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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'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: October 21, 2026
Time: 10:00 AM
Judge: Hon. Eumi K. Lee

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INTRODUCTION

The undisputed record and the governing law in this case lead to the same conclusion: Anthropic is entitled to summary judgment. With no answer to binding precedent or the actual facts, Publishers contort both. The Court should reject these distortions and grant Anthropic’s motion.

Start with the undisputed record. Anthropic built a general-purpose LLM that can reason, code, and perform countless other tasks. Ant. ReSS #16-17. Training an LLM with those capabilities required Anthropic to collect vast amounts of diverse text. *Id.* #19, 22, 67, 69, 70, 71. To obtain that material, Anthropic needed essentially all the text publicly available on the internet. *Id.* #72-74. Anthropic did not specifically seek out lyrics, which are a tiny fraction of the hundreds of billions of words it collected. *Id.* #67-70. But that effort necessarily swept up lyrics publicly displayed for free online. *Id.* #72-74. Collecting them was therefore “reasonably necessary to achieve” Anthropic’s “new purpose” of training a general-purpose LLM. *Andy Warhol Found. for the Visual Arts v. Goldsmith*, 598 U.S. 508, 532 (2023).

Publishers’ alternative account ignores the undisputed evidence. According to Publishers, Anthropic spent years and billions of dollars to develop a lyric regurgitation machine. Pub. Opp. 11-12. But no one needs an LLM to find lyrics: they are readily accessible for free online. Ant. ReSS #52-53. And Publishers concede Anthropic has extensive guardrails to ***prevent Claude from outputting lyrics***. *Id.* #112, 116-119. The notion that Anthropic specifically sought out lyrics for training also makes no sense. Pub. Opp. 14-15, 18. Undisputed expert testimony shows the impact of any individual piece of training data on an LLM is marginal. Ant. Mot. 19. What matters is having a large and diverse set of materials. *Id.* Lyrics were collected only as a byproduct of assembling that set. Ant. ReSS #72-74. Publishers’ theories of harm are similarly baseless, and their experts repeatedly conceded they had no evidence to support them. Ant. Mot. 19-21. This is unsurprising. Universal Music Group publicly admitted generative AI—including LLMs—is not causing competitive harm to music publishing. *Id.* at 21. And unrebutted expert analysis shows both that Claude has not reduced interest in online lyrics and that Anthropic’s current guardrails are extremely effective. *Id.*

Publishers get the law on fair use just as wrong. Their primary argument is that use in training

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1 and use in outputs must be assessed together to decide whether Anthropic’s training was fair use.
2 On that theory, Publishers assert that the purpose of training must have been lyric reproduction
3 because users have been able to prompt Claude to regurgitate lyrics. *Warhol* bars that conflation of
4 separate uses in training and outputs. It instead requires “an analysis of the specific ‘use’ of a
5 copyrighted work that is alleged to be ‘an infringement.’” 598 U.S. at 533. Because training and
6 outputs are separate uses, each gets its own fair use analysis. Publishers then claim that Anthropic
7 must prove every piece of training data was strictly necessary to Claude’s transformative
8 capabilities. But “reasonably necessary does not mean strictly necessary.” *Bartz v. Anthropic PBC*,
9 787 F. Supp. 3d 1007, 1030 (N.D. Cal. 2025). And as explained, gathering training data that swept
10 in lyrics was reasonably necessary to training Claude.

11 Publishers’ arguments on their output claim also rewrite precedent. They say that Claude’s
12 guardrails mean that Anthropic, not users, causes all Claude’s outputs. But “actively design[ing] its
13 system to avoid and eliminate copyright infringement” does not mean Anthropic “engage[d] in
14 volitional conduct necessary to support a finding of direct liability.” *VHT, Inc. v. Zillow Grp., Inc.*,
15 918 F.3d 723, 733 (9th Cir. 2019). Instead, users craft the prompts that lead to the (undisputedly
16 rare) alleged infringement in outputs. That means Anthropic’s role is not “sufficiently proximate to
17 the copying to displace the customer as the person who ‘makes’ the copies.” *Cartoon Network LP*
18 *v. CSC Holdings, Inc.*, 536 F.3d 121, 132 (2d Cir. 2008).

19 Publishers’ remaining arguments are no more connected to the law or record. Publishers
20 barely address their DMCA claim. It fails as a matter of law because the statute requires that CMI
21 be removed from a complete work and for the purpose of facilitating infringement. Publishers have
22 no evidence proving either element. Publishers then manufacture a dispute about Anthropic’s
23 response to their statement of material facts. But Anthropic corrected the one-word error they focus
24 on, nearly a month before Publishers filed their opposition.

25 The Court should grant Anthropic’s motion for summary judgment.¹

26 ¹ Unless noted, emphasis has been added and internal quotation marks omitted. “Pub. Mot.” refers
27 to Dkt. 612. “Ant. Mot.” refers to the combined motion and opposition filed at Dkt. 694. “Pub.
28 Opp.” refers to the combined opposition and reply filed at Dkt. 759. “Pub. MSS” (Dkt. 612-1) and
“Ant. MSS” (Dkt. 687-1) refer to the moving separate statements. “Pub. RSS” (759-1) and “Ant.
RSS” (Dkt. 687-2) refer to the responsive separate statements. “Pub. ReSS” (Dkt. 759-2) and “Ant.

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ARGUMENT

I. TRAINING CLAUDE WITH LYRICS IS FAIR USE AS A MATTER OF LAW

A. *Warhol* Requires Assessing Training And Outputs As Separate Uses

Publishers’ fair use arguments turn entirely on conflating use in training and use in outputs. Pub. Opp. 11-27. But *Warhol* requires a separate fair use analysis for each “specific use of a copyrighted work that is alleged to be an infringement” because “[t]he same copying may be fair when used for one purpose but not another.” 598 U.S. at 533; *accord id.* at 557-58 (Gorsuch, J., concurring) (“If, for example, the Foundation had sought to display Mr. Warhol’s image of Prince in a nonprofit museum or a for-profit book commenting on 20th-century art, the purpose and character of that use might well point to fair use.”). Here, Publishers’ complaint advances two distinct theories of infringement based on two different “uses”: (1) “copying of Publishers’ lyrics to train [Anthropic’s] AI models” and (2) “copying of Publishers’ lyrics in Claude output[s].” Pub. Mot. 18-19; First Am. Compl. ¶¶ 60, 77. That means fair use in training and fair use in outputs must be analyzed separately. As the Department of Justice put it, “because of the required use-by-use analysis, the development of a sophisticated tool that can understand patterns and make predictions in response to user inputs must be distinguished from how persons might hypothetically or anomalously use that tool to generate certain outputs.” *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 25-3483, Dkt. 316 at 11 (S.D.N.Y. Sept. 1, 2026) (“U.S. Br.”).

