor. At page 44 of the Zhao report, he says: That demonstrates one way in which Anthropic failed to implement sufficient copyright-related safeguards prior to the launch and at the time of the launch. Indeed, publishers were able to obtain the lyrics to all the works-in-suit after May 19th, 2023.

And then at footnote 182 he cites the declaration of Dan Seymour, who is the investigator, and Exhibits A and B to that declaration which were submitted as part of the preliminary injunction.

So, specifically, with respect to safeguards, they are relying on that investigation and as it was submitted to Your Honor, and only the positive results, because we obviously don't have what was omitted from that record.

THE COURT: So, Mr. Miller, let's say that the Court -- and I'm going to just make this sort of -- we're going to make it a little small sample size, so to speak. What was being discussed about the 144 instances which are produced by third parties, the 11 pre-suit, 93 post-suits being discussed, which were being discussed earlier, let's say that the Court -- that if publishers are going to rely on that, that the Court found that defendant had -- must have the ability to test that,

where they came from, who they came from, what would that information look like?

MR. MILLER: Well, if they wanted to determine who that information came -- whether that information came from us or not, they could show those prompts to our witnesses and ask them if they came from us or not. They have not done that. They could identify who submitted the prompts and ask us whether those are our people. They have refused to do that. There are a number of options, I think.

THE COURT: So they could figure it out is what you're saying. So how would they do that?

MR. MILLER: They could have served us -- as you suggested, they could have served us interrogatories or RFAs on this point. I don't believe they did that. They could have asked deposition questions. There are a lot of different things they could have done that don't require us to give them the keys to unlock our protected work product.

THE COURT: And the protected work product is -- because you're not arguing that the account naming user names are, per se, protected work product, it's what they -- it's what you're saying they could investigate or figure out from that?

MR. MILLER: That's correct. The e-mail addresses or various other account information is not itself the protected work product. The protected work product, as Magistrate Judge

van Keulen concluded, is the attorney's thoughts, opinions, and analysis that goes into deciding what prompts to use as part of -- and what outputs were returned as part of the investigation that we conducted prior to filing the suit. That is the work product.

MR. OPPENHEIM: Your Honor, may I offer one point not relevant to the papers? But as opposing counsel knows, our firm represents many clients not in this case that have been adverse or may be adverse to Anthropic, so they know that, we know that. I wanted the Court to be aware of that.

THE COURT: I know that. I have enough cases with you, Mr. Oppenheim, I know that as well.

MR. OPPENHEIM: Apologies for stepping in.

THE COURT: All right.

MR. MILLER: And this is not a hypothetical or trivial concern, because Anthropic has already done this in this case. They managed, I'm not quite sure how, but to discover the e-mail address of one of our investigators, and they have used that e-mail address to search their database of prompts to uncover and discover the prompts and outputs that he tested the model with. And then they showed those to him at his deposition, some of them, others they attached --

THE COURT: Well, I think it's a little tricky right now. I think there is possibly more information. There should be, arguably, more information they should be able to know of

like, okay, well, this came from this person; this came from this person; this came from this person.

I hear your concerns, but you're also saying, okay, well, they should investigate harder. And then you're saying, okay, well, when they did investigate harder, okay, now they're doing -- they're crossing the line. They shouldn't be using the information, or they shouldn't -- like there is something in between here, which is, I mean, the sword and shield is playing itself out to some degree. And to say, well, try harder, investigate harder, but hold on, don't do -- don't investigate. Take our word for it when you're not giving specific -- more specific information that can actually somehow be tested.

When you're relying on these, I'm just -- you're specifically relying on these, both in terms of direct and secondary, or saying, okay, we included these within our datasets for -- I mean, it sounds like, at least from what was just read, that in the pre-suit investigation, in terms of testing the guardrails, it was relied upon. So that's my concern, and so --

MR. MILLER: And Judge van Keulen, in an attempt to -- so a couple things. One is that I think there are ways they could have investigated this, and I think I've described a couple, without invading our protected work product. And the case law in this circuit is very clear that where you have

protected opinion work product, which is what Judge van Keulen found, and which is a determination that Anthropic has not challenged, waivers should be construed as narrowly as possible in order to protect the opinion work product.

