

OPPENHEIM + ZEBRAK, LLP

Matthew J. Oppenheim
Nicholas C. Hailey
Jeffrey M. Gould
Corey Miller
Keith Howell
(admitted *pro hac vice*)
4530 Wisconsin Ave., NW, 5th Floor
Washington, DC 20016
Telephone: (202) 480-2999
matt@oandzlaw.com
nick@oandzlaw.com
jeff@oandzlaw.com
corey@oandzlaw.com
khowell@oandzlaw.com

Alexander Kaplan
Jennifer Pariser
Andrew Guerra
Bret Matera
Timothy Chung
Michelle Gomez-Reichman
(admitted *pro hac vice*)
461 5th Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 951-1156
alex@oandzlaw.com
jpariser@oandzlaw.com
andrew@oandzlaw.com
bmatera@oandzlaw.com
tchung@oandzlaw.com
mgomez-reichman@oandzlaw.com

Attorneys for Plaintiffs

COBLENTZ PATCH DUFFY & BASS LLP

Jeffrey G. Knowles (SBN 129754)
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Telephone: (415) 391-4800
ef-jgk@cpdb.com

COWAN, LIEBOWITZ & LATMAN, P.C.

Richard S. Mandel
Jonathan Z. King
Richard Dannay
(admitted *pro hac vice*)
114 West 47th Street
New York, NY 10036-1525
Telephone: (212) 790-9200
rsm@ccl.com
jzk@ccl.com
rxd@ccl.com

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

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

**PLAINTIFFS' OPPOSITION TO
ANTHROPIC'S MOTION FOR
SUMMARY JUDGMENT AND
REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

FILED UNDER SEAL

Judge Eumi K. Lee
Magistrate Judge Susan van Keulen

Hearing Date: October 21, 2026, 10:00 am
Courtroom: 7

TABLE OF CONTENTS

INTRODUCTION	1
ARGUMENT	3
I. Anthropic cannot manufacture nonexistent disputes to evade summary judgment.	3
II. Publishers are entitled to summary judgment on <i>prima facie</i> direct infringement.	5
A. Deposit copies are not necessary to show Anthropic’s copying.	6
B. Anthropic exercises volition over the output that its AI models generate.	8
III. Publishers are entitled to summary judgment on Anthropic’s fair use defense.	11
A. Anthropic’s mass copying is antithetical to the purpose of copyright.	12
B. All four statutory fair-use factors strongly favor Publishers.	12
1. The purpose and character of Anthropic’s use precludes fair use.	12
2. Publishers’ Works are undoubtedly at the core of copyright protection.	19
3. Anthropic does not dispute copying Publishers’ lyrics wholesale.	19
4. Anthropic’s use harms the market for and value of Publishers’ Works.	20
IV. Anthropic should be denied summary judgment as to Publishers’ CMI claims.	27
CONCLUSION.....	28

TABLE OF AUTHORITIES

Cases

<i>A.V. ex rel. Vanderhye v. iParadigms, LLC</i> , 562 F.3d 630 (4th Cir. 2009)	17, 18
<i>A&M Recs. v. Napster, Inc.</i> , 239 F.3d 1004 (9th Cir. 2001)	24
<i>Am. Broad. Companies v. Aereo, Inc.</i> , 573 U.S. 431 (2014).....	9
<i>Am. Title Ins. Co. v. Lacelaw Corp.</i> , 861 F.2d 224 (9th Cir. 1988)	4
<i>Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith</i> , 598 U.S. 508 (2023).....	<i>passim</i>
<i>Authors Guild v. Google, Inc.</i> , 804 F.3d 202 (2d Cir. 2015)	17
<i>Authors Guild, Inc. v. HathiTrust</i> , 755 F.3d 87 (2d Cir. 2014)	17
<i>Barkley & Assocs. v. Quizlet, Inc.</i> , 2025 WL 2946993 (C.D. Cal. Sept. 11, 2025)	10, 19
<i>Bartz v. Anthropic PBC</i> , 787 F. Supp. 3d 1007 (N.D. Cal. 2025)	<i>passim</i>
<i>Bell v. Wilmott Storage Servs.</i> , 12 F.4th 1065 (9th Cir. 2021)	10
<i>Campbell v. Acuff-Rose Music, Inc.</i> , 510 U.S. 569 (1994).....	<i>passim</i>
<i>Carlson v. Century Sur.</i> , 606 F. App'x 882 (9th Cir. 2015)	5
<i>Cartoon Network LP v. CSC Holdings, Inc.</i> , 536 F.3d 121 (2d Cir. 2008)	9
<i>Corona v. Novartis Pharmaceuticals Corp.</i> , 2012 WL 13418947 (C.D. Cal. June 12, 2012)	5
<i>CoStar Grp. v. Commercial Real Est.</i> , 2025 WL 2647269 (C.D. Cal. June 25, 2025)	28
<i>Cox Commc'ns, Inc. v. Sony Music Ent.</i> , 146 S. Ct. 959 (2026).....	8
<i>De Fontbrune v. Wofsy</i> , 39 F.4th 1214 (9th Cir. 2022)	24
<i>Disney Enterprises, Inc. v. Minimax</i> , 2026 WL 1476670 (C.D. Cal. May 22, 2026)	10
<i>Dr. Seuss Enters., L.P. v. ComicMix</i> , 983 F.3d 443 (9th Cir. 2020)	11, 19, 21, 26

1	<i>EMI Christian Music Grp. v. MP3tunes, LLC</i> ,	
	844 F.3d 79 (2d Cir. 2016)	10
2	<i>F. W. Woolworth Co. v. Contemp. Arts</i> ,	
	344 U.S. 228 (1952).....	21
3	<i>Google LLC v. Oracle Am., Inc.</i> ,	
4	593 U.S. 1 (2020).....	19, 24, 27
5	<i>Hachette Book Grp., Inc. v. Internet Archive</i> ,	
	115 F.4th 163 (2d Cir. 2024)	21
6	<i>Harper & Row Publishers, Inc. v. Nation Enters.</i> ,	
7	471 U.S. 539 (1985).....	2, 19, 21
8	<i>ICONICS, Inc. v. Massaro</i> ,	
	192 F. Supp. 3d 254 (D. Mass. 2016)	28
9	<i>Kadrey v. Meta Platforms, Inc.</i> ,	
	2025 WL 744032 (N.D. Cal. Mar. 7, 2025).....	28
10	<i>Kadrey v. Meta Platforms, Inc.</i> ,	
11	2024 WL 5008065 (N.D. Cal. Dec. 6, 2024)	7
12	<i>Kadrey v. Meta Platforms, Inc.</i> ,	
	788 F. Supp. 3d 1026 (N.D. Cal. 2025)	<i>passim</i>
13	<i>Kirk Kara Corp. v. W. Stone & Metal</i> ,	
	2020 WL 5991503 (C.D. Cal. Aug. 14, 2020).....	8
14	<i>Kohistani v. Scott</i> ,	
15	2026 WL 2185717 (N.D. Cal. July 29, 2026).....	22
16	<i>Leadsinger, Inc. v. BMG Music Publ'g</i> ,	
	512 F.3d 522 (9th Cir. 2008)	18, 19
17	<i>Los Angeles News Serv. v. KCAL-TV Channel 9</i> ,	
18	108 F.3d 1119 (9th Cir. 1997)	18
19	<i>McGucken v. Pub Ocean Ltd.</i> ,	
	42 F.4th 1149 (9th Cir. 2022)	19, 20, 21
20	<i>Monge v. Maya Mags., Inc.</i> ,	
	688 F.3d 1164 (9th Cir. 2012)	19, 20, 26
21	<i>Nat'l Fire Prot. Ass'n v. UpCodes, Inc.</i> ,	
22	753 F. Supp. 3d 933 (C.D. Cal. 2024)	18
23	<i>Norse v. Henry Holt & Co.</i> ,	
	991 F.2d 563 (9th Cir. 1993)	7
24	<i>Perfect 10, Inc. v. Amazon.com, Inc.</i> ,	
	508 F.3d 1146 (9th Cir. 2007)	17
25	<i>Range Rd. Music, Inc. v. E. Coast Foods, Inc.</i> ,	
26	668 F.3d 1148 (9th Cir. 2012)	7
27	<i>Real World Media v. Daily Caller, Inc.</i> ,	
	744 F. Supp. 3d 24 (D.D.C. 2024).....	28

1	<i>Romanova v. Amilus</i> ,	
	138 F.4th 104 (2d Cir. 2025)	13, 16
2	<i>Ross-Nash v. Almond</i> ,	
	2020 WL 6947691 (D. Nev. Oct. 28, 2020)	7
3	<i>S.E.C. v. Seaboard Corp.</i> ,	
4	677 F.2d 1297 (9th Cir. 1982)	28
5	<i>Schneider v. YouTube</i> ,	
	649 F. Supp. 3d 872 (N.D. Cal. 2023)	28
6	<i>Sega Enters. Ltd. v. Accolade, Inc.</i> ,	
7	977 F.2d 1510 (9th Cir. 1992)	24
8	<i>Seltzer v. Green Day, Inc.</i> ,	
	725 F.3d 1170 (9th Cir. 2013)	25
9	<i>Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin</i> ,	
	952 F.3d 1051 (9th Cir. 2020)	7
10	<i>Sony Corp. of Am. v. Universal City Studios, Inc.</i> ,	
11	464 U.S. 417 (1984).....	21
12	<i>Thaler v. Perlmutter</i> ,	
	687 F. Supp. 3d 140 (D.D.C. 2023).....	12, 24
13	<i>Thomson Reuters Enter. Ctr. v. Ross Intel. Inc.</i> ,	
	765 F. Supp. 3d 382 (D. Del. 2025).....	17
14	<i>UMG Recordings, Inc. v. Grande Commc'ns Networks</i> ,	
15	118 F.4th 697 (5th Cir. 2024)	7
16	<i>VHT, Inc. v. Zillow Grp., Inc.</i> ,	
	918 F.3d 723 (9th Cir. 2019)	9, 18, 21, 26
17	Statutes	
18	17 U.S.C. § 101.....	7, 15
19	17 U.S.C. § 102.....	7
20	17 U.S.C. § 107.....	11, 14, 19, 20
	8 Del. Gen. Corp. L. § 362.....	3
21	Other Authorities	
22	U.S. COPYRIGHT OFFICE, CIRCULAR 6: OBTAINING ACCESS TO AND COPIES OF COPYRIGHT OFFICE RECORDS AND DEPOSITS (2019).....	7
23	U.S. COPYRIGHT OFFICE, <i>Copyright and Artificial Intelligence, Part 3: Generative AI Training</i> (<i>Pre-Publication Version</i>) (May 2025).....	15, 22, 25
24	Rules	
25	Fed. R. Civ. P. 36(b)	6
26	Fed. R. Civ. P. 56(c)(1)(A)	3
27		
28		

INTRODUCTION

“Steal a little and they throw you in jail, steal a lot and they make you king.” BOB DYLAN, *Sweetheart Like You* (1983). Bob Dylan’s timeless lyrics could have been written about Anthropic.