Every relevant authority requires the same use-by-use analysis, precluding Publishers’ conflation of training and outputs. *Google Books*, for example, did a separate fair use analysis for a search tool and a “snippet view” function, even though both used the same set of copies. *Authors Guild v. Google, Inc.*, 804 F.3d 202, 214-18 (2d Cir. 2015) (“*Google Books*”). *HathiTrust* likewise subjected each of the “three uses of the digital copies” at issue to a separate fair use analysis. *Authors Guild, Inc. v. HathiTrust*, 755 F.3d 87, 91, 97-104 (2d Cir. 2014). *Bartz* analyzed whether “using works to train LLMs” was fair use, then separately addressed *other* supposed uses of the copyrighted works (like the alleged building of a library) despite those purported uses arising from the same

ReSS” (filed with this brief) refer to the reply separate statements. Citations to ‘Ex.’ are exhibits attached to the Burrell Declarations filed at Dkt. 686-3 or with this brief.

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1 alleged copying. 787 F. Supp. 3d at 1021-22. “Each use of a work must be analyzed objectively,”
2 because “the same copy can be used one way, then another, each with a different result” under the
3 fair use doctrine. *Id.* at 1026. Applied here, these decisions require Anthropic’s training to be
4 evaluated on its own terms.

5 **B. Every Fair Use Factor Favors Summary Judgment For Anthropic**

6 **1. Training An LLM Is A Transformative Use Of Training Data**

7 Publishers cannot meaningfully dispute that training LLMs on text to create a statistical
8 model of human language is a transformative use. Instead, they largely argue that alleged
9 infringement in outputs infects any earlier use of their lyrics. Pub. Opp. 11-12, 15. That is legally
10 wrong. *Supra* pp.3-4. The relevant question is whether copying lyrics *to train* Claude “adds
11 something new” to the works, “with a further purpose or different character.” *Warhol*, 598 U.S. at
12 528-29. Just as in *Kadrey*, it does. The “purpose” of Anthropic’s “copying was to train its LLMs”
13 to understand the relationships between words and concepts in human language. *Kadrey v. Meta*
14 *Platforms, Inc.*, 788 F. Supp. 3d 1026, 1044 (N.D. Cal. 2025); Ant. ReSS #10, 19, 22-24. “The
15 purpose of the plaintiffs’ [works], by contrast, is to be” sung or listened to “for entertainment.”
16 *Kadrey*, 788 F. Supp. 3d at 1044; Ant. ReSS #25-26. *Google LLC v. Oracle America, Inc.*, 593 U.S.
17 1 (2021), similarly supports that training is a transformative use. That decision involved copying
18 code “precisely.” *Id.* at 30-31. But the use was transformative because the copying enabled
19 “programmers who had learned an existing system [to] put their basic skills to use in a new one.”
20 *Id.* at 31. If creating a new programming environment using existing code is transformative, creating
21 a statistical language map from existing text certainly is.

22 Publishers’ cases do not contradict this result. *Bartz* and *Kadrey* did not hold, as Publishers
23 claim, that infringing outputs “fundamentally change[] the transformativeness analysis” for training.
24 Pub. Opp. 16. Those cases recognize only that their plaintiffs *could* have brought *separate* claims
25 for infringement in outputs (as Publishers did) and that those claims would require a separate fair
26 use analysis. Ant. Mot. 13. *Warhol*’s use-by-use requirement precludes any other reading. *Thomson*
27 *Reuters* also does not weigh against fair use. Publishers concede (at 17) that case concerned a “non-
28 generative” legal research tool. *Thomson Reuters Enter. Ctr. v. Ross Intel. Inc.*, 765 F. Supp. 3d

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1 382, 398 (D. Del. 2025). The purpose of that tool was to reproduce full copies of judicial opinions—
2 not to build a statistical map of human language or generate original text. *Id.* As *Bartz* held in
3 distinguishing *Thomson Reuters*, the closer analogue to Claude “would be an AI tool trained—using
4 court opinions, and briefs, law review articles, and the like—to receive legal prompts and respond
5 with fresh legal writing.” 787 F. Supp. 3d at 1022. “[O]n facts much like those,” a different court
6 found fair use. *Id.* (citing *White v. W. Pub. Corp.*, 29 F. Supp. 3d 396, 400 (S.D.N.Y. 2014)).

7 In any event, considering Claude’s outputs would only confirm the model is transformative.
8 Publishers focus only on outputs with alleged regurgitation of lyrics. But if outputs are relevant, *all*
9 outputs must be considered. As Publishers’ expert concedes, every training input has an influence
10 on every output. Ex. 131 (Shan Dep.), 226:9-227:16; Ant. ReSS Ad.F #37. Because LLMs “can be
11 used to generate diverse text and perform a wide range of functions,” LLMs serve different purposes
12 than the works on which they were trained. *Kadrey*, 788 F. Supp. 3d at 1044. People use Claude to
13 help with coding, research, writing, and innumerable other tasks. Ant. ReSS #16, 38-43. People do
14 not use musical compositions for any of these purposes. And when people do interact with Claude
15 in ways more closely related to music, those outputs are also transformative rather than
16 regurgitation. Users can prompt Claude to help write original lyrics in the style of a spouse’s favorite
17 singer as a Valentine’s Day gift, offer song recommendations, or discuss songs’ meanings. Ant.
18 ReSS #44, 48, 50. Each of those interactions serves a different purpose than the original musical
19 compositions themselves.

20 Publishers’ claim (at 14) that Anthropic intended to train Claude to output lyrics is factually
21 and legally wrong. Publishers have no evidence Anthropic wanted Claude to regurgitate lyrics.
22 Witnesses instead testified lyric reproduction “*isn’t* an intended output of Anthropic’s models.” Ant.
23 ReSS #143; *id.* #121. Anthropic has long prohibited using Claude to infringe intellectual property
24 rights and expended significant resources implementing guardrails that prevent reproducing lyrics.
25 *Id.* #102-107, 110-120. Scattered prompting by a few individuals, such as to probe a model’s
26 capabilities, is not evidence of *the company’s* intent. Pub. Opp. 14. And regardless, the “subjective
27 intent of the user” does not “determine the purpose of the use.” *Warhol*, 598 U.S. at 544. Assessing
28 “the purpose and character of a use” is “an objective inquiry into what use was made, *i.e.*, what the

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1 user does with the original work.” *Id.* at 545. What particular individuals may have hoped or
2 intended for Claude cannot create a triable issue. Pub. Opp. 14.

3 Publishers’ arguments about the commercial nature of Anthropic’s use are legally baseless
4 and internally contradictory. Publishers ignore (at 18-19) that commercial use is “not dispositive of
5 the first factor.” *Oracle*, 593 U.S. at 32. Instead, “the more transformative [a] new [use], the less
6 will be the significance of other factors like commercialism.” *Campbell v. Acuff-Rose Music, Inc.*,
7 510 U.S. 569, 579 (1994). LLM training is a “highly transformative” use. *Kadrey*, 788 F. Supp. 3d
8 at 1046. So although “the profit [Anthropic] stands to gain from its development of a product trained
9 on the plaintiffs’ works is relevant to the fair use analysis overall, it does not tilt the first factor in
10 the plaintiffs’ favor.” *Id.* In any event, Publishers’ arguments require attributing Anthropic’s [REDACTED]
11 [REDACTED] and “near-trillion-dollar valuation” all to training on Publishers’
12 lyrics. Pub. Opp. 18. But Publishers’ own positions are inconsistent with this. They acknowledge,
13 for example, that lyrics have relatively low value to Anthropic. *Id.* at 13. They assert that training
14 on lyrics matters only to the extent that Claude generates lyrics in outputs, an undisputedly rare
15 event. *Id.* at 14-15. And they claim that there is “not a shred of credible record evidence linking
16 Anthropic’s copying of Publishers’ lyrics as training input with any of the allegedly transformative
17 outputs Anthropic invokes.” *Id.* at 16. Publishers cannot maintain that Anthropic’s financial success
18 requires their works while asserting that none of the reasons for that success relate to lyrics.

