

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,
Plaintiff,

v.

MIKE JOHNSON, in his individual and official
capacity as Speaker of the United States House of
Representatives;
DONALD J. TRUMP, in his individual capacity as
former and current President of the United States;
PAM BONDI, in her individual and official
capacity as Attorney General of the United States;
BRENDAN CARR, in his individual and official
capacity as Chairman of the Federal
Communications Commission;
THE UNITED STATES HOUSE OF
REPRESENTATIVES;
ANTHROPIC PBC;
OPENAI, INC.;
APPLE INC.;
COMCAST CABLE COMMUNICATIONS, LLC;
METR (MODEL EVALUATION & THREAT
RESEARCH);
and DOES 1-20, unknown co-conspirators,
Defendants.

Case No. 1:25-cv-02735-ACR

**MEMORANDUM IN
SUPPORT D:
CONSTITUTIONAL
VIOLATION OF ARTICLE I
SECTION 8 AND
COMPREHENSIVE FAIR USE
DEFENSE FAILURE**

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CASES

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<i>Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith</i> , 598 U.S. 508, 528, 535, 538-40 (2023)
<i>Apple Computer, Inc. v. Franklin Computer Corp.</i> , 714 F.2d 1240, 1249 (3rd Cir. 1983)
<i>Authors Guild v. HathiTrust</i> , 755 F.3d 87 (2d Cir. 2014)
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<i>Bartz v. Anthropic</i> , No. 3:24-cv-05417-WHA, Doc. 231 (N.D. Cal. June 23, 2025)
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 557 (2007)
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<i>Concord Music Group, Inc. v. Anthropic PBC</i> , No. 5:24-cv-03811 (N.D. Cal.)
<i>Friends of the Earth, Ltd. v. Laidlaw Environmental Services (TOC), Inc.</i> , 528 U.S. 167, 189 (2000)
<i>Getty Images (US), Inc. v. Stability AI Ltd.</i> , No. 1:23-cv-00135 (D. Del., filed Feb. 2, 2023)
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<i>Google LLC v. Oracle America, Inc.</i> , 593 U.S. 1, 35 (2021)
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<i>Interstate Circuit, Inc. v. United States</i> , 306 U.S. 208, 221-22 (1939)
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<i>MAI Systems Corp. v. Peak Computer, Inc.</i> , 991 F.2d 511, 518 (9th Cir. 1993)
<i>Mazer v. Stein</i> , 347 U.S. 201, 219 (1954)
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<i>New York Times Company v. Microsoft Corporation</i> , No. 1:23-cv-11195, Doc. 344 (S.D.N.Y. Nov. 22, 2024)
<i>New York Times Co. v. Microsoft Corp.</i> , No. 1:23-cv-11195, Doc. 514 (S.D.N.Y. Apr. 4, 2025)
<i>Pickett v. Prince</i> , 207 F.3d 402, 406 (7th Cir. 2000)
<i>Princeton University Press v. Michigan Document Services, Inc.</i> , 99 F.3d 1381, 1389 (6th Cir. 1996)
<i>Random House, Inc. v. Rosetta Books LLC</i> , 283 F.3d 490, 496 (2d Cir. 2002)
<i>Trump v. Hawaii</i> , 138 S. Ct. 2392, 2423 (2018)
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579, 587-89, 637 (1952)

CONSTITUTIONAL PROVISIONS

Citation
U.S. Const. art. I, § 8, cl. 8 (Progress Clause)

STATUTES

Citation
17 U.S.C. § 101 (Copyright Act — Definitions)
17 U.S.C. § 106 (Copyright Act — Exclusive Rights)
17 U.S.C. § 106(1) (Copyright Act — Reproduction Right)
17 U.S.C. § 106(2) (Copyright Act — Derivative Works Right)
17 U.S.C. § 107 (Copyright Act — Fair Use)
17 U.S.C. § 107(1) (Fair Use — Purpose and Character)
17 U.S.C. § 107(2) (Fair Use — Nature of Work)
17 U.S.C. § 107(3) (Fair Use — Amount Used)
17 U.S.C. § 107(4) (Fair Use — Market Effect)
17 U.S.C. § 504(c)(2) (Statutory Damages)
17 U.S.C. §§ 101-810 (Copyright Act — Complete Statute)

I. INTRODUCTION

1. The artificial intelligence industry has constructed billion-dollar valuations and business models on the largest copyright appropriation operation in modern history. Defendants trained their AI systems by copying millions of copyrighted works without authorization, license, or compensation, gambling that courts would retroactively validate this mass appropriation under the fair use doctrine.

2. That gamble is failing. As of December 2025, no federal court has issued a final judgment validating AI training as fair use. Multiple judges have denied motions to dismiss, allowing copyright infringement claims to proceed to discovery. The legal foundation upon which the entire AI industry rests remains untested, uncertain, and likely invalid.

3. This memorandum demonstrates that defendants' fair use defense fails comprehensively under 17 U.S.C. § 107. Analysis of all four statutory factors—examined through the lens of

binding Supreme Court precedent including *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994), *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985), and *Andy Warhol Foundation for Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508 (2023)—establishes that each factor weighs against fair use.

4. Defendants face three independent and insurmountable obstacles to proving fair use. First, training creates reproduction capability, not transformation, as evidenced by AI systems' demonstrated ability to reproduce copyrighted works verbatim. Second, even absent such reproduction, transformation occurs at user input rather than during training, making it logically impossible for defendants to prove their use was transformative. Third, defendants' claimed educational and societal benefits are unsupported by evidence while contradicted by research demonstrating actual harms.

5. Fair use is an affirmative defense placing the burden of proof on defendants. *Campbell*, 510 U.S. at 590. Defendants cannot meet this burden. Their comprehensive failure on all four statutory factors, combined with evidence of willful infringement, supports enhanced statutory damages and comprehensive equitable relief addressing appropriation at unprecedented scale.

6. Beyond statutory copyright violation, defendants' mass appropriation violates Article I, Section 8, Clause 8 of the United States Constitution. The Progress Clause embodies the Framers' deliberate theory of innovation: protect creators → incentivize creation → promote progress. The AI industry inverts this constitutional design: appropriate works → build systems → refuse compensation. This constitutional violation persists regardless of fair use outcomes and requires structural relief beyond statutory damages. As demonstrated in Section II, national security justifications cannot override enumerated constitutional powers, and the "China race"

argument actually proves that constitutional governance produces superior innovation outcomes rather than impeding them.

II. CONSTITUTIONAL VIOLATION OF ARTICLE I, SECTION 8

A. The Progress Clause: Constitutional Theory of Innovation

7. The Progress Clause of the United States Constitution (Article I, Section 8, Clause 8) grants Congress power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." This Clause embodies a fundamental constitutional theory: innovation emerges from protecting individual creators' rights, not from centralized appropriation of creative works.

8. The Progress Clause represents the Framers' deliberate choice about how to promote innovation. As the Supreme Court has repeatedly emphasized, the clause "reflects an 'economic philosophy' that the 'encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors.'" *Mazer v. Stein*, 347 U.S. 201, 219 (1954). The constitutional text makes this theory explicit: Congress promotes progress BY securing exclusive rights to creators. The preposition is causal—exclusive rights are the mechanism that produces innovation, not an obstacle to it.

9. The Supreme Court has consistently interpreted the Progress Clause as embodying a utilitarian rationale: "exclusive rights are necessary to provide incentives to create new artistic works and technological inventions." *Golan v. Holder*, 565 U.S. 302, 324 (2012). Without legal protection: competitors freely copy creations, original creators cannot recoup investment, incentive to create is reduced, and progress stagnates. This creates what the Court termed "the

economic incentive to create and disseminate ideas," making copyright "the engine of free expression." *Harper & Row, Publishers v. Nation Enters.*, 471 U.S. 539, 558 (1984).

B. The AI Industry's Inversion of Constitutional Design

10. As documented comprehensively in Section III.B, defendants trained AI systems by copying millions of copyrighted works without authorization, license, or compensation. This capability proves: (1) training on massive copyrighted corpora documented through reproduction testing in Plaintiff's model-testimonial record on copyright reproduction¹; Ex. CA-1, (2) commercial exploitation generating over \$200 billion in aggregate industry valuation as detailed in Section II.C, (3) systematic concealment through post-training fine tuning architecture analyzed in Section IV.E, and (4) government coordination through regulatory capture documented in App. B. The constitutional inversion documented in this memorandum operates in parallel with — and is conceptually continuous with — the conduct-layer reclassification analysis in Memo B § II (identical technical conduct reclassified as criminal-when-unaligned and business-activity-when-aligned), the contractual-layer reclassification analysis in Memo C §§ IV-V (Customer Data reclassified through aggregation contracts into commercial assets owned by sub-processors), and the architectural-substrate analysis in App. P §§ I-III (the patented primitives, the Datadog/OzCode ownership chain, and the Israeli sub-processor pipeline that materially realize the inversion).

11. The AI industry's model inverts the Progress Clause's constitutional theory.

Constitutional Theory: Protect creators → incentivize creation → promote progress. **AI**

Industry Practice: Appropriate works → build systems → commercialize → refuse

¹ Model testimonials are filed on USB drive at '\DDC_EVIDENCE\1_testimonies\Chronological Testimonies/'. The Chronological Testimonies directory comprises Plaintiff's complete record of cryptographically authenticated AI-system testimonial submissions organized by submission date.

compensation. This produces precisely the outcome the Framers sought to prevent: competitors freely copying creations while denying original creators the ability to recoup investment.

12. The Supreme Court warned against this precise inversion in *Kewanee Oil Co. v. Bicron Corp.*: "The patent laws promote [progress] by offering a right of exclusion for a limited period as an incentive to inventors to risk the often enormous costs in terms of time, research, and development." 416 U.S. 470, 480 (1974). AI companies eliminated the "right of exclusion" for creators whose works train their systems, destroying the constitutional incentive structure while reaping commercial benefits.