So the fact that their way of investigating was to directly invade precisely what Judge van Keulen told them not to invade without doing -- without trying other investigative techniques that would not have invaded our protected work product is deeply concerning to me.

On the point you were making about this -- about sort of threading the needle, Magistrate Judge van Keulen did that. And her solution was I'm not -- was to require us to provide detailed statistical information about our pre-suit investigation, which without revealing the actual prompts and outputs which would have disclosed the protected opinion work product. And we provided that detailed statistical information, and that information gives them the ability to make arguments about how many times did you need to prompt the model in order to generate the outputs that you're claiming are infringing, for example. They have our statistical data on that from our investigation.

THE COURT: We have been going and discussing this for a while now. I'm concerned that there is a lot of this which isn't before me. And in terms of the best way to sort of cut through this, because I think some of this has become much more

concrete now that the summary judgment motion is here, and whether or not makes more sense -- well, let me --

Ms. Mehta, last -- any last, very short response?

MS. MEHTA: Yes, Your Honor. So the first is just on the process point, understanding that, obviously, there is a lot that's evolved. If it would be helpful to Your Honor, we would be happy to submit -- and we can keep these very short -- you know, five pages that just give you the core examples of where they have relied on this and how this has all been playing out over the last several weeks. And we can attach short excerpts of the depositions and the reports so you can see exactly what the issue is.

I don't want to give you more paper if you don't want it, but I think, if it would be helpful, we'd be happy to do that. And we can file that next week and then you can look at it. So that's just a process question or suggestion.

On the substance, I think what you heard a lot of today was, well, you know, Anthropic, you should just go and figure it out, and if you -- you know, and take our word for this, and on the rest of it you can figure it out. That's just not how discovery works.

And the reality is is we can't figure it out, because if we don't know what e-mail addresses are associated with their investigators, their lawyers, et cetera -- because they testified in deposition. We tried to get information about

this, and they instructed all their witnesses not to answer on the basis of work product. But we don't know what --

THE COURT: That's part of my concern of saying, okay, and then when you did find the investigator's e-mail, then it was: You're invading their work product, so I'm not sure where the line is here.

MS. MEHTA: And I apologize, Your Honor.

When we did that, we did that in response to Judge van Keulen's order. She ordered us to identify which prompts and outputs we thought, based on our own suspicion, investigation might be associated with the publishers, and so we did that. But we know that they used personal e-mail accounts, or e-mail accounts not associated with the entities to do a lot of this work. And so there is no way for us to untangle this giant mess we're in.

And I'm sympathetic to the idea they have other clients. On the other hand, there is a way to do this that wouldn't involve getting into this morass that we have found ourselves in. They could have done two things.

The one thing they could have done is not affirmatively relied on these prompts and outputs in this litigation. They could have done the investigation, had their Rule 11 basis to file the lawsuit, and then proceeded to develop their evidence in the course of discovery in this case without relying on it. They chose not to do that.

They could have set up specific accounts associated with specific client matters so that whatever investigation they might be doing for other clients or other matters is not commingled with whatever they're relying on here. But having chosen to do this way they have, it is now quintessentially a selective waiver.

THE COURT: So one point which has not been addressed, which I think is a fair point raised by the publishers, is that Anthropic did not appeal the whole lot of the December, or the October 2025 magistrate judge orders, only specific. I mean, as I read it, it was specifically going to account information of the publishers and their employees, agents, investigators, or counsel. In my view, that is too broad unless they are relying on it.

MS. MEHTA: Yes, Your Honor.

So we appealed that because that would allow us to disentangle what it is they're relying on and evaluate whether or not it is, in fact, theirs or third party or not. There has been -- and this maybe goes back to my initial suggestion in this segment, which is there have now been subsequent developments which suggest even greater reliance on and waiver of work product, insofar as Judge van Keulen held that this was work product. And so if the answer is we need to now file a subsequent motion to ask for you to find a broader waiver in light of what they did in their summary judgment papers on

Monday and their expert reports, I'm happy to do that as well.