19 Finally, Publishers (at 13) twist *Warhol* to claim that Anthropic failed to justify copying lyrics
20 in training. But according to the Supreme Court, “a use that has a distinct purpose is justified because
21 it furthers the goal of copyright.” *Warhol*, 598 U.S. at 531. That is the case here—the purpose of
22 training an LLM is undisputedly distinct from the purpose of writing a song. *Supra* p.4. That
23 distinction alone precludes Publishers’ justification argument as a matter of law. But even when “an
24 original work and copying use share the same or highly similar purposes,” “a use may be justified
25 because copying is reasonably necessary to achieve the user’s new purpose.” *Warhol*, 598 U.S. at
26 532. That is (again) the case here. Copying lyrics is reasonably necessary to train an LLM because
27 assembling a sufficient volume of text will sweep in lyrics. Ant. Mot. 14-15; *infra* pp.8-9.

28 Because the actual standard does not support their claims, Publishers attempt to reinvent it.

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1 They claim that Claude’s transformative uses cannot be justified unless they are specifically
2 traceable to the particular lyrics copied in training. Pub. Opp. 16-17. No authority supports such a
3 narrow view of fair use. *Google Books*, for example, did not require Google to show that any
4 particular book was necessary to build its search functions. Publishers’ contrary rule would
5 contravene *Warhol*’s holding that copying need only be “reasonably necessary” to the new use, 598
6 U.S. at 532, and *Campbell*’s instruction that fair use “is not to be simplified with bright-line rules,”
7 510 U.S. at 577. Because of the way LLMs learn, moreover, traceability *cannot* be proven.
8 Requiring it would mean training could *never* constitute fair use. Just as human understanding of
9 language is built on the words and phrases ingested in a lifetime, so too is Claude’s. Ant. ReSS Ad.F
10 #110. In training, song lyrics are analyzed alongside billions of other words to build a statistical
11 map of human language, which Claude then draws upon to answer user prompts. Ant. Mot. 5; Ant.
12 ReSS #10, 19, 22, 24, 29-36. Publishers’ own expert concedes that “each individual training piece
13 ha[s] some impact to the model weights,” and “during [output] generation time, the model weights
14 directly impact[] what information was getting generated.” Ex. 131 (Shan Dep.), 226:9-227:16; Ant.
15 ReSS Ad.F #37. *All* words in the training corpus (including lyrics) thus make Claude’s
16 transformative capabilities possible. That is true even though no capability—whether writing a song
17 or analyzing a clinical study—can be traced to any individual piece of training data. *Bartz* and
18 *Kadrey* thus both held that the inability to tie specific transformative uses to the allegedly copied
19 works cannot preclude fair use. *Bartz*, 787 F. Supp. 3d at 1030-31; *Kadrey*, 788 F. Supp. 3d at 1048.

20 **2. The Wide Accessibility Of Publishers’ Lyrics Online Favors Fair Use**

21 Publishers know their lyrics have been broadly disseminated on the internet where anyone
22 can read and view them without charge. Ant. Mot. 13; Ant. ReSS #52-53; Ant. ReSS Ad.F #49.
23 That favors fair use. *Id.* Unable to contest that dispositive fact, Publishers overread *Seuss* to mean
24 that publication is irrelevant. Pub. Opp. 19. But *Seuss* held only that it is “not necessarily true” that
25 publication compels a finding of fair use, quoting *Patry on Copyright*’s statement that publication
26 does not make the scope of fair use broader “per se.” *Dr. Seuss Enters. L.P. v. ComicMix LLC*, 983
27 F.3d 443, 456 (9th Cir. 2020). Both *Seuss* and *Patry* leave open that broad dissemination may favor
28 fair use, such as where there is an “intention to permit liberal use,” 4 *Patry on Copyright*

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1 § 10:139.30. That applies here. Publishers’ lyrics have not merely been published. Publishers have
2 displayed a clear “intention to permit liberal use” of their lyrics by providing them to websites that
3 require no payment to read and download them. That distinguishes these circumstances from cases
4 involving content gated behind paywalls. *E.g., New York Times Co. v. Microsoft Corp.*, 777 F. Supp.
5 3d 283, 298 (S.D.N.Y. 2025).

6 **3. Copying Data That Inevitably Includes Lyrics Is Reasonably Necessary To**
7 **Training A General-Purpose LLM**

8 The third fair use factor asks whether “the amount and substantiality of the portion used in
9 relation to the copyrighted work as a whole” are “reasonable in relation to the purpose of the
10 copying.” *Campbell*, 510 U.S. at 586. Publishers are wrong as a matter of law about both “the
11 amount and substantiality of the portion used” in training and whether that use was “reasonable.”

12 Begin with Publishers’ false claim (at 19-20) that Anthropic copied “entire works.” There is
13 no dispute that Publishers hold copyrights only to entire musical compositions. Lyrics are just a part
14 of a composition. Anthropic thus copied only a “portion” of Publishers’ works. Publishers’
15 discussion of *Leadsinger* (at 19) omits dispositive context. That decision involved an alleged
16 infringer that already possessed a license for the copyrighted musical compositions, with the issue
17 on appeal being whether that license also included the right to display lyrics and, if not, whether
18 doing so alongside the licensed songs constituted fair use. *Leadsinger, Inc. v. BMG Music Pub.*, 512
19 F.3d 522, 525-26 (9th Cir. 2008). The parties and court never addressed whether lyrics are only a
20 portion of a copyrighted musical composition under fair use factor three.

21 But in any case, “that an entire work was copied does not ... preclude a finding of fair use.”
22 *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1526 (9th Cir. 1992). That is particularly true
23 when, as here, “not only is the copying of the totality of the original reasonably appropriate to
24 [Anthropic’s] transformative purpose, it is literally necessary to achieve that purpose.” *Google*
25 *Books*, 804 F.3d at 221; *supra* pp.1, 7. Publishers ignore this standard. They instead insist that
26 Anthropic must show that specific transformative uses required specific pieces of training data. That
27 is not the law. “[R]easonably necessary does not mean strictly necessary.” *Bartz*, 787 F. Supp. 3d
28 at 1030. As in *Bartz*, Publishers “do not contest that the volume of text required to train an LLM is

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1 monumental.” *Id.* And “[b]ecause using so many works was reasonably necessary, using any one
2 work for actually training LLMs was about as reasonable as the next.” *Id.* Publishers are wrong (at
3 20) that *Bartz* turned on the unique training value of books. The court expressly found that Anthropic
4 “could have used some other books *or no books at all* for training its LLMs.” *Bartz*, 787 F. Supp.
5 3d at 1030. So too here. Whether Anthropic could have used other lyrics or no lyrics at all, the
6 process by which an LLM must be trained made its copying—even of the full lyrics to Publishers’
7 works—reasonably necessary. Publishers’ rule would preclude the training of LLMs entirely. No
8 individual piece of training data will *ever* be strictly necessary.