Anthropic cannot dispute the basic facts of its infringement. There is no real question that it systematically copied Publishers’ lyrics in their entirety to train its Claude AI models, and that those models have produced verbatim copies of those lyrics, synthetic derivatives, and “new” AI lyrics that displace the human-written lyrics that enabled their generation. That is infringement.

Nor does Anthropic justify its mass copying of Publishers’ lyrics in AI training as fair use. Quite the opposite, Anthropic continues to insist it has **no** particular need for Publishers’ lyrics at all—an admission that is fatal to its fair use defense. Where Anthropic has “no independent justification, let alone a compelling one, for copying” Publishers’ lyrics, its fair use defense must fail. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 547 (2023).

Rather than justify its copying of Publishers’ lyrics as the law requires, Anthropic instead tries to dodge the question by reframing this case as about anything **but** its copying of those lyrics. Anthropic invokes its copying of “billions of other copyrighted works” that are not Publishers’ lyrics, lists Claude uses that are “wholly unrelated” to lyrics, and opines on purported benefits of AI that have nothing to do with lyrics. None of those issues bear on Anthropic’s fair use defense.

Anthropic cannot argue with a straight face that it copied the lyrics to “A Change is Gonna Come,” “What a Wonderful World,” and “American Pie” to train Claude to write computer code, conduct clinical drug research, or remove lead cables from Lake Tahoe. AI technology is not alchemy. Publishers’ lyrics are not “transformed” as input to generate that output. The reason Anthropic copies Publishers’ lyrics in training is for Claude to output verbatim copies, AI derivatives, and machine-generated lyric substitutes. That is not a transformative use.

Anthropic also fails to carry its burden of showing no market harm. It ignores the undeniable harm AI-generated songs cause by congesting streaming platforms and music charts, displacing the human-written works that enabled their creation. And by fixating on actual damages, it disregards black-letter law that Publishers “need only show that if the challenged use should become widespread, it would adversely affect the potential market for the copyrighted work.”

1 *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 568 (1985).

2 The *Bartz* and *Kadrey* rulings underscore why Anthropic’s mass copying of Publishers’
3 lyrics here is **not** fair use. While those defendants justified their copying by arguing that the
4 copyrighted books at issue were uniquely valuable to AI training, Anthropic denies that Publishers’
5 lyrics have any training value at all. Where those courts premised their transformativeness rulings
6 on the absence of infringing AI output, the record here is replete with such output. And while those
7 cases may have lacked sufficient market harm evidence, Publishers have presented the exact
8 evidence of market dilution *Kadrey* outlined and the market substitution *Bartz* found missing.

9 Anthropic warps the law by suggesting its mass theft of Publishers’ lyrics somehow
10 promotes the goals of copyright, just as Napster did when trying to defend its mass infringement.
11 Like a parasite that kills its host, Anthropic feeds on Publishers’ copyrighted lyrics to fuel its
12 production of uncopyrightable AI imitations, while destroying the incentive to create the human-
13 written lyrics that enabled them. Anthropic CEO Dario Amodei foretells that AI models will
14 “eventually automate everything”—rendering the human-created artistry on which they were built
15 “obsolete.” MSS ##215-16. That is the antithesis of fair use.

16 If the Court rules for Publishers, Anthropic can seek a license for Publishers’ lyrics or, if
17 those lyrics are as valueless to AI training as it insists, simply stop using them. Either way, it will
18 not dent Anthropic’s trillion-dollar AI business, which dwarfs the income of the music publishing
19 industry. Anthropic cries wolf that granting Publishers’ motion will “veto” AI more broadly. That
20 is “nonsense.” *Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026, 1058 (N.D. Cal. 2025).

21 By contrast, Anthropic asks this Court to become the first to hold that it is fair use for an
22 AI company to train on copyrighted works even where the AI company admits it does not need
23 those works and where it uses those works to produce harmful AI output. That extraordinary ruling
24 would empower Anthropic to continue exploiting copyrighted content indiscriminately, leaving
25 creators powerless to stop AI companies from using their creations to destroy their livelihoods.¹

26
27 ¹ “Mot.” refers to Pls.’ Motion for Partial Summary Judgment (ECF No. 594); “MSS” refers to
28 Pls.’ Moving Separate Statement (ECF No. 594-1); “Def. RSS” refers to Defs.’ Responsive
Separate Statement (ECF No. 686-2) and “Def. Ad.F” to additional facts therein; “Reply SS” refers

ARGUMENT

I. Anthropic cannot manufacture nonexistent disputes to evade summary judgment.

At the outset, Anthropic’s RSS is rife with violations of the Federal Rules of Civil Procedure and this Court’s Standing Order. These violations clog the summary judgment record and impede Publishers’ and the Court’s ability to determine where genuine disputes exist.

The Federal Rules require Anthropic to pinpoint each fact in Publishers’ MSS that “is genuinely disputed” by “citing to particular parts of materials in the record.” Fed. R. Civ. P. 56(c)(1)(A). The Court’s Standing Order (Secs. IX & VIII.G) makes clear Anthropic must cite “evidence in the record establishing the dispute,” attest all evidence cited “fairly and accurately supports or disputes the facts as asserted,” and ensure factual statements are “completely accurate.”

Anthropic’s RSS violates those rules with abandon. Anthropic invents false and frivolous disputes, re-litigates its prior binding admissions, purports to “dispute” facts without identifying any contrary evidence in the record, and injects improper argument and objections, all in an attempt to muddy the record and evade summary judgment. *See also* ECF Nos. 731 and 731-2.²

For example, Anthropic baselessly disputes the fact that it “is a for-profit” company, MSS #149, which bears on the commercial nature of its use and weighs against fair use. *See Warhol*, 598 U.S. at 532-33. Anthropic’s claimed “dispute” blatantly contradicts its 30(b)(6) witness’s testimony *admitting* it is a for-profit: “Q. Is Anthropic [a] for-profit company? A. It is.” MSS #149 (citing ECF No. 595-3, Whittle 30(b)(6) Dep. Tr. 32:18-20). It also ignores testimony by two of its founders that it is “not a nonprofit.” Ad.F #3. Nor can Anthropic hide behind its incorporation as a “public benefit corporation,” when the relevant law defines a “public benefit corporation” as “a for-profit corporation.” 8 Del. Gen. Corp. L. § 362. Anthropic’s refusal to admit even the basic fact of its for-profit status is emblematic of its broader disregard of the Court’s RSS rules.

Anthropic separately exploits its RSS to improperly re-litigate its prior binding admissions.

to Pls.’ Reply Separate Statement; “Def.” refers to Defs.’ Motion for Summary Judgment and Opposition (ECF No. 693); “Def. MSS” refers to Defs.’ Moving Separate Statement (ECF No. 686-1); “RSS” refers to Pls.’ Responsive Separate Statement and “Ad.F” to Pls.’ additional facts therein. Unless otherwise indicated, internal quotation marks and citations are omitted.

² Anthropic also fails to cite several of its affirmative facts (Def. MSS #37 and Def. Ad.F ##6-9) anywhere in its brief. Pursuant to the Court’s Standing Order, uncited facts are not considered.

1 A matter admitted in response to a request for admission is “conclusively established.” Fed. R.
2 Civ. P. 36(b). Anthropic, despite admitting in response to numerous RFAs that it copied Publishers’
3 lyrics in training, MSS #6, now disputes Publishers’ Fact #6 quoting that RFA response verbatim.
4 Def. RSS #6. Likewise, admissions in an answer are “conclusively binding on the party who made
5 them.” *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988). Anthropic, despite
6 admitting in its Answer that its founder Tom Brown prompted Claude pre-launch for lyrics to Work
7 in Suit “Desolation Row” by Bob Dylan, ECF No. 483 ¶ 113 (“Anthropic admits that Tom Brown
8 prompted Claude in the quoted manner.”), now denies that very same fact. Def. RSS #114. Making
9 matters worse, the evidence it cites does not even support its denial. It points the finger at Mr.
10 Brown’s father, but Mr. Brown testified he himself prompted Claude. Ad.F #38. Nor can Anthropic
11 dispute Fact #114 by claiming Claude did not output lyrics, when that is both irrelevant and wrong:
12 the fact addresses Mr. Brown’s prompting, not any output (which Anthropic did not preserve), and,
13 in any event, Mr. Brown testified “I don’t really remember clearly” the model’s output. *Id.*

14 Anthropic also spuriously claims Publishers’ facts are “disputed” without citing evidence
15 to show a dispute. Publishers’ Fact #70 states, “Anthropic selected the data it used to train Claude,”
16 which goes to its volition. While Anthropic claims that fact is “disputed,” its response addresses a
17 **different** fact (denying it selected “specific copyrighted works”), while conceding it **did** “select[]
18 training data’ for Claude.” Def. RSS #70; *see* RSS #98 (undisputed). Publishers’ Fact #184 states,
19 “Claude can produce AI-generated lyrics far faster than any human, generating output of between
20 ‘60 to a hundred words per second,’” which goes to market harm caused by these AI-generated
21 competing substitutes. Anthropic’s purported “dispute” fails to address the fact asserted (*i.e.*,
22 Claude produces lyrics faster than humans). Instead, it improperly argues “[t]he speed with which
23 Claude can generate textual outputs does not bear on whether Claude can or does output lyrics,”
24 Def. RSS #184, which is especially head-scratching, given Anthropic elsewhere **admits** Claude
25 can and does output such AI-generated lyrics, *id.* ##181, 185 (undisputed); *see* Ad.F ##8, 10. In
26 over 100 instances, Anthropic “disputes” something other than the asserted fact, leveraging its
27 RSS to confuse the record. *See* Def. RSS ##2, 8-10, 13-14, 26, 33-42, 44-45, 47-50, 72, 77-78, 83,
28 85-86, 90, 93, 95-113, 116-120, 122-123, 126-132, 136, 139, 142, 144, 149, 152-153, 157, 164,

1 166-167, 169, 171-173, 178-180, 183, 189-191, 195-199, 201-204, 206, 211, 213-218.

2 Anthropic also jams its RSS with improper argument and evidentiary objections, violating
3 the Standing Order’s mandate that the RSS “shall not include argument” or “objections to
4 evidence” and “shall not be used to circumvent the page limits.” Anthropic “disputes” Publishers’
5 Fact #45—which states that “Anthropic did not preserve Claude third-party user records prior to
6 September 22, 2023,” showing the under-inclusiveness of the infringing outputs in the record—by
7 improperly (1) arguing it had “no obligation” to preserve, (2) objecting to the evidence, and (3)
8 ignoring that it admits the *exact same fact* in its prior response. Def. RSS #45; *id.* #44 (stating
9 same fact in response). Similar violations abound. *See id.* ##2, 4-11, 14-15, 17, 19, 21, 26, 33-39,
10 41-42, 54, 64, 66-68, 74-77, 81-82, 85-86, 90, 92-93, 107, 129-132, 136, 142, 144, 149, 162, 164-
11 167, 169, 171-173, 178-180, 183-184, 192-193, 195-204, 206, 211, 217-218.

