Class-Wide Relief: The Sleeping Bear of AI Litigation Is Starting to Wake Up

By Anna B. Naydonov, Mark Davies and Jules Lee

Probably no intellectual property (IP) topic in the last several years has gotten more attention than the litigation over the use of the claimed copyrighted content in training artificial intelligence (AI) models. The issue of whether fair use applies to save the day for AI developers is rightfully deemed critical, if not existential, for AI innovation. But whether class relief – and the astronomical damages that may come with it – is available in these cases is a question of no less significance.

Class actions have historically been rare in IP litigation – both in terms of parties seeking motions to certify and even more so when it comes to courts granting certification. The individualized inquiry into issues like validity, substantial or confusing similarity, and damages made Rule 23(a)'s typicality, commonality, and adequacy of representation requirements as well as any of 23(b)'s elements difficult to meet.

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The arrival of AI large language models (LLMs), however, has changed the game. It created a sudden spike in the number of IP lawsuits filed on a putative class action basis. As of June 30, 2025, around 47 copyright lawsuits have been filed against AI companies in the United States.[1] Some of the most closely-watched cases including *Guild v. Open AI*, *In re Google Generative AI Copyright Litig.*, and *Bartz v. Anthropic PBC* involve critical – often multi-billion-dollar – questions of whether class certification is proper in copyright or trademark cases alleging infringement during LLM training. In what may become a bellwether case, the court in *Bartz* recently certified a limited class as to certain pirated books used for LLM training.

Should the courts deviate from their historic skepticism over class action relief in IP cases? And should the Rule 23 floodgates open up to cases involving LLM training or infringing model output? The legal issues are complex and nuanced. But given that class-wide relief ups the ante significantly in terms of exposure (potentially to the tune of billions of dollars), the question of potential effects on U.S. innovation is no less difficult. This article explores the history of class certification in IP cases and the current landscape.

THE HISTORY: TRADITIONAL CHALLENGES IN CERTIFYING COPYRIGHT AND TRADEMARK CLASS-ACTION CASES

Only under 30 IP-focused class actions were filed since 2003, by our count, and less than half involved trademark and copyright claims. In the few IP cases where class certification was attempted (we counted around ten cases since 2003 in the United States), certification almost always failed. The issues of copyright ownership, validity, and similarities with the asserted copyrights/trademarks were overwhelmed with individualized differences, unique to each plaintiff. Combining all claims into one class action would thus have made resolution more difficult on a class-wide basis – the exact opposite of a class action's intended purpose.

Take *Football Ass'n Premier League v. Youtube, Inc.* as an example, where the court denied class certification deeming the case a "Frankenstein monster posing as a class action."[2] There, Premier League attempted a putative class consisting of "every person and entity in the world who own infringed copyrighted works, who have or will register them with the U.S. Copyright Office as required, whose works fall into either of two categories: they

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were the subject of prior infringement which was blocked by YouTube after notice, but suffered additional infringement through subsequent uploads (the "repeat infringement class"), or are musical compositions which defendants tracked, monetized or identified and allowed to be used without proper authorization (the "music publisher class")."[3] A mouthful of a definition.

The court recognized that "copyright claims are poor candidates for class-action treatment."[4] Their similarities are, almost always, superficial only. Sure, the legal elements and analyses were similar: proving copyright ownership, whether the accused work was published on the YouTube platform, and deciding whether the platform had knowledge and failed to remove the video. But "each of [these issues] must be resolved upon facts which are particular to that single claim of infringement, and separate from all the other claims."[5] For example, the way in which the copyrighted material was used, whether that accused content was shielded by fair use, and the specific facts around how YouTube responded to the takedown notice were all fact-specific inquiries and could not be merged into one proceeding.[6] Commonality and typicality thus failed. And the named plaintiffs could not serve as adequate representatives of the entire class based on these differences, failing to meet all Rule 23(a) requirements.

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For similar reasons, the court found 23(b) elements were not met either.[7] Because the "questions affecting only individual members" predominate over common questions, a class action is not superior, but inferior to other methods of adjudication.[8] The court concluded a class action would "not simplify or unify the process of their resolution but multiply its difficulties over the normal one-by-one adjudications of copyright cases."[9]

Vulcan Golf, LLC. v. Google Inc. is another notable case which reinforces these points but for trademark claims. There, the plaintiff trademark owners sued defendant Internet companies for contributory and vicarious trademark infringement and unjust enrichment over the alleged registration and trafficking of domain names that were confusingly similar to the plaintiffs' marks.