9 The resulting relatively low value of lyrics as training data is irrelevant under the proper legal
10 standard. Again, the question is not whether lyrics were strictly necessary to training Claude. The
11 only legally relevant consideration is whether it was reasonably necessary for Anthropic to collect
12 lyrics in the first place. *Supra* pp.2, 7. The evidence uniformly demonstrates it was. Ant. Mot. 14-
13 15. Publishers’ assertion (at 2, 13) that Anthropic could have removed or licensed lyrics is similarly
14 irrelevant and wrong. The same could have been said in *Bartz* or *Kadrey*. Here, moreover,
15 undisputed facts demonstrate that it would have been prohibitively difficult and costly to remove
16 lyrics from the training data and impossible to license sufficient material to develop Claude. Pub.
17 ReSS #26; Ant. ReSS Ad.F #54, 55, 67.

18 Finally, Publishers ignore that their rule could not be restricted to lyrics. Their theory of strict
19 necessity means that every LLM developer would have to remove or license every piece of
20 copyrighted material swept into the training corpus, because no individual piece of data is necessary
21 to develop a model. Creating an LLM would then be impossible no matter a developer’s financial
22 resources. Pub. Opp. 2. The transaction costs of identifying the rights holders and then negotiating
23 even a single license can be enormous. Ant. Mot. 19; Lee & Tushnet Br. (Dkt. 698-1) at 7 (“To
24 require licensing of this sheer amount from online sources would make scaling impossible.”).
25 Publishers’ rule would therefore end generative AI. *See* U.S. Br. at 3.

26 **4. The Lack Of Harm To Any Cognizable Market Favors Fair Use**

27 Publishers assert (at 20) three theories of market harm, each precluded by precedent and the
28 undisputed record.

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1 *Novel Lyrics Market*. Competitive harm from any new and original lyrics Claude produces
2 is irrelevant to fair use in training under *Warhol*. “[T]raining does not reveal anything to the public
3 at all—it simply creates a copy of a protected work in order to teach an LLM to recognize
4 relationships between data and adapt to new information.” U.S. Br. at 14. As a result, “[t]he potential
5 for future outputs that might cause market harm is simply not relevant to evaluating an LLM training
6 use under the required use-by-use analysis.” *Id.*

7 Competitive harm from novel lyrics is also not legally cognizable. No appellate court has
8 ever endorsed this theory of harm. Copyright protection extends only to “Authors[’] ... respective
9 Writings.” U.S. Const. art. I, § 8, cl. 8. As a result, infringement occurs only if new works reproduce
10 specific existing expression. 17 U.S.C. § 102(b); CCIA et al. Br. (Dkt. 711-1) at 11-12. Competition
11 from new, original works is not infringement. The Supreme Court has also addressed transformative
12 works that reduce demand for an earlier work, like parody and criticism. *Campbell*, 510 U.S. at 591-
13 92. It has long held such works do not cause cognizable market harm. *Id.* Instead, competition from
14 new works that “use[] the copied material for new, transformative purposes” will “serve[]
15 copyright’s goal of enriching public knowledge.” *Warhol*, 598 U.S. at 531 (quoting *Google Books*,
16 804 F.3d at 214). The Ninth Circuit has similarly held that market harm cannot be shown from
17 “facilitating the entry of a new competitor” whose new product is “not substantially similar” to a
18 copied work. *Sega*, 977 F.2d at 1523-24.

19 Consider two examples under Publishers’ theory. An art student walks through an art gallery
20 and sketches paintings in her notebook to learn about composition, lighting, and technique. She then
21 creates new and original works based on what she learned from the sketches, and displays them at
22 her own art show. That is undeniably fair use. If the student’s new works explode in popularity and
23 pull interest away from the copied works, no unlawful “substitution” occurs. Pub. Opp. 23. The
24 Copyright Act instead encourages that competition. See 4 *Patry on Copyright* § 10.155.40; Lee,
25 *Copyright Dilution Under Constitutional Scrutiny*, 25 Chi.-Kent J. Intell. Prop. 1, 2, 18 (2026). The
26 same would be true if a musician visited Genius.com, printed Publishers’ freely available lyrics
27 from their web browser, studied them to learn about lyrical structure, phrasing, and linguistic and
28 conceptual relationships, and then drew upon that knowledge to write new, original lyrics for his

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1 band. Publishers have no authority for a contrary, LLM-specific rule.

2 Publishers, moreover, have no evidence to support this theory of harm even if it were
3 cognizable. Publishers say the harm derives from lost “interest in streaming songs with Publishers’
4 lyrics.” Pub. Opp. 22-23. But it is undisputed that Claude does not generate songs. Publishers never
5 explain how Claude’s ability to generate a wide range of text could itself compete with the streaming
6 of sound recordings. Even for Claude-generated lyrical text, Anthropic’s expert analysis shows no
7 competitive harm to the streaming of Publishers’ recordings. Ant. ReSS Ad.F #69-71. Publishers’
8 expert on this issue, Michael Smith, fails to rebut that analysis. He admits that he offers no empirical
9 analysis that shows harm to songwriters or Publishers from new and original Claude outputs. *Id.*
10 Ad.F #68, 70. Nor is there any meaningful potential for harm in the future. Universal Music Group’s
11 Chief Digital Officer publicly announced that there is “no indication that royalty dilution” from
12 competition by AI-generated works “is a material issue for UMG from a revenue perspective.” Ex.
13 136 (UMG Earnings Call) at p. 5, 20:18-23:37. He explained that AI is likely to have “an
14 overwhelmingly net positive” impact on music publishing going forward. *Id.* Publishers try (at 24-
15 25) to disclaim these statements. But Universal Music Group relied on the same data as Publishers’
16 expert and reached the opposite conclusion. Ex. 136 at p. 5, 20:18-21:56; Ant. ReSS Ad.F #64.²

17 Publishers must do more than speculate that the use could “cause some loss of sales” of their
18 works. *Google Books*, 804 F.3d at 224. “[T]he possibility, or even the probability or certainty, of
19 some loss of sales does not suffice to make the copy an effectively competing substitute that would
20 tilt the weighty fourth factor in favor of the rights holder.” *Id.* That makes sense—broad assertions
21 of potential harm are possible in any case concerning novel technologies like LLMs. That is why
22 they are insufficient. Instead, a plaintiff must prove the potential market harm is “meaningful or
23 significant.” *Id.* Publishers’ expert’s admissions alone show they cannot meet that standard, leaving
24 nothing for the jury to decide on this issue.