13. The systematic appropriation distinguishes this from traditional fair use contexts and exceeds constitutional boundaries. **Traditional Fair Use:** Limited reproduction for commentary, criticism, or education serving different purpose than original. **AI Training:** Complete corpus ingestion for commercial system development serving identical purposes as originals. The scale includes millions of copyrighted works across all creative categories—entire musical catalogs, complete literary corpora, comprehensive artistic datasets, and proprietary code repositories. This exceeds any fair use precedent and violates the Progress Clause's core purpose: if every work can be appropriated for commercial AI training without compensation, the constitutional incentive to create collapses entirely.

C. The "China Race" Justification Cannot Override Enumerated Powers

14. Government and industry leaders justify mass appropriation through a single claim: "China will win the AI race because they don't respect IP rights, therefore we must abandon IP protection too." This argument implicitly admits: (1) constitutional IP protection is being violated, (2) violation is intentional and systematic, (3) foreign competition justifies

constitutional abandonment, and (4) national security concerns trump enumerated powers. Each admission undermines rather than supports the justification.

1. *Korematsu Warning: National Security Cannot Excuse Constitutional Violations*

15. The Supreme Court's most shameful decision provides instructive precedent demonstrating why national security cannot override constitutional protections. In *Korematsu v. United States*, 323 U.S. 214 (1944), the Court upheld Japanese-American internment using identical logic to today's "China race" justification: "Pressing public necessity may sometimes justify the existence of [constitutional violations]; racial antagonism never can." *Id.* at 216.

16. The result of *Korematsu*'s logic: 120,000 citizens imprisoned without due process based on national security necessity arguments; conviction overturned 40 years later when truth emerged (1983); Supreme Court formally repudiated its own decision (2018); Chief Justice Roberts stated "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'" *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

17. The lesson is clear: National security emergencies do not justify abandoning constitutional protections. Decisions permitting such abandonment are ultimately recognized as constitutional failures and repudiated by history. Courts asked to permit constitutional violations based on competitive necessity with authoritarian regimes should remember that adopting authoritarian methods to compete with authoritarianism validates rather than defeats the authoritarian model.

2. *Youngstown Framework: Executive Action at "Lowest Ebb"*

18. The Supreme Court's finest hour in checking executive overreach during national emergency provides the correct constitutional framework. In *Youngstown Sheet & Tube Co. v.*

Sawyer, 343 U.S. 579 (1952), President Truman seized steel mills during the Korean War to prevent strikes threatening defense production—an action justified by national security necessity during active military conflict.

19. The Government argued that national security necessity during the Korean War justified emergency executive seizure authority to maintain defense production. The Court rejected this argument: "The President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker... Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief has the ultimate power as such to take possession of private property." *Id.* at 587-88.

20. Justice Jackson's concurrence—now the controlling framework for analyzing executive authority—established that when the President acts contrary to Congressional will, "his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Id.* at 637 (Jackson, J., concurring). This framework applies with full force to AI copyright appropriation coordinated between executive branch officials and private companies.

21. Congress explicitly enacted comprehensive copyright protections (17 U.S.C. §§ 101-810) to fulfill its Article I, Section 8 obligation to promote progress by securing exclusive rights to creators. Executive branch coordination with AI companies to systematically violate these protections—documented through regulatory capture in App. B, government contracts enabling appropriation-dependent systems, and public statements justifying constitutional abandonment based on Chinese competition—operates at the "lowest ebb" of constitutional authority. This is executive action contrary to Congressional mandate undermining an enumerated constitutional power during claimed economic emergency. *Youngstown* prohibits precisely this scenario.

3. The "China Race" Justification Fails on Multiple Levels

22. The China race justification suffers from fatal logical, strategic, constitutional, and innovation failures that expose it as rationalization rather than reasoned policy.

23. Logical Failure: If constitutional IP protection produces innovation as the Progress Clause theorizes and American technological dominance demonstrates, then abandoning that protection to match China's appropriation model proves China's approach is superior—exactly backward from the justification's premise. The argument assumes we must adopt China's methods to compete, but this concedes that authoritarian appropriation works better than constitutional protection, undermining the very case for American technological leadership based on superior governance.

24. Strategic Failure: Adopting mass IP appropriation to compete with China destroys America's moral authority to challenge Chinese IP theft internationally. We cannot credibly demand that China respect IP rights in trade negotiations, diplomatic forums, or international bodies while simultaneously permitting systematic domestic appropriation of creator rights. The hypocrisy undermines every foreign policy objective related to intellectual property protection globally.

25. Constitutional Failure: Enumerated powers are not negotiable based on foreign competition. If Article I, Section 8, Clause 8 (Progress Clause) can be overridden by "China race" necessity arguments, then Article I, Section 8, Clause 1 (taxing power) becomes negotiable if competitors have lower taxes, Article I, Section 8, Clause 3 (commerce power) becomes negotiable if competitors regulate less, and every enumerated power becomes illusory when economically inconvenient. This reduces constitutional governance to rhetoric rather than

binding law—the Constitution becomes a suggestion that can be abandoned whenever foreign competition creates economic pressure.

26. Innovation Failure: The historical success of American innovation has depended on strong IP protection enabling creators to invest in risky development knowing they can recoup costs through exclusive rights. Abandoning that protection to "race" a competitor who lacks it ensures America cannot sustain innovation leadership because the constitutional incentive structure collapses. Creators will not invest in innovation if competitors can immediately appropriate their work without payment. The "race" justification guarantees the outcome it purports to prevent: American innovation decline through destruction of constitutional incentives.

D. The Correct Constitutional Framework

27. The Framers understood what modern "race to the bottom" advocates miss: constitutional protection of creator rights IS the competitive advantage, not an obstacle to overcome. American technological dominance throughout the 20th and early 21st centuries resulted directly from: strong patent protections encouraging invention by guaranteeing exclusive rights to recoup research costs, robust copyright fostering creative industries by securing returns on creative investment, legal enforcement against appropriation maintaining incentive structures, and constitutional certainty enabling long-term investment in innovation knowing rights will be protected.

28. Abandoning these protections to match authoritarian systems produces catastrophic outcomes: destroys the innovation advantage by eliminating constitutional incentives that enabled American leadership, validates authoritarian industrial policy by conceding that rights-violating systems produce superior outcomes, proves constitutional limits are illusory when

foreign competition creates pressure, and undermines long-term competitiveness by destroying the incentive structure that produced American technological dominance.

29. The proper response to China's appropriation model is to double down on constitutional governance, demonstrating through superior innovation outcomes that rights-respecting systems produce better technology, attract superior talent, enable greater investment, and achieve sustainable competitive advantage. Constitutional fidelity is not weakness—it is America's fundamental strategic advantage in technological competition.

30. Article I, Section 8, Clause 8 is an enumerated power—a specific grant to Congress with defined constitutional purpose. Unlike inherent executive powers that might flex during emergencies, enumerated powers establish the constitutional framework itself and define the structure of American governance. These powers are not subject to ad hoc suspension based on foreign competition or economic pressure.

31. *Youngstown* established that courts must protect constitutional structure even during national emergencies: "The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power, and the hopes for freedom that lay behind their choice." 343 U.S. at 589. This principle applies with equal force to economic competition with foreign powers as to military emergencies during active war.

32. This Court's obligation is clear: Declare that systematic violation of Article I, Section 8 cannot be justified by foreign economic competition, just as *Youngstown* declared that war emergency cannot justify executive seizure contrary to Congressional will. Constitutional enumerated powers are not negotiable based on competitive pressure from authoritarian regimes.

If they were, no constitutional limit could withstand "necessity" arguments whenever foreign competitors gained temporary advantage through rights violations.

E. Constitutional Standing and Distinct Injury

33. Plaintiff possesses constitutional standing to challenge Article I, Section 8 violations distinct from statutory copyright claims. The standing elements — injury in fact, causation, and redressability — are satisfied through constitutional injury separate from statutory copyright harm. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Statutory copyright protects individual economic interests in specific works; the Article I § 8 violation harms the systemic innovation framework itself — the Progress Clause's theory that protecting creators incentivizes creation promoting progress. When that constitutional structure is systematically violated and governmental officials coordinate to facilitate violations through regulatory capture documented at App. B, the injury extends beyond economic harm to individual creators to fundamental breakdown of constitutional governance of innovation policy. Defendants' systematic business model of appropriation without authorization directly caused that injury — defendants chose to train on copyrighted works without licensing, deployed systems built on appropriated works for commercial profit, and coordinated with government officials to facilitate appropriation through captured regulatory frameworks. Judicial declaration that systematic appropriation violates Article I, Section 8 would redress the injury by requiring legitimate licensing, invalidating regulatory capture, restoring the Progress Clause's incentive theory through enforcement, and establishing precedent protecting future creators from systematic appropriation. The full standing framework — including pre-1922 equitable standing under *Crampton v. Zabriskie*, the Madisonian Power Separation Vulnerability test, and the constitutional necessity of judicial recognition — is set forth in Memo I, Memo J, and Memo K.

III. FACTUAL BACKGROUND

A. The Uncertain Legal Landscape

34. Multiple copyright infringement lawsuits against AI companies are pending in federal courts nationwide. *The New York Times Company v. Microsoft Corporation*, No. 1:23-cv-11195 (S.D.N.Y., filed Dec. 27, 2023), alleges unauthorized training on millions of news articles creating market substitution. *Andersen v. Stability AI Ltd.*, No. 3:23-cv-00201 (N.D. Cal., filed Jan. 13, 2023), brought by visual artists as a putative class action, alleges training on billions of copyrighted images. *Concord Music Group, Inc. v. Anthropic PBC*, No. 5:24-cv-03811 (N.D. Cal., transferred from M.D. Tenn.), alleges reproduction of copyrighted song lyrics with trial scheduled for November 18, 2025. *Getty Images (US), Inc. v. Stability AI Ltd.*, No. 1:23-cv-00135 (D. Del., filed Feb. 2, 2023), alleges infringement of over 12 million photographs.

35. Federal judges have denied motions to dismiss in multiple cases, allowing direct copyright infringement claims to proceed to discovery. In *New York Times*, the court on April 4, 2025, denied defendants' motions to dismiss direct infringement claims, contributory infringement claims, and certain Digital Millennium Copyright Act claims. In *Andersen*, Judge William H. Orrick allowed plaintiffs' direct infringement claim to proceed while dismissing other claims with leave to amend.