Although the four pillars of 23(a) were satisfied here, the plaintiffs still fell short of each 23(b) element.[10] Nixing 23(b)(3) claims, the court noted "the class members cannot be treated alike because of the requisite individual inquiries regarding ownership, distinctiveness and the effect of the affirmative defenses that are inherent in a trademark-related action."[11]

Rule 23(b)(2) class also failed since injunctive relief was not the primary objective. Google's complaint procedures and Uniform Domain Name Dispute Resolution Policy (UDRP) proceedings were available for swift resolutions against the infringing domain names. The court reasoned that in cases where other more efficient means of stopping the complained-of-conduct existed, it was difficult to find the plaintiffs' main objective to have been injunctive relief.[12]

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Lastly, *Vulcan* held that the individual fact-specific nature of IP claims also barred a Rule 23(b)(1) class because litigating claims one-by-one does not create incompatible standards of conduct.[13] Although individual claims may certainly create varying rulings, they lack stare decisis effect. These varying results are inevitable based on the "varying factual scenarios" and does not create "incompatible standards of conduct" for defendants as each infringement claim is separate from the other.[14]

PAST OUTLIERS: VICTORIOUS IP CLASS CERTIFICATION CASES

As shown by *Premier League* and *Vulcan Golf*, class certification for IP cases proved to be extremely difficult. Bypassing these barriers generally required a specific type of fact pattern where the proof of

infringement was more-or-less uniform across all plaintiff IP holders.

Rare cases of victorious class certification include *Flo & Eddie, Inc. v. Sirius CM Radio, Inc.* and *In re Napster.* In *Flo & Eddie*, Plaintiffs owned the rights to sound recordings which Sirius XM Radio performed without obtaining licenses for or paying royalties.[15]

Since the wrongful conduct was the unauthorized playing of certain pre-1972 recordings, Sirius XM's actions were "not unique to Flo & Eddie" and consistent across the board. The court found that the Rule 23(a) requirements were met where uniform conduct caused uniform harm. The copyright class was thus certified given the "factual and legal analytical parallels among class members" who "argue[d] that Sirius XM engaged in the same conduct against them."[16]

The court's finding of core uniform facts also helped successful 23(b)(3) certification. Despite there being individual issues of record ownership, authorization, and damages, the court deemed each component to entail relatively streamlined inquiries that would not predominate over the common controlling issues.

Specifically, the court held that the ownership verification procedures would be largely administrative and miniscule compared to the nearly identical legal issues.[17] Because Sirius XM already admitted to not seeking authorization of performed recordings, the authorization inquiry was also deemed peripheral, if not unnecessary.[18] Damages were expected to be streamlined through a mechanical formula eradicating the need for factual investigation beyond reviewing Sirius XM's Records.[19]

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The court found that the superiority prong was also met because "precluding the class mechanism [from the pre-1972 recordings' owners] would chill vindication of rights."[21] Given the costs of litigating against Sirius XM, "it would be inefficient for recording owners, Sirius XM, and the courts to litigate these similar factual and legal circumstances a thousand times separately."[22] Thus, an IP-23(b)(3) class was certified despite some individual elements being unique for each claim.

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Ten years prior, a similar class was certified in *In re Napster* where a peer-to-peer file-sharing service was sued for direct copyright infringement committed by its users, giving rise to contributory and vicarious infringement claims against Napster.[23] Similar to *Flo & Eddie*, the court found that individual ownership, registration, and damages inquiries did not predominate because all claims were premised upon the uniform act of uploading or downloading copyrighted work(s) by Napster users.[24]

THE RISE IN IP CLASS ACTION CASES AGAINST AI DEVELOPERS

Training AI models on third-party copyrighted content has recently marked the rise of IP cases brought on a class-wide basis.

Proposed class definitions so far have encompassed copyright holders in the United States whose registered works were used during a specified time period to "train" defendants' LLMs.