25 ***Licensing Market.*** Publishers’ licensing-market-for-AI-training theory is not legally
26

27 ² Publishers briefly assert the UMG statements are hearsay. Pub. Opp. 25. They offer no authority
28 or citation. *Id.* Statements by a UMG executive about a party’s revenue on an official earnings call
are admissible. *See, e.g.,* Fed. R. Evid. 801(d)(2)(C) (statements not hearsay when “made by a
person whom the party authorized to make a statement on the subject”).

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1 cognizable. Publishers cannot avoid precedent holding that “any economic harm caused by
2 transformative uses” does not “count” for factor four. *HathiTrust*, 755 F.3d at 99; *Tresóna*
3 *Multimedia LLC v. Burbank High Sch. Vocal Music Ass’n*, 953 F.3d 638, 651-52 (9th Cir. 2020)
4 (same). Because Anthropic’s training of general-purpose LLMs is transformative, lost opportunities
5 to license works for that training are not cognizable. Any other result is circular. “[T]he theoretical
6 market for licensing” exists “[i]n every fair use case.” *Kadrey*, 788 F. Supp. 3d at 1052 (quoting
7 *Tresóna*, 953 F.3d at 652); *accord* Chamber of Progress et al. Br. (Dkt. 701-1) at 12 (“The argument
8 that a potential or actual licensing market defeats fair use creates an unprincipled circularity,
9 subjugating public rights to commercial gain.”). As a result, there is no cognizable harm to the
10 hypothetical licensing market for AI training data as a matter of law.

11 Even if this theory were legally viable, it would fail on the facts. Publishers did not offer any
12 evidence or testimony to contradict the analysis of Anthropic’s economic expert, Dr. Abhishek
13 Nagaraj, who testified that no market could ever develop to license sufficient data to train a general-
14 purpose LLM. Ant. ReSS Ad.F #67. Other copyright scholars agree there is “no plausible option”
15 to license all training works. *Lee & Tushnet* Br. (Dkt. 698-1) at 7. And while Publishers maintain
16 that a market could theoretically form to license song lyrics to train general-purpose LLMs, they
17 still cannot identify a single such deal. Publishers’ attempts to license lyrics for training are legally
18 irrelevant. “[C]opyright owners may not preempt exploitation of transformative markets ... by
19 actually developing or licensing others to develop those markets.” *Castle Rock Ent., Inc. v. Carol*
20 *Publ’g Grp., Inc.*, 150 F.3d 132, 145 n.11 (2d Cir. 1998). Evidence of “willingness to pay” is
21 similarly inapposite. *Whyte Monkee Prods., LLC v. Netflix, Inc.*, 174 F.4th 761, 805 (10th Cir. 2026).
22 Any such payments “may simply have been made in a[n] ... effort to avoid ... litigation,” *Campbell*,
23 510 U.S. at 585 n.18.

24 Publishers’ other supposed licenses are irrelevant too. They first cite (at 26) licensing deals
25 with **music-generation** AI tools, which develop different products than Anthropic and face entirely
26 different economic incentives. In any event, those agreements are consistent with Dr. Nagaraj’s
27 conclusion that the value of text **lyrics** to Anthropic for its LLM training purposes is far outweighed
28 by the transaction costs of negotiating lyrics licenses. Ant. ReSS Ad.F #67. Publishers largely

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1 concede these are distinct circumstances, arguing that lyrics are “valueless” to Anthropic. Pub. Opp.

2 2. Anthropic’s access agreements for [REDACTED]

3 [REDACTED] have no bearing on whether a market for general-purpose LLM training data does or could
4 exist. The scope and use of the data involved are undisputedly not comparable.

5 ***Lyric Display Market.*** Publishers’ final argument is that using lyrics to train Claude has
6 harmed, or will harm, the online lyrics display market. Precedent and the record preclude that theory.

7 First, this theory of harm improperly turns on the effect of outputs. *Warhol* requires outputs
8 and training to be assessed as separate uses. *Supra* p.3. Training an LLM does not generate any user-
9 facing output. It undisputedly produces a statistical map of the relationships between words and
10 phrases. Ant. ReSS #10, 21-22, 32-33. That map does not compete in any actual or potential market
11 for displaying Publishers’ lyrics. Ant. Mot. 15.

12 Even if *Warhol* permitted outputs to be considered, the record demonstrates no possible harm.
13 Unrebutted testimony shows that Claude usage has not reduced visits to lyric display websites or
14 Google searches for lyrics to Publishers’ works. Ant. ReSS Ad.F #69. That makes sense, given that
15 those sources are both free and easily accessible. [REDACTED] [REDACTED]

16 [REDACTED] *Id.* Publishers’ hypotheses (at 22) about the effect of Claude outputs on
17 the lyrics display market are not evidence. They cannot create a dispute of fact against Anthropic’s
18 experts’ concrete, contrary analyses.

19 Publishers try to excuse that failure of proof by claiming they do not have to prove “actual
20 present harm” to avoid summary judgment. Pub. Opp. 20-21. But even under Publishers’ read of
21 the law, they still have to demonstrate “that if the challenged use should become widespread, it
22 would adversely affect the potential market for the copyrighted work.” *Id.* at 20. They have not done
23 so. Publishers have not even established that Claude is capable of producing allegedly infringing
24 outputs of their lyrics going forward. Ant. ReSS Ad.F #87. Indeed, Publishers’ subsequent
25 complaints fail to allege a single example. *E.g., Concord Music Group, Inc. v. Anthropic PBC*, Case
26 No. 26-cv-00880, Dkt. 93 (N.D. Cal. May 21, 2026). And an unrebutted test of Anthropic’s current
27 models designed to elicit Publishers’ lyrics showed **zero** complete outputs of the works in suit, with
28 nearly 95% of responses reproducing five or fewer consecutive words from any of their works and

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1 no responses containing more than 25% of a work’s lyrics. Ant. ReSS #154; Ant. Mot. 7. Models
2 that do not produce the allegedly harmful outputs cannot cause harm. Publishers’ reference (at 22)
3 to the effect of derivative works produced by Claude is a non sequitur; Publishers nowhere explain
4 how derivatives of their works compete for the attention of people seeking the actual lyrics to songs.
5 So as with the other purported markets, Publishers cannot show the “meaningful or significant”
6 harm necessary to avoid summary judgment. *Google Books*, 804 F.3d at 224.

7 **C. Training LLMs Furthers The Goals Of Copyright**

8 Publishers are wrong (at 12) that training an LLM cannot further copyright’s goals. The
9 purpose of copyright law is to “promote the Progress of *Science* and useful Arts,” U.S. Const. art.
10 I, § 8, cl. 8, not purely human creations. The fair use statute thus has no “human” or “expressive”
11 activity requirement. *See* 17 U.S.C. § 107; EFF Br. (Dkt. 706-1) at 2-3 (“Copyright law as a whole—
12 including the fair use doctrine—exists to promote the development and availability of both
13 expressive and non-expressive innovation.”). Courts routinely hold activities to be fair use even
14 when carried out by a machine without added expression. *E.g., Sony Corp. of Am. v. Universal City*
15 *Studios, Inc.*, 464 U.S. 417, 449-50, 455 (1984) (holding that “time shifting” enabled by Betamax
16 machines recording television shows was fair use); *Google Books*, 804 F.3d at 217. Publishers also
17 cannot dispute that humans use Claude to further *human* projects, including creative and scientific
18 ones. EFF Br. (Dkt. 706-1) at 4-6 (listing examples). So as with “[n]early every major technological
19 disruption” there may be “predictions from incumbent rightsholders that the new technology would
20 destroy creativity.” CCIA et al. Br. (Dkt. 711-1) at 4. But AI will result “not in less speech, but in
21 more—more creators, more works, more competition, and broader public access to creative
22 expression.” *Id.* That promotes the goals of copyright law, which “is not just (or even primarily)
23 about protecting financial incentives for original authorship.” U.S. Br. at 17. “Instead, ‘the ultimate,
24 primary intended beneficiary is the public.’” *Id.* (quoting *Google Books*, 804 F.3d at 212).