12 Anthropic “cannot manufacture a dispute on summary judgment, *ipse dixit*, by refusing to
13 concede the truth of a fact without adducing some evidentiary support for its position.” *Carlson v.*
14 *Century Sur.*, 606 F. App’x 882, 884 (9th Cir. 2015). Nor can it evade briefing limits by converting
15 its RSS into a supplementary brief. Publishers detailed these violations in a letter to Anthropic,
16 ECF No. 731-2, met and conferred, and requested Anthropic correct them. Anthropic refused.

17 Accordingly, all the facts that Anthropic has improperly disputed in violation of the rules
18 should be deemed admitted under Sec. IX of the Court’s Standing Order. *See also, e.g., Corona v.*
19 *Novartis Pharmaceuticals Corp.*, 2012 WL 13418947, at *2 nn.28-29 (C.D. Cal. June 12, 2012).

20 **II. Publishers are entitled to summary judgment on *prima facie* direct infringement.**

21 Publishers are entitled to summary judgment on their direct infringement claim, given the
22 lack of any genuine dispute as to the ownership or copying elements of that claim. Mot. 13-18.

23 First, Publishers have established ownership by showing timely copyright registration and
24 chain of title for all 499 Works in Suit. *Id.* 13-14. Anthropic does not actually dispute any of those
25 underlying facts. *See generally* Def.; Def. RSS ##1-4. Anthropic cannot invent a “dispute” as to
26 ownership by ignoring the asserted facts and instead asserting non-responsive argument and
27 commentary, in violation of the Court’s rules. *See* Def. RSS ##2, 4.

28 Second, Anthropic cannot thwart summary judgment by manufacturing a dispute as to its

1 copying of Publishers’ lyrics. As for training, Anthropic admitted “at least one Claude model was
2 trained on a dataset containing the lyrics to at least one hundred (100) of Publishers’ Works [in
3 Suit],” MSS #6 (citing ECF No. 595-21, Def.’s Am. Resp. to Pls.’ RFA 20), which “conclusively
4 established” that fact. Fed. R. Civ. P. 36(b). Anthropic’s motion also concedes “it is undisputed”
5 that “Publishers’ lyrics . . . were swept up and included in Claude’s vast training corpus.” Def. 14-
6 15; *see* Def. MSS #74 (“Anthropic collected lyrics to the works-in-suit from [REDACTED] public
7 web pages.”). Likewise, there is no real dispute Anthropic reproduced Publishers’ lyrics in output.
8 Anthropic admits that by explicitly identifying in its output the lyrics it has copied, *e.g.*, MSS #34,
9 and those lyrics are instantly recognizable. The evidence of infringing output is overwhelming:
10 Publishers’ investigation identified Claude output copying lyrics to *every single one* of the 499
11 Works in Suit, often multiple times over, MSS ##34-35, and Anthropic’s Claude records reveal
12 hundreds of instances in which third-party users—plus its own employees—requested and
13 received copies of Publishers’ lyrics in output, *id.* ##36-43, 51-58, 60-63, 65, 113-14, 130-32.
14 Anthropic quibbles over the precise number of copies it made of Publishers’ lyrics in its training
15 corpus, or the frequency of output copying those lyrics, but that does not alter its liability.

16 Against this record, Anthropic’s thin challenges to Publishers’ direct infringement claim
17 are easily dispatched. First, Anthropic cannot walk back its admissions that it copied Publishers’
18 lyrics by conjuring some imagined uncertainty as to the content of those lyrics in the absence of
19 deposit copies. There is no genuine dispute as to the lyrics to “Mama Said,” “Sweet Caroline,” or
20 “Uptown Funk,” which millions can recite from memory. Second, Anthropic cannot evade direct
21 liability for the infringing output its AI models generate. Where Anthropic “invented Claude and
22 continue[s] to improve Claude every day,” Def. 22, it has volition over the output it produces.

23 **A. Deposit copies are not necessary to show Anthropic’s copying.**

24 The undisputed evidence that Anthropic copied Publishers’ lyrics eliminates any need for
25 deposit copies. The only possible relevance of deposit copies would be as a “benchmark” for a
26 substantial similarity analysis. Def. 37. But the Ninth Circuit has made clear that “[a] showing of
27 ‘substantial similarity’ is irrelevant in a case like this one, in which the [plaintiffs] produced
28 evidence that the [alleged infringements] entailed direct copying of copyrighted works.” *Range*

1 *Rd. Music, Inc. v. E. Coast Foods, Inc.*, 668 F.3d 1148, 1154 (9th Cir. 2012). This is not a case
2 where the defendant created a purportedly new work resembling the plaintiff's work and there is
3 some question whether the defendant copied protectable elements of the plaintiff's work. Because
4 there is no question Anthropic copied Publishers' lyrics in their entirety, deposit copies would be
5 superfluous. *See, e.g., UMG Recordings, Inc. v. Grande Commc'ns Networks*, 118 F.4th 697, 710
6 (5th Cir. 2024) (declining to require deposit copies where parties had not "meaningfully disputed
7 whether the defendants' alleged copies were substantially similar to the plaintiffs' alleged works");
8 *Norse v. Henry Holt & Co.*, 991 F.2d 563, 566 (9th Cir. 1993) (observing "the substantial similarity
9 analysis is inapposite to the copying issue because [defendants] admit that they in fact copied [the
10 works at issue]"); *Ross-Nash v. Almond*, 2020 WL 6947691, at *1 (D. Nev. Oct. 28, 2020).

11 Anthropic's claim that "the scope of the copyright is limited by the deposit copy," Def. 36,
12 misstates the law. *Skidmore* held only that the scope of copyright for an **unpublished work**
13 registered under the **1909 Copyright Act** is "limited by the deposit copy." *Skidmore as Tr. for*
14 *Randy Craig Wolfe Tr. v. Led Zeppelin*, 952 F.3d 1051, 1062-63 (9th Cir. 2020). For a **published**
15 **work** registered under the 1909 Act, and for both published and unpublished works registered
16 under the **1976 Copyright Act**, the scope of protection is determined by a copy of the work itself,
17 not a deposit copy. *Id.*; 17 U.S.C. §§ 101, 102. Here, at most sixteen of Publishers' 499 Works in
18 Suit were solely registered as unpublished works under the 1909 Act, *see* MSS #3, and for nearly
19 all that were so registered, Publishers **have** provided deposit copies, Reply SS Def. Ad.F. #3-4.
20 Additional deposit copies are unnecessary to determine the scope of protection for the Works in
21 Suit. *See, e.g., Kadrey v. Meta Platforms, Inc.*, 2024 WL 5008065, at *2 (N.D. Cal. Dec. 6, 2024)
22 (rejecting argument relying on *Skidmore* that deposit copies define scope of copyright and must
23 be produced where "nearly all of the [works] at issue" were created after the 1976 Copyright Act).

24 Critically, neither the Copyright Office nor the Library of Congress preserves all deposit
25 copies. *See, e.g., U.S. COPYRIGHT OFFICE, Circular 6: Obtaining Access to and Copies of*
26 *Copyright Office Records and Deposits* 3 (2019) (Copyright Office "does not retain all works
27 deposited for copyright registration"). As a result, Publishers could not obtain deposit copies for
28 all Works. Chung Decl. at ¶¶ 3-9, ECF No. 595. Requiring Publishers to produce deposit copies

1 would effectively bar infringement claims whenever the Copyright Office has not retained deposit
2 copies. Nothing in the Copyright Act imposes such a draconian requirement. Had Congress
3 intended to limit rightsholders' ability to sue in that way, it would have done so expressly.

4 Even if there were any question as to the content of Publishers' lyrics (which there is not),
5 Publishers *have* provided "benchmarks" proving those lyrics. Publishers produced copies of all
6 lyrics—as deposit copies, copies from LyricFind, or both—and sworn testimony that the LyricFind
7 lyrics are materially accurate. MSS #4; Reply SS Def. Ad.F. ##3-4. The LyricFind lyrics are not
8 mere "proxies," but are the lyrics of the registered Works, reflecting the lyrics embodied in the
9 sound recordings typically submitted as deposit copies. MSS #4; Reply SS Def. Ad.F. ##6-10.

10 Anthropic never explains how any of the rare, minor discrepancies it claims to identify
11 between copies of lyrics would affect its liability. The omission of a stanza or the difference in a
12 single line from the version Anthropic copied does not excuse its copying of other protected
13 portions. Even if the Court applies the substantial similarity test, "a copyrighted [work] need not
14 be copied 'in its entirety' to be infringed under the substantial similarity standard—the infringer
15 need only copy a 'substantial portion' of the copyrighted work." *Kirk Kara Corp. v. W. Stone &*
16 *Metal*, 2020 WL 5991503, at *4 (C.D. Cal. Aug. 14, 2020). Publishers have shown substantial
17 copying for all 499 Works in Suit in Anthropic's training and the resulting output (including for
18 the 13 Works for which Publishers acquired and produced deposit copies). MSS ##5-10, 34, 66.

19 **B. Anthropic exercises volition over the output that its AI models generate.**

20 Given that Anthropic indisputably controls the output that its AI models generate, it cannot
21 duck direct liability for that infringing output by foisting the blame onto its users. Mot. 17-18.

22 As an initial matter, nowhere does the Copyright Act expressly require volition. The
23 Supreme Court recently instructed courts not to read additional doctrines into copyright law
24 beyond the statute's text. *Cox Commc'ns, Inc. v. Sony Music Ent.*, 146 S. Ct. 959, 967-68 (2026).
25 To the extent courts previously used volition to distinguish between direct and secondary liability,
26 they relied on a theory of secondary liability that the Supreme Court has since narrowed. *Id.*

27 In any event, Anthropic plainly exercises volition. Volition "does not really mean an act of
28 willing or choosing," but simply that "proximate causation historically underlines copyright

1 infringement liability.” *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731 (9th Cir. 2019). In
2 determining volition, “the distinction between active and passive participation” is “central.” *Id.* at
3 732. Here, Anthropic unquestionably meets that standard by playing an “active” role at every stage.

4 Anthropic does not argue it lacks volition when it selects and copies Publishers’ lyrics as
5 input to train Claude in the first instance. In the non-volitional-conduct cases cited by Anthropic,
6 third parties—not the defendants—“select[ed] and upload[ed]” the material to be copied. *VHT*,
7 918 F.3d at 733; *Cartoon Network LP v. CSC Holdings, Inc.*, 536 F.3d 121, 131 (2d Cir. 2008)
8 (defendant lacked volition where user selected copyrighted content to be recorded). Unlike those
9 passive defendants, Anthropic here selects and copies Publishers’ lyrics to train its models. RSS
10 ##61-62, 98 (undisputed); Ad.F #78; *see VHT*, 918 F.3d at 736 (holding volition where defendant
11 “selected and tagged” copyrighted works for website display). Training Claude on Publishers’
12 lyrics enables it to respond to lyric-related queries and output copies and derivatives of those lyrics,
13 thereby “instigat[ing]” the copying. *VHT*, 918 F.3d at 732; *see* MSS #73; Ad.F. ##47, 79.