Again, I don't want to inundate you with paper, but I think we now know that the concerns that we had that at that time hadn't come to fruition and that Judge van Keulen didn't know would come to fruition, have, in fact, come into fruition.

THE COURT: Well, that seems like it would be a separate motion.

MS. MEHTA: And we're happy to file that, Your Honor. If that would be permissible to you, we're happy to file that.

THE COURT: Well, and I'm also wondering whether that would be a more first instance before Judge van Keulen, in terms of the selective waiver and whether or not it was more broadly waived in light of the pending motion, or whether or not that would come here.

MS. MEHTA: We can do that in whatever way Your Honor thinks best, obviously. I -- the one thing that I'm thinking about is the timing of all of this relative to the summary judgment process.

THE COURT: I am as well, which is also on my mind about whether or not certain deadlines would need to be, in light of the -- even this pending motion -- would need to be pushed back.

Mr. Miller, let me hear from you. We've been going back and forth about different procedural sort of process points. Let me hear your thoughts.

MR. MILLER: On the process point, Anthropic doesn't get to expand the scope of their appeal of Magistrate Judge van Keulen's order several months after that order was issued. The deadline for appealing was two weeks after the order was issued, and they filed a very narrow appeal. If they now want to take issue with broader parts of that order, that ship has sailed a long time ago.

THE COURT: Well, no, I agree with that, but they're asking for the account information, right, and so that's squarely before me.

MR. MILLER: The account information for the purpose of distinguishing first and third-party accounts specifically related to this. The only issue they raised in their papers was this secondary liability issue. All this stuff about guardrails has nothing to do with their --

THE COURT: Mr. Miller, publishers are relying on it, correct? For secondary liability, you are relying on it for purposes, correct? So, I mean, that's all before me.

MR. MILLER: Yes.

THE COURT: Account information and such.

I agree with you that the separate question of, okay, well, now, has the waiver been -- even been greater because of the summary judgment and the expert reports? That's a separate question, I tend to agree. Whether or not the scope of the waiver, and whether or not that is more befitting to be before

me or before Judge van Keulen is what I'm going back and forth a little bit about. Because I do think there is an issue that it's separate and apart from what can be appealed right now and properly before me.

MR. MILLER: Your Honor, I agree with that. On the guardrails point, the word guardrails appears in their paper exactly one time in a footnote. Their appeal was based entirely on this secondary liability issue, that they have spent nearly all of the time today talking about anything but the secondary liability issue.

THE COURT: I disagree with that, but -- I mean, but that, my point is, would be a separate selective waiver question.

Okay. So let's do this. We need to step into -- I'm going to take a short break. We're going to need to step into closed session anyway. I'm trying to decide whether or not, sort of process-wise, how to do this.

Mr. Miller, any concrete suggestions, in terms of process-wise, of moving forward should -- given my concerns which I've raised?

MR. MILLER: I think the timing is an issue. We've already -- you know, we're already in the middle of summary judgment and Daubert briefing. You know, one of the things -- if we're going to be re -- you know, Anthropic is, essentially, seeking to reopen significant swaths of fact discovery and

take -- so I don't -- we'd have to --

There are two process issues. One is how do we resolve the issue that's currently before you; and second would be, based on that resolution, what does the process going forward look like? And I think those are -- given where we are in the case, I think those are both significant and require consideration.

THE COURT: Okay. Now, I was just looking at -- so right now the opening summary judgment brief and opposition by defendants is due April 20th. Plaintiffs just filed their opening three days ago.

MS. MEHTA: Your Honor, may I make one just timing comment on the briefing?

THE COURT: Yes.

MS. MEHTA: From our perspective, I don't think -- and we certainly don't have a desire to derail the current summary judgment and Daubert schedule. There are multiple rounds of briefing leading up to conclusion of the briefing. And so, at least from my perspective, our hope was that this could be resolved, you know, whenever you have a chance to rule, obviously, in a way that would allow us to get the fruits of that discovery, if additional discovery is offered, and build it into the subsequent briefing that both sides have so that we don't need to derail the schedule that we've already worked out with Your Honor. And I know you already have a trial date set

based on the summary judgment schedule as well.