Although the facts varied for each complaint, the crux of the class allegations hinged on the defendants' training process allegedly infringing on the copyright holders' rights in a uniform manner. For example, according to the Amended Complaint in *Guild v. Open AI*, training requires inputting large numbers of parameters in the model and then supplying the LLM with large amounts of text for it to ingest.[25] The Authors Guild alleges that "training" involves "copying and ingesting expression" and thus constitutes reproducing copyrighted content without the authors' consent.[26]

Notably, not all proposed class definitions have sailed through. *In Re Google Generative AI Copyright*

Litigation, the class allegations were stricken because of an improper fail–safe class definition. Specifically, the proposed definition included only owners of "valid" copyright registration(s).[27] The court held it had to first make a legal ruling deciding the validity of each plaintiff's copyright in order to determine their class membership.[28] But Judge Lee granted leave to amend, paving the way for the plaintiffs' proposed modifications.[29]

BREAKING DOWN THE FIRST SUCCESSFUL AI/IP CLASS CERTIFICATION IN *BARTZ V. ANTHROPIC PBC*

So far, only one case involving training an AI model on copyrighted content has successfully certified a partial class. In *Bartz*, Judge Alsup certified a Rule 23(b)(3) class for the authors whose works were accessed through LibGen & PiLiMi and thus allegedly pirated.[30]

Plaintiffs' arguments in favor of certifying a class were, as one would suspect, strategically simplistic: "Because Anthropic acquired books with common methods (downloading), used books in a common manner (LLM training), and needed books for a common reason (their expressive content), its conduct infringed all of the copyrights owned by members of each Class, or none."[31]

Citing cases like *Flo & Eddie* where predominance was found for 23(b)(3) classes even when individualized inquiries existed, the plaintiffs claimed that ownership may be proven through registration records from the Copyright Office. And infringement may be assessed using common evidence.[32] Lastly, a class action would be a superior method of resolving the disputes, pressing a public-policy argument that few class members could afford to bring "an expensive copyright case against a well–funded artificial intelligence company with extensive litigation resources" especially when the damages available under the Copyright Act would be "insufficient to compensate the average rights holder for the time and cost required to bring an action against a multi–billion dollar corporation."[33]

Plaintiffs also allege that 23(b)(2) class requirements would be met because injunctive relief through a successful copyright claim would effectively preclude Anthropic from infringing on all the plaintiffs' copyrighted works.[34] In contrast to *Vulcan Golf*, processes equivalent to the UDRP proceedings or Google takedown complaints were not yet available here. Therefore, unlike traditional putative IP classes, the focus of the litigation is more likely injunctive relief as opposed to monetary damages.

ANTHROPIC'S OPPOSITION TO CLASS CERTIFICATION

For its part, Anthropic disputed Rule 23(a)'s commonality and adequacy requirements, 23(b)(3)'s predominance and typicality prongs, and it also disputed the 23(b)(2) and 23(c)(4) class allegations.[35]

Highlighting how the plaintiffs amended their complaint early on after discovering assignments or transfers of their copyrights, Anthropic argues that "the prospect of this kind of fact-specific inquiry playing out up to five million times explains why no court, ever, has certified a copyright class even remotely approaching this scale or complexity."[36] Anthropic also further contrasted the case with *Flo & Eddie* where individual inquiries of ownerships were determined through third-party databases instead of allegedly unreliable copyright registrations.

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Though ultimately unsuccessful, Anthropic attempted novel arguments as to adequacy of representation. Citing to research findings that many authors use Claude as part of their creative processes and that academic authors use AI in their professional work in the same way that Anthropic does, Anthropic insisted that intraclass conflicts were inevitable: "Plaintiffs cannot adequately represent a class of people when a significant number of people in that same class benefit from the very conduct they claim is unlawful."[37] In other words, the widespread use of AI may aid, as opposed to hinder, creative professionals.