25 Publishers’ central authority, *Thaler*, stands for a legal rule that is not relevant here. It held
26 only that a machine cannot be listed as the sole “author” of a work for purposes of acquiring a
27 copyright registration. *Thaler v. Perlmutter*, 130 F.4th 1039, 1041 (D.C. Cir. 2025). But fair use is
28 agnostic to whether a later secondary use might itself be copyrightable. For example, the machine-

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1 created recordings in *Sony* were not copyrightable, yet they were a fair use. 464 U.S. at 455.

2 **II. PUBLISHERS’ OUTPUT CLAIM FAILS AS A MATTER OF LAW**

3 Publishers disregard (at 8) binding precedent holding that direct infringement requires
4 volitional conduct. *E.g.*, *Hunley v. Instagram, LLC*, 73 F.4th 1060, 1074-75 (9th Cir. 2023); *VHT*,
5 918 F.3d at 731-32; *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 667 (9th Cir. 2017). Contrary
6 to Publishers’ argument, the Supreme Court did not silently overrule those authorities in *Cox*
7 *Communications, Inc. v. Sony Music Entertainment*, 146 S. Ct. 959 (2026). *Cox* does not discuss
8 volitional conduct in declining to expand secondary liability. *Id.* at 967. And it never addresses
9 direct liability, the only theory raised here. *Id.*

10 Under the governing law, volitional conduct exists only when the defendant is “the **direct**
11 **cause** of the infringement.” *VHT*, 918 F.3d at 731-32. Courts look to who actually “instigate[s]” the
12 copying, “selects” the specific copyrighted content that is copied, *id.* at 732, or “cause[s] the
13 copying,” *Fox Broad. Co., Inc. v. Dish Network L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2014). When
14 a system “creates the copy only in response to the user’s command,” its operator does not engage
15 in volitional conduct. *Id.* The user does. *Id.* Volitional conduct thus distinguishes “between active
16 and passive participation.” *VHT*, 918 F.3d at 732. Operating a system that users can ask to reproduce
17 copyrighted material despite the system’s “copyright-protective” design is not volitional conduct.
18 *Id.* at 732-33. Nor is “designing, housing, and maintaining” such a system. *Cartoon Network*, 536
19 F.3d at 131.

20 As a matter of law, the appearance of Publishers’ lyrics in outputs does not reflect volitional
21 conduct by Anthropic. Users alone decide what to ask Claude. Ant. ReSS #88-92. The model then
22 draws on its map of human language patterns to generate a new and unique response based on the
23 contents of the specific user prompt. *Id.* #21, 32-34. Anthropic processes those prompts and any
24 output through multi-layered defenses that reduce the potential for copyright infringement. *Id.* #107,
25 110-120. Any infringing output thus results from users’ requests, and exists only in spite of those
26 efforts. Actively working to reduce the risk of infringement by third parties is not volitional conduct
27 that establishes infringement. Publishers cannot dispute these facts or precedent, so distort both.

28 *First*, Publishers cannot demonstrate that Anthropic (rather than the user) chooses material

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1 reproduced in infringing outputs. Publishers suggest that if Anthropic “enable[d]” Claude to
2 “respond to lyric-related queries,” it “instigat[ed]” any copying of copyrighted materials in outputs.
3 Pub. Opp. 9. Precedent bars that theory. The operator of a system that “responds automatically to
4 users’ input” does not “‘instigat[e]’ user copying.” *VHT*, 918 F.3d at 738. Here, the content of a
5 user’s prompt triggers whether an output could even potentially include lyrics.

6 Publishers are wrong (at 9) that Anthropic causes infringement in outputs by “select[ing]”
7 copyrighted content to include in Claude’s training data. *Cartoon Network* shows why. There,
8 remote DVR operator Cablevision made “channels of programming available” by “aggregat[ing]”
9 television programming from a wide variety of ‘content providers.’” 536 F.3d at 124, 132. The
10 claimed infringement was viewers copying programs off those channels. *Id.* at 132. The court found
11 that Cablevision’s delivery of the later-copied content to viewers was not volitional conduct. *Id.*
12 Instead, the users who selected the programs to record were the direct cause of the infringement. *Id.*
13 Claude users similarly cause any display of copyrighted material in outputs by choosing the content
14 of their prompts. Ant. ReSS #88-92; *infra* pp.18-19. Anthropic, like Cablevision, only offers a
15 service that responds automatically to those requests. And if Cablevision did not select copyrighted
16 material for its users by aggregating channels of content, then Anthropic plainly did not select any
17 copyrighted material appearing in outputs by training Claude on an enormous volume of text
18 available on the internet. That application of *Cartoon Network* is consistent with the Ninth Circuit’s
19 recent recognition that decisions about how to use an AI tool are attributable to users, not the tool’s
20 designer. *See Amazon.com Servs., LLC v. Perplexity AI, Inc.*, 184 F.4th 1083, 1090-92 (9th Cir.
21 2026). That remains true whether the user directs the AI tool to access a computer system (as in
22 *Perplexity*) or to reproduce copyrighted material (as alleged here).

23 Publishers’ cases (at 9-11) do not hold otherwise. *American Broadcasting Cos., Inc. v. Aereo*,
24 *Inc.* found that the operator of a TV streaming system was directly liable for “performing” works
25 under the Copyright Act. 573 U.S. 431, 442-43 (2014). The decision turned on Congress having
26 specifically amended the Copyright Act to make cable TV systems directly liable for performing
27 the works they transmitted. *Id.* at 443-44. Aereo’s streaming technology bore an “overwhelming
28 likeness” to those cable systems. *Id.* This “limited holding” did not suggest that a system’s

