

McKool Smith

Current Edition: Updates on Generative AI Infringement Cases in Media and Entertainment

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Here is our latest review and assessment of major AI-related disputes in the media and entertainment sectors.

Our AI Litigation Tracker is prepared by McKool Smith principal [Avery Williams](#) in collaboration with AI and media expert [Peter Csathy](#) of [Creative Media](#), a leading consulting firm specializing in AI, media, entertainment, and technology. The Tracker is also featured in Peter's weekly newsletter [the brAIn](#).

1. Kadrey et al. v. Meta

Background: This case is similar to the “In re OpenAI ChatGPT Litigation” class action below against OpenAI. In this case, Kadrey, comedian Silverman, and others sued Mark Zuckerberg’s Meta on July 7, 2023 in the U.S. District Court (Northern District of California) for mass infringement - i.e., unlicensed “training” of their generative AI model on millions of copyrighted works, including their own. Not surprisingly, Meta’s defense is “fair use.” The judge assigned is Judge Vince Chhabria.

Much like the class action “In Re OpenAI ChatGPT Litigation” above, and for similar reasons, in November 2023, the Court dismissed the bulk of plaintiffs’ claims against Meta. But much like in the OpenAI case, the Court gave the plaintiffs a chance to amend their complaint to add a more direct link to actual harm (and they filed their amended complaint in December 2023).

Current Status: Meta finally catches a break. In a text-only order from the Court on January 21st, Judge Chhabria rejected plaintiffs’ request to further extend discovery. In the Court’s order granting leave to amend, the Judge originally implied he might be receptive to altering the case schedule to

permit plaintiffs to investigate their new claims. The parties presented their competing case schedules to the Court on January 20th, with Plaintiffs wanting a massive 10 additional custodians, 5 interrogatories, and up to 13 new depositions per side. Meta argued that discovery should remain closed, except for a limited reopening to allow *Meta* to take discovery regarding an agreement between Harper-Collins and an unnamed tech company. Surprisingly, the Court sided with Meta, adopting their proposed case schedule. Plaintiffs will have to work with the evidence they have to prove their new claims.

2. The New York Times v. Microsoft & OpenAI

Background: *This is the most closely watched litigation involving copyright owners and generative AI tech companies.*

On December 27, 2023, *The New York Times* sued Microsoft and OpenAI in the U.S. District Court for the Southern District of New York for copyright infringement and other related claims. *The Times* alleges that the companies used “millions” of its copyrighted articles to train their AI models without its consent. *The Times* claims this has resulted in economic harm by pulling users away from their paywalled content and impacting advertising revenue. The complaint alleges several causes of action, including copyright infringement, unfair competition, and trademark dilution. In its pleadings, *The Times* asserts that Microsoft and OpenAI are building a “market substitute” for its news and further that their AI generates “hallucinations” based on *The Times*’ articles also substantially damage its reputation and brand. *The Times* seeks “billions of dollars of statutory and actual damages.” Microsoft and OpenAI assert the defense of “fair use” - i.e., no license, payment or consent is needed.

On September 13, 2024, the Court granted a motion to consolidate the case with one brought by the *Daily News* and other publications. The judge assigned is Judge Sidney Stein.

Current Status: No major substantive developments this past week. On January 17th, Magistrate Judge Wang granted the 9 pending motions to seal. The same day, the parties in the Newspapers and Authors cases submitted charts detailing the significant number of ongoing discovery disputes. Among many other things, in the Newspaper cases, disputes center around deposition coordination, the use of Microsoft's "AEO" confidentiality designations, and the preservation and inspection of OpenAI's training data and log output data. In the Authors cases, disputes include the plaintiffs' request for source code related to ChatGPT's training, which OpenAI argues is overbroad, and disagreements over deposition protocols and the length of custodial depositions. There are over 20 referenced filings in the charts, which the Court addressed in a conference held on January 22nd. Stay tuned for the Court's decision.

