Lex Lumina LLP

Rhett O. Millsaps II | rhett@lex-lumina.com | 646.535.1137

October 29, 2026

VIA ECF

The Honorable Sidney H. Stein
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re: OpenAI, Inc. Copyright Infringement Litig.*, No. 25-md-3143 (SHS) (OTW); Motion for Leave to File Amicus Curiae Brief by Wikimedia Foundation

Dear Judge Stein:

We represent Wikimedia Foundation, Inc. ("Wikimedia"). Pursuant to Local Civil Rule 7.1(e) and the Court's August 7, 2026, Order (ECF No. 1663), as modified by the Court's September 24, 2026, Order (ECF No. 2049), Wikimedia respectfully requests leave to file the [P]roposed Amicus Curiae Brief of Wikimedia Foundation in Support of Neither Party, attached hereto as Exhibit A, in the above-captioned matter.

The proposed brief contains 5,831 words, within the 6,000-word limit set by the Court's Order at ECF No. 1663. No party or party's counsel authored the proposed brief in whole or in part, and no person other than Wikimedia contributed any money to fund its preparation or submission. Because the Court's Order at ECF No. 1663 directs prospective amici to seek leave by motion, Wikimedia has not sought the parties' consent.

I. Interests of Wikimedia

Wikimedia is a non-profit charitable foundation based in San Francisco, California, with the mission is to empower and engage people around the world to build free, reliable knowledge and to disseminate it globally under a free license.[1] Wikimedia accomplishes its mission primarily by hosting thirteen free-knowledge platforms known as the Wikimedia Projects.[2] The Wikimedia Projects host factual and educational content that is created, edited, and moderated by over 260,000 volunteer contributors per month worldwide.[3] Wikipedia is Wikimedia's most well-known platform, receiving billions of views every month and serving as a free online encyclopedia that allows human users from

[1] *Wikimedia Foundation Mission*, Wikimedia Foundation, https://wikimediafoundation.org/who-we-are/mission/ (last visited Oct. 28, 2026) and Wikimedia Foundation, https://wikimediafoundation.org/ (last visited Oct. 28, 2026).
[2] The Wikimedia Projects include Wikipedia, Wikibooks, Wiktionary, Wikiquote, Wikimedia Commons, Wikisource, Wikiversity, Wikispecies, Wikidata, Wikifunctions, MediaWiki, Meta-Wiki, and Wikivoyage. *See Wikimedia Projects,* Wikimedia Foundation, https://wikimediafoundation.org/what-we-do/wikimedia-projects/ (last visited Oct. 28. 2026).
[3] As of January 2025.

all around the world collaboratively to write and edit content.[4] Wikimedia also develops and improves free software, called MediaWiki, that is used to host its projects and by many third parties for hosting their own wikis around the world.[5] Wikimedia has developed tools based on machine learning that support this software and the work on our projects for many years.[6]

Users contributing to the Wikimedia Projects agree to license what they write under a Creative Commons CC BY-SA license.[7] The CC BY-SA requirements – attribution and ShareAlike – aim to ensure that, respectively, people get credit for their contributions and that the contributions remain free as others build on them. When AI-based chatbots use Wikimedia-hosted content without also abiding by the CC licensing terms, humans are directed away and thus disincentivized from engaging with free-knowledge projects. Because copyright law undergirds the terms of these licenses, the Court's ruling in this case will affect how open knowledge contribution amongst humans is encouraged and disseminated in the age of AI.

Moreover, the Wikimedia Projects' body of freely licensed, reliable knowledge is one of the most critical sources of data for all artificial intelligence and machine learning training. The non-human traffic created by scraping and crawling strains Wikimedia servers, pushing Wikimedia to put up technical safeguards that are often bypassed by bad actors. Both the strain on servers and the increase in technical safeguards threaten the accessibility of Wikimedia sites to human readers. The Court's interpretation of copyright law in this case could shift the incentives behind how openly web publishers can host content for both human readership and technological innovation.