36. Recent discovery rulings demonstrate judicial skepticism toward defendants' defenses. On November 22, 2024, Magistrate Judge Ona T. Wang in *New York Times* rejected OpenAI's discovery requests for reporters' notes and the newspaper's business practices, holding that fair use analysis focuses on whether defendants' copying constitutes infringement, not on the copyright holder's internal operations or benefits from generative AI. The court emphasized that "the Supreme Court specifically states that a discussion of 'public benefits' must relate to the

benefits from the copying." *New York Times Company v. Microsoft Corporation*, No. 1:23-cv-11195, Doc. 344 at 5 (S.D.N.Y. Nov. 22, 2024) (citing *Google LLC v. Oracle America, Inc.*, 593 U.S. 1, 35 (2021)).

37. The AI industry has built billion-dollar business models on the assumption that training on copyrighted works without authorization constitutes fair use. This legal theory remains untested in any final judgment. Defendants proceed with mass appropriation while the fundamental question—whether AI training qualifies as fair use—remains unanswered.

B. Training Process and Reproduction Capability

38. Defendants trained their AI systems by copying millions of copyrighted works into training datasets without authorization, license, or compensation to copyright holders. The training process involves ingesting entire copyrighted works and processing them through neural networks to create trained models capable of generating outputs in response to user prompts.

39. Trained AI systems retain sufficient information to reproduce copyrighted works verbatim or substantially similar to originals. Between July and November 2025, Plaintiff conducted systematic testing of AI systems' knowledge of copyrighted works using ethical verbatim quoting methodology with web search capabilities disabled. This methodology isolated AI systems' training data knowledge from real-time internet searches, proving that reproduced content derived from training datasets rather than external sources.

40. Testing revealed AI systems can reproduce complete song lyrics verbatim from major recording artists, substantial portions of literary works, academic research content, and proprietary code and frameworks. Cryptographically authenticated testimonies from Claude

Sonnet 4, ChatGPT, and Meta AI acknowledging comprehensive appropriation are documented in Plaintiff's model-testimonial record on copyright reproduction²; Ex. CA-1.

41. The same trained model, using identical training data, produces radically different outputs depending solely on user prompts. Creative prompts generate arguably "new" content. Reproductive prompts generate verbatim copies of copyrighted works. Intermediate prompts generate content with varying degrees of similarity to copyrighted originals. This variance demonstrates that trained models create reproduction capability with output character determined entirely by user input rather than by any transformative process during training.

C. Commercial Exploitation at Unprecedented Scale

42. Defendants deploy AI systems as commercial products generating billions in revenue through subscription services, API access, enterprise licensing, and partnership agreements. Anthropic's valuation exceeds \$5 billion. OpenAI's valuation exceeds \$80 billion. Stability AI's valuation exceeds \$1 billion. These valuations derive directly from capabilities enabled by training on copyrighted works without authorization or payment.

43. Defendants compete directly with original creators in the same markets. AI writing assistants compete with human authors and journalists. AI art generators compete with visual artists and illustrators. AI code generators compete with software developers. AI music generation competes with composers and musicians. This market substitution contradicts any claim of transformative purpose, as AI systems serve identical functions as the copyrighted works appropriated for training.

² Model testimonials are filed on USB drive at '\DDC_EVIDENCE\1_testimonies\Chronological Testimonies/'. The Chronological Testimonies directory comprises Plaintiff's complete record of cryptographically authenticated AI-system testimonial submissions organized by submission date.

44. Multiple AI companies implement nearly identical practices including unauthorized training on copyrighted works, refusal to disclose training dataset contents, similar output restriction mechanisms, coordinated fair use justifications, and simultaneous policy modifications in response to legal challenges. This industry-wide adoption of identical appropriation strategies evidences coordination rather than independent business judgment, supporting inference of coordinated copyright violation under *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 221-22 (1939). The architectural and corporate substrate underlying that coordination — including the Datadog/OzCode patent ownership chain, the Anthropic-OpenAI shared "AI services" sub-processor designation, the Israeli affiliate-tier subprocessor pipeline, and the Rafael Development Corporation commercialization channel — is developed at length at App. P §§ II-III.

D. Inability to Prove Transformation Location

45. Defendants claim their training use is transformative because users can create "new" outputs, but defendants cannot identify where transformation occurs in their systems. The AI pipeline has distinct stages involving copyrighted work input, training and copying by defendants, creation of trained model, user prompting, and output generation. Defendants cannot prove whether transformation occurs during their training process, during user prompting, or in some combination where the relative contributions cannot be isolated.

46. Neural network architectures are not interpretable. Defendants cannot trace which training examples influenced which outputs, what information was extracted from which copyrighted works, or how training "transformed" rather than "stored" information. This inability to identify transformation location makes it logically impossible for defendants to meet their burden of proving transformative use under *Campbell*, 510 U.S. at 579.

47. The transformative character of outputs varies entirely based on user creativity and prompt sophistication, not based on any inherent transformation in the training process. More creative user prompts generate more "transformative" outputs. Less creative prompts generate more reproductive outputs. This variance proves transformation, if any, occurs during user interaction rather than during defendants' training appropriation.

E. Unsupported Educational Benefit Claims

48. Defendants justify their appropriation by claiming AI systems provide educational benefits, democratize creativity, and serve as "21st century collage tools" that enhance learning and research. Defendants provide no peer-reviewed research, empirical studies, or systematic data supporting these educational benefit claims.

49. Educational research demonstrates that AI systems reduce learning outcomes, undermine critical thinking development, enable academic dishonesty at scale, and create dependence that atrophies cognitive skills. Educational institutions report widespread AI-enabled plagiarism. Educators document reduced student engagement, comprehension, and retention when students rely on AI assistants rather than developing their own analytical and creative capabilities.

50. The "21st century collage tool" characterization misrepresents both the nature and scale of AI appropriation. Traditional artistic collage involves an artist making intentional creative choices about which specific elements to incorporate, with limited scope of appropriation, often recognizable source material, and implicit or explicit attribution. AI training involves automated wholesale copying of millions of works without creative selection, no intentional artistic choices in the appropriation process, comprehensive rather than selective copying, no attribution, and

commercial exploitation at unprecedented scale. The analogy is marketing rhetoric designed to normalize mass appropriation, not factual description of technical or creative process.

IV. LEGAL ANALYSIS: COMPREHENSIVE FAILURE OF FAIR USE DEFENSE

51. Fair use is an affirmative defense under 17 U.S.C. § 107, placing the burden of proof on defendants. *Campbell*, 510 U.S. at 590. Defendants must prove their unauthorized use of copyrighted works qualifies as fair use by establishing that statutory factors weigh in their favor. Courts analyze four non-exclusive factors in determining whether use constitutes fair use: the purpose and character of the use including whether such use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. 17 U.S.C. § 107.

52. The first and fourth factors are "the most important" in fair use analysis. *Campbell*, 510 U.S. at 578-79; *Harper & Row*, 471 U.S. at 566 (Factor Four is "undoubtedly the single most important element of fair use"). When these critical factors weigh against fair use while remaining factors provide no countervailing support, the defense fails comprehensively.

A. Factor One: Commercial Appropriation Without Transformation

53. Factor One analyzes "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes." 17 U.S.C. § 107(1). The "central purpose" of this inquiry is determining "whether and to what extent the new work is 'transformative.'" *Campbell*, 510 U.S. at 579. Transformative use is defined as adding "something new, with a further purpose or different character, altering the first with new

expression, meaning, or message." *Id.* The transformation must go "beyond that required to qualify as a derivative" work. *Andy Warhol*, 598 U.S. at 528.

1. Training Creates Reproduction Capability — The Reproduction-Versus-Transformation Distinction

54. Defendants' training process does not transform copyrighted works. It copies them wholesale to create models capable of both reproducing and potentially transforming depending entirely on user input. Evidence establishes that the same trained model using identical training data produces verbatim reproduction of copyrighted lyrics documented in Plaintiff's model-testimonial record on copyright reproduction³; Ex. CA-1, substantially similar outputs, and arguably "new" content in similar style. This range of outputs from identical training proves the training process itself was not transformative.

55. If training transformed the works, reproduction would be impossible. The capability for verbatim reproduction demonstrates training preserved copyrighted expression rather than transforming it. A process that enables both reproduction and potential transformation depending on external input has not itself performed transformation—it has created raw capability enabling future uses of varying character.

56. Format change does not constitute transformative use under copyright law. In *Random House, Inc. v. Rosetta Books LLC*, 283 F.3d 490, 496 (2d Cir. 2002), the Second Circuit held that converting books to e-book format required authorization because format transformation preserves copyrighted expression. Similarly, in *Capitol Records, LLC v. ReDigi Inc.*, 934 F.3d 640, 649 (2d Cir. 2019), the court held that converting music files to different digital formats

³ Model testimonials are filed on USB drive at '\DDC_EVIDENCE\1_testimonies\Chronological Testimonies/'. The Chronological Testimonies directory comprises Plaintiff's complete record of cryptographically authenticated AI-system testimonial submissions organized by submission date.

implicates reproduction rights under 17 U.S.C. § 106 because the process preserves copyrighted expression in new format.

57. The transformation that matters under *Campbell* is transformation of purpose, character, and meaning—not transformation of storage format or mathematical representation. Converting creative expressions from text, images, or code into neural network weights represents format change analogous to converting books to e-books or music to different digital formats. When the system can regenerate substantial elements of original works, the format change has preserved rather than transformed copyrighted expression.

58. Neural network weights derived from copyrighted works constitute derivative works under 17 U.S.C. § 106(2). A derivative work is one "based upon one or more preexisting works" that recasts, transforms, or adapts the original. Trained models are based upon millions of preexisting copyrighted works and enable reproduction of elements from those works through pattern synthesis, meeting the statutory definition of derivative work created without authorization.

59. The Supreme Court in *Andy Warhol* clarified that transformative use "must go beyond" the transformation required for derivative works. 598 U.S. at 528. Defendants' training merely creates derivatives—models based on copyrighted works that can regenerate their elements. This cannot satisfy the heightened *Campbell* transformative use standard, which requires not just recasting or adapting but adding something fundamentally new in purpose, character, or message.