COURT'S REASONING FOR GRANTING CLASS CERTIFICATION

Ultimately, Judge Alsup certified a class of copyright owners limited to the "pirated" books from the LibGen and PiLiMi libraries. Why those two libraries? Because, according to the court, sufficient common evidence supported the finding that the class members – i.e., the specific books and rights holders – could be identified in a reliable fashion.[38]

Specifically, the plaintiffs proposed relying on catalogs separately torrented by Anthropic which they adopted to keep track of the copied books.[39] It contained bibliographic metadata including identifying information like the Industry Standard Book Number (IBSN) linked to copyright registrations, Amazon Standard Identification Number (ASIN), and hash value.[40] Through common hashing methods and occasional manual review, book titles and editions can further be identified to pinpoint the specific copied works.[41]

> **The court reached a divergent conclusion on the Books3 class (yet another library where the books were taken for eventual training), denying class certification.**

But the class remains conditional as the burden remains on the plaintiffs to produce "such a per work list."[42] And, according to Anthropic, this is where things get messy in practice, making even this limited class ill-suited for adjudication through a single proceeding.

The court reached a divergent conclusion on the Books3 class (yet another library where the books were taken for eventual training), denying class certification. Because a separate book catalog was lacking in this instance, the metadata available for Books3 was much more limited and intrinsic to the books' filenames (like title and author), making works and their ownership much less discernible.[43]

Next, the court tackled the issue of proving copyright ownership on a class-wide basis. Because the class is limited to books for which an ISBN or ASIN exists, Judge Alsup reasoned, the works could eventually be reliably matched with copyright registrations.[44]

Notably, the class encompassed both legal and beneficial owners. Authors (or their employers) start out owning the legal title to the entire copyright but may become beneficial owners upon transferring legal title or exclusive reproduction rights to the copyright in exchange for royalties.[45] To recover, the claimant must submit a claim under oath stating that it is the owner of the copyright interest infringed (stating the title, author, publisher and ISBN and/or ASIN for the claimed work) and serve notice to the publisher or any other stakeholder to permit them to contest the claim.[46]

Although Anthropic emphasizes complications created by varying ownership structures, the court doubted that such disputes will arise between claimants for the same work because authors and their publishers must maintain ongoing business relationships, pushing them to work out whatever differences they have.[47] Whether this is how things will actually play out is a separate matter.

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Cognizant of the need to come up with a class-wide methodology for calculating damages, the court limited the class further to works that were registered "prior to infringement or within three months of first publication."[48] This limitation means the plaintiffs will be entitled to elect statutory damages – a highly streamlined process as contrasted with proving actual damages.[49] If a class member believes her actual damages will surpass the statutory ones, she can intervene to prove it or simply opt out.[50]

To determine a statutory award, a jury must first make findings as to the infringer's mental state.[51] Here, the court was convinced that Anthropic's mental state was consistent across pirated works.[52]

Judge Alsup also noted that an AI developer would not have been able to negotiate individual deals to acquire books. The AI companies who have purchased books would have done so on either a blanket price, tiered price, or mass-market price.[53] Therefore, the resulting price to be applied to each book may also be solved in one stroke.

Judge Alsup drew a close parallel between *Bartz* and *In re Napster*, quoting that the "shared factual predicate" of claims arising from uniform uploads and downloads of copyrighted works "gives rise to a host of common legal issues."[54] The shared factual predicates of amassing works for AI-training control over the individual inquiries which remain manageable; therefore, "common issues and evidence heavily *predominate*."[55] The court further accepted the plaintiffs' arguments for superiority doubting that individual claims will be litigated without class certification.[56]

WHAT'S NEXT?

Rule 23(f) allows interlocutory appeals from an order granting or denying class certification.[57] And by the time you are reading this article, an appeal may be well underway.

The appellate precedent in IP class actions is even more sparse than substantive lower-court orders on class certification. So, the territory would truly be uncharted. In *Flo & Eddie*, discussed above, Sirius XM attempted an appeal, but the U.S. Court of Appeals for the Ninth Circuit ultimately denied the Rule 23(f) petition and its subsequent motion for reconsideration en banc. But given the prominence and importance of AI-related issues, the Ninth Circuit (or another circuit in a future case) may be willing to take on the issue.

