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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANDREA BARTZ, ET AL.,  
  
Plaintiffs,  
  
v.  
  
ANTHROPIC PBC,  
  
Defendant.

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Case No. 3:24-cv-05417-WHA

**PLAINTIFFS' SUPPLEMENTAL  
BRIEFING REGARDING *GOOGLE  
BOOKS***

1 Plaintiffs submit the following brief in answer to the Court’s questions at the summary  
 2 judgment hearing regarding whether the initial acquisition of books was at issue in *Authors Guild*  
 3 *v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015) (“*Google Books*”).

4 **First**, in *Google Books*, Google’s *initial acquisition* of books was not at issue, because the  
 5 Google Books Project acquired paid-for physical books. “**Each year**” Google’s library partners  
 6 “spen[t] tens millions of dollars” “acquiring new works,” *i.e.*, physical copies of books. *See*  
 7 Libraries’ Statement of Material Facts ¶ 8, *Authors Guild v. Hathi Trust*, 1:11-cv-6531, Dkt. 113  
 8 (Jun. 29, 2012 S.D.N.Y.) (“Libraries’ SUF”) (emphasis added). The Google Books Project was a  
 9 common venture between Google and a consortium of “major research libraries.” *Authors Guild v.*  
 10 *Hathi Trust*, 775 F.3d 87 (2d Cir. 2014) (“*Hathi Trust*”). After the libraries purchased the books,  
 11 Google then lawfully borrowed those physical copies and had them shipped to its scanning centers.  
 12 *See* Authors Guild Op. Br., *Google Books*, Dkt. 55, No. 13-4829 (2d Cir. Apr. 11, 2014) (“Once a  
 13 Library Partner’s books were selected, they were shipped to Google’s scanning centers to be  
 14 digitized and indexed[.]”). Because Google initially acquired the works at issue via loans of  
 15 physical books from libraries, its initial acquisition was not a reproduction under 17 U.S.C. § 106(1)  
 16 that would give rise to a *prima facie* case of infringement. This stands in stark contrast to  
 17 Anthropic’s initial acquisition of books. Anthropic downloaded them directly from illegal libraries  
 18 like Pirate Library Mirror, thus making a digital copy for which Anthropic paid not one cent.

19 **Second**, in *Google Books*, the plaintiffs did challenge—and the Court did address—  
 20 Google’s subsequent scanning of these physical books into digital copies for use in its search  
 21 engine. *See* 804 F.3d at 228-29; *Google Books*, Dkt. 55 at p. 22-23, 32-35. But, to be clear, the  
 22 *Google Books* plaintiffs never raised the argument that the *Bartz* Plaintiffs raise here with respect  
 23 to Anthropic’s piracy: that Google (or here Anthropic), at a minimum, should have lawfully  
 24 acquired and paid a purchase price for its initial acquisition of the works at issue. That is perhaps  
 25 because Google’s partners—the libraries—had paid tens of millions to lawfully acquire the books  
 26 at issue in *Google Books*. *See* Libraries’ SUF ¶ 8. Anthropic’s piracy, by contrast, threatens the  
 27 most well-established market for Plaintiffs’ works: the market for books. *See* Pls. MSJ Op. at 12-  
 28 13 & n.7. A decision finding fair use for such piracy, unlike *Google Books*, would result in

1 widespread devastation for the market for copyrighted creative content. *See id.*

2 *Google Books* repeatedly emphasized the importance of the fact that libraries “already  
3 owned”—i.e., had lawful possession of—the books ultimately used in the Google Books Project.  
4 “In these circumstances, Google’s creation for each library of a digital copy of that *library’s*  
5 *already-owned book* in order to permit that library to make fair use through provision of digital  
6 searches is not an infringement.” *Id.* at 229 (emphasis added). Because the libraries were using  
7 “already-owned books” for their co-venture with Google—books on which they had spent tens of  
8 millions of dollars annually—there could be no serious allegation that the Google Books Project  
9 had circumvented the traditional book sale market to get books needed for scanning.