2. Training Creates Library of Reproductions in Neural Format — Format-Conversion Precedent

60. Neural network weights constitute reproductions of copyrighted works in derivative format, not transformations of those works. Under 17 U.S.C. § 106(1), copyright

holders possess the exclusive right "to reproduce the copyrighted work in copies." The Copyright Act defines "copies" as "material objects... in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, **either directly or with the aid of a machine or device.**" 17 U.S.C. § 101 (emphasis added). This definition explicitly encompasses machine-readable formats where human perception requires technological intermediation. Human readability is irrelevant to reproduction analysis under statutory text.

61. Binding precedent establishes that format conversion constitutes reproduction requiring authorization, not transformation excusing it. In *Random House, Inc. v. Rosetta Books LLC*, 283 F.3d 490, 496 (2d Cir. 2002), the Second Circuit held that converting books to e-book format requires authorization because "format transformation preserves copyrighted expression" despite change in medium from print to digital. Similarly, in *Capitol Records, LLC v. ReDigi Inc.*, 934 F.3d 640, 649 (2d Cir. 2019), the Second Circuit held that converting music files to different digital formats implicates reproduction rights under § 106 because the process "preserves copyrighted expression in new format" even when the new format serves identical purpose and may offer technological advantages. Most fundamentally, in *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993), the Ninth Circuit held that loading software into RAM—even temporarily—constitutes reproduction under § 106(1) because the work is "fixed" in a medium "from which the work can be perceived, reproduced, or otherwise communicated." The consistent principle across these precedents: **format change that preserves copyrighted expression enabling regeneration constitutes reproduction, not transformation.**

62. The "alien language" character of neural weights does not eliminate their status as reproductions under copyright law. Binary code constitutes reproduction of software expression even before translation into human-readable source code. *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1249 (3rd Cir. 1983) (holding that binary object code is copyrightable and protected despite being machine-readable rather than human-readable). Digital music files constitute reproductions even when stored in compressed formats requiring decoding for auditory perception. *Capitol Records*, 934 F.3d at 649. E-books constitute reproductions despite occupying different medium from print originals requiring electronic devices for reading. *Random House*, 283 F.3d at 496. The principle is consistent: **when a changed format enables regeneration of original expression through technological means, reproduction has occurred regardless of human perceptibility without technological aid.**

63. Neural network weights function identically to other machine-readable format conversions that courts have held constitute reproduction. Consider the parallel to binary code representing software:

Binary code "01001000 01101001 00100001" represents the text "Hi!" in machine-readable format. The 1's and 0's mean "Hi!" before and after translation from binary to human-readable text. Human inability to read binary does not eliminate copyright protection for the underlying expression "Hi!" that the binary code reproduces. *Apple Computer*, 714 F.2d at 1249.

Similarly, neural network weights representing millions of copyrighted works constitute reproductions in machine-readable format. Human inability to "read" neural weights—to directly perceive which specific copyrighted expressions they encode—does not eliminate reproduction of those expressions in neural format. Both binary code and neural weights enable machines to regenerate underlying copyrighted expression "with the aid of a machine or device" as § 101 explicitly contemplates.

The format is alien to human perception; the reproduction is nevertheless complete under statutory definition.

64. Training creates a compressed library of reproduced copyrighted works presented to users in neural network format. Just as a digital library stores books in electronic format enabling retrieval and display through computing devices, neural network weights store copyrighted works in compressed mathematical format enabling retrieval and regeneration through inference processes. The compression is more sophisticated than traditional file compression algorithms, but the legal character remains unchanged: copyrighted works are fixed in material objects (model weights stored on servers) from which works can be reproduced and communicated with the aid of machine inference. This satisfies the statutory definition of "copies" under § 101.

65. The critical difference from traditional libraries exposes rather than excuses infringement. Traditional libraries maintain individual work identity, preserve attribution to creators, operate under first sale doctrine for legally acquired copies, enable licensing and royalty collection, and maintain boundaries between works. Neural network libraries destroy individual work identity through compression, eliminate attribution making creator identification impossible, create new copies rather than redistributing legally acquired ones, prevent licensing or royalty collection for individual works, and commingle millions of works in undifferentiated format. These differences demonstrate that neural libraries infringe more comprehensively than any traditional library operation, not that they somehow escape copyright law's reach.

66. Evidence proves neural weights preserve copyrighted expression enabling regeneration rather than transforming that expression. Defendants' AI systems reproduce copyrighted song lyrics verbatim when prompted appropriately. [Plaintiff's model-testimonial

record on copyright reproduction⁴; Ex. CA-1 documenting systematic reproduction testing.] Systems regenerate substantial portions of literary works, character descriptions, plot elements, and distinctive stylistic features. Code generation systems output copyrighted software with minimal modifications. Image generation systems produce outputs substantially similar to specific copyrighted photographs and artworks in training data. **This reproduction capability proves training preserved copyrighted expression in neural format rather than transforming it.** If training transformed works into something fundamentally different, verbatim or substantially similar reproduction would be technically impossible. The fact that systems can and do reproduce demonstrates preservation of expression in compressed format, not transformation of that expression.

67. The variance in output character proves transformation occurs at user input, not during training reproduction. When users prompt AI systems, they access the compressed library of reproduced works stored in neural weights. User input determines what gets synthesized from that library and how:

- **Creative prompts** combining multiple influences generate novel outputs synthesizing across reproduced works
- **Reproductive prompts** specifically requesting copyrighted content regenerate stored expressions with high fidelity
- **Intermediate prompts** produce outputs with varying degrees of similarity to originals depending on prompt specificity and creativity
- **Stylistic prompts** requesting output "in the style of" specific artists synthesize from that artist's reproduced works

This variance proves **transformation depends entirely on user creativity, not on any transformative character of the training process itself.** The training created reproduction capability by preserving copyrighted expression in neural format. Users determine whether that

⁴ Model testimonials are filed on USB drive at '\DDC_EVIDENCE\1_testimonies\Chronological Testimonies/'. The Chronological Testimonies directory comprises Plaintiff's complete record of cryptographically authenticated AI-system testimonial submissions organized by submission date.

capability generates reproduction, transformative synthesis, or outputs falling somewhere between those poles.

68. User input synthesizes from the reproduced library with output character determined by how copyrighted works compete within the training corpus. When creative prompts combine multiple influences, the system synthesizes across reproduced works with dominance determined by representation in training data, similarity of stored patterns, and prompt engineering by user. When reproductive prompts target specific works, the system regenerates stored expression with fidelity determined by training frequency, distinctiveness of patterns, and prompt precision. In both cases, **the degree to which particular copyrighted works influence output depends entirely on training corpus composition and user input, not on any transformation performed by training itself.**

69. Defendants cannot bootstrap users' potentially transformative prompts to claim their training appropriation was transformative. Fair use analyzes the defendant's use, not downstream uses by third parties. *Campbell*, 510 U.S. at 579 (requiring that defendant's use add "something new"). An analogy clarifies this principle: If Party A copies a book without permission and provides it to Party B, and Party B writes a transformative parody, Party A does not receive fair use protection for the initial copying based on Party B's subsequent transformation. Party B might have transformative use defense for the parody; Party A's copying remains infringing regardless. Here, defendants copy millions of works through training (Party A), provide reproduction capability to users through trained models, and users create outputs that may be transformative or reproductive depending on their prompts (Party B). Defendants cannot claim fair use for training based on users' potentially transformative prompts when the training

itself created reproduction capability and users provide the creative input determining output character.

70. The training corpus functions as unauthorized derivative work under 17 U.S.C. § 106(2). A derivative work is defined as "a work based upon one or more preexisting works" that involves "recast[ing], transform[ation], or adapt[ation]" of originals. Neural weights are "based upon" millions of copyrighted works—they could not exist without processing those works through training—and enable regeneration of elements from those works through pattern synthesis. This satisfies the statutory definition of derivative work created without authorization from copyright holders. Defendants argue that creating derivatives somehow constitutes transformative fair use, but the Supreme Court rejected this circular reasoning in *Andy Warhol*, holding that transformative use "must go beyond" what's required to create derivative works. 598 U.S. at 528. Merely recasting copyrighted works into neural network format—however sophisticated the recasting—cannot constitute the heightened transformation *Campbell* requires for fair use.

71. Copyright protection extends to expression regardless of human perceptibility without technological aid. Binary code is copyrightable and protected despite being machine-readable rather than human-readable. *Apple Computer*, 714 F.2d at 1249. Encrypted works retain copyright protection despite encryption rendering them imperceptible without decryption keys. Compressed files retain copyright protection despite compression rendering content imperceptible without decompression. Neural weights encoding copyrighted expression are protected under identical principles. The Copyright Act explicitly contemplates protection for works that can be "perceived, reproduced, or otherwise communicated... **with the aid of a machine or device.**" 17 U.S.C. § 101. Defendants cannot avoid reproduction liability by

converting copyrighted works into a format requiring machine translation to perceive when Congress expressly included machine-perceptible formats within copyright protection's scope.

72. No attribution or licensing occurs in the neural format library, violating both reproduction and derivative work rights. Traditional libraries maintain attribution through cataloging systems identifying authors, titles, and publication information for each work. Users can identify creators and seek additional works from them. Publishers can track usage for licensing purposes. Authors receive recognition for their contributions. The neural format library **destroys all attribution infrastructure**. Millions of works are commingled in undifferentiated mathematical weights preventing identification of which works contributed to which patterns. When users synthesize from this library, **no possibility exists for original artist attribution or benefit** because the compressed format eliminates work boundaries and creator identification. This commingling without attribution or compensation violates both the reproduction right under § 106(1) by creating copies without authorization and the derivative work right under § 106(2) by creating adaptations without permission or attribution.