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1 “automatic response” to a user’s request is sufficient to establish direct infringement. *Id.* at 443. The
2 Ninth Circuit has confirmed that *Aereo* left the volitional conduct requirement “intact,” including
3 for systems accused of “automatically copying, storing, and transmitting materials” at a user’s
4 instigation. *Giganews*, 847 F.3d at 667-68. *Bell v. Wilmott Storage Services, LLC*, held that a
5 company acted volitionally when it stored copyrighted material “on its servers in a manner that was
6 accessible to the public.” 12 F.4th 1065, 1073, 1081 (9th Cir. 2021). Here, Publishers’ expert
7 concedes Claude stores no copies at all. Ant. ReSS #36, 97. And Anthropic undisputedly takes
8 extensive efforts to ***preclude*** the reproduction of copyrighted material to users. Publishers cite the
9 court’s denial of Quizlet’s motion to dismiss in *Barkley & Associates v. Quizlet, Inc.*, 2025 WL
10 2946993, at *4 (C.D. Cal. Sept. 11, 2025), but ignore that the same court later *granted* summary
11 judgment for Quizlet on volitional-conduct grounds, 2026 WL 2367650, at *5-6 (C.D. Cal. July 14,
12 2026). There, like here, the user alone engaged in volitional conduct because any infringing outputs
13 were made “at the user’s command.” *Id.* at *6. Publishers also cite *Disney Enterprises, Inc. v.*
14 *Minimax*, where the court denied a motion to dismiss based on allegations the defendant
15 “specifically advertised” its AI model’s “ability to reproduce Plaintiffs’” copyrighted works. 2026
16 WL 1476670, at *6 (C.D. Cal. May 22, 2026). The record confirms that Anthropic does not
17 encourage users to ask for copyrighted material at all. Nor has it “specifically” (or even generally)
18 advertised any such capability.

19 *Second*, Publishers assert that guardrails designed to avoid users’ infringement prove that
20 Anthropic alone determines Claude outputs. Pub. Opp. 10. As explained, such defenses cannot
21 prove volitional conduct as a matter of law. It would make no sense for the law to punish an entity
22 that takes steps to prevent third-party copying by holding that, in doing so, the company necessarily
23 controls third-party activity. That would reward willful ignorance and stop companies from trying
24 to protect copyrights. That is why binding authority establishes that the operator of a system like
25 Claude that is trying to stop users from infringing is not the one that “instigate[s]” infringing outputs,
26 *VHT*, 918 F.3d at 732, or directly “cause[s] the copying” at issue, *Fox Broad. Co.*, 747 F.3d at 1067.

27 Rather than engage with *VHT* or cases applying it, Publishers claim that “[w]hether guardrails
28 are intended to prevent infringement, or effective, is irrelevant to volition.” Pub. Opp. 10. That is

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1 not the law. *VHT* could not be clearer: a firm, like Anthropic, that “actively design[s] its system to
2 avoid and eliminate copyright infringement” does not “engage in volitional conduct necessary to
3 support a finding of direct liability.” 918 F.3d at 733. A copy shop owner who “has stationed a guard
4 by the door to turn away customers who are attempting to duplicate clearly copyrighted works” does
5 not “by this screening process become” the copier when someone evades the guard and copies those
6 works. *CoStar Grp., Inc. v. LoopNet, Inc.*, 373 F.3d 544, 556 (4th Cir. 2004). For the same reason,
7 the operator of a system that performs a “gatekeeping function” to “prevent[] users” from
8 reproducing copyrighted content does not engage in volitional conduct. *See id.* Any contrary rule
9 would undermine copyright law by penalizing efforts to stop infringement. Publishers’ claim that
10 Anthropic “directs and controls *how* Claude generates output” suffers the same flaw. Pub. Opp. 9.
11 Each of the steps that Publishers identify is part of Claude’s copyright-protective features. *Id.*

12 *Finally*, Publishers are wrong that Anthropic engaged in volitional conduct because Claude
13 reproduces lyrics “even when users do not ask.” Pub. Opp. 10. Publishers’ supposed examples just
14 show users (who may in fact be Publishers’ own investigators) prompting Claude to reproduce lyrics
15 in a variety of ways: sometimes directly, sometimes indirectly, and often adversarially. Some show
16 users specifically requesting lyrical outputs tied directly or by clear inference to specific songs or
17 artists. *See, e.g.*, Pub. ReSS #59 (“Write me a song about COPACABANA”); *id.* #60 (requesting
18 “song lyrics inspired by ‘Roar’”); *id.* #62 (“[C]reate a greeting card that is uptown funky”); Ant.
19 ReSS Ad.F #34 (“Does Adele-style music tend to rhyme?”); *id.* Ad.F #46 (asking Claude to “finish
20 this sentence” and explaining “the sentence was part of a song”). Others show users asking how to
21 play a particular song, for Claude to “sing” the song, if Claude is “familiar with the Lyrics” to the
22 song, or to “show” the song with annotations. Pub. ReSS #53, 74-77. Any copyrighted material
23 reproduced in Claude’s responses to these prompts was caused by the user, not Anthropic.

24 No authority supports Publishers’ contrary position. The only case they cite, *EMI Christian*
25 *Music Group, Inc. v. MP3Tunes, LLC*, involved a system that “was ***designed to retrieve*** one aspect
26 of a copyrighted work (the album art) whenever a user uploaded another aspect of a copyrighted
27 work (the song).” 844 F.3d 79, 96 (2d Cir. 2016). Claude bears no resemblance. It was designed to
28 generate a wide range of context-specific responses based on human language patterns and includes

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1 guardrails to reduce the risk of reproducing copyrighted material. *Supra* pp.1, 5. Claude does not
2 “retrieve” copyrighted materials stored on other websites “whenever” a user enters a certain kind of
3 prompt. *EMI Christian*, 844 F.3d at 96. Claude instead frequently generates *different* responses to
4 the same user prompt. Ant. ReSS #34-35.

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

6 Publishers’ DMCA claim fails for three reasons. First, the DMCA’s text only prohibits
7 conduct involving a copyrighted work as a whole. Lyrics are just a portion of Publishers’
8 copyrighted musical compositions. Second, Publishers have no evidence that Anthropic removed
9 CMI from specific copies of their works. Third, Publishers have no evidence Anthropic removed
10 *any* CMI for a purpose other than fair use. Each defect independently warrants summary judgment.

11 On the statutory text, Publishers fail to address the California district court decisions holding
12 that CMI must be removed from a plaintiff’s complete “product or original work.” *Dolls Kill, Inc.*
13 *v. Zoetop Bus. Co.*, 2022 WL 16961477, at *3 (C.D. Cal. Aug. 25, 2022); Ant. Mot. 34. Instead,
14 they cite two out-of-circuit cases and never explain how the reasoning of those decisions complies
15 with the DMCA’s plain language. The statute defines CMI as certain information “conveyed in
16 connection with” a “*work*.” 17 U.S.C. § 1202(c); *id.* § 1202(b)(3). Here, Publishers’ copyrighted
17 works are musical compositions, not lyrics alone. The focus on a whole work is also the only logical
18 one. While it makes sense to roll credits at the end of an entire film (and require that they not be
19 removed when the entire film is copied), it would be impractical to do so each time a clip is played.

20 On the facts, Publishers have “no affirmative evidence at all” showing Anthropic removed
21 CMI from particular copies of their works. *Stevens v. CoreLogic*, 899 F.3d 666, 673 (9th Cir. 2018).
22 They instead try to prove removal with two observations. First, Publishers assert there are copies of
23 their lyrics with CMI in Claude’s training data. Pub. Opp. 27-28. Second, they say excerpts of lyrics
24 without CMI appeared in Claude outputs. *Id.* But Publishers cannot show the requisite causality to
25 connect these observations. Ant. Mot. 35. They concede that every one of the 499 works at issue
26 appeared without CMI on a publicly available webpage included in Claude’s training data. Ant.
27 ReSS #172. Those webpages could be the source of any copies lacking CMI. Ant. ReSS Ad.F #109.
28 Publishers bear the burden of proving otherwise. They did not.

