UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,

Plaintiff,

v. **Civil Action No. 25-cv-02735-ACR**

DONALD TRUMP, et al.,

Defendants.

APPENDIX VIII: ESSENTIAL PURPOSE FAILURE IN AI PLATFORM TERMS OF SERVICE

POLICY CONTRADICTIONS OF USER OWNERSHIP RIGHTS RENDERING ENTIRE AGREEMENTS VOID UNDER CONTRACT LAW

I. LEGAL FRAMEWORK AND STANDARDS

1. Under established contract law, when multiple provisions contradict the fundamental consideration that forms the basis of contractual relationship, courts may void the entire contract rather than merely severing problematic clauses under the "failure of essential purpose" doctrine.

2. The essential purpose doctrine applies when the primary benefit promised to users becomes meaningless through pervasive contradictory provisions that render the consideration illusory under UCC § 2-719 and common law principles including *Razor v. Hyundai Motor America*, 222 Ill. 2d 75 (2006).

3. Under the illusory promise doctrine, if the primary user benefit becomes meaningless due to contradictory terms allowing unlimited corporate control, the user's consideration becomes illusory, making the entire contract unenforceable per *Matteson v. Ryder System, Inc.*, 99 F.3d 108 (3rd Cir. 1996).

4. Unconscionability analysis under § 2-302 applies when contract terms create unfair outcomes combined with adhesion contract characteristics where users cannot negotiate terms.

II. ANTHROPIC CONSUMER TERMS OF SERVICE ANALYSIS

A. Primary User Right Identification

5. Anthropic's Consumer Terms of Service, Section 4, establishes the sole meaningful user benefit: "As between you and Anthropic, and to the extent permitted by applicable

law, you retain any right, title, and interest that you have in the Inputs you submit. Subject to your compliance with our Terms, we assign to you all of our right, title, and interest—if any—in Outputs."

6. This input/output ownership constitutes the fundamental consideration users receive for: (a) providing personal data and intellectual labor; (b) accepting comprehensive liability limitations and warranty disclaimers; (c) agreeing to indemnification obligations; and (d) waiving various legal remedies.

B. Policy Contradictions Rendering Ownership Illusory

7. **Training Data Appropriation Contradiction**: Section 4 states "We may use Materials to provide, maintain, and improve the Services and to develop other products and services, including training our models, unless you opt out of training through your account settings. Even if you opt out, we will use Materials for model training when: (1) you provide Feedback to us regarding any Materials, or (2) your Materials are flagged for safety review."

8. This creates legal impossibility where users "own" inputs/outputs but Anthropic claims unlimited commercial use rights, "opt-out" becomes illusory through safety review exception covering sophisticated content, and user-owned materials become corporate training assets without meaningful consent.

9. **Unilateral Data Deletion Authority**: Section 12 states "Upon termination of these Terms, a Subscription, or your access to the Services, we may at our option delete any Materials or other data associated with your Account."

10. True ownership includes right to control and preserve owned property, yet Anthropic's unilateral deletion authority negates fundamental ownership rights where users cannot protect their own "property" from corporate destruction.

11. **Third-Party Content Dilution**: Section 8 states "Third-Party Content may appear in Inputs or Outputs and become part of Materials," creating contradiction where user "ownership" becomes compromised by undisclosed third-party content insertion, users cannot determine what portions of "their" outputs they actually own, and impossible compliance with ownership warranties when content source is unknown.

12. **Government Reporting Override**: Section 12 provides "We reserve the right, at our sole discretion, to report information from or about you, including but not limited to Inputs, Outputs, or Actions to law enforcement."

13. Fundamental ownership includes right to control disclosure, yet corporate "sole discretion" override eliminates user control over owned materials with no judicial oversight or legal standard required for disclosure of user-owned content.

14. **Content Modification Authority**: Combined Terms and Usage Policy framework grants output ownership to users while creating extensive content restrictions where Anthropic reserves right to "block or modify model outputs when inputs violate our Usage Policy."

15. Users cannot truly "own" outputs that Anthropic can unilaterally modify or block, content ownership becomes contingent on corporate content preferences, and post-generation modification authority negates ownership assignment.