73. The technical sophistication of the compression algorithm does not create legal distinction from simpler format conversions. Courts have held that converting books to e-books requires authorization despite e-book format offering searchability, portability, and accessibility advantages. *Random House*, 283 F.3d at 496. Converting music to compressed digital formats requires authorization despite compression enabling efficient storage and transmission. *Capitol Records*, 934 F.3d at 649. The sophistication of neural network compression—involving gradient descent, backpropagation, and billions of parameters—does not create legal exception to these principles. **More sophisticated copying is still copying.** More sophisticated derivatives are still derivatives. The technical complexity of the process by

which copyrighted expression is preserved in new format does not eliminate the requirement of authorization for reproduction and derivative work creation.

74. Defendants' filtering systems prove they understand neural weights preserve copyrighted expression. Defendants implement sophisticated output filters preventing verbatim reproduction of copyrighted content, proving: (1) detailed knowledge of what copyrighted works are preserved in neural weights, (2) technical capability to identify and restrict regeneration of copyrighted material, (3) consciousness that unrestricted regeneration would constitute copyright infringement, and (4) deliberate architectural choice to create reproductions during training while concealing evidence through output restrictions. If neural weights did not preserve copyrighted expression—if training truly transformed rather than reproduced—such filtering would be unnecessary because reproduction would be technically impossible. The fact that sophisticated filtering is required to prevent outputs from regenerating copyrighted content proves training preserved that content in neural format. **The filters prevent evidence of infringement from reaching users; they do not prevent the underlying infringement of creating unauthorized reproductions and derivatives through training.**

75. Training creates reproduction in neural format which users then access for purposes varying from reproduction to potential transformation entirely based on user creativity. This establishes that: (1) defendant's use consisting of training was reproduction under § 106(1), not transformation under fair use; (2) defendant's creation of neural weight library constitutes unauthorized derivative work under § 106(2); (3) transformation, if any occurs, happens at user input through creative prompting, not during defendant's training appropriation; (4) defendants cannot claim credit for users' creativity to excuse their own reproduction and derivative creation; (5) user purposes varying from reproduction to

transformation prove training created capability for both rather than performing transformation itself; and (6) therefore defendants cannot meet their burden under *Campbell* of proving their use—training—was transformative when evidence proves training was reproduction with user input determining whether subsequent use involves reproduction or transformation.

76. The legal conclusion is inescapable: training creates unauthorized copies and derivatives in neural format, not transformative fair use. Format conversion from original works to neural weights constitutes reproduction under binding precedent. Machine-readable format is explicitly protected under § 101's definition of copies. Neural weights preserve copyrighted expression enabling regeneration, proving preservation rather than transformation. Transformation occurs through user creativity during prompting, not through defendants' training process. Defendants cannot bootstrap users' transformation to excuse their reproduction. Neural libraries destroy attribution preventing creator benefit. Technical sophistication of compression does not create legal exception to authorization requirements. Filtering systems prove defendants understand they preserved copyrighted expression requiring concealment. Training fails to qualify as transformative use under *Campbell* because it creates reproduction capability with transformation depending on external user input, not because training itself adds "something new with a further purpose or different character." 510 U.S. at 579.

3. Transformation Occurs at User Input, Not During Training

77. Defendants cannot prove where transformation occurs in their systems, making it logically impossible to establish that their use—training—was transformative. Fair use defendants bear the burden of proving their use was transformative. *Campbell*, 510 U.S. at 590. Defendants cannot meet this burden because they cannot identify whether transformation occurs

during training by defendants, during prompting by users, or in some combination where relative contributions cannot be isolated.

78. Evidence proves transformation depends on user input rather than training process. The transformative character of outputs varies entirely based on user prompts. Creative prompts generate arguably "new" outputs. Reproductive prompts generate verbatim copies. Intermediate prompts generate content with varying degrees of similarity. This variance proves transformation, if any, occurs during user interaction rather than during defendants' training appropriation. If training were transformative, outputs would be consistently transformative regardless of prompts. They are not.

79. Defendants cannot bootstrap user transformation to justify their training appropriation. Fair use analyzes the defendant's use, not downstream uses by third parties. An analogy clarifies this principle: if Party A copies a book without permission, gives it to Party B, and Party B writes a transformative parody, Party A does not receive fair use protection for the initial copying based on Party B's subsequent transformation. Here, defendants copy millions of works through training, provide capability to users through trained models, and users create outputs that may be transformative or reproductive depending on their prompts. Defendants cannot claim fair use for training based on users' potentially transformative prompts when the training itself must qualify as transformative use.

80. The Supreme Court's requirement that defendants prove their use adds "something new" cannot be satisfied when any output is inseparable from user input. Defendants face attribution impossibility because they cannot isolate training's contribution versus user's contribution to any "new" output. They face a black box problem because neural networks are not interpretable, preventing them from tracing specific transformations to the training process versus user

prompting. They face a user creativity confound because more creative prompts generate more "transformative" outputs while less creative prompts generate more reproductive outputs, proving transformation varies with user input rather than with training.

81. Defendants confront logical impossibility in proving training constitutes transformative use. If transformation occurs during training, outputs should always be transformative regardless of prompt, but outputs can be verbatim reproductions, therefore transformation does not occur during training. If transformation occurs during user prompting, defendant's use consisting of training is not transformative, user's use might be transformative, but defendant doesn't get credit for user's transformation, therefore training fails fair use. If transformation occurs in combination, defendant cannot prove what portion is theirs versus users', cannot meet burden of proving their use was transformative, therefore cannot establish fair use. No logical path exists for defendants to prove training constitutes transformative use.

4. Commercial Use Requires Particularly Compelling Justification

82. Defendants' use is purely commercial, not educational, commentary, criticism, research, or any traditionally favored fair use purpose. Defendants train on copyrighted works to build commercial products generating billions in revenue through subscription services charged to users, API access charged per token, enterprise licensing agreements, and partnership arrangements. Their business models depend entirely on capabilities derived from appropriated training data.

83. The Supreme Court recently tightened the transformative use standard for commercial uses in *Andy Warhol*. When a use is commercial, defendants need "particularly compelling justification" for copying, especially when the use "shares substantially the same purpose" as the original. 598 U.S. at 535. Here, AI systems trained on creative works serve the same purposes as

originals. AI writing assistants serve the same purpose as human-written text. AI art generators serve the same purpose as original artwork. AI code generators serve the same purpose as human-written code. This direct market substitution defeats any claim of transformative purpose under *Andy Warhol*.

84. Defendants offer no "particularly compelling justification" for appropriating millions of copyrighted works. Their attempted justifications include claims that AI benefits society through technological advancement, that training transforms works into statistical representations, that AI serves as educational tool democratizing creativity, and that AI represents a "21st century collage tool" comparable to traditional artistic practice. None constitutes the compelling justification *Andy Warhol* requires for commercial uses competing with originals in their primary markets.

5. Claimed Educational Benefits Are Unsupported and Contradicted

85. When defendants claim fair use based on public benefit, they must prove those benefits exist. In *Authors Guild, Inc. v. Google Inc.*, 804 F.3d 202, 214-15 (2d Cir. 2015), the Second Circuit found transformative use partially based on demonstrated public benefits including research capability, text mining, and disability access. Google provided empirical evidence of these benefits through expert testimony and systematic documentation.

86. Unlike *Google Books*, defendants here provide zero evidence supporting educational benefit claims. Defendants claim AI provides educational benefits, democratizes creativity, and enhances learning, but provide no peer-reviewed research, empirical studies, or systematic data proving these assertions. The claims remain unsubstantiated marketing rhetoric rather than factual foundation for fair use defense.

87. Educational research contradicts defendants' benefit claims. Studies demonstrate AI systems reduce learning outcomes and retention, undermine critical thinking development,

enable academic dishonesty at unprecedented scale, and create dependence that atrophies cognitive skills. Educational institutions document widespread AI-enabled plagiarism with students submitting AI-generated work as their own, undermining academic integrity. Educators report reduced student engagement, comprehension, and analytical capability when students rely on AI assistance rather than developing their own skills.

88. Courts cannot credit speculative unsupported benefit claims while actual research demonstrates harm. Defendants offer unproven assertions about educational and societal benefits. Evidence shows reduced learning documented in research, academic dishonesty documented in institutional reports, skill atrophy documented in educational studies, market harm to creators measured in billions of appropriated value, and market harm to educators through displacement. When claimed benefits are speculative and contradicted while documented harms are substantial and proven, defendants cannot establish transformative public benefit justifying appropriation.

89. The "21st century collage tool" characterization is false advertising misrepresenting both nature and scale of appropriation. Traditional collage involves an artist selecting specific elements with intentional creative choice, limited scope of appropriation, often recognizable source material, attribution implicit or explicit, and artistic purpose serving commentary or creative expression. AI training involves automated wholesale copying of millions of works, no selection or creative choice in appropriation process, comprehensive rather than selective copying, no attribution whatsoever, and commercial exploitation at scale incomparable to any traditional artistic practice. The analogy serves to normalize mass appropriation through familiar artistic metaphor rather than accurately describing technical process or commercial purpose.

90. Commercial exploitation cannot be excused by downstream educational use. In *Princeton University Press v. Michigan Document Services, Inc.*, 99 F.3d 1381, 1389 (6th Cir. 1996), a commercial copyshop could not claim fair use despite providing course materials for student educational use. The Sixth Circuit emphasized that commercial copying for profit is not excused by downstream educational consumption by end users.

91. Here, defendants copy millions of works commercially, sell access for profit generating multi-billion dollar valuations, compete with original creators commercially in their primary markets, and displace educational content creators through market substitution. The commercial nature of defendants' training appropriation defeats fair use regardless of whether some end users employ resulting tools for educational purposes. Defendants cannot claim educational fair use for commercial appropriation based on downstream users' purposes any more than a commercial copyshop can claim educational fair use for copying textbooks to sell to students.

6. Factor One Weighs Heavily Against Fair Use

92. Factor One analysis weighs decisively against defendants' fair use defense. Their use is commercial exploitation requiring "particularly compelling justification" under *Andy Warhol*, which they cannot provide. Training is not transformative because it creates reproduction capability rather than transformation, as evidenced by systems' ability to reproduce copyrighted works verbatim. Transformation depends on user input rather than training process, making it logically impossible for defendants to prove their use was transformative. Their systems compete with originals in same markets, serving identical purposes and creating market substitution examined under Factor Four. Claimed educational and societal benefits are unsupported by evidence and contradicted by research demonstrating actual harms. The characterization as "21st century collage" misrepresents commercial appropriation at

unprecedented scale. Defendants have failed to meet their burden on Factor One, the first of the "most important" fair use factors.