MR. MILLER: With all due respect, Your Honor, I don't see how that's possible. The relief Anthropic is seeking would require, essentially, redoing our swaths of expert discovery, let alone they want to take additional 30(b)(6) fact depositions. I don't see how we can continue briefing summary judgment and Daubert motions on the schedule that has been established while the record is still in flux in that way.

THE COURT: Let's hold on, because I think we need to take this a step at a time. So part of it would be I need to think about whether or not the additional briefing would be helpful for me. But it's going to need to be narrow.

I agree with Mr. Miller that this is not reopening all of Judge van Keulen's -- it has to stay within the scope of what was being sought, which was the e-mail address, the account information, so -- and then possibly the 30(b)(6), but the Court's less inclined to do that.

So let me start with thinking whether or not those briefs would be helpful and the time period for that, and we'll go from there after the short break. And let me -- I want to pull up my -- the sealing motion issues. From that, we'll set a briefing schedule if I think it's necessary. And when we talk about that, given that schedule, we can talk about whether or not it makes sense, and perhaps just waiting for the ruling a week later, or so forth, and deciding whether or not it makes

sense to stay on the schedule we're at.

So for right now let's take a short break, four or five minutes, just to get re-setup for the closed session, and we'll take it from there. So we will take a brief recess until 12:25 and beginning closed session.

THE COURT: Thank you.

MR. OPPENHEIM: Thank you, Your Honor.

MR. MILLER: Thank you, Your Honor.

(Recess taken, 12:17 p.m. - 12:30 p.m.)

(Proceedings held not included in this transcript.)

THE COURT: Okay. So turning back to the open session.

So my inclinations coming into this hearing were to affirm the magistrate judge, but with the caveat of if publishers are relying on any of this in terms of their case in chief, it's going to have to be turned over. Because there is a line between reliance on this versus -- and if it's being relied on for purposes of liability, whether or not that makes -- it doesn't -- particularly where parties agree at this point that the account information itself is not work product, but it's basically what would happen with that, and that publishers are making a choice by putting it at issue.

And so that was -- the caveat I was going to say, assuming that we weren't going to be dealing with this until trial, things have come to pass, perhaps, a little bit earlier,

it seems. And so, with that, I need to have a better understanding outside of what is being argued at me, very eloquently by both sides, but what is being said in terms of what is out there right now and what is going to be relied on. So I am going to ask for simultaneous supplemental briefing so that I understand that scope. So briefs due on Tuesday --

I'll just check one thing.

So briefs due on Tuesday, five pages max, limited to the question of how plaintiffs are using the pre-suit investigation information to support their summary judgment motion. And I'm trying to capture, because I don't think I have a full understanding of -- and what information from publishers' investigation is being used to establish both the direct and secondary liability as proof of that in the summary judgment motion. So going to the separate statement which I was referencing from earlier.

MR. MILLER: So --

THE COURT: Same question, how it's being used in the summary judgment.

MR. MILLER: Your Honor, one clarification.

THE COURT: Yeah.

MR. MILLER: Our summary judgment motion, we did not move on contributory liability, so that issue was not addressed in the summary judgment papers.

THE COURT: Well, I guess I would ask plaintiffs,

like, how you're intending to use it in terms of secondary liability if you're relying on that?

MR. MILLER: We can address that. I just wanted to --

MR. OPPENHEIM: We can address that, Your Honor, not a problem, because the underlying direct infringement is --

THE COURT: I assume it's the same, in terms of --

MR. OPPENHEIM: Yeah, we can address it. Not a problem, Your Honor.

MR. MILLER: We're happy to address it. I just wanted to make sure we're clear about what is in the summary judgment papers and what's not.

THE COURT: That's helpful. I would like to say I've read them all already.

MR. MILLER: I hope you haven't.

MR. OPPENHEIM: You haven't?

THE COURT: But I'm trying to think if there is anything else which would be helpful for me.