Wikimedia therefore has unique information and perspective concerning the importance of this Court's applying separate fair-use analyses to the distinctive uses of copied works throughout the development and operation of an LLM-based chatbot like ChatGPT. The positions taken in this case by the parties propose overbroad applications of the fair-use analysis. Wikimedia's proposed amicus brief seeks to strike a balance between the two parties' arguments and presents to the Court a more nuanced fair-use outcome that supports the open-knowledge movement, the Wikimedia projects, and the widely used Creative Commons public licenses they depend on.

II. Argument

A district court has broad discretion to decide whether to accept an amicus curiae brief. *See, e.g.*, *City of New York v. U.S.*, 971 F. Supp. 789, 799 n.3 (S.D.N.Y. 1997); *U.S. v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992). For example, the Court has granted leave to file an amicus brief where the amicus "has unique information or perspective that can help the court" and its proposed brief would "help ensure that there has been a complete and plenary presentation of difficult issues so that the court may reach a proper decision." *C&A Carbone, Inc. v. Cty. Of Rockland*, No. 08-cv-6459-ER, 2014 WL 1202699, at *4 (S.D.N.Y. Mar. 24, 2014).

---

[4] *Wikipedia: About*, Wikipedia, https://en.wikipedia.org/wiki/Wikipedia:About (last visited Oct. 28, 2026).
[5] MediaWiki, https://www.mediawiki.org/wiki/MediaWiki (last visited Oct. 28, 2026)
[6] *Machine Learning*, MediaWiki, https://www.mediawiki.org/wiki/Machine_Learning (last visited Oct. 28, 2026)
[7] See *Wikimedia Foundation Terms of Use,* Wikimedia Foundation https://foundation.wikimedia.org/wiki/Policy:Terms_of_Use#7._Licensing_of_Content (last visited Oct. 28, 2026), and *Attribution-ShareAlike 4.0 International*, Creative Commons, https://creativecommons.org/licenses/by-sa/4.0/deed.en (last visited Oct. 28, 2026).

Wikimedia's proposed amicus brief will assist the Court in three ways. First, Wikimedia—the leading online encyclopedia of freely licensed content—explains to the Court how the Court's ruling on fair use in this case will impact the continuity of the open-knowledge movement, undergirded by the Creative Commons public copyright licenses. *See Andersen v. Leavitt*, No. 03-CV-6115 DRHARL, 2007 WL 2343672, at *3 (E.D.N.Y. Aug. 13, 2007) (finding an amicus brief is useful when it "can bring to this Court a fuller understanding of the broad implications and potential adverse impact [the Court's] decision" can have).

Second, Wikimedia's technological expertise as a long-time developer of its own machine-learning tools provides the Court with an approach to copyright fair use that is conducive both to the creation and dissemination of information and to AI innovation. This is a different and more balanced approach to fair use than presented by either party in this case. *See Jamaica Hosp. Med. Ctr., Inc. v. United Health Grp., Inc.*, 584 F. Supp. 2d 489, 497 (E.D.N.Y. 2008) ("An amicus brief should normally be allowed . . . when an amicus has unique information or perspective that can help the court beyond the help that lawyers for the parties are able to provide.").

Finally, Wikimedia explains how retrieval-augmented generation ("RAG") and similar processes specifically harm websites like Wikipedia by burdening and displacing access to its hosted content. RAG's significance in disturbing the flow of information between human authors and audiences is not explored deeply by either party. *See U.S. v. Yaroshenko*, 86 F. Supp. 3d 289, 290–91 (S.D.N.Y. 2015) (finding that a valid amicus curiae "offers a fresh perspective on an unsettled question of law that the actual parties to the litigation have not fully addressed.")

III. Conclusion

For the foregoing reasons, Wikimedia respectfully requests leave to file the proposed amicus brief attached as Exhibit A.

Respectfully submitted,



Rhett O. Millsaps II

Enclosure

cc: All Counsel of Record (via ECF)