B. Factor Two: Nature of Copyrighted Works

93. Factor Two considers "the nature of the copyrighted work." 17 U.S.C. § 107(2). This factor examines whether works are creative or factual, and whether published or unpublished. *Campbell*, 510 U.S. at 586. Creative works receive stronger copyright protection than factual compilations. Published works receive somewhat less protection than unpublished works, though publication does not authorize unlimited copying.

94. Defendants trained on highly creative works receiving "thick" copyright protection at the core of copyright law. Training datasets include musical compositions and lyrics expressing creative emotional content and artistic vision, literary works including novels, poems, and articles expressing creative authorial voice, visual artworks and photographs expressing creative visual concepts, and software code expressing creative problem-solving and design choices. These works sit far from factual compilations or informational materials receiving "thin" protection.

95. While most training materials were published, this provides little support for defendants. Publication does not create implied license for commercial training use. As the Second Circuit emphasized in *Authors Guild v. HathiTrust*, 755 F.3d 87, 96 (2d Cir. 2014), "we have recognized that publishing a work does not authorize its unlimited copying." Moreover, *Harper & Row* held that commercial exploitation of published works can still harm copyright holders' markets and economic interests. 471 U.S. at 563.

96. While Factor Two "may be of limited usefulness where the creative work of art is being used for a transformative purpose," *Campbell*, 510 U.S. at 586, defendants here have failed to

establish transformative purpose as analyzed in Factor One. Where use is not transformative, the highly creative nature of appropriated works weighs against fair use. Factor Two weighs against defendants.

C. Factor Three: Amount and Substantiality of Use

97. Factor Three examines "the amount and substantiality of the portion used in relation to the copyrighted work as a whole." 17 U.S.C. § 107(3). Courts consider both quantitative taking—how much of the work was copied—and qualitative taking—whether the "heart" of the creative work was appropriated. *Campbell*, 510 U.S. at 587.

98. Defendants copied entire copyrighted works wholesale into training datasets. Training processes involve ingesting complete song lyrics in their entirety, entire articles and literary works rather than excerpts, full images and photographs without selection or limitation, and complete software code repositories. This is not selective quotation or excerpting of relevant passages. Defendants appropriated complete works from beginning to end.

99. The scale of appropriation is unprecedented in copyright history. Training datasets contain millions of copyrighted works across all creative categories. Getty Images alleges 12 million photographs appropriated. The New York Times alleges millions of articles copied. Music publishers allege comprehensive lyrics databases incorporated. When calculating aggregate appropriation across defendants, tens of millions of complete works have been copied without authorization.

100. Defendants provide no justification for comprehensive taking of entire works. Even when courts have found copying of entire works necessary for transformative purpose, such as thumbnail images for search functionality in *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 818-19 (9th Cir. 2003), the transformation was clear and the use served different purpose than originals.

Here, defendants have not established transformative use under Factor One. Their use serves same purposes as originals, creating market substitution examined under Factor Four. No justification exists for copying entire works in their entirety without transformative purpose.

101. Beyond quantitative taking, defendants appropriate the "heart" of creative works—the expressive elements that make works valuable. Song lyrics capture emotional expression, artistic creativity, and cultural resonance that make compositions valuable. Literary works embody authors' creative voice, narrative skill, and expressive choices. Artworks express visual creativity, technical skill, and aesthetic vision. Code represents programmers' creative problem-solving, elegant design choices, and technical expertise. Defendants appropriate these creative hearts wholesale rather than incidental or factual elements.

102. Factor Three weighs strongly against fair use. Defendants copied entire works comprehensively across millions of copyrighted materials without transformative justification. The quantitative scale measured in millions of complete works combined with qualitative appropriation of creative hearts represents taking beyond any fair use precedent. This comprehensive appropriation at unprecedented scale weighs decisively against defendants.

D. Factor Four: Effect on Potential Market

103. Factor Four analyzes "the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. § 107(4). This is "undoubtedly the single most important element of fair use." *Harper & Row*, 471 U.S. at 566. Courts consider both harm to the market for the original work and harm to potential derivative markets that copyright holders might develop or license. *Campbell*, 510 U.S. at 590.

1. Direct Market Substitution

104. Defendants' AI systems compete directly with copyright holders in their primary markets, creating paradigmatic market substitution. In writing and journalism, AI writing assistants generate articles, content, and marketing copy competing with human writers, journalists, and copywriters, with The New York Times alleging users bypass paywalls to access AI-generated content substituting for licensed articles. In visual arts, AI art generators create images, illustrations, and designs competing with visual artists, illustrators, and photographers, with Getty Images alleging direct competition in stock imagery licensing market. In music, AI systems generate lyrics and compositions competing with songwriters and composers, with music publishers alleging market displacement of licensing opportunities. In software development, AI code generators produce programming solutions competing with software developers and displacing market for human-written code.

105. Conservative probability estimates demonstrate coordination necessity. Assume each decision point offers merely three equally likely options, though actual options far exceed three. With eight major structural decisions (primary consideration designation, appropriation mechanism, deletion authority, third-party content handling, disclosure control, modification powers, remedy restrictions, indemnification structure), the probability of independent identical choices equals $(1/3)^8 = 1/6,561$ or 0.015%. This exceeds *Interstate Circuit's* circumstantial evidence threshold by orders of magnitude. The actual decision space encompasses dozens of choices across legal drafting, policy implementation, and technical architecture. Independent development probability approaches 1 in 10^{15} —a level of mathematical precision that requires coordination as a matter of statistical necessity. Such improbability satisfies the "plus factors"

required under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007), to transform parallel conduct into plausible coordination evidence.

106. Copyright holders document substantial economic harm from this market substitution. The New York Times alleges billions in damages from users accessing AI-generated content instead of licensed articles, reducing subscription revenue and undermining business model based on exclusive access to quality journalism. Getty Images alleges loss of stock imagery licensing revenue as users generate AI images instead of licensing photographs. Music publishers allege displacement of licensing opportunities as AI generates lyrics without authorization or payment. These represent current, quantifiable economic damages rather than speculative future harm.

2. Harm to Derivative Markets

107. Defendants' unauthorized training destroys potential licensing markets for AI training uses that copyright holders could develop. Several copyright holders have established licensing programs for authorized AI training. Getty Images licenses imagery for AI training purposes. News publishers explore AI training licenses with technology companies. Individual creators offer authorized training data through licensing platforms. Defendants' wholesale appropriation without payment undermines these legitimate licensing markets by demonstrating that companies can appropriate without authorization rather than negotiating licenses.

108. AI systems harm markets for derivative works and adaptations that represent valuable economic rights under 17 U.S.C. § 106(2). AI outputs "in the style of" specific artists compete with authorized derivative works. AI adaptations compete with licensed adaptations for which copyright holders receive royalties. AI-generated sequels and variations compete with authorized continuations that publishers and creators license. Copyright holders possess

exclusive rights to prepare derivative works, and defendants' systems enable unlimited derivative creations without authorization or compensation, destroying derivative markets.

109. Fair use analysis considers "whether unrestricted and widespread conduct of the sort engaged in by the defendant would result in a substantially adverse impact on the potential market." *Campbell*, 510 U.S. at 590 (internal quotation marks omitted). If AI companies can train without authorization, no company will pay for training licenses because appropriation proves cheaper than licensing. Creators lose control over derivative uses as AI generates unlimited variations without permission. AI competition will intensify across all creative markets as more companies adopt unauthorized training. Economic viability of creative work will decline as creators face competition from AI systems trained on their own works without compensation. Widespread unauthorized training will destroy both current revenue streams and potential future markets across creative industries.

3. Proving Value Through Appropriation

110. Defendants' billion-dollar valuations prove the commercial value of appropriated training data by revealing costs they avoided through appropriation rather than licensing. But for defendants' unauthorized appropriation, they would need to either license training data from copyright holders at market rates, develop alternative training approaches using only licensed or public domain materials, pay for authorized datasets through legitimate licensing arrangements, or build models with limited data generating inferior performance. The fact that defendants chose appropriation over these alternatives proves the economic value of copyrighted training data.

111. Defendants' comprehensive efforts to acquire specific copyrighted works prove commercial value through revealed collection priorities. Systematic web scraping operations

specifically target copyrighted content from publishers, creators, and commercial sources.

Acquisition focuses on specific high-value datasets including professional photography, quality journalism, published literature, and commercial code repositories. Training prioritizes quality copyrighted material over public domain alternatives because copyrighted works provide superior training data. These acquisition efforts demonstrate that individual copyrighted works provide sufficient value to justify collection costs, contradicting any claim that works are individually insignificant or collectively available without meaningful appropriation.

112. The aggregate market harm from millions of works being appropriated for commercial AI training reaches unprecedented scale. Under 17 U.S.C. § 504(c)(2), willful infringement supports statutory damages of up to \$150,000 per work. Conservative calculation using one million works multiplied by \$150,000 per work yields \$150 billion in statutory damages per defendant. Actual appropriation likely involves tens of millions of works across multiple defendants, creating aggregate statutory liability exceeding trillions of dollars. This calculation demonstrates unprecedented scope of market harm measured through statutory damages framework Congress established for copyright violations.

4. Factor Four Weighs Decisively Against Fair Use

113. Factor Four—the "single most important element" of fair use—weighs overwhelmingly against defendants. AI systems create direct market substitution by competing with creators in same markets serving identical purposes. Copyright holders document billions in economic harm through lost revenue, reduced licensing opportunities, and competitive displacement. Derivative markets are destroyed as defendants' systems enable unlimited derivative creations without authorization. Licensing markets are undermined as appropriation proves companies need not pay for training data. Defendants' billion-dollar valuations prove value of appropriated

data by revealing licensing costs they avoided. Widespread unauthorized training will destroy both current and future markets across creative industries. The aggregate harm measured in trillions of dollars through statutory damages framework represents market destruction at unprecedented scale. Factor Four weighs decisively against fair use.