3. In re OpenAI ChatGPT Litigation (*the cases, Paul Tremblay v. OpenAI,*

Inc., Sarah Silverman v. OpenAI, Inc., and Chabon v. OpenAI were consolidated and recaptioned to this new moniker)

Background: Comedian Sarah Silverman and other artists filed this class action lawsuit in the Northern District of California on June 28th, 2023, asserting copyright infringement claims, in addition to unfair competition, negligence, and unjust enrichment. The plaintiffs alleged that OpenAI used their copyrighted written works to train its AI chatbot. In February, the Court dismissed most of the claims against OpenAI, rejecting plaintiffs' argument that the content generated by ChatGPT (i.e., the "output") infringes their copyrighted works because there is no "substantial similarity" on the "output" side of the copyright question (and, therefore, no meaningful harm). But the Court gave the plaintiffs an opportunity to amend their complaint to plead a more direct link of harm (which they later did). In July, the Court dismissed the unfair competition claim. The claim for direct infringement is the only main one that remains. The case is assigned to Judge Araceli Martinez-Olguin.

Current Status: Discovery Disputes Continue. On January 17th, the parties jointly submitted a brief discussing the issue of plaintiffs' request for an order compelling OpenAI's production of the "English Colang Dataset." As of now, it's not exactly clear what the dataset is, or why it is important to the case. The brief is subject to a motion to seal, so we may or may not learn why plaintiffs are seeking this discovery.

On January 15th, Benjamin Mann, co-founder of Anthropic and former OpenAI employee, moved to quash a third-party subpoena plaintiffs served on him. While Mann argued that he has no unique information, plaintiffs claim in their January 22nd response that he is arguably one of the most important witnesses in the case. They cite to redacted allegations that Mann engaged in some sort of illegal activity related to pirated data, which could ultimately undermine OpenAI's fair use argument.

4. Dow Jones & Co, et al v. Perplexity AI

Background: On October 21st, 2024 *The Wall Street Journal* and *The New York Post* sued generative search company Perplexity AI in the U.S. District Court for the Southern District of New York for copyright infringement and other related claims. A new twist in this litigation is the focus on Retrieval Augmented Generation ("RAG") AI. RAG GenAI not only uses an LLM trained on copyrighted material to respond to individual prompts, but also goes out to the web to update itself based on the relevant query. Perplexity even said the quiet part out loud, encouraging its users to "*skip the links*" to the actual sources of the copyrighted content. Based on Perplexity's RAG model, the media plaintiffs allege that Perplexity is infringing on their copyrights at the input and output stage, sometimes reproducing copyrighted content verbatim. Plaintiffs cited their parent company News Corp's recent licensing agreement with OpenAI in explaining that GenAI technology can be developed by legitimate means.

Current Status: Plaintiffs' new complaint due by January 28. On January 3rd, the Court granted

Perplexity's request for a Pre-Motion Conference, in anticipation of its motion to dismiss the First Amended Complaint, or alternatively, transfer to the Northern District of California. The necessity of the pre-motion conference stems from the defendant's arguments regarding jurisdiction, venue, and the validity of the copyright claims, which the plaintiffs contest. The hearing took place January 14th, and the Court ordered the parties to file a jointly proposed schedule by the end of that week. The parties complied, filing their proposed deadlines for the upcoming Second Amended Complaint and Motion to Dismiss. The Court approved on January 21st, ordering plaintiff's new complaint due by January 28th and defendant's motion to dismiss due by February 18th.

5. Raw Story Media & Altnet v. OpenAI

Background: News publishers Raw Story Media and Altnet filed suit against OpenAI and Microsoft on February 28th, 2024 in the Southern District of New York, claiming their articles were used to train the LLM that powers OpenAI's ChatGPT. Rather than claiming copyright infringement, the plaintiffs alleged one cause of action for violating the DMCA (which is a separate provision of the Copyright Act related to Internet content). The plaintiffs claimed that OpenAI removed the CMI from their articles, which they argue is a violation of the DMCA.

Current Status: Raw Story Media argues for one last chance. Raw Story Media submitted its reply in support of its request for leave to file an amended complaint. They assert that the removal of copyright management information (CMI) by OpenAI constitutes copyright infringement, which is a recognized harm under Article III. Additionally, they claim that OpenAI unlawfully profited from this removal, which is analogous to unjust enrichment, a common-law injury. If the Court finds that standing requires dissemination, Raw Story Media requests jurisdictional discovery to determine if OpenAI disseminated their articles. With their earlier complaint dismissed in its entirety for lack of standing, this is Raw Story Media's last chance in this lawsuit.