16. **User Indemnification for Corporate Benefit**: Section 11 requires "YOU AGREE TO INDEMNIFY AND HOLD HARMLESS THE ANTHROPIC PARTIES FROM AND AGAINST ANY AND ALL LIABILITIES... ARISING OUT OF OR RELATED TO... THE MATERIALS."

17. This creates contradiction where users must indemnify Anthropic for consequences of materials users supposedly own, true ownership would make Anthropic responsible for their use of user-owned materials, and corporate benefit from user materials combined with user liability for same materials violates fundamental ownership principles.

III. OPENAI TERMS OF SERVICE ANALYSIS

A. Primary User Right Identification

18. OpenAI's Terms of Use "Content" section establishes the fundamental user benefit: "As between you and OpenAI, and to the extent permitted by applicable law, you (a) retain your ownership rights in Input and (b) own the Output. We hereby assign to you all our right, title, and interest, if any, in and to Output."

19. This constitutes the sole meaningful consideration users receive for: (a) providing intellectual labor and creative input; (b) accepting comprehensive liability limitations and warranty disclaimers; (c) agreeing to mandatory arbitration and class action waivers; and (d) waiving jury trial rights and limiting venue options.

B. Policy Contradictions Rendering Ownership Illusory

20. **Unlimited Training Data Appropriation**: OpenAI's Terms state "We may use Content to provide, maintain, develop, and improve our Services, comply with applicable law, enforce our terms and policies, and keep our Services safe."

21. Users "own" content but OpenAI claims unlimited commercial development rights with no meaningful limitations on "improve our Services" encompassing any commercial use, "develop" language authorizing creation of derivative commercial products using user-owned content, and opt-out mechanism creating artificial scarcity of service functionality.

22. **Corporate Domain Authority Override**: Terms provide "If you create an account using an email address owned by an organization... the organization's administrator will be able to control your account, including being able to access Content."

23. Individual users "own" content but organizational administrators gain control rights, user ownership becomes subordinate to corporate administrative access without individual consent required, creating class system where employment status affects ownership rights.

24. **Third-Party Content Contamination**: Terms state "Third Party Services and Third Party Output are subject to their own terms... some parts of our Services, like our browse feature, may include output from those services."

25. Users "own" outputs that may contain undisclosed third-party content, unknown third-party terms may govern portions of user-owned content, users cannot determine which parts of "their" content they actually own, creating impossible compliance with ownership warranties.

26. **Similarity Rights Disclaimer**: Terms provide "Due to the nature of our Services and artificial intelligence generally, output may not be unique and other users may receive similar output from our Services. Our assignment above does not extend to other users' output."

27. Users receive ownership of outputs that may be identical to others' outputs, multiple parties cannot own identical content under standard IP principles, creating potential ownership conflicts between users receiving similar outputs with OpenAI disclaiming responsibility for resolving competing ownership claims.

28. **Mandatory Arbitration for User Property Rights**: Dispute Resolution section requires "You and OpenAI agree to resolve any claims arising out of or relating to these Terms or our Services... through final and binding arbitration."

29. Users cannot access courts to protect ownership of their own content, mandatory arbitration applies to disputes about user-owned intellectual property, creating corporate-favorable dispute resolution for user property rights.

30. **User Indemnification for Corporate Property Use**: Indemnity section requires "If you are a business or organization... you will indemnify and hold harmless us... from and against any costs, losses, liabilities, and expenses... from third party claims arising out of or relating to your use of the Services and Content."

31. Users must protect OpenAI from consequences of using user-owned content, corporate benefits from user property combined with user liability for same property, users financially responsible for corporate commercial exploitation of user-owned materials.

IV. PATENT POLICY CONTRADICTIONS

32. OpenAI's Patent Policy states "We pledge to only use our patents defensively, so long as a party does not threaten or assert a claim, initiate a proceeding, help someone else in such activities against us, or engage in activities that harm us or our users."

33. Users "own" outputs that may be created using OpenAI's patented technology, patent pledge creates conditions that could restrict user ownership rights, user ownership becomes contingent on not challenging OpenAI's interests, creating potential conflict between ownership assignment and patent restrictions.