10 Four other critical features of the Google Books project bear emphasis. *First*, Google *did*  
11 *not copy* any books where “Google had received a specific request from a copyright owner not to  
12 scan the book.” *See* Authors Guild Op. Br. at p. 9, *Google Books* Dkt. 55. Furthermore, the “contract  
13 between Google and each of the participating libraries commit[ted] the library to use its digital  
14 copy *only in a manner consistent with the copyright law, and to take precautions to prevent*  
15 *dissemination of their digital copies* to the public at large.” *Google Books*, 804 F.3d at 228–29  
16 (emphasis added). The arrangement set forth in *Google Books* is thus worlds apart from Anthropic’s  
17 unrestricted, ungoverned, and unlawful acquisition of millions of pirated books from pirate  
18 libraries. There is, for example, no dispute that the pirate libraries Anthropic patronized were illegal  
19 criminal enterprises that lacked authorized copies. Likewise, Anthropic had no agreements to honor  
20 the requests of rightsholders. Moreover, record evidence confirms that Anthropic places *no use*  
21 *restrictions* on its datasets within the company, MSJ Op. Ex. 22 at 196:15-18, that its patronage of  
22 pirated websites may keep these criminal enterprises alive, *see* Pls. Cert Reply Ex. 53 (Pirate  
23 Library successor stating, that prior to LLMs, “shadow libraries were dying”), and that Anthropic  
24 retained and continues to use pirated datasets to this day, *see* Pls. MSJ Op. at 4 (citing Ex. 17, at  
25 93:23-94:14, 249:2-13).

26 *Second*, the *Google Books* Court noted that, if any libraries violated their agreements, were  
27 negligent in their storage, or employed the copies in an infringing manner, copyright holders could  
28 bring suit against those libraries. 804 F.3d at 229. By contrast, Plaintiffs here have no recourse

1 against shadow libraries, as they have been repeatedly enjoined by U.S. courts, yet continue to  
 2 operate. *See, e.g., Elsevier Inc. v. Sci-Hub*, 2015 WL 6657363, at \*3, \*5 (S.D.N.Y. Oct. 30, 2015);  
 3 *Cengage Learning, Inc. v. Library Genesis*, 23-cv-8136, Dkt. 36 (S.D.N.Y. Sept. 24, 2024).

4 **Third**, as the Second Circuit “cautioned” in *Fox News Network, LLC v. Tveyes, Inc., Google*  
 5 *Books* “test[ed] the boundaries of fair use.” 883 F.3d 169, 174 (2d Cir. 2018) (quoting *Google*  
 6 *Books*, 804 F.3d at 206); *see id.* (finding use transformative but nevertheless rejecting fair use  
 7 defense). And nothing in *Google Books* sanctions Anthropic’s piracy.

8 **Fourth**, the only analog in this case to book scanning in *Google Books* is not Anthropic’s  
 9 piracy but, obviously, Anthropic’s books scanning project. But even Anthropic’s books scanning  
 10 project exceeds the “boundaries” of *Google Books*, 804 F.3d at 206. After Anthropic stopped using  
 11 the pirated datasets “for legal reasons,” Pls. MSJ Opp. Ex. 19, Anthropic began its books scanning  
 12 project. While in *Google Books*, the scanned books were subject to protections for copyright holders  
 13 and were scanned to provide search functionality, Anthropic repeatedly and systematically  
 14 exploited authors’ expressive content. Anthropic scanned books for precisely their expressive  
 15 (rather than functional) qualities. *See* Pls. MSJ Opp. at 8-9, 16-19; MSJ. Opp. Ex. 3 (internal memo  
 16 calling for training material with “good writing,” the “kind of content an editor would approve of,”  
 17 because it “teaches” the LLM to “write well, rather than low quality internet speak”); Dkt. 119-5  
 18 (Kaplan Decl. ISO MSJ) ¶¶ 36, 47 (noting training process “teaches” relationship between words  
 19 in training data, that Anthropic seeks “vast amounts” of “diverse” books to optimize model  
 20 performance, and that books are useful for “long context training”). But, regardless of this Court’s  
 21 resolution of the training issue, Anthropic’s piracy finds no predecessor in the cabined, lawful, and  
 22 contractually-governed digitization of lawfully-acquired physical books at issue in *Google Books*.

23 \* \* \*

24 *Google Books* only underscores how far afield Anthropic’s piracy is from fair use. The  
 25 libraries participating in the Google Books Project spent tens of millions of dollars purchasing  
 26 lawful copies of books, which were then lent to Google. Anthropic, by contrast, downloaded  
 27 millions of books from known criminal enterprises. Decades of case law—*e.g. A&M Records v.*  
 28 *Napster*, 239 F.3d 1004 (9th Cir. 2001)—confirms this is an infringing and manifestly unfair use.

1  
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Respectfully submitted,

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