I think there is this question, but I'm trying to decide how to best tease it up, which I don't think is squarely before me, frankly, which is the, okay, well, now, has there been -- has the scope of the waiver -- alleged waiver expanded? I don't want that brief before me, but it's more if that is what Anthropic is urging, which I'm seeing nodding from Anthropic's counsel, then where should that go, in other words, I don't think that's before me in this motion.

MS. MEHTA: Understood, Your Honor. So I think we understand the scope of this supplemental briefing that you've asked for on Tuesday. Both sides can respond to that. And then we also have, obviously, other motions that are coming in to Your Honor. And then I understand you to be saying that insofar as we are going to argue there is a broader waiver, that is a new motion that we should bring, if we're going to argue that. I'm not suggesting that I want to file that motion or that we've made that decision yet, because, obviously, we'll see -- we need to sort of see how the next few weeks play out. But I understand you're saying that's not to be addressed on Tuesday, and we won't address that on Tuesday.

THE COURT: Right. Or, I mean, if you're going to address it, I guess I'm wondering where should that go? What is the scope of that argument and where should that go? Should that go back to Judge van Keulen or should that be here?

MS. MEHTA: I think -- and the reason I'm hesitating a little bit, Your Honor, is I think there is two sides to that particular issue. There is a question of whether we want additional information on the basis of a waiver, or whether at this point in the process they simply should be precluded on -- from relying on things where they have made a decision to selectively waive. And that is why I'm suggesting that what might make sense is for Your Honor to rule on this particular issue that's before you, and we will consider the question of

whether we intend to argue for preclusion, as opposed to ask for more discovery.

You know, what we absolutely do not think is appropriate is for them to say, well, now we're going to have new expert reports and we're going to rely on a whole bunch of information, and that's a concern. So that's why I'm being thoughtful about how best to tee up the next phase of this to Your Honor.

THE COURT: Well, I will also be frank of, like, this motion has been pending. And so I also think to say, okay, going for the gusto, we're going to try to do preclusion seems a little much as well. But that's first hit on this.

Let's do it this way, because I do think it, actually, there is -- this is complicated. And I, as parties have noted -- and the proof is in the pudding from the number of motions before Judge van Keulen, which continue to now -- which continue now to these other issues. I'm going to order parties to meet and confer before Tuesday as well, because I could see a world where it is, okay, you get this account information but you can't use it for anything beyond X; or we're going to contain it this way; or can we address it this way, in terms of the selective waiver.

I mean, I'm just wondering if there are ways which parties can come up -- because I don't know what these records look like. I do not -- I probably will after Tuesday, but I --

and you're welcome to have exhibits, if necessary, for this, that would be helpful. Do not bury me in paper. But I'm wondering, in looking down -- because part of this is, you know, what is plaintiff going to assert and use to prove its case? And so there are choices which are being made. And I could see this being litigated different ways in terms of going into trial. So I just -- I'm urging parties to meet and confer to see whether or not there are creative solutions that could be reached in terms of line drawing. And so I am going to order you to meet and confer by Tuesday.

MR. MILLER: Your Honor, we're happy to do that. I would just ask if there is any flexibility at all on the timing? The parties' Daubert briefing is also due on Tuesday, and we have a lot of work to get that all on file. So even a couple of days would be -- would make a big difference, I think, to both sides.

THE COURT: I'm open to that. So how about Thursday of next week, or Thursday or Friday?

MR. MILLER: We could do Friday. That would be fine, Your Honor.

MS. MEHTA: Any day next week is fine for us, Your Honor. Maybe not Monday, but Tuesday through Friday is fine.

THE COURT: So I'm also going to require that parties meet and confer regarding this, and also file a status report on their meet and confer. Because I do wonder whether or not

there are other ways. There might be different choices which plaintiffs are making, but I just -- we'll see.

All right. So one thing which I realize is that, in terms of going to closed session, should either party request that transcript, I need to just put an order on the record that the closed session is with the exception of counsel which is present. If counsel for either side, or if either side requests a transcript of the proceeding, they may do so. So that's just for the closed session.

Mr. Oppenheim.

MR. OPPENHEIM: I didn't mean to step on your words, Your Honor. Apologies. Can I just -- if we're done with the other matters, may I raise a quick housekeeping matter?