14 Anthropic likewise cannot deny volition over the output its AI models ultimately generate.
15 That users may enter initial requests does not inoculate Anthropic from direct liability for the
16 output it designed Claude to produce. *See Am. Broad. Companies v. Aereo, Inc.*, 573 U.S. 431, 443
17 (2014) (holding defendant liable for direct infringement even where its “system remains inert until
18 a subscriber indicates that she wants to watch a program” and “[o]nly at that moment, in automatic
19 response to the subscriber’s request, does [the] system . . . transmit the requested program”).

20 Further, Claude does not just “automatically” execute user commands. In fact, Anthropic
21 argues Claude is “unlike a database or retrieval system.” Def. MSS #35. Rather, Anthropic directs
22 and controls how Claude generates output in response to user requests, in multiple ways. During
23 development, Anthropic trains and finetunes its models to generate output in the manner it desires.
24 MSS #94; RSS ##88, 138-39 (undisputed); Ad.F #32. After models are released, it continues to
25 control their output. Before a user even enters a prompt, Anthropic enters a “system prompt”
26 (invisible to the user) to steer Claude’s response. Ad.F. #82. Then, Anthropic determines—via its
27 training, finetuning, and guardrails—how Claude generates output in response to a user prompt
28 (or whether it generates output at all). *See* MSS ##80, 84 (undisputed); Def. MSS #35 (Anthropic

1 “control[s]” “stochasticity” of “output”). Claude generates different outputs even in response to
2 identical user prompts. Def. 10. In short, Anthropic, not any user, ultimately determines and
3 controls Claude’s output. That is the definition of volition. *See also* Ad.F ##77, 80, 83.

4 Anthropic’s “guardrails” prove its volition. Anthropic claims to override user prompts and
5 control output via guardrails: its “Constitution directs the model to choose [certain] responses” and
6 “avoid” others, Def. 6; “Prompt Shield” “modifies” prompts in ways “invisible to the user” before
7 submitting those prompts to the model, *id.*; RSS #113-14 (undisputed); Ad.F #81; and “CCS”
8 “performs checks throughout the generation process” and “reject[s]” output before displaying it to
9 users, RSS #118 (undisputed). Whether guardrails are intended to prevent infringement, or
10 effective, is irrelevant to volition: “Whether [Anthropic] intended to infringe [] copyright is
11 ultimately immaterial—the innocent intent of the defendant constitutes no defense to liability.”
12 *Bell v. Wilmott Storage Servs.*, 12 F.4th 1065, 1082 (9th Cir. 2021); *see* Ad.F ##17-18, 85-90.

13 Anthropic cannot shift the blame to users for output they do not control. Time after time,
14 Claude generates output copying Publishers’ and others’ lyrics ***even when users do not ask***. MSS
15 #63; *see id.* ##53, 59-62, 74-78; Ad.F #33-34, 46. Anthropic tries to rewrite those user prompts
16 now, claiming they did request lyrics. But they obviously did not. *Id.* When Anthropic produces
17 “a copyrighted item that a user did not request,” it is self-evident that Anthropic—not the user—
18 is responsible. *EMI Christian Music Grp. v. MP3tunes, LLC*, 844 F.3d 79, 96 (2d Cir. 2016).

19 Numerous courts have held conduct like Anthropic’s “plainly volitional.” *Bell*, 12 F.4th at
20 1081-82 (holding volition where defendant “hosted [copyright content] on its servers in a manner
21 that was accessible to the public”). That includes district courts in this Circuit addressing similar
22 copyright infringement claims against AI companies like Anthropic. *Disney Enterprises, Inc. v.*
23 *Minimax*, 2026 WL 1476670, at *6 (C.D. Cal. May 22, 2026) (denying motion to dismiss where
24 defendants’ alleged volition included “train[ing] their AI using [p]laintiffs’ copyrighted content,”
25 not “merely operating a website on which users are able to independently upload infringing
26 content”); *Barkley & Assocs. v. Quizlet, Inc.*, 2025 WL 2946993, at *1-4 (C.D. Cal. Sept. 11, 2025)
27 (denying motion to dismiss where defendant allegedly “directly copied [copyrighted works] to
28 develop and train” AI product that output “derivative content that closely mimics [those] original

works,” “directly participat[ing] in creating and distributing infringing material”).

Accordingly, Publishers are entitled to summary judgment on their *prima facie* direct infringement claim. At a minimum, disputed facts preclude summary judgment for Anthropic.

III. Publishers are entitled to summary judgment on Anthropic’s fair use defense.

Anthropic’s mass infringement of Publishers’ lyrics is not fair use as a matter of law. Where Anthropic fails to meet its “unequivocal[]” burden of proving fair use, its attacks on Publishers’ arguments are immaterial. *Dr. Seuss Enters., L.P. v. ComicMix*, 983 F.3d 443, 459 (9th Cir. 2020).

At the outset, Anthropic concedes its verbatim copying of Publishers’ lyrics in AI output is not fair use. *See* Def. 22-23 (“Anthropic does not assert a fair use defense to any actual ‘verbatim . . . cop[y] of lyrics’ [in output].”). Given the overwhelming record of Claude’s regurgitating verbatim lyrics to each of Publishers’ 499 Works in Suit, *e.g.*, MSS ##34-35, 66-68, Publishers are entitled to summary judgment as to that infringing output without even addressing fair use.

Relatedly, Anthropic cannot evade summary judgment by vaguely asserting a handful of outputs may qualify as fair use, then shrugging that the record is “factually complex.” Def. 8, 22-23. Without demonstrating how each infringing output identified by Publishers is purportedly fair use, Anthropic fails to meet its burden of proving its defense against the extensive record of its infringement. *See, e.g., Warhol*, 598 U.S. at 533 (“[F]air use . . . requires an analysis of the specific ‘use’ of a copyrighted work that is alleged to be ‘an infringement.’” (citing 17 U.S.C. § 107)).

The remaining question before the Court—and the critical issue for Publishers—is whether it is fair use for Anthropic to systematically copy Publishers’ lyrics as AI input to generate harmful lyric-based output. Anthropic would have the Court believe *Bartz* and *Kadrey* broadly held that “use of copyrighted text to train LLMs is fair use as a matter of law,” Def. 8, but Anthropic severely mischaracterizes those decisions. Indeed, *Kadrey* stressed that it did “not stand for the proposition that Meta’s use of copyrighted materials to train its language models is lawful,” emphasizing instead that the unauthorized use of copyrighted works for AI training will “in most cases” be “illegal.” 788 F. Supp. 3d at 1034-37. That is hardly the glowing endorsement Anthropic trumpets.

Contrary to Anthropic’s claims, the law is clear that its mass copying of Publishers’ lyrics to train its AI models to generate unauthorized copies, distorted derivatives, and market substitutes

1 is anathema to the purpose of copyright and that all four statutory factors weigh against fair use.

2 **A. Anthropic’s mass copying is antithetical to the purpose of copyright.**

3 Anthropic’s defense profoundly misunderstands copyright’s purpose. Copyright “seeks to
4 advance original works of authorship,” as Anthropic admits. Def. 17 (quoting *Bartz v. Anthropic*
5 *PBC*, 787 F. Supp. 3d 1007, 1032 (N.D. Cal. 2025)). That principle is embedded in the key judicial
6 interpretations of fair use. *Warhol* teaches that fair use balances “encourag[ing] creativity” and
7 “promoting broad public availability of literature, music, and the other arts.” 598 U.S. at 526. Or,
8 in the AI context, “[w]hat copyright law cares about, above all else, is preserving the incentive for
9 human beings to create artistic and scientific works.” *Kadrey*, 788 F. Supp. 3d at 1034.

10 Anthropic’s mass ingestion of Publishers’ copyrighted lyrics so that its AI models can
11 regurgitate and imitate them is antithetical to these goals. Claude does not respond to copyright’s
12 “incentives” to create—only to Anthropic’s programming. Likewise, Claude cannot “create”
13 copyrighted works—only AI-generated facsimiles. *See, e.g., Thaler v. Perlmutter*, 687 F. Supp.
14 3d 140, 146 (D.D.C. 2023) (“[C]opyright law protects only works of human creation.”), *aff’d*, 130
15 F.4th 1039 (D.C. Cir. 2025). In other words, whereas copyright law is intended to encourage
16 humans to create “literature, music, and the other arts,” while ensuring that the public can benefit
17 from that creation, Anthropic does the exact opposite. *Warhol*, 598 U.S. at 526. As Judge Chhabria
18 observed, “training generative AI models with copyrighted works . . . dramatically undermine[s]
19 the market for those [human] works, and thus dramatically undermine[s] the incentive for human
20 beings to create things the old-fashioned way.” *Kadrey*, 788 F. Supp. 3d at 1035.

21 **B. All four statutory fair-use factors strongly favor Publishers.**

22 **1. The purpose and character of Anthropic’s use precludes fair use.**

23 The Supreme Court’s seminal *Warhol* decision instructs that the first fair-use factor “relates
24 to the justification for the use,” and “considers whether the use of a copyrighted work has a further
25 purpose or different character, which is a matter of degree” (referred to as transformativeness), and
26 which “must be balanced against the commercial nature of the use.” 598 U.S. at 531, 532. Here,
27 Anthropic fails to justify its mass copying of Publishers’ lyrics, distorts the transformativeness
28 analysis, and disregards the commercial nature of its use altogether. *See* Mot. 21-27.

a. Anthropic fails to justify its copying of Publishers' lyrics.

Anthropic's brief entirely "disregards [the Supreme] Court's repeated emphasis on justification." *Warhol*, 598 U.S. at 549. "[F]air use is an affirmative defense, and [Anthropic] bears the burden to justify its taking of [Publishers'] work." *Id.* at 547 n. 21. But *nowhere* does Anthropic (or its *amici*) "justif[y]" its copying of Publishers' lyrics as "reasonably necessary to achieve" any transformative use, as *Warhol* demands. *Id.* at 532. That is fatal to Anthropic's fair use defense. *Romanova v. Amilus*, 138 F.4th 104, 119 (2d Cir. 2025) (reversing fair use ruling for "fail[ing] to heed *Campbell*'s insistence, later reiterated in *Warhol*, that there must be justification").