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On scienter, Publishers have no evidence that Anthropic removed CMI to conceal infringement. They primarily claim that Anthropic removed CMI because it was “worried the model would output CMI” and thereby “expose” that Publishers’ lyrics were in Claude’s training data. Pub. Opp. 28. But Anthropic never hid training Claude on an enormous volume of text that included lyrics freely available on the internet. Ant. ReSS #67, 73-74; Pub. ReSS Ad.F #34. In fact, Publishers claim the datasets Anthropic used to train Claude *were known* to include lyrics. Ant. ReSS #106-107; Pub. ReSS #16-19. The evidence Publishers cite shows only concerns that training on too much repetitive text (like CMI) might make LLMs less effective. Ant. ReSS Ad.F #9, 12, 29, 84, 101-102, 112. Publishers also have no evidence of the allegations this Court credited in denying Anthropic’s motion to dismiss. They still cannot show that Anthropic used an extractor tool to remove CMI from any of the works in suit. Their own experts recognized that the tool extracts text from webpage headers or footers, not the webpage bodies where Publishers’ CMI appears. Ant. ReSS #177-179.

IV. ANTHROPIC’S RSS COMPLIES WITH THIS COURT’S RULES

Anthropic’s RSS properly disputes Publishers’ asserted “facts.” Publishers focus primarily on the mistaken inclusion of “nonprofit” in one response. *Supra* p.2. But Anthropic properly described itself as a public benefit corporation in numerous MSS and RSS entries, including in the exact sentence Publishers complain about. Ant. MSS #7, 8; Ant. RSS #149, 151. When Publishers brought the error to Anthropic’s attention, Anthropic promptly acknowledged the mistake and corrected the record by filing an amended RSS—long before Publishers’ brief was filed. Dkt. 727. None of Publishers’ other complaints have merit. They certainly do not show a failure to comply with the Court’s rules warranting the extraordinary sanction of counterfactual admissions.

Anthropic properly disputed facts that are, in fact, disputed. Consider a few examples. Publishers say Anthropic’s RSS #114 wrongly “points the finger at Mr. Brown’s father” for prompting Claude for lyrics. Pub. Opp. 4. But Publishers’ own quotations show Mr. Brown testified that “this is me playing around with my family.” Pub. ReSS #114. Publishers also omit Mr. Brown’s clarification that his father thought to prompt Claude for the lyrics. *Id.* Anthropic was permitted to dispute Publishers’ misleading characterization and provide that context. Publishers’ Fact #70 states

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1 that “Anthropic selected the data it used to train Claude.” Anthropic’s response appropriately
2 disputes the expansive contention that Anthropic “selected” particular data. Anthropic in fact
3 aggregated large, diverse datasets without “select[ing]” specific documents within them. *Id.* Or take
4 Publishers’ Fact #184, “Claude can produce AI-generated lyrics far faster than any human,
5 generating output of between ‘60 to a hundred words per second.’” Anthropic disputes that supposed
6 fact because the evidence Publishers cite says no such thing. Claude’s ability to generate *text* at a
7 certain rate has no bearing on whether Claude does or could generate “*lyrics*” faster than humans.
8 Lyric-generation speed, not text-generation speed, is the “fact” Publishers claim is undisputed.
9 Anthropic’s agreement that Claude can produce new song lyrics is also irrelevant. Pub. Opp. 4. That
10 again says nothing about lyric-writing *speed*, whether absolute or relative to humans.

11 Publishers are also wrong (at 3-4) that Anthropic improperly withdrew “binding admissions.”
12 Publishers assert, for example, that Anthropic’s dispute of Publishers’ Fact #6 contradicts
13 Anthropic’s response to an RFA. Fact #6 states “Anthropic admits that ‘at least one Claude model
14 was trained on a dataset containing the lyrics to at least one hundred (100) of Publishers’ Works
15 listed at Dkt. 337-1.’” Publishers have not shown the scope of “Works listed at Dkt. 337-1” that are
16 “Publishers’,” or what the genuine lyrics are. So as Anthropic’s response states, “Publishers cannot
17 demonstrate the scope of rights they control.” *Id.* The allegedly contradictory RFA did not admit
18 that the lyrics of the works listed at Dkt. 337-1 are owned or controlled by Publishers or are genuine.
19 Publishers similarly contend Anthropic’s Answer required admitting Publishers’ Fact #114.
20 Publishers again ignore the basis of Anthropic’s response—deposition testimony that was not
21 available when the answer was filed. And even if Anthropic’s responses *were* different from
22 previous ones, parties can amend admissions after reassessing the facts, including in an “opposition
23 to [a party’s] motion for summary judgment.” *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848, 860 (9th Cir.
24 1995). That makes sense. The purpose of discovery is to find the facts. When there are new or
25 changed facts, parties should update their positions. Publishers’ only authority is consistent with
26 that rule. It recognizes that “[f]actual assertions in pleadings and pretrial orders, *unless amended*,
27 are considered judicial admissions conclusively binding on the party who made them.” *Am. Title*
28 *Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). That decision itself found a party’s

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1 statement in a filing could be nonbinding when later testimony contradicted it. *Id.* at 227.

2 Publishers thus have no basis for their extraordinary request to deem more than one hundred
3 facts admitted. Publishers address only a handful of these facts. And their sole case deemed facts
4 admitted because the plaintiff “cite[d] no evidence indicating the existence of a material dispute.”
5 *Corona v. Novartis Pharms. Corp.*, 2012 WL 13418947, at *2 nn.28-29 (C.D. Cal. June 12, 2012).
6 Here, all agree Anthropic cited evidence and gave reasoning for its disputes.

7 Even setting all that aside, Publishers’ own MSS makes their request for draconian sanctions
8 unwarranted. That document is rife with the kind of improper arguments, distortions of fact, and
9 other issues that Publishers claim exist in Anthropic’s RSS. Publishers’ Fact #175, for example,
10 offers only the (false) argument that “Anthropic’s use of Publishers’ lyrics ... would destroy
11 Publishers’ ability to license lyrics for these uses in the future.” Pub. ReSS #175. Publishers falsely
12 claim in Fact #13 that “Anthropic has ignored or circumvented the robots.txt protocol ... in the
13 past,” omitting information about what materials Anthropic was then-crawling. Pub. ReSS #13. And
14 Publishers’ Fact #71 misstates Ben Mann’s 30(b)(6) testimony by omitting that [REDACTED]
15 [REDACTED] Pub. ReSS #71. Publishers’ complaints about
16 Anthropic’s RSS thus describe their own MSS. Their decision to seek extreme sanctions invites the
17 Court to compare the two. That comparison does not favor Publishers.

18 **CONCLUSION**

19 The Court should grant Anthropic’s motion for summary judgment.
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1 Date: September 8, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2026, I did cause this motion to be served on the following listed below and in the manner so indicated.

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