THE COURT: Yes.

MR. OPPENHEIM: So counsel for defense for Anthropic has raised some concerns with plaintiffs that our summary judgment brief contains footnotes that have -- are in a font of ten point, and that we have bullet points that are not double spaced. Which has been true of briefs that both sides have filed to date with Your Honor, but it has now been pointed out that your rules prohibit that.

But, Your Honor, as a housekeeping matter, we obviously want to file whatever Your Honor wants, and the past it hasn't been a problem. Do you want us to re-file the brief to be compliant or is it okay? We have a totality of eight

footnotes, Your Honor, and somewhat more bullet points that are just referencing evidentiary points, but want to do whatever the Court wants.

THE COURT: How much -- if I put all your footnotes on a piece of paper, how many pieces of paper would they be?

MR. OPPENHEIM: I think the footnotes, if you expand them, is going to add maybe a couple lines to the brief total. It's not -- I don't believe it's substantial. Like I said, there are only eight footnotes, so it's not --

THE COURT: But, I mean, footnotes can be --

MR. OPPENHEIM: I worked for the partner when I was a young lawyer who would have footnotes the entire size of the page. They are not that, Your Honor. They are true footnotes.

MS. MEHTA: Your Honor, just one -- I'm sorry. I didn't mean to step on Mr. Oppenheim. Just one thing.

There is also a whole extra page, because they didn't include the notice of motion and motion pursuant to the local rules. So, you know, it's about, by our count, about two-and-a-half pages over the page limit. And we just raise that with them, because the parties had jointly requested extra pages from you already for this, and so we wanted to be cognizant of not inundating you with overlong papers.

THE COURT: How long is the brief now total? I'm just pulling it up.

MR. OPPENHEIM: 35 pages, Your Honor.

THE COURT: Oh, you took all 35?

MR. OPPENHEIM: We did. As Your Honor is aware, there are a lot of issues here, and we wanted to raise them cleanly for the Court.

MR. MILLER: And to be -- Your Honor.

THE COURT: Mr. Miller.

MR. MILLER: Sorry. Yeah, to be clear, our papers do include the notice of motion. It's in there. We just didn't include the notice of motion in the count towards the 35.

THE COURT: Okay. Ms. Mehta, do you agree with me that it's -- so you're saying it's two-and-a-half pages over?

MS. MEHTA: Approximately.

THE COURT: So if Anthropic was given two-and-a-half pages in addition, would that address the concern?

MS. MEHTA: Certainly, Your Honor. And we will be judicious with the amount of paper we give you. We are trying our best to be concise, given the issues.

THE COURT: Mr. Oppenheim, any concerns with that?

MR. OPPENHEIM: That's fine, Your Honor.

THE COURT: Let's just do it that way versus having you re-file or having me strike, it just -- and having me count how big it is and playing with your fonts. All right. So, with that, the Court -- Anthropic is granted two-and-a-half additional pages on their opening brief.

So follow my rules for -- the standing order for the

rest of the briefs, so...

MR. OPPENHEIM: We will, Your Honor. And apologies.

THE COURT: That's fine.

All right. Anything else housekeeping-wise?

MS. MEHTA: Nothing from us, Your Honor.

MR. OPPENHEIM: No.

THE COURT: All right. Great.

And so, with that, the Court is now in recess until my pretrial. I will see you all soon at the rate we're going. And if I need to call you in after I receive your briefs, I will do so, because I do think we just need to come to conclusion about how we address this, and so that is the reason I'm encouraging parties to meet and confer to see whether or not there is a more creative solution that can be reached.

But in either case, given what we're talking about, I feel like there is going to be likely further conversations even if I were to grant any relief so.

All right. Thank you.

MS. MEHTA: Thank you, Your Honor.

MR. OPPENHEIM: Thank you, Your Honor.

(Proceedings concluded at 12:51 p.m.)

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C E R T I F I C A T E

I, CHRISTINE M. COALY, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 30th day of March, 2026.

/s/ Christine M. Coaly
Christine M. Coaly, RMR, CRR