In *Bartz* and *Kadrey*, defendants justified their copying for AI training by arguing that "books," the copyrighted works at issue, were "especially valuable training data." *Kadrey*, 788 F. Supp. 3d at 1039; *see Bartz*, 787 F. Supp. 3d at 1015. Here, by contrast, Anthropic insists "lyrics are of such low training value" that it has no particular need for them at all. Def. 19. Anthropic co-founder (Def. MSS #6) and 30(b)(6) witness Benjamin Mann testified "we [don't] view it as important to include lyrics" in Claude's training data and the only reason Anthropic does not remove them is that it is not worth the hassle; its co-founder and Chief Science Officer Jared Kaplan affirmed Anthropic has "no interest" in Publishers' lyrics specifically and that similar types of works "are considered fungible for purposes of the model"; and its economics expert opined "[l]yrics in particular are not a unique or indispensable input" for AI training and Anthropic "could substitute Plaintiffs' Works-in-Suit with other text sources." MSS ##143, 146, 148 (undisputed); Def. RSS #26. Anthropic's motion doubles down, representing "there was nothing uniquely valuable about Publishers' lyrics relative to other training data." Def. 20; *see also, e.g.*, Def. Ad.F #26 ("Anthropic 'typically[] doesn't have any particular interest in song lyrics'"), *id.* #33 ("[S]ong lyrics [have] . . . always been the least useful data for Claude."); *id.* #1 (undisputed).

Thus, Anthropic cannot show that copying Publishers' lyrics is necessary for AI training. *Warhol*, 598 U.S. at 532; *Bartz*, 787 F. Supp. 3d at 1028 (rejecting transformativeness where "[n]ot every copy was even necessary" for training). Nor can it show, like "[p]arody needs to mimic an original to make its point," *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 580-81 (1994), that it needs to copy Publishers' lyrics to train Claude to produce "wholly unrelated" output. Def. 10.

1 Its bald claim that “all the works within [its training] corpus are reasonably necessary,” Def. 15, is
2 no justification—especially when its witnesses have disavowed any need for Publishers’ lyrics.
3 *See supra* 13. Where no justification is offered “except for Anthropic’s pocketbook and
4 convenience,” its fair use defense must fail. *Bartz*, 787 F. Supp. 3d at 1033; *see also* Ad.F #54-55.

5 **b. Anthropic’s copying of Publishers’ lyrics is not transformative.**

6 Rather than defend its copying of Publishers’ lyrics as transformative, Anthropic diverts
7 the fair-use analysis to its use of *other* works for *different* purposes. But that cannot establish that
8 Anthropic’s use of Publishers’ lyrics, specifically, is transformative. *Warhol* makes clear (and
9 Anthropic concedes, Def. 8) that “[t]he fair use provision, and the first factor in particular, requires
10 an analysis of the specific ‘use’ of a copyrighted work that is alleged to be an ‘infringement.’” 598
11 U.S. at 533 (citing 17 U.S.C. § 107). Here, the specific challenged use is “Anthropic’s
12 unauthorized copying of [Publishers’] lyrics to train AI models that regurgitate those lyrics, spit
13 out AI-generated derivatives, and output synthetic lyrics that compete with Publishers.” Mot. 22.

14 Anthropic indisputably trained Claude to generate this harmful lyric-based output. Its own
15 records emphasize the importance that its AI models “[e]ncod[e] information verbatim, like
16 lyrics . . . where precise recall is necessary.” MSS #129.³ What Anthropic describes as its “human
17 feedback data used to finetune Claude,” MSS #97, contains dozens of finetuning prompts for
18 copies of existing lyrics, AI-generated derivatives, and “new” AI lyrics, MSS ##100-11. Similarly,
19 Anthropic’s “competitive analysis” benchmarked Claude’s ability to output existing lyrics relative
20 to competitors. MSS ##124-26. Its own founders, executives, and other employees repeatedly used
21 Claude to generate these exact types of harmful lyric-related output, in both pre-deployment
22 testing, MSS ##112-21, and real-world personal use, MSS ##132-36, 192-93.

23 Nor can Anthropic deny that its admitted copying of Publishers’ lyrics in training enables
24 its AI models to generate this harmful output based on those lyrics. It is self-evident that Claude
25 can produce output copying Publishers’ lyrics verbatim only because Anthropic included copies

26
27 ³ Because Anthropic has touted Claude’s abilities and sought to affirmatively rely on Claude
28 records itself, *see, e.g.*, Def. 7-8, 11, 22-23, it cannot turn around and dismiss these and other
admissions in its own Claude records as “hallucination[s]” or “not competent evidence,” *see* Def.
RSS ##107, 129-131, 183. Such evidentiary objections in its RSS also violate the Court’s rules.

1 of those same lyrics in Claude’s training corpus. MSS ##31-32, 73, 182; Ad.F. ##47, 79. Claude
2 does not produce word-for-word copies of those lyrics by chance, like the proverbial monkeys
3 typing Shakespeare. It derives its output from the text on which Anthropic trains it. *See* MSS #30
4 (undisputed). Similarly, Claude can produce synthetic derivatives of Publishers’ lyrics only
5 because Anthropic copied those lyrics into Claude’s training data. Claude cannot, for instance,
6 output translations of Publishers’ lyrics, *see* MSS #52—paradigmatic derivative works, 17 U.S.C.
7 § 101—unless Anthropic first copies the lyrics into its training data. Claude’s generation of “new”
8 AI song lyrics likewise relies on Anthropic’s training it on human-written lyrics. When Claude is
9 asked to write “a song about the death of Buddy Holly,” it simply outputs the lyrics to “American
10 Pie,” MSS #59; and when it is asked for help in writing a “catchy pop tune” with “more bob dylan,”
11 it simply regurgitates the lyrics to “Blowin’ in the Wind,” MSS #60. More broadly, Claude can
12 output “new” AI lyrics only because Anthropic trained it on existing lyrics, as Anthropic admits:
13 “For the model to be able to respond sensibly to queries about rap music . . . it must have been
14 shown examples of texts that approximate those concepts.” ECF No. 207 at 5.

15 When the first-factor analysis properly focuses on the challenged use—copying Publishers’
16 lyrics to train Claude to generate this harmful lyric-based output—Anthropic’s transformativeness
17 claims collapse. By training Claude to spit out verbatim copies of Publishers’ lyrics—as reflected
18 in hundreds of outputs, for every Work in Suit, *see* MSS ##34-36, 65-68—Anthropic “merely
19 supersede[s] the objects of the original creation,” *Campbell*, 510 U.S. at 579. When Anthropic
20 “train[s] a model to generate outputs that are substantially similar to copyrighted works in the
21 dataset,” “it is hard to see the use as transformative.” U.S. COPYRIGHT OFFICE, *Copyright and*
22 *Artificial Intelligence, Part 3: Generative AI Training (Pre-Publication Version)*, 46 (May 2025)
23 (“C.O. Report”). Likewise, by training Claude to produce derivative outputs that modify or
24 combine Publishers’ lyrics with other text—output that is extensively documented, *e.g.*, MSS
25 ##55-56—Anthropic unlawfully “swallow[s]” Publishers’ derivative-works right. *Warhol*, 598
26 U.S. at 541. And by training Claude on Publishers’ lyrics to produce “new” AI-generated lyrics—
27 a use that is undisputed, MSS ##181, 185 (undisputed)—Anthropic “supplant[s]” the human-
28 written lyrics that enabled them. *Warhol*, 598 U.S. at 528. Synthetic lyrics that imitate the

expressive features of existing lyrics serve the same purpose. *See id.*; Ad.F ##19, 31, 39-40, 44.

Unable to defend its use of Publishers' lyrics as transformative, Anthropic instead misapplies the transformativeness analysis in two critical ways:

First, Anthropic tries to restrict the transformativeness inquiry to its use of Publishers' lyrics in training only, ignoring the AI output that is the intended and inevitable result of that training. But Anthropic's admitted purpose in training Claude is "to both understand language **and generate new text**." Def. 5 (emphasis added); Def. MSS #23; Ad.F #51. Its copying of Publishers' lyrics in training cannot be considered entirely in a vacuum from the output that training enables.

Bartz and *Kadrey* highlight how Anthropic's harmful Claude output undercuts its claim to transformativeness in training. Both decisions emphasized that infringing output, while absent in those cases, fundamentally changes the transformativeness analysis. Judge Alsup stated in *Bartz* that, "[h]ere, if the outputs seen by users had been infringing, [plaintiffs] would have a different case." 787 F. Supp. 3d at 1021. Likewise, Judge Chhabria premised his *Kadrey* transformativeness holding on the fact that the AI model did "not produce more than 50 words of any of the plaintiffs' books," 788 F. Supp. 3d at 1045, and cited Judge Leval's *Romanova* decision, which recognized that fair use is "in most cases limited to circumstances in which the benefit was provided without allowing public access to the copy," 138 F.4th at 115-18 (collecting cases). This case, by contrast, presents an overwhelming record of the exact types of harmful AI output absent in those cases.

Second, it is Anthropic that tries to "build a fair use Frankenstein by mixing and matching" its copying of "billions of other copyrighted works" and end uses "wholly unrelated" to Publishers' lyrics. Def. 1, 10, 17. But "this case does not concern those other texts" Anthropic copied without permission for AI training. *Bartz*, 787 F. Supp. 3d at 1033. Just as *Bartz* and *Kadrey* addressed the specific copyrighted books at issue in those cases, the inquiry here must focus on Anthropic's use of Publishers' Works in Suit specifically. The vast scale of its broader infringement is no defense.

Nor is this case about Claude's ability to "write computer code," "accelerate clinical trials," or remove lead cables from Lake Tahoe. Def. 5, 18. There is not a shred of credible record evidence linking Anthropic's copying of Publishers' lyrics as training input with any of the allegedly transformative outputs Anthropic invokes. Publishers' lyrics are not "transformed" to generate

1 these AI outputs that Anthropic admits are “wholly unrelated to lyrics or music.” Def. 10. That
2 every piece of training data might have some infinitesimal effect on the model’s behavior cannot
3 on its own sufficiently connect Anthropic’s use of Publishers’ lyrics to any of these other uses.

4 The lone example of lyric-related output Anthropic argues is “a transformative use of its
5 training data,” *id.* at 11, is obviously not a use of Publishers’ lyrics at all. The Claude output cited
6 by Anthropic refers to “[t]he raw emotion in [the singer’s] voice.” *Id.* But that statement is not
7 based on the written text of Publishers’ lyrics. Nor is it derived from a sound recording, as it is
8 undisputed Claude is not trained on audio. RSS ##64, 166-67 (undisputed). Instead, Claude is
9 parroting human-written commentary about the song from its training data, and passing that off as
10 its own. Ad.F ##35-36. That is not a transformative use of Publishers’ lyrics. *See also id.* #45.

11 While *Bartz* and *Kadrey* each highlight why Anthropic’s use of Publishers’ lyrics here is
12 not transformative, they are also not the “only two courts to consider the issue,” as Anthropic
13 contends. Def. 1. *Thomson Reuters* specifically rejected transformativeness in the context of AI
14 training. *Thomson Reuters Enter. Ctr. v. Ross Intel. Inc.*, 765 F. Supp. 3d 382 (D. Del. 2025),
15 *motion to certify appeal granted*, 2025 WL 1488015 (D. Del. May 23, 2025). In particular,
16 *Thomson Reuters* held that copying copyrighted headnotes to train a “competing [non-generative
17 AI] legal research tool” was “not transformative.” *Id.* at 398-99. The court reached that conclusion
18 even where the defendant’s AI tool did not actually output the copied headnotes to users, and
19 instead only “spit[] back relevant judicial opinions that have already been written.” *Id.* at 398.