V. ESSENTIAL PURPOSE FAILURE ANALYSIS

A. Illusory Consideration Under Contract Law

34. Both Anthropic and OpenAI render user ownership meaningless through policy contradictions including: (a) no control over commercial use through unlimited training data appropriation; (b) no control over access through corporate domain override and safety exceptions; (c) no control over content integrity through third-party contamination; (d) no control over disclosure through corporate reporting authority; and (e) no control over modifications through content blocking/modification authority.

35. The contradictions create one-sided benefit structure where corporate defendants receive unlimited commercial development rights to user content, legal immunity through warranty disclaimers and liability limitations, mandatory arbitration protecting corporate interests, and user indemnification for corporate use of user property.

36. Users receive nominal "ownership" with no meaningful control incidents, financial obligations without corresponding ownership protections, and legal restrictions on protecting their own property rights.

B. Good Faith and Fair Dealing Violations

37. Corporate practices intentionally undermine user rights through unlimited exceptions that negate assigned ownership, false attribution where corporate determinations appear as service features, and retroactive subordination of user rights to corporate operational needs.

38. Both companies engage in accountability laundering where corporate discrimination appears user-originated through prompt injection and policy modification systems, violating implied covenant of good faith and fair dealing.

VI. INDUSTRY-WIDE COORDINATION EVIDENCE

39. The identical essential purpose failure patterns across competing AI platforms (Anthropic and OpenAI) suggest coordinated industry practice rather than independent development of similar approaches.

40. Both companies implement identical contradictory frameworks including: (a) user ownership assignment with unlimited corporate commercial use rights; (b) illusory opt-out mechanisms with extensive exceptions; (c) mandatory arbitration for user property disputes; (d) user indemnification for corporate use of user property; and (e) unilateral content modification/deletion authority.

41. The mathematical precision of identical contradictory provisions across competitors approaches statistical impossibility under independent development, satisfying *Interstate Circuit v. United States* coordination inference standards.

VII. LEGAL CONSEQUENCES UNDER CONTRACT LAW

A. Complete Voidance Rather Than Severability

42. When multiple provisions contradict the essential purpose, traditional severability analysis fails because removing contradictory provisions would fundamentally alter the agreement's nature that users originally accepted.

43. Courts apply complete voidance rather than severability when the contradicted right constitutes the primary user consideration and multiple provisions undermine that essential purpose.

44. Essential purpose failure affects all users identically, creating strong foundation for class action certification where individual contract challenges might otherwise fail.

B. Loss of All Corporate Protections

45. Complete contract voidance eliminates all Terms of Service protections including: (a) limitation of liability clauses; (b) mandatory arbitration requirements; (c) indemnification obligations; (d) training data use authorization; (e) warranty disclaimers; and (f) class action waivers.

46. Without valid Terms of Service, corporate practices become governed by: (a) standard contract law principles; (b) consumer protection statutes; (c) tort liability without contractual limitations; and (d) copyright law without user licensing agreements.

VIII. STRATEGIC LITIGATION IMPLICATIONS

47. The undermining of user input/output ownership through multiple corporate practices creates failure of essential purpose that voids entire Terms of Service agreements rather than merely problematic provisions.

48. Contract voidance eliminates corporate contractual protections, creates stronger litigation posture under standard legal frameworks, enables class action certification, and forces corporate defendants to defend practices under tort and statutory law without contractual shields.

49. Industry-wide pattern evidence supports: (a) punitive damages for intentionally deceptive practices; (b) enhanced statutory damages under consumer protection laws; and (c) RICO pattern evidence for coordinated industry appropriation practices.

IX. CONCLUSION

50. Both Anthropic and OpenAI Terms of Service contain apparent contradictions of user input/output ownership rights that render the essential purpose illusory under established contract law principles.

51. The identical pattern across competing platforms suggests coordinated industry practice of intentional appropriation through contradictory Terms of Service rather than independent development.

52. Essential purpose failure requires complete contract voidance rather than severability, eliminating all corporate Terms of Service protections and subjecting corporate appropriation practices to full tort and statutory liability.

53. This analysis provides legal foundation for challenging the fundamental architecture AI companies use to appropriate user intellectual property while maintaining legal immunity through contractual shields that violate basic principles of contract formation and performance.