UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENAI, INC., COPYRIGHT INFRINGEMENT LITIGATION This Document Relates To: Case No. 1:23-cv-08292 Case No. 1:25-cv-04315 Case No. 1:23-cv-11195	25-md-3143 (SHS) (OTW) Hon. Sidney H. Stein Hon. Ona T. Wang

MEMORANDUM OF KEVIN KELLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to the Court's August 7, 2026, Order regarding amicus briefs, ECF 1663, Kevin Kelly respectfully moves for leave to file the accompanying brief in support of Defendants OpenAI and Microsoft.

Interests of Proposed Amicus. Kevin Kelly is a writer and thought leader in the use of AI and technology in the literary field. He is a *New York Times* bestselling author, futurist, and photographer who writes fiction and nonfiction about the future of technology.[1] He is also the co-founder and founding executive editor of *Wired*, a leading technology magazine. He writes on AI, including its development and applications. As Mr. Kelly has explained, an AI model can be understood as an entirely new medium that

[1] *See, e.g.*, Kevin Kelly, *The Inevitable: Understanding the 12 Technological Forces That Will Shape Our Future* (2017); Kevin Kelly, *The Silver Cord* (2015); Kevin Kelly, *Why Are LLMs Smart?*, KK (June 22, 2026), https://perma.cc/A3YH-SXNL.

offers authors the capability to create new texts, ideas, and reason. *See* Kevin Kelly, *Latent Space as a New Medium*, KK (July 13, 2026), https://perma.cc/6KNK-8WAP; Kevin Kelly, *Arguments in Favor of AI Fair Use*, KK (Sept. 7, 2026), https://perma.cc/R2LG-39RE.

Based on these lifelong pursuits, the protections afforded to copyright owners are important to Mr. Kelly. Equally important is preserving fair use of copyrighted materials and the growth of transformative technologies. Otherwise, copyright will stifle the very creativity, innovation, and spread of knowledge it exists to encourage. Mr. Kelly's views are based on his decades of research and writing on AI, technology, and related topics.

Proposed Amicus Offers the Court a Unique Perspective. This Court has explained that an "*amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide." Order, ECF 440 (Aug. 7, 2025) (quoting *In re Terrorist Attacks on Sept. 11, 2001*, No. 03-md-1570, 2022 WL 17326181, at *2 (S.D.N.Y. Nov. 29, 2022)).

Mr. Kelly provides the unique perspective of an author who has written using both traditional methods and with the help of generative AI models to augment and enrich the writing processes. He also has written on the effects of emerging technologies on society, including AI. *See, e.g.*, Kelly, *The Inevitable: Understanding the 12 Technological Forces That Will Shape Our Future, supra note 1*. In other words, Mr. Kelly, as an author, has first-hand experience as to the transformative nature, effects, and benefits of AI models for writers and creators—key issues in the parties' motions for summary judgment. *See,*

e.g., ECF 1983. He thus offers a unique perspective on this issue that neither Plaintiff authors nor Defendants provide in their motions.

The proposed brief attached as Exhibit A complies with the Court's August 7, 2026, Order, ECF 1663, and Local Civil Rule 7.1(c) because the brief contains 4,013 words. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person other than Amicus and his counsel contributed money intended to fund its preparation or submission.

* * *

Mr. Kelly respectfully requests the Court grant his motion for leave to file the proposed brief attached as Exhibit A to this motion.

Dated: October 16, 2026

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CERTIFICATE OF COMPLIANCE

I, Serena Orloff, an attorney duly admitted to practice law in this Court, hereby certify that this Memorandum of Law complies with the word count limit because it contains 548 words, excluding the parts exempted by Local Civil Rule 7.1(c). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this Memorandum.

Dated: October 16, 2026

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