20 By contrast, the other cases Anthropic cites do not support its transformativeness claims
21 because they involved copying for completely different purposes than here. *Perfect 10*, *HathiTrust*,
22 and *Google Books* involved the defendants’ development of search engines, increasing access to
23 the plaintiffs’ copyrighted works without, as Anthropic does, supplanting those works. 508 F.3d
24 1146, 1165 (9th Cir. 2007); 755 F.3d 87, 97 (2d Cir. 2014); 804 F.3d 202, 216-17 (2d Cir. 2015).
25 *iParadigms* addressed the defendant’s creation of plagiarism-detection software, not competing
26 substitutes. 562 F.3d 630, 638 (4th Cir. 2009). None of these cases endorsed “simply re-displaying
27 the same [copyrighted] content,” Def. 11, or producing market substitutes, like Anthropic does
28 here. Indeed, *iParadigms* emphasized that copyright “protects **against** a republication which offers

1 the copyrighted work in a secondary packaging.” 562 F.3d at 643 (emphasis added). And,
2 importantly, these cases all pre-date *Warhol*’s significant recalibration of transformativeness.

3 **c. Anthropic’s highly commercial use further undermines fair use.**

4 Separately, *Warhol* elevated the importance of commerciality, stressing that the degree of
5 transformativeness “must be balanced against the commercial nature of the use.” 598 U.S. at 532;
6 see *VHT*, 918 F.3d at 742 (emphasizing that courts “cannot ignore” commerciality). Despite the
7 centrality of Anthropic’s commercial use to the first-factor analysis, Anthropic barely mentions it.

8 There can be no legitimate dispute that Anthropic’s use of Publishers’ lyrics to build a
9 \$965-billion-dollar AI empire is highly commercial. MSS ##150, 154-56, 158-61 (undisputed);
10 Ad.F ##1-6. “The undisputed commercial character” of Anthropic’s use, while not alone
11 dispositive, “tends to weigh against a finding of fair use.” *Warhol*, 598 U.S. at 537; see also *Nat’l*
12 *Fire Prot. Ass’n v. UpCodes, Inc.*, 753 F. Supp. 3d 933, 961 (C.D. Cal. 2024) (“indisputably
13 commercial” character of use “weighs strongly against” fair use). Anthropic’s frivolous denial of
14 its for-profit status betrays that its highly commercial use offsets any claimed transformativeness.

15 In reinvigorating commerciality, *Warhol* stressed the importance of ensuring “an economic
16 incentive to create original works, which is the goal of copyright.” 598 U.S. at 535. That requires
17 considering whether a commercial defendant “may knowingly have exploited a purloined work
18 for free that could have been obtained for a fee,” *Los Angeles News Serv. v. KCAL-TV Channel 9*,
19 108 F.3d 1119, 1122 (9th Cir. 1997), which weighs against fair use, or whether requiring a paid-
20 for license would undermine a non-commercial defendant’s use, which favors fair use. Anthropic
21 unquestionably has the resources to compensate Publishers for exploiting their Works but simply
22 prefers not to pay. That refusal undermines copyright’s incentive structure and is “presumptively”
23 unfair. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 530 (9th Cir. 2008).

24 Even if Anthropic’s use was transformative to some degree, the massively commercial
25 nature of that use would still tilt the first factor against fair use. Anthropic has released its Claude
26 models trained on Publishers’ lyrics to millions of customers, generating tens of billions of dollars
27 in revenues and surging to a near-**trillion**-dollar valuation. MSS ##158-61 (undisputed); Ad.F #6.
28 The unprecedented scale of this commercial use outweighs any claimed transformativeness. See

1 *Monge v. Maya Mags., Inc.*, 688 F.3d 1164, 1183 (9th Cir. 2012) (where “minimal transformation
2 . . . is amply outweighed by [] commercial use,” first factor “does not support” fair use).

3 **2. Publishers’ Works are undoubtedly at the core of copyright protection.**

4 The second fair-use factor, “the nature of the copyrighted work,” clearly favors Publishers.
5 17 U.S.C. § 107(2). “[S]ong lyrics fall within the core of copyright protection.” *Leadsinger*, 512
6 F.3d at 531-32; MSS #163 & RSS #51 (undisputed). In minimizing this factor, Anthropic ignores
7 Supreme Court precedent emphasizing “[t]he nature of the interest at stake is highly relevant to
8 whether a given use is fair,” *Harper*, 471 U.S. at 553; “fair use is more difficult to establish” when
9 expressive works are copied, *Campbell*, 510 U.S. at 586; and “copyright’s protection may be
10 stronger” for expressive works, *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 20 (2020).

11 Anthropic is legally and factually wrong that dissemination of Publishers’ lyrics on the
12 internet favors fair use. The Ninth Circuit has emphasized that “neither *Harper* [] nor any principle
13 of fair use counsels that the publication of the copyrighted work weighs in favor of fair use.” *Seuss*,
14 983 F.3d at 456. Moreover, Publishers do not make their lyrics available on the internet “for free.”
15 Def. 13. Rather, the evidence makes clear that Publishers require third-party websites to pay for
16 licenses to display their lyrics (among other licensed uses). Ad.F ##48-49; MSS #169; *id.* ##170,
17 212 (undisputed); Def. MSS #155 (identifying “licensed lyrics websites like Genius, AZLyrics”).

18 **3. Anthropic does not dispute copying Publishers’ lyrics wholesale.**

19 The third fair-use factor, “the amount and substantiality of the portion used in relation to
20 the copyrighted work as a whole,” also favors Publishers. 17 U.S.C. § 107(3). Anthropic does not
21 dispute copying Publishers’ “lyrics text” in full, Def. 14, and it does so both as AI training input
22 and as AI-generated output. Its “total” copying plainly weighs against fair use. *McGucken v. Pub*
23 *Ocean Ltd.*, 42 F.4th 1149, 1162 (9th Cir. 2022); *see also Barkley*, 2025 WL 2946993, at *6.

24 Where Anthropic admits copying Publishers’ “lyrics text for its training corpus,” Def. 14,
25 it cannot twist this factor by arguing it did not also copy the music embodied in Publishers’ musical
26 compositions. In *Leadsinger*, the Ninth Circuit had no trouble ruling that the use of “copyrighted
27 lyrics in their entirety” “militate[d] against a finding of fair use,” even where the rightsholder
28 owned copyrights to the musical compositions as a whole. 512 F.3d at 531. In any event, Anthropic

1 plainly copied the “heart” of the Works. *McGucken*, 42 F.4th at 1162; *see also* Ad.F ##50, 52.

2 Nor can Anthropic prove, as it must, that it copied no “more than was necessary” from
3 Publishers’ Works or that “alternatives were not available.” *McGucken*, 42 F.4th at 1162-63.
4 Nowhere does Anthropic explain why it needed to copy the full lyrics to Publishers’ Works,
5 specifically, to train its AI models, or why the “billions of other copyrighted works” it admittedly
6 copied for training were not viable alternatives. Def. 1. To the contrary, Anthropic has repeatedly
7 disclaimed *any* need to train on Publishers’ lyrics specifically. *See supra* 13. Where Anthropic
8 unequivocally admits that its “purpose could have been served” by relying on “other sources rather
9 than copyrighted” lyrics owned by Publishers, the third factor “weighs decisively against fair use.”
10 *Monge*, 688 F.3d at 1179-80; *see also, e.g., McGucken*, 42 F.4th at 1162-63 (third factor weighed
11 against fair use where defendant “failed to put forward any evidence that other photographs or
12 visual aids were unavailable or an inadequate substitute for [plaintiff’s copyrighted] photos”).

13 *Bartz* is a useful contrast. There, Anthropic’s copying of plaintiffs’ copyrighted books was
14 held “reasonably necessary” because those books were the “strongest examples of writing” and
15 “most highly” valuable training data. *Bartz*, 787 F. Supp. 3d at 1017, 1030. Here, Anthropic claims
16 “song lyrics [have] . . . always been the least useful data for Claude.” Def. Ad.F #33. *Bartz* also
17 premised its third-factor analysis on the lack of infringing output: because Anthropic copied those
18 books in training only and “no output to the public was even alleged to be infringing,” Anthropic
19 copied no more than necessary. 787 F. Supp. 3d at 1030-31. Here, the opposite is true.

20 **4. Anthropic’s use harms the market for and value of Publishers’ Works.**

21 Anthropic’s unauthorized copying of Publishers’ lyrics for AI training harms “the potential
22 market for or value of” Publishers’ Works, 17 U.S.C. § 107(4), in at least three markets: the online
23 lyrics display market, Mot. 28-31, the streaming market for Publishers’ Works, *id.* at 31-34, and
24 the licensing market for AI training data, *id.* at 34-35; *see* Ad.F ##66-71. Because Anthropic cannot
25 establish a lack of harm in these three markets, it fails to “carry[] [its] burden of demonstrating fair
26 use,” and Publishers are entitled to summary judgment. *Campbell*, 510 U.S. at 590.

27 Anthropic premises its market harm arguments on two broad misconceptions of the law.

28 First, Anthropic mistakenly focuses on the alleged lack of actual present harm—ignoring

1 the well-settled law that “[a]ctual present harm need not be shown.” *Sony Corp. of Am. v. Universal*
2 *City Studios, Inc.*, 464 U.S. 417, 451 (1984). While the evidence of actual present harm here is
3 extensive, Anthropic’s defense would fail even absent such evidence because, “[t]o defeat a fair
4 use defense, one need only show that if the challenged use should become widespread, it would
5 adversely affect the *potential* market for the copyrighted work.” *VHT*, 918 F.3d at 744. Indeed, the
6 Copyright Act provides for statutory damages in cases such as this one precisely “to give the owner
7 of a copyright some recompense for injury done him . . . where the rules of law render difficult or
8 impossible proof of damages.” *F. W. Woolworth Co. v. Contemp. Arts*, 344 U.S. 228, 231 (1952).
9 Accordingly, Anthropic’s arguments that Publishers have not empirically demonstrated specific
10 examples of actual harm, Def. 19-22, ignore that market harm can still weigh against fair use even
11 where “the record reflects little direct evidence of actual market harm caused by [the defendant’s
12 use].” *McGucken*, 42 F.4th at 1163. Empirical analysis is unnecessary where, as here, “[t]he harm
13 to the market for licensing [the work] would be immense” because the defendant’s use is a “ready
14 market substitute” for the work. *Id.* at 1163-64; *see also, e.g., Seuss*, 983 F.3d at 461 (holding that
15 defendant’s use “usurps [the work’s] potential market” without empirical analysis). Courts in such
16 cases “routinely rely on [] logical inferences where appropriate in assessing the fourth fair use
17 factor.” *Hachette Book Grp., Inc. v. Internet Archive*, 115 F.4th 163, 193 (2d Cir. 2024).