6. UMG Recordings v. Uncharted Labs (d/b/a Udio)

Background: This action was brought on June 24, 2024, in the Southern District of New York, by a group of major record companies against the company behind Udio, a generative AI service launched in April 2024 by a team of former researchers from Google Deepmind. Much like Suno below, Udio allows users to create digital music files based on text prompts or audio files. And as with the complaint against Suno (see *below*), plaintiffs rely on tests comprising targeted prompts including the characteristics of popular sound recordings — such as the decade of release, the topic, genre, and descriptions of the artist. They allege that using these prompts caused Udio's product to generate music files that strongly resembled copyrighted recordings. The claims are for direct infringement and related causes of action. The judge assigned is Judge Alvin K. Hellerstein.

Current Status: No major substantive developments this past week. As we reported last month, the Special Master was ordered to provide status updates regarding his work with the parties beginning this month. His first report, filed on January 17th, revealed his belief that the parties have been “proceeding cooperatively,” and have reached resolution on many of the previously disputed issues. Since his appointment, the parties have resolved their disagreements as to the ESI protocol, a confidentiality order, and the Source Code protocol. The Special Master indicated he is still assisting the parties on reaching agreement regarding the protocol for examining data used to train the defendant’s AI models. The Court endorsed the Special Master’s report on January 21st, with Judge Hellerstein expressing his gratitude for the Special Master’s accomplishments.

7. Concord Music Group, et al. v. Anthropic

Background: UMG, Concord Music and several other major music companies sued Amazon-backed OpenAI competitor Anthropic on October 18th, 2023 in the U.S. District Court (Middle District of Tennessee). The music companies assert that Anthropic is infringing their music lyric copyrights on a massive scale by scraping the entire web to train its AI, essentially sucking up their copyrighted lyrics into its vortex – all without any licensing, consent or payment. In its response, Anthropic claimed fair use. The case was transferred to the Northern District of California on June 26th, 2024 and closed in Tennessee. The judge assigned is Judge Eumi K. Lee. The parties have not yet had a case management conference.

Current Status: No major substantive developments this past week. As we reported last week, the parties jointly filed a stipulation, which the Court accepted on January 2nd, regarding their ongoing dispute on whether a preliminary injunction should issue. The stipulated order included an agreement that Anthropic will “maintain its already-implemented guardrails” that seek to prevent infringing outputs of copyrighted content in its current AI models and apply the same guardrails to new AI models. Still at issue is whether Anthropic should be forced to refrain from using unauthorized copies of plaintiffs’ lyrics to train future AI models.

The Court held a hearing on December 19th regarding Anthropic’s motion to dismiss. The Court took the motion under submission, so we will update you as soon as Judge Lee issues her opinion.

8. Sarah Andersen v. Stability AI

Background: Visual artists filed this putative class action on January 13th, 2023, alleging direct and induced copyright infringement, DMCA violations, false endorsement and trade dress claims based on the creation and functionality of Stability AI’s Stable Diffusion and DreamStudio, Midjourney Inc.’s generative AI tool, and DeviantArt’s DreamUp. On August 12th, 2024, the Court dismissed many of the claims in the plaintiffs’ first amended complaint, leaving the claims for direct copyright infringement,

trademark, trade dress, and inducement. The assigned judge is Judge William H. Orrick.

Current Status: No major substantive developments this past week. We are still waiting on the May 6, 2025 hearing over disagreements regarding the Second Amended Complaint. The hearing was previously set for December 17, 2024. No word yet on why such a significant delay.

9. UMG Recordings v. Suno

Background: The RIAA on behalf of the major record labels filed their lawsuit in the federal district Court in Massachusetts on June 24th, 2024, for mass copyright infringement and related claims based on alleged training on their copyrighted works. Suno is a generative AI service that allows users to create digital music files based on text prompts. This is the first case brought against an AI service related to sound recordings. In their answer on August 1st, Suno argued that their actions were protected by fair use. The judge assigned is Chief Judge F. Dennis Saylor, IV.

Current Status: No major substantive developments this past week. The parties jointly filed their proposed Protective Order and ESI Protocol on December 6th. This comes after a November 18th hearing, in which the parties presented their positions on the PO and ESI Protocol to the Court. The Court adopted the proposed orders on December 11th.