AND MORE ON THE CRITICAL QUESTION OF HARM

The recent *Bartz* decision paved a narrow path – albeit one bound to be challenged on appeal – to certify a "*Napster* style"[58] class. The court was careful to make the ruling as confined as its class definition, ensuring that all plaintiffs, who chose not to opt out, may be afforded uniform statutory damages relief. But even then, Anthropic's opposition to class certification was adamant about how statutory damages may not be assessed on a class-wide basis.[59]

Other types of harm including wider market effects may be even more difficult to prove, especially on a class-wide basis. Take, for example, the recent *Kadrey* decision, where the court chastised plaintiffs' counsel for what the court saw as a failure to prove harm.[60]

Cognizant of these challenges, the plaintiffs are continuously evolving their case theories. For example, the most recent class action complaint *Denial v. OpenAI* banks on antitrust injuries alleging that a conspiracy to restrain trade "affected Plaintiffs' ability to compete in the market . . . [c] ausing significant harm to Plaintiffs and the market as a whole."[61]

And in their amended complaint in *Guild v. Open AI*, the plaintiffs have expended much energy alleging harm from job displacement, market dilution, and increased competition. Plaintiffs clamored that "ChatGPT and the LLMs underlying it seriously threaten the livelihood of the very authors – including Plaintiffs here, as discussed specifically below – on whose works they were 'trained' without the authors' consent."[62]

> **How we deal with applying existing legal frameworks – including how far we are willing to stretch the bounds of Rule 23 to afford class action relief – will shape this legal, economic, and likely even geo-political future.**

The plaintiffs also cited to some data that is purportedly already available including a Goldman Sachs estimate that generative AI could replace 300 million full-time jobs (a quarter of the labor currently performed in the United States and Europe) and the Authors Guild's most recent earnings study showing loss of income streams to AI for copywriting, journalism, and marketing writing (which has reportedly already cut up to 75% of one member's income).[63] But allegations, relying on third-party studies, of course, are no match for offering a reliable theory that will withstand a *Daubert* challenge as the litigation proceeds.

LOOKING AHEAD

The speed of AI litigation resembles the fast pace of AI development. One minute, the AI developers are ahead winning on fair use. A minute later, copyright holders are ahead successfully certifying their class. Despite this ever-changing landscape, one consistent trend has emerged: judges issuing these decisions appear more ready than ever to discuss and tackle holistic questions pertaining to AI development, effects on the market, and how the law should evolve. Go no further than Judge Chhabria's hypothetical roadmap in *Kadrey* on how

to approach fair-use factor four to secure a winning outcome for hypothetical future plaintiffs.[64] Resonating throughout these opinions are deeply personal views of each of the judges on how this transformational technology should be treated, aided, or controlled.

The courts are correct in that they are dealing with some of the most important legal issues for many generations to come. How we deal with applying existing legal frameworks – including how far we are willing to stretch the bounds of Rule 23 to afford class action relief – will shape this legal, economic, and likely even geo-political future.

Notes

1. Master List of lawsuits v. AI, ChatGPT, OpenAI, Microsoft, Meta, Midjourney & other AI cos. – Chat GPT Is Eating the World (June 30, 2025), available at https://chatgptiseatingtheworld.com/2024/08/27/master-list-of-lawsuits-v-ai-chatgpt-openai-microsoft-meta-midjourney-other-ai-cos/.
2. Football Ass'n Premier League v. Youtube, Inc., 297 F.R.D. 64, 65 (S.D.N.Y. 2013) (quoting Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 572 (2d Cir. 1968)).
3. Football Ass'n Premier League, 297 F.R.D. at 65.
4. Id.
5. Id.
6. Id.
7. "The individual and non-transferrable nature of findings necessary to determine each infringement claim" renders 23(b)(1) and (2) inapplicable. Id. at 67.
8. Id.
9. Id. at 66.
10. Vulcan Golf, LLC v. Google Inc., 254 F.R.D. 521, 534 (N.D. Ill. 2008). See also Andrews v. Chevy Chase Bank, 545 F.3d 570, 577 (7th Cir. 2008) ("If the class certification only serves to give rise to hundreds or thousands of individual proceedings requiring individually tailored remedies, it is hard to see how common issues predominate or how a class action would be the superior means to adjudicate the claims.").
11. Vulcan Golf, LLC, 254 F.R.D. at 537.
12. Plaintiffs refused on grounds that "monetary damages are not available in UDRP proceedings." Id. at 536. See also Chambers v. Time Warner, No. 00 Civ 2839 (JSR), 2003 U.S. Dist. LEXIS 3065, at *23 (S.D.N.Y. Mar. 4, 2003) (IP class actions were barred from 23(b)(2) classes since "plaintiffs have candidly admitted that the importance of monetary relief far outweighs the importance of any injunctive and declaratory relief sought").