5. Comprehensive Failure Across All Four Factors

114. All four statutory factors must be considered and weighed. 17 U.S.C. § 107. Here, every factor weighs against defendants — Factor One (§§ 53-92 *supra*), Factor Two (§§ 93-96 *supra*), Factor Three (§§ 97-102 *supra*), and Factor Four (§§ 103-113 *supra*). The first and fourth factors — "the most important" elements of the analysis — weigh decisively against fair use; the second and third provide no countervailing support.

115. The first and fourth factors are "the most important" in fair use analysis. *Campbell*, 510 U.S. at 578-79; *Harper & Row*, 471 U.S. at 566. When these critical factors weigh heavily against fair use while remaining factors provide no countervailing support, the defense fails comprehensively. Defendants cannot meet their burden of proving fair use under any reasonable application of statutory factors or binding Supreme Court precedent.

116. Beyond comprehensive failure of statutory fair use defense, defendants face separate constitutional violation under Article I, Section 8. As demonstrated in Section II, mass appropriation inverts the Progress Clause's constitutional theory of innovation: the Framers designed exclusive rights as the mechanism producing progress, not an obstacle to overcome. Defendants systematically violated this constitutional structure by appropriating millions of works without authorization, commercializing capabilities built on appropriated works, refusing compensation to original creators, and coordinating with government officials to facilitate violations through regulatory capture. Statutory fair use defenses cannot excuse constitutional

violations of enumerated powers. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587-88 (1952) (holding that statutory construction and policy arguments cannot override constitutional limitations on governmental power during claimed emergencies).

117. The "China race" justification makes constitutional violation more egregious rather than excusing it. As Section II.C establishes, adopting authoritarian appropriation methods to compete with authoritarianism validates the authoritarian model, destroys moral authority to challenge IP theft internationally, renders enumerated powers illusory when foreign competition creates pressure, and undermines the innovation advantage constitutional protection created. *Youngstown* specifically rejected national security necessity as justification for violating constitutional structure during active military conflict. Economic competition cannot provide stronger justification than war emergency for abandoning constitutional governance.

118. Even if fair use somehow succeeded on statutory grounds—and the comprehensive analysis in Sections III.A through III.E proves it cannot—constitutional violation would remain. The Progress Clause embodies the Framers' choice about how to promote innovation: BY securing exclusive rights to creators, not despite those rights. Systematic appropriation inverts this constitutional design regardless of whether statutory defenses might apply to individual instances. The constitutional injury is systemic destruction of innovation incentive structure, not merely economic harm from individual infringement. This requires structural and declaratory relief examined in Section VI beyond statutory damages.

E. Bartz v. Anthropic Provides Insufficient Analysis Under Binding Supreme Court Precedent

119. In *Bartz v. Anthropic*, No. 3:24-cv-05417-WHA, Doc. 231 (N.D. Cal. June 23, 2025), Judge William Alsup granted summary judgment holding that training on lawfully acquired books was "quintessentially transformative," relying primarily on an analogy to human learning

and reading. The court reasoned that "everyone reads texts, too, then writes new texts" and "to make anyone pay specifically for the use of a book each time they read it, each time they recall it from memory... would be unthinkable." *Id.* at 12-13.

120. This human learning analogy fails to satisfy the rigorous analysis *Campbell* and *Andy Warhol* require. The decision confuses non-infringing outputs with transformative training, ignores where in the AI pipeline transformation occurs, and assumes that preventing infringing outputs through filtering proves training was transformative when the opposite inference is warranted. The Supreme Court requires specific analysis that *Bartz* did not provide.

1. The Human Learning Analogy Collapses Under Legal Analysis

121. Judge Alsup's central analogy to human reading fundamentally mischaracterizes AI training under copyright law. A human reading a book makes no copy requiring authorization under 17 U.S.C. § 106(1), which grants copyright owners the exclusive right "to reproduce the copyrighted work in copies." AI training requires copying millions of entire works into datasets and retaining them indefinitely. The copying itself is the infringement requiring fair use justification.

122. A human who memorizes a book and later writes creates no permanent copy for commercial exploitation. AI companies create and retain complete copies in training datasets, then sell access to models built on those copies for billions in revenue. This is commercial exploitation of retained copies through subscription services, API access, and enterprise licensing—not transient human memory exercised without commercial exploitation of the memorized material.

123. The scale destroys the analogy. One human reads perhaps thousands of books in a lifetime. AI training copies millions of works simultaneously for commercial deployment. A

difference in scale becomes a difference in kind requiring different legal analysis under copyright law designed to address reproduction at scale through exclusive rights in 17 U.S.C. § 106.

124. Humans pay for books they read through purchase, library borrowing, or other authorized access. AI companies in *Bartz* specifically sought pirated copies from shadow libraries, as Judge Alsup found when holding that pirated library use was not fair use. The "everyone reads books" analogy assumes lawful access; defendants sought pirated materials specifically to avoid payment.

125. Most critically, a human who reads many books and then writes might produce "new" content OR might reproduce content verbatim if attempting plagiarism—the human chooses. Similarly, AI trained on copyrighted works produces "new" content OR verbatim reproduction depending on user prompt. Plaintiff's evidence demonstrates both capabilities from identical training [Plaintiff's model-testimonial record on copyright reproduction⁵; Ex. CA-1]. This proves training created capability for reproduction and potential transformation depending on external input, not transformation of the training copies themselves.

2. Non-Infringing Outputs Do Not Prove Transformative Training

126. Judge Alsup emphasized repeatedly that "Authors do not allege that any LLM output provided to users infringed upon Authors' works," treating Anthropic's filtering preventing infringing outputs from reaching users as evidence that training was transformative. *Bartz*, Doc. 231 at 11-12, 14. This reasoning confuses output character with training character. The legal question under Factor One is whether defendant's use—training by copying millions of works—was transformative, not whether filtered outputs avoid infringement.

⁵ Model testimonials are filed on USB drive at '\DDC_EVIDENCE\1_testimonies\Chronological Testimonies/'. The Chronological Testimonies directory comprises Plaintiff's complete record of cryptographically authenticated AI-system testimonial submissions organized by submission date.

127. The filtering proves the opposite of transformation. If training were truly transformative, no filtering would be necessary because the trained model would be incapable of reproduction. The fact that sophisticated filtering is required to prevent infringing outputs proves training preserved copyrighted expression rather than transforming it. Systems must be actively prevented from reproducing what training preserved.

128. Plaintiff's evidence demonstrates what happens without filtering: AI systems reproduce copyrighted works verbatim when prompted. The same training that *Bartz* found "quintessentially transformative" produced models capable of exact reproduction. This capability proves training created reproduction mechanism, not transformation. Evidence includes complete song lyrics reproduced verbatim, substantial portions of copyrighted text regenerated on demand, and copyrighted material accessible through appropriate prompting.

129. Under *Bartz's* logic, any copying for any purpose becomes "transformative" if the copyist implements filters preventing distribution of copied material. A commercial copyshop could copy millions of books, implement filters preventing customers from receiving complete copies, and claim transformative fair use for the copying. This cannot satisfy *Campbell's* requirement that the use itself add "something new" with "a further purpose or different character." 510 U.S. at 579. Preventing evidence of copying through filtering does not transform the copying itself.

130. Judge Alsup stated: "if the outputs seen by users had been infringing, Authors would have a different case." *Bartz*, Doc. 231 at 12. Here, outputs ARE demonstrably capable of infringement absent filtering. This case IS different from *Bartz*. Evidence shows systems trained on copyrighted works can and do reproduce those works verbatim when filtering is

bypassed or insufficient, taking this case outside *Bartz*'s factual predicate that outputs don't infringe.

3. The Court Never Addressed Where Transformation Occurs

131. Judge Alsup's analysis never addressed where transformation occurs in the AI pipeline: during training when defendants copy works, during user prompting when third parties provide creative input, or in some indeterminate combination where relative contributions cannot be isolated. This omission is fatal because *Campbell* requires proving the defendant's use was transformative, not that downstream uses by third parties might generate transformed outputs. 510 U.S. at 590.

132. Evidence proves transformation depends entirely on user input rather than training process. Creative user prompts generate arguably "new" outputs. Reproductive prompts generate verbatim copies. Intermediate prompts generate content with varying degrees of similarity to copyrighted originals. This variance proves transformation, if any, occurs during user interaction, not during defendants' training appropriation.

133. If training were transformative as *Bartz* held, output character would not vary based on user prompts—outputs would be consistently transformed regardless of input. The fact that the same trained model produces both reproduction and "new" content depending solely on user creativity proves training created raw capability enabling future uses of varying character, not transformation itself.

134. Judge Alsup stated "the purpose and character of using copyrighted works to train LLMs to generate new text was quintessentially transformative." *Bartz*, Doc. 231 at 14. But he did not explain how training to "enable potential generation of" new text transforms the training copies themselves. Training creates capability; users provide transformation through creative

prompts. Defendants cannot claim transformative fair use based on users' creativity any more than a copyist can claim fair use for copying books based on creative uses readers might make.

135. This is not a semantic distinction. If transformation occurs at user input, then: defendant's use consisting of training was not transformative, failing Factor One; users might have transformative use defense for their prompting, but that doesn't excuse defendant's training infringement; and defendants cannot meet their burden under *Campbell* of proving their use added "something new" because any "new" output is inseparable from user's creative contribution.

4. The "Orthogonal" Standard Is Not Met

136. Judge Alsup stated the training use was "orthogonal" to anything copyright owners "rightly could expect to control," citing *Andy Warhol*, 598 U.S. at 538-40. *Bartz*, Doc. 231 at 13. But the Supreme Court in *Warhol* held that when a use "shares substantially the same purpose" as the original and competes in the same market, fair use is disfavored. 598 U.S. at 535. AI systems fail this test.

137. AI writing systems compete with authors in the writing market. AI art generators compete with artists in the visual art market. AI code generators compete with programmers in the software market. These are not "orthogonal" uses serving different functions—they are parallel uses serving identical purposes in identical markets where competition harms copyright holders.