10. Getty Images v. Midjourney and Stability AI

Background: Getty Images filed this lawsuit against image generator Stability AI on February 2nd, 2023, accusing the company of infringing more than 12 million photographs, their associated captions and metadata, in building and offering Stable Diffusion and DreamStudio. Getty's claims are similar to those in *The New York Times v. Microsoft & OpenAI* case above, but here they are in the context of visual images instead of written articles - i.e., unlicensed scraping by their AI with an intent to compete directly with, and profit from, Getty Images (i.e., market substitution). This case also includes trademark infringement allegations arising from the accused technology's ability to replicate Getty Images' watermarks in the AI outputs. Getty filed its Second Amended Complaint on July 8th, 2024, and the parties are currently engaged in jurisdictional discovery related to defendants' motion to transfer the case to the Northern District of California. The judge assigned is Judge Jennifer L. Hall.

Current Status: Another week of nothing new for Getty. As we reported last month, Getty submitted a letter to the Court on November 25th explaining its frustration with Stability AI's refusal to participate in discovery or participate in a Rule 26(f) conference. In August, Stability AI argued that they were under no obligation to commence fact discovery until the court issued its ruling on jurisdiction. That ruling has still not come, so we can assume Stability is sticking with that argument. Getty requested that the Court order Stability to stop delaying and proceed with the case. It has been over a month, and still no

response from the Court.

11. The Intercept Media v. OpenAI

Background: The Intercept Media, a news publisher represented by the same firm that represents the plaintiffs in the *Raw Story Media* litigation below, filed suit against OpenAI and Microsoft on February 28th, 2024 in the Southern District of New York, the same day Raw Story Media commenced their suit. Like the *Raw Story* allegations, The Intercept alleged that their articles were used to train ChatGPT and brought claims for the removal of the copyright management information (“CMI”) from the articles.

Current Status: No major substantive developments this past week. Nothing new since OpenAI filed their answer to The Intercept’s First Amended Complaint on December 6th. OpenAI presented 10 affirmative defenses, including fair use, several equitable doctrines, statute of limitations, lack of mitigation, and failure to state a claim.

12. The Center for Investigative Reporting v. OpenAI

Background: The Center for Investigative Reporting, which produces Mother Jones and Reveal, sued Microsoft and OpenAI for essentially the same claims made in *The New York Times* case above.

Current Status: Motion to consolidate recently granted! Microsoft and OpenAI asked the court to consolidate this case with *NY Times v. Microsoft & OpenAI*, and — and, as indicated above, the Magistrate granted the motion to consolidate on October 30th (refer to the activity discussed above).

13. The Authors Guild, et al. v. OpenAI

Case Background. The Authors Guild and seventeen individual authors (including John Grisham, George R.R. Martin and Nicholas A. Basbanes) filed a putative class-action suit against OpenAI on September 19th, 2023. The plaintiffs claimed that OpenAI trained its ChatGPT LLM by copying their copyrighted works. The complaint brings claims under 17 U.S.C. §501 for direct, vicarious, and contributory copyright infringement. The case is assigned to Judge Ona T. Wang.

Current Status: No major substantive developments this week. We are still waiting for the court’s decision on discovery consolidation. The case seems to be on ice until then.

14. INTERNATIONAL CASE TRACKED: Canadian News Media Companies v. OpenAI

In a case similar to *The New York Times v. OpenAI*, Canada’s major news organizations sued OpenAI

for copyright infringement on November 28th. Filed in Ontario's Superior Court of Justice, the news organizations are seeking billions of dollars in compensation for the "ongoing, deliberate, and unauthorized misappropriation of the Plaintiffs' valuable news media works." This is the first case of its kind in Canada, and presents a new front against OpenAI, after one was opened in Germany in *Gema v. OpenAI* as reported last week.

See <https://litigate.com/assets/uploads/Canadian-News-Media-Companies-v-OpenAI.pdf>

15. INTERNATIONAL CASE TRACKED: GEMA v. OpenAI

GEMA, a German association representing more than 95,000 composers, lyricists and publishers, filed suit in German court accusing OpenAI of reproducing their members' song lyrics without a license. Gema claims this is a test case to clarify the law in Germany, and that it aims to establish a license model that would compensate music creators whose works are used to train AI models. The details of German copyright law are a bit beyond the scope of this blog, but we did think it noteworthy that the litigation trend is catching on worldwide. While we don't plan to track this case closely, we will watch for any momentous developments.