13. "Different results do not trap [a defendant] in the inescapable legal quagmire of not being able to comply with one such judgment without violating the terms of another." Vulcan Golf, LLC, 254 F.R.D. at 537 (quoting Walker v. Houston, 341 F. Supp. 1124, 1131 (S.D. Tex. 1971)).
14. Vulcan Golf, LLC, 254 F.R.D. at 537.
15. Flo & Eddie, Inc. v. Sirius XM Radio, Inc., No. 13-5693 PSG (RZx), 2015 U.S. Dist. LEXIS 98656, at *3 (C.D. Cal. May 27, 2015).
16. Id. at *30.
17. Id. at *38.
18. Id. at *44-45.
19. Id. at *52.
20. Id. at *46.
21. Id. at *55.
22. Id.
23. In re Napster, Inc. Copyright Litig., No. C MDL-00-1369 MHP, 2005 WL 1287611, at *1 (N.D. Cal. June 1, 2005).
24. Id. at *7 (citations omitted).
25. Id. at ¶ 62.
26. Id. at ¶¶ 63, 88.
27. In re Google Generative AI Copyright Litig., No. 23-CV-03440-EKL, 2025 WL 1159998, at *3 (N.D. Cal. Apr. 21, 2025).
28. Ord. Granting Mot. to Strike Class Allegations at 4, In re Google Generative AI Copyright Litigation, No. 5:23-CV-03440, (N.D. Cal. Apr. 21, 2025).
29. Id. at 9.
30. Bartz v. Anthropic PBC, No. C 24-05417 WHA, 2025 WL 1993577, at *13 (N.D. Cal. July 17, 2025).
31. Mot. for Class Cert. at 4, Bartz v. Anthropic PBC, No. C 24-05417 WHA (N.D. Cal. Mar. 27, 2025).
32. Id. at 15-16.
33. Id. at 23.
34. Id. at 13.
35. Opp. to Pls.' Mot. for Class Cert. at 10, Bartz v. Anthropic PBC, No. C 24-05417 WHA (N.D. Cal. Apr. 17, 2025).
36. Id. at 1.
37. Id. at 24.
38. Bartz v. Anthropic PBC, No. C 24-05417 WHA, 2025 U.S. Dist. LEXIS 136877, at *20.
39. Id. at 16.
40. Id. at 4.
41. Id. at 21.
42. Id. at 17-18.
43. Id. at 21.
44. Id. at 22.
45. Id. at 6.
46. Id. at 25.
47. Id.

48. Id. at 23.
49. 17 U.S.C. §§ 412, 504(c)(1).
50. Bartz v. Anthropic PBC, No. C 24-05417 WHA, 2025 U.S. Dist. LEXIS 136877, at *24.
51. See § 504(c)(2) (citations omitted).
52. Bartz v. Anthropic PBC, No. C 24-05417 WHA, 2025 U.S. Dist. LEXIS 136877, at *24.
53. Id.
54. In re Napster, Inc. Copyright Litig., No. C MDL-00-1369 MHP, 2005 WL 1287611, at *7 (citations omitted).
55. Bartz v. Anthropic PBC, No. C 24-05417 WHA, 2025 U.S. Dist. LEXIS 136877, at *27.
56. Id. at *29.
57. Fed. R. Civ. P. 23(f).

58. Bartz v. Anthropic PBC, No. C 24-05417 WHA, 2025 U.S. Dist. LEXIS 136877, at *15.
59. Opp. to Pls.' Mot. for Class Cert. at 22, Bartz v. Anthropic PBC, No. C 24-05417 WHA (N.D. Cal. Apr. 17, 2025) (citations omitted).
60. Kadrey v. Meta Platforms, Inc., 2025 U.S. Dist. LEXIS 121064, *76-77 (Northern Dist. Cal. June 25, 2025).
61. Compl. ¶¶ 35-36, Denial v. OpenAI, Inc., No. 3:25-cv-05495 (N.D. Cal. June 30, 2025).
62. Am. Compl. ¶ 120, Authors Guild v. OpenAI Inc., No. 1:23cv8292 (S.D.N.Y. Dec. 5, 2023).
63. Id. at ¶¶ 121-124.
64. Kadrey, 2025 U.S. Dist. LEXIS 121064 at *76-77.

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