18 Second, Anthropic is wrong that a transformative use cannot cause cognizable market
19 harm. To the contrary, a transformative use can still have harmful “effects . . . in protectible markets
20 for derivative works.” *Campbell*, 510 U.S. at 562. Collapsing market harm into transformativeness,
21 as Anthropic advocates, would ignore that market harm “is undoubtedly the single most important
22 element of fair use,” *Harper*, 71 U.S. at 566, while transformativeness is “a matter of degree”
23 weighed against the other factors, *Warhol*, 598 U.S. at 510. It would also contravene the Supreme
24 Court’s mandate that “[a]ll [four factors] are to be explored, and the results weighed together, in
25 light of the purposes of copyright.” *Campbell*, 510 U.S. at 578. As Judge Chhabria observed, “it’s
26 easy to imagine a situation in which a secondary use is highly transformative but the secondary
27 user nonetheless loses on fair use because allowing people to engage in that kind of use would
28 have too great an effect on the market for the original work.” *Kadrey*, 788 F. Supp. 3d at 1050-51.

a. Anthropic’s training on Publishers’ lyrics to output those lyrics harms the market for online lyrics display.

When Anthropic’s training results in “exact copies [or] infringing knockoffs of [Publishers’] works being provided to the public,” market harm is clear. *Bartz*, 787 F. Supp. 3d at 1031. By training Claude to reproduce Publishers’ lyrics to users on demand, Anthropic supplants websites authorized to do the same, harming both existing and potential lyric licensing markets. Mot. 29-31; MSS ##172-74; Ad.F ##68-69. In assessing market harm, Anthropic cannot just ignore infringing outputs that result from its training on Publishers’ lyrics, particularly when it also invokes Claude outputs with no connection to those lyrics to argue its AI training is transformative.

Anthropic’s attempt to dismiss market harm from infringing outputs as “rare,” Def. 17, is both wrong and misses the point. Anthropic tries to downplay Claude’s uses to look up lyrics. But its own records reveal it trained Claude for that purpose. Mot. 5-7, Ad.F #13-15. And many third-party users—plus Anthropic’s founder and employees—have prompted Claude to output lyrics in just that way. MSS ##36-43, 113-14, 132-34; *id.* #115 (undisputed); Ad.F ##7, 20-26, 41-42. Moreover, there is no doubt, if using Claude to look up lyrics becomes unrestricted and widespread, it will undermine the existing market for licensed lyrics display. Mot. 29-31. Anthropic’s expert does not dispute that obvious point; he simply had “no opinion.” Ad.F #69.

Anthropic’s opposition also does not address—let alone rebut—that its AI models harm the vital derivative-works market by producing output with unauthorized derivatives of Publishers’ lyrics. *See* Mot. 30-31; Ad.F #43. Because it waived argument as to that market harm, summary judgment is warranted. *E.g., Kohistani v. Scott*, 2026 WL 2185717, at *5 (N.D. Cal. July 29, 2026).

b. Fair use must account for the immense harm from using copyrighted works to generate competing market substitutes.

Even where Anthropic’s outputs are not themselves infringing, its use of Publishers’ lyrics to produce “new” AI-generated song lyrics that substitute in the market for Publishers’ lyrics inevitably harms the market for those lyrics. *See, e.g., Kadrey*, 788 F. Supp. 3d at 1055 (“[M]arket dilution will often cause plaintiffs to decisively win the fourth factor”); C.O. Report at 73 (recognizing AI output “can dilute the market for works similar to those found in [] training data”).

Anthropic’s generation of massive volumes of competing synthetic lyrics diverts consumer

1 interest in streaming songs with Publishers’ lyrics and dilutes royalty pools to Publishers’
2 detriment. *See* Mot. 33-34; Ad.F #70. Those competing substitutes “supersede[] the objects of the
3 original and serve[] as a market replacement for it,” imposing “cognizable market harm to the
4 original[.]” *Campbell*, 510 U.S. at 591. The scale of this substitution is unprecedented. AI “can
5 generate literally millions of secondary works, with a miniscule fraction of the time and creativity
6 used to create the original works it was trained on.” *Kadrey*, 788 F. Supp. 3d at 1055. Few courts
7 have yet addressed this theory only because “no other use . . . has anything near the potential to
8 flood the market with competing works” and threaten substitution on such a scale. *Id.* Taking that
9 harm into account accords with long-established law. Mot. 31-32. “Courts can’t stick their heads
10 in the sand to an obvious way that a new technology might severely harm the incentive to create,
11 just because the issue has not come up before.” *Kadrey*, 788 F. Supp. 3d at 1055.

12 Here, there can be no doubt that Claude’s generation of competing substitutes already
13 harms the market for Publishers’ works. *See* Ad.F ##11, 16, 27-28, 70. AI-generated music is
14 spreading voraciously: one streaming service estimated that AI-generated music already accounted
15 for three percent of all streams by January 2026 (up from 0.5% in November 2025), representing
16 a 600 percent increase in just four months. MSS ##197-98. While this harm is undoubtedly
17 significant, its full extent is impossible to pinpoint. Anthropic has not identified any source of data
18 showing tracks on streaming services that contain AI-generated lyrics. While some streaming
19 services can identify some AI-generated recordings, they cannot comprehensively identify all such
20 AI-generated lyrics, let alone the models that generated those lyrics. Ad.F. #72.

21 Just as important, if Claude’s use of Publishers’ lyrics to generate competing AI lyrics
22 becomes even more widespread, the harm will increase exponentially. Mot. 33-34; MSS #175. In
23 attempting to deny the market harm Claude’s generation of competing substitutes causes,
24 Anthropic ignores this potential harm entirely. *See* Def. 20-21.

25 None of Anthropic’s other arguments have any merit. Its contention that acknowledging
26 the harm from market dilution extends copyright protection to unprotected expression conflates
27 actionable infringement with cognizable market harm. Nor would recognizing the obvious
28 substitutive harm Anthropic’s copying causes grant Publishers a monopoly over a genre or style.

1 Anyone can create competing works in the same genre or style, but Anthropic cannot *copy*
2 ***Publishers' Works*** to generate synthetic displacements. Anthropic's analogies to previous
3 technologies like photography are inapt because none of those used copyrighted works as inputs.

4 Because copying Publishers' lyrics is not, by Anthropic's admission, a needed intermediate
5 step to generating new AI lyrics, there is no danger of monopolization or threat to competition.
6 Unlike *Google* or *Sega*, where use of the copyrighted computer code at issue was necessary to
7 participate in the relevant market, denying fair use here would not empower Publishers to "alone
8 [] hold the key" to the lyrics market. *Google*, 593 U.S. at 39; *see Sega Enters. Ltd. v. Accolade,*
9 *Inc.*, 977 F.2d 1510, 1526 (9th Cir. 1992) (denying fair use where use of code at issue "was
10 necessary in order to understand the functional requirements for [product] compatibility").

11 Anthropic's argument that, "[u]nder copyright law, an expansion in the number of original
12 works is a benefit," Def. 16, proves nothing. Finding fair use would always superficially expand
13 the number of works by permitting both the defendant's and the plaintiff's works. Fair use demands
14 more: it requires examining the effects of the defendant's copying on "preserving the incentive for
15 human beings to create artistic and scientific works." *Kadrey*, 788 F. Supp. 3d at 1034. Here,
16 moreover, Claude does not produce original works in the copyright sense, but rather
17 uncopyrightable, statistical imitations of human works. *See, e.g., Thaler*, 687 F. Supp. 3d at 146.

18 Anthropic's expert's attempt to assess Claude's historical impact on Publishers' revenues
19 does not alter the analysis. The Ninth Circuit has held market harm can weigh against fair use even
20 where a plaintiff's work's value **increased**, as that "proves nothing about the effect on the market
21 for licensing the [work]." *De Fontbrune v. Wofsy*, 39 F.4th 1214, 1226 (9th Cir. 2022). So too here.

22 While Anthropic argues AI's benefits to Publishers may offset the harm from dilution,
23 "increased sales of copyrighted material attributable to unauthorized use should not deprive the
24 copyright holder of the right to license the material." *A&M Recs. v. Napster, Inc.*, 239 F.3d 1004,
25 1018 (9th Cir. 2001). Even if positive effects like increased songwriter productivity counted, those
26 effects are irrelevant because they do not result from Anthropic's copying of Publishers' lyrics.

27 Finally, the comments Anthropic cites from Michael Nash, Universal Music Group's
28 ("UMG") Chief Digital Officer, do not create disputed fact issues. UMG is not a party here, Mr.

1 Nash is not an employee of any Publisher plaintiff, and his comments are plainly inadmissible
2 hearsay. Further, Mr. Nash addressed only AI revenue dilution’s *current* impact on UMG’s sound
3 recording business. He did not address the key inquiry here: the *potential* harm from widespread
4 use of Claude to generate competing market substitutes for Publishers’ lyrics. UMG’s businesses
5 also extend beyond music publishing to include substantial recorded music operations with distinct
6 business models and royalty structures. Ad.F #64. For example, [REDACTED]
7 [REDACTED] Mr. Nash
8 describes as protecting UMG’s revenues. *Compare* ECF Nos. 595-121, -122, -123 with ECF No.
9 686-139 at 22:44; Ad.F. #65. In short, these comments have no bearing on the present case.

10 In the end, accepting Anthropic’s arguments here would mean that a would-be songwriter
11 could walk into a music bookstore, fill up a bag with books containing Publishers’ musical
12 compositions, and walk out without paying a cent—so long as the songwriter used those stolen
13 works to learn to write and sell new songs. Fair use does not countenance such obvious theft.

14 **c. The AI training data licensing market is a reasonable market.**

15 Finally, Anthropic’s unlicensed use of Publishers’ Works for AI training threatens to
16 destroy an existing and growing licensing market for such uses. *See* Mot. 34-35; Ad.F ##66-69.

17 A licensing market for generative AI training data is a reasonable market that creators,
18 including Publishers, have sought to develop. MSS ##208-11; Ad.F #62-63; *see* C.O. Report at 85
19 (“[V]oluntary licensing of copyrighted works for use in AI training is increasingly taking place.”).
20 Cognizable market harm extends to markets that are “traditional, reasonable, or likely to be
21 developed.” *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1179 (9th Cir. 2013). AI companies and
22 rightsholders have entered at least 200 AI training data licensing deals as of January 2026. MSS
23 #210. The four largest LLM developers (Anthropic, Google, Meta, and OpenAI) have entered over
24 30 such licenses. Ad.F. #75. That these licenses sometimes include additional terms does not
25 change that a training data licensing market exists. Given this use is one “creators of original works
26 would in general develop or license others to develop,” *Campbell*, 510 U.S. at 592, Anthropic is
27 wrong to summarily dismiss the harm from lost AI training data licensing as “circular.”

28 Publishers have repeatedly emphasized their willingness to discuss licensing with

1 Anthropic and other AI companies. MSS ##209, 211. Some Publishers have even licensed musical
2 compositions as AI training data for so-called “single-purpose LLMs.” MSS #211. Thus, “this is
3 not a case where the copyist’s work fills a market that the copyright owner will likely avoid.”
4 *Seuss*, 983 F.3d at 460. Anthropic fails to distinguish these “single-purpose LLMs” from Claude:
5 both generate “new” AI song lyrics, compete for that use, and train on lyrics for that purpose. Ad.F.
6 #73. The Ninth Circuit has rejected Anthropic’s argument that Publishers have not licensed their
7 works to a general-purpose LLM developer as “speculative because [defendant] never asked for a
8 license or permission.” *Seuss*, 983 F.3d at 461. When a plaintiff is “actively exploring” a market,
9 harm exists even if that plaintiff has not yet concluded any licenses. *VHT*, 918 F.3d at 744.

10 Anthropic’s claim that no market exists to license *all* data needed to train a general-purpose
11 LLM is irrelevant and wrong. Anthropic could license Publishers’ lyrics for AI training regardless
12 of whether it licenses other data; in fact, [REDACTED].
13 MSS #212 (undisputed). The market to license Publishers’ lyrics for AI training data exists
14 regardless of whether some other market to license additional data to train an LLM also exists.

15 Accepting Anthropic’s bold contention that no AI licensing market for lyrics exists, simply
16 because it deems lyrics insufficiently valuable to justify the transaction costs, would destroy all
17 licensing markets. No such markets could ever function if potential licensees could unilaterally
18 pronounce the costs of licensing too high and then just use copyrighted works for free. Ad.F. #74;
19 *see Monge*, 688 F.3d at 1182 (holding no fair use where “unrestricted and widespread reproduction
20 of [defendant’s] conduct . . . would also create incentives to pirate intellectual property”).

21 Anthropic’s admission that it [REDACTED]
22 [REDACTED], Ad.F. #53, both confirms the existence of a training data licensing
23 market and underscores the root problem in Anthropic’s argument. Just because Anthropic does
24 not want to license Publishers’ lyrics does not mean a licensing market for those lyrics does not
25 exist; it just means Anthropic would rather steal those lyrics than pay for them.

26 **d. Anthropic’s claimed “public benefits” are irrelevant.**

27 Anthropic cannot save itself by repeating its mantra that Claude’s unrelated “public
28 benefits” justify its massive copying of Publishers’ lyrics. The fair-use analysis may “take into

1 account the public benefits the copying will likely produce,” but any such benefits must flow from
2 that copying to be relevant. *Google*, 593 U.S. at 35. That is fatal to Anthropic’s argument.

3 Here, no evidence ties Anthropic’s claimed benefits (all of which are based on inadmissible
4 hearsay) to its copying of Publishers’ lyrics. Anthropic cannot credibly claim that drug discovery,
5 access to European Parliament records, or the Tahoe Lead Removal Project were achieved by
6 copying Publishers’ lyrics specifically. It has disavowed any need to train on those lyrics, *see supra*
7 13, and its expert on Claude’s benefits could not say whether Claude would be less effective if not
8 trained on those lyrics, Ad.F #37. Equally irrelevant are Publishers’ acknowledgments of AI’s
9 beneficial applications, because none of those uses result from copying Publishers’ Works.

10 Moreover, if the Court were to consider the purported benefits of Anthropic’s AI models,
11 it would also need to take into account the corresponding *risks*. Anthropic’s CEO Dario Amodei
12 has warned that AI is “the greatest risk humanity has ever faced,” Ad.F #76; estimated “there is a
13 20-30% chance that [artificial general intelligence] will lead to the destruction (or permanent
14 stunting) of humanity,” *id.*; and predicted “AI could wipe out half of all entry-level, white-collar
15 jobs and spike unemployment to 10 percent to 20 percent in the next one to five years,” MSS #213.

16 However, this case is not a referendum on AI technology more broadly. There is no need
17 for the Court to address Anthropic’s arguments about Claude’s public benefits (or its corresponding
18 risks) to hold that Anthropic’s unauthorized copying of Publishers’ lyrics here is not fair use.

19 **IV. Anthropic should be denied summary judgment as to Publishers’ CMI claims.**

20 Finally, Anthropic’s scattershot attacks on Publishers’ CMI claims disregard the extensive
21 evidence of its CMI violations. These facts preclude summary judgment.

22 When Publishers license their copyrighted lyrics for online display, they require those
23 lyrics to be accompanied by CMI, which identifies and protects their works against misuse. Ad.F.
24 ##91-94. When Anthropic scraped copies of Publishers’ lyrics to the 499 Works in Suit from the
25 internet for training, those copies included CMI. Ad.F. ##95-98; *see id.* ##56-61; RSS #100
26 (undisputed). Anthropic then intentionally stripped that CMI, including using the “extraction” tool
27 it found to be most effective at removing CMI. Ad.F. ##99-106; *see* MSS #25 & RSS ##101, 103
28 (undisputed). Separately, it trained Claude using third-party datasets including Publishers’ lyrics

1 from which it knew CMI had been removed. Ad.F. ##106-07; MSS ##18, 22-23 (undisputed); *id.*
2 #19. As a result, Anthropic generated and distributed AI output copying lyrics to Publishers’ 499
3 Works in Suit—knowing it lacked critical CMI. Ad.F. ##108-09; RSS #168-70 (undisputed).

4 Anthropic took these steps to conceal its own infringement. It knew it was training Claude
5 on copyrighted content copied without permission, and it knew “output[ting] copyrighted content”
6 was “against the law.” Ad.F. ##110-11. Given Claude’s known tendency to memorize and
7 regurgitate repeated text like copyright notices and other CMI, Anthropic worried the model would
8 output CMI and expose its infringement. Ad.F. ##9, 12, 29, 84, 101-02, 112. But rather than
9 remove Publishers’ copyrighted lyrics from its training data as it should have, it instead stripped
10 Publishers’ CMI to cover its tracks. *E.g.*, Ad.F #113; MSS ##59-61. In other words, Anthropic
11 “removed CMI to try to prevent [the AI model] from outputting CMI and thus revealing that it was
12 trained on copyrighted material,” which “is clearly an identifiable (alleged) infringement.” *Kadrey*
13 *v. Meta Platforms, Inc.*, 2025 WL 744032, at *2 (N.D. Cal. Mar. 7, 2025).

14 These disputed facts preclude summary judgment. *See CoStar Grp. v. Commercial Real*
15 *Est.*, 2025 WL 2647269, at *13 (C.D. Cal. June 25, 2025); *Schneider v. YouTube*, 649 F. Supp. 3d
16 872, 890 (N.D. Cal. 2023). “Where intent is a primary issue”—as it is here—“summary judgment
17 is generally inappropriate.” *S.E.C. v. Seaboard Corp.*, 677 F.2d 1297, 1298 (9th Cir. 1982).

18 Anthropic’s legal arguments fail. It wrongly contends the DMCA bars CMI removal only
19 from “works as a whole,” Def. 34, but has no authority supporting that claim. The caselaw holds
20 to the contrary. *ICONICS, Inc. v. Massaro*, 192 F. Supp. 3d 254, 272 (D. Mass. 2016) (“[T]he
21 definition of CMI neither states nor implies that CMI can only exist with regard to the full version
22 of a work.”); *Real World Media v. Daily Caller, Inc.*, 744 F. Supp. 3d 24, 40-41 (D.D.C. 2024).
23 Likewise, its claim that it cannot be liable because it removed Publishers’ CMI for a fair use
24 purpose both ignores that it removed that CMI to conceal its infringing AI output (which it does
25 not even defend as fair use) and wrongly presumes its AI training is fair use (which it is not).

26 CONCLUSION

27 Publishers respectfully request that the Court grant their Motion for Partial Summary
28 Judgment and deny Anthropic’s Motion for Summary Judgment in full.

1 Dated: August 17, 2026

Respectfully submitted,

2 /s/ Nicholas C. Hailey

3 **OPPENHEIM + ZEBRAK, LLP**

Matthew J. Oppenheim

Nicholas C. Hailey

4 Jeffrey M. Gould

Corey Miller

Keith Howell

(admitted *pro hac vice*)

6 4530 Wisconsin Ave., NW, 5th Floor

Washington, DC 20016

Telephone: (202) 480-2999

7 matt@oandzlaw.com

nick@oandzlaw.com

8 jeff@oandzlaw.com

corey@oandzlaw.com

9 khowell@oandzlaw.com

10 Alexander Kaplan

Jennifer Pariser

11 Andrew Guerra

Bret Matera

12 Timothy Chung

Michelle Gomez-Reichman

(admitted *pro hac vice*)

13 461 5th Avenue, 19th Floor

New York, NY 10017

14 Telephone: (212) 951-1156

alex@oandzlaw.com

15 jpariser@oandzlaw.com

andrew@oandzlaw.com

16 bmatera@oandzlaw.com

tchung@oandzlaw.com

17 mgomez-reichman@oandzlaw.com

18 **COBLENTZ PATCH DUFFY & BASS LLP**

Jeffrey G. Knowles (SBN 129754)

One Montgomery Street, Suite 3000

19 San Francisco, CA 94104

Telephone: (415) 391-4800

20 ef-jgk@cpdb.com

21 **COWAN, LIEBOWITZ & LATMAN, P.C.**

Richard S. Mandel

Jonathan Z. King

22 Richard Dannay

(admitted *pro hac vice*)

23 114 West 47th Street

New York, NY 10036-1525

24 Telephone: (212) 790-9200

rsm@cjl.com

25 jzk@cjl.com

26 rxd@cjl.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2026, I caused the foregoing document to be served on the following counsel via email:

**WILMER CUTLER PICKERING HALE AND DORR
LLP**

Sonal Mehta (SBN 222086)
sonal.mehta@wilmerhale.com
Allison Bingxue Que (SBN 324044)
allison.que@wilmerhale.com
2600 El Camino Real, Suite 400
Palo Alto, CA 94306
(650) 858-6000
Fax: (650) 858-6100

Robin C. Burrell (admitted *pro hac vice*)
robin.burrell@wilmerhale.com
Ari Holtzblatt (admitted *pro hac vice*)
ari.holtzblatt@wilmerhale.com
2100 Pennsylvania Avenue NW
Washington, DC 20037
(202) 663-6964

Jared V. Grubow (admitted *pro hac vice*)
jared.grubow@wilmerhale.com
7 World Trade Center
250 Greenwich Street
Suite Floor 42
New York, NY 10006
(212) 295-6459

Joseph Taylor Gooch (SBN 294282)
taylor.gooch@wilmerhale.com
50 California Street
Suite 3600
San Francisco, CA 94111
(628) 235-1002

Louis W. Tompros (admitted *pro hac vice*)
louis.tompros@wilmerhale.com
Disha Patel (admitted *pro hac vice*)
Disha.Patel@wilmerhale.com
60 State Street
Boston, MA 02109
(617) 526-6886

Attorneys for Defendant

/s/ Timothy Chung
Timothy Chung