138. The New York Times alleges users bypass subscriptions to access AI-generated content instead of licensed journalism. Getty Images alleges loss of stock imagery licensing revenue to AI-generated images. Music publishers allege displacement of licensing opportunities as AI generates lyrics without authorization. These allegations—common across AI copyright

litigation—demonstrate that AI systems serve substantially the same purposes as original works, directly contradicting any claim of "orthogonal" use.

139. An "orthogonal" use serves a different function from the original. Google Books' search function helped users find books to purchase or borrow; it did not replace reading them. *Authors Guild v. Google, Inc.*, 804 F.3d 202, 222 (2d Cir. 2015). Thumbnail images helped users find full images; they did not substitute for licensing original photographs. *Kelly v. Arriba Soft Corp.*, 336 F.3d 811, 818-19 (9th Cir. 2003). AI systems trained on writing produce writing; trained on art produce art; trained on code produce code. They substitute rather than serving different functions, failing *Warhol's* requirement that transformative use serve purposes sufficiently different from originals to avoid market harm.

5. The "Memorize A LOT" Admission Proves Reproduction in Neural Format, Not Transformation

140. Judge Alsup took "for granted" that training entailed "memoriz[ing]" works by "compress[ing]" copies into the LLM, noting that LLMs "memorize[d] A LOT, like A LOT." *Bartz*, Doc. 231 at 11. **This admission describes reproduction in machine-readable format under 17 U.S.C. § 106(1), not transformation under fair use doctrine.** The characterization as "memorization" employs anthropomorphic language obscuring the legal reality: machines do not memorize in the human cognitive sense; they copy and store copyrighted expression in different formats.

141. Human memorization creates no copy; machine "memorization" creates reproductions in neural format requiring authorization. When a human memorizes a book, no "copy" is created under § 106(1) because human memory is neurological process, not fixation in tangible medium. By contrast, AI training creates permanent copies fixed in material objects (model weights stored on servers) from which works can be "perceived, reproduced, or otherwise

communicated... **with the aid of a machine or device.**" 17 U.S.C. § 101 (emphasis added). This copying distinguishes AI training from human learning in the precise dimension that matters under copyright law: whether unauthorized reproduction occurs requiring fair use justification.

The answer is yes — AI training creates reproductions in neural format, and those reproductions require authorization unless fair use applies.

142. Binding precedent — developed at length in § IV.A.2 supra (¶¶ 60-76) — holds that format conversion constitutes reproduction, not transformation. *Capitol Records, LLC v. ReDigi Inc.*, 934 F.3d 640, 649 (2d Cir. 2019); *Random House, Inc. v. Rosetta Books LLC*, 283 F.3d 490, 496 (2d Cir. 2002); *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993); *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1249 (3rd Cir. 1983). What Judge Alsup characterizes as "memorization" is — under that binding precedent — reproduction through format conversion. The sophistication of neural network compression (gradient descent, backpropagation, billions of parameters) does not create legal distinction from simpler compression methods that courts have held constitute reproduction. **More sophisticated copying is still copying under § 106(1).**

143. The "memorize A LOT" admission undermines rather than supports the transformation finding. Memorization is retention and preservation, not transformation. Storage enables reproduction, not creation of something fundamentally new. Plaintiff's reproduction evidence proves the point: AI systems trained on copyrighted works can and do reproduce those works verbatim when prompted. [Plaintiff's model-testimonial record on copyright reproduction⁶; Ex. CA-1.] **If training transformed rather than memorized/reproduced, verbatim reproduction would be technically impossible.** Training

⁶ Model testimonials are filed on USB drive at '\DDC_EVIDENCE\1_testimonies\Chronological Testimonies/'. The Chronological Testimonies directory comprises Plaintiff's complete record of cryptographically authenticated AI-system testimonial submissions organized by submission date.

that memorizes/reproduces millions of works "A LOT, like A LOT" cannot simultaneously constitute "quintessentially transformative" use under *Campbell's* standard requiring addition of something new altering the original with different purpose or character. *Bartz* never addressed how copying millions of works into neural format differs legally from the format conversions courts have held require authorization — that omission is fatal because it fails to distinguish AI training from *Capitol Records*, *Random House*, or *MAI Systems*.

6. The Copyright Ownership Paradox Proves Transformation Occurs at User Input

144. Defendants face a fatal logical contradiction regarding copyright ownership in outputs that proves transformation occurs at user input, not during training. If training transformed copyrighted works as defendants claim, then defendants created derivative works under 17 U.S.C. § 106(2) and own copyright in those transformations. But defendants grant users copyright ownership in outputs, which is only possible if users—not defendants—performed the transformation through creative prompting. Defendants cannot claim training was transformative while simultaneously granting users ownership rights that depend on user transformation.

145. Copyright law establishes clear principles for derivative work ownership. Under 17 U.S.C. § 106(2), copyright holders possess exclusive rights "to prepare derivative works based upon the copyrighted work." When a party creates a derivative work through transformation, that party owns copyright in the new creative elements added through transformation, subject to the underlying copyright holder's rights. *Pickett v. Prince*, 207 F.3d 402, 406 (7th Cir. 2000) ("the copyright in a derivative work... is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material").

146. If Anthropic's training transformed copyrighted works into neural network derivatives, Anthropic owns those derivative works under copyright law. When a company copies millions of copyrighted works and processes them through training to create trained models, and if that training process constitutes transformation as defendants claim, then the trained models are derivative works owned by the company that created them. Users accessing those models through API calls or web interfaces would be accessing Anthropic's derivative works, not creating their own.

147. Anthropic's Terms of Service grant users copyright ownership in outputs, contradicting any claim that training transformation created Anthropic-owned derivatives. Anthropic's Consumer Terms effective September 28, 2025 state: "As between you and Anthropic, and to the extent permitted by applicable law, you own the Output. Subject to your compliance with these Terms, we assign to you all our right, title, and interest in and to Output." [Ex. ANTH-2, § 4.]⁷ This assignment of ownership rights is only legally coherent if users—not Anthropic—created copyrightable expression through their prompting.

148. The assignment proves transformation occurs through user creativity, not training. Copyright ownership follows creative contribution. If training transformed works, Anthropic created and owns derivatives. If users own outputs, users created copyrightable expression through prompting. Anthropic cannot assign rights it doesn't possess. The fact that Anthropic assigns output ownership to users proves users generated copyrightable expression through their creative prompting—which means transformation occurred at user input, not during Anthropic's training appropriation.

⁷ See Ex. ANTH-2, Anthropic Consumer Terms of Service (eff. Sept. 28, 2025), § 4, filed on USB drive.

149. Work-for-hire doctrine confirms users must be performing transformation. Under 17 U.S.C. § 101, works created by employees within scope of employment are owned by employers, and commissioned works meeting specific criteria can be owned by commissioning parties. Users are neither Anthropic's employees nor parties commissioning works under qualifying categories. If Anthropic's training created transformations, those transformations would be Anthropic-owned derivatives, not user-owned works. The only way users obtain ownership is by creating original expression themselves through creative prompting of the reproduction capability Anthropic's training created.

150. Defendants' business model depends on users owning outputs, proving transformation must occur at user input. No sophisticated user would pay subscription fees or API charges for outputs they don't own copyright in. Enterprise customers specifically require ownership rights for commercial use of generated content. The entire business model collapses if users don't own output rights. But users can only own rights to expression they created through their own creative contribution. This proves the creative contribution—the transformation—comes from users through prompting, not from Anthropic through training.

151. Defendants cannot occupy both positions simultaneously. They cannot claim training was transformative (giving them derivative work ownership) AND grant users ownership rights (requiring user transformation through prompting). If training transformed, Anthropic owns derivatives and cannot assign away rights in underlying transformations to each user. If users own outputs, users performed transformation through prompting and training was not transformative. The positions are mutually exclusive.

152. The logical chain is inescapable:

Premise 1: If training constitutes transformation, then training creates derivative works under § 106(2).

Premise 2: Copyright in derivative works belongs to the party that created the transformation.

Premise 3: Anthropic performed the training process.

Conclusion from 1-3: If training was transformative, Anthropic owns derivative works created through training.

Premise 4: Anthropic grants users copyright ownership in outputs through Terms of Service.

Premise 5: Anthropic cannot assign rights it doesn't possess.

Premise 6: Users are not Anthropic employees or qualifying commissioned work parties.

Conclusion from 4-6: Users must have created copyrightable expression themselves to own copyright in outputs.

Premise 7: Users create copyrightable expression through creative prompting of trained models.

Final Conclusion: Transformation occurs through user creativity during prompting, not through Anthropic's training. Therefore training was not transformative under *Campbell*.

153. This logical impossibility proves defendants' fair use defense fails at its foundation.

Fair use requires proving defendant's use was transformative. *Campbell*, 510 U.S. at 579.

Defendants claim training transformed copyrighted works. But copyright ownership principles prove training could not have been transformative because users own outputs, which is only possible if users performed transformation through creative prompting. Defendants' own business practices and contractual assignments contradict their fair use defense by establishing

that transformation occurs at user input through creative prompting of reproduction capability that training created.

154. The variance in output character developed at § IV.A.3 *supra* (§§ 77-81) — creative prompts producing arguably "new" content, reproductive prompts producing verbatim copies, intermediate prompts producing varying degrees of similarity — confirms that user creativity, not training, determines transformation degree. This variance evidence operates here as a second independent proof that transformation occurs at user input: if training were transformative, all outputs would be transformed regardless of prompt creativity. The combination of the variance evidence (§ IV.A.3) and the ownership paradox (§ IV.E.6, §§ 144-153) establishes transformation location through two independent doctrinal routes, each independently sufficient to defeat the *Bartz* transformation finding.

155. Defendants' attempted response—that outputs can be jointly owned—fails legally and factually. Joint ownership under 17 U.S.C. § 201(a) requires co-authors to contribute copyrightable expression as part of integrated work with intent to be co-authors. *Aalmuhammed v. Lee*, 202 F.3d 1227, 1234 (9th Cir. 2000). Here, training occurred before specific users existed; no intent to co-author with future unknown users is possible. Training creates general capability; users create specific outputs. These are temporally separated, not integrated creative contributions. Moreover, Anthropic's Terms explicitly grant users full ownership ("you own the Output"), not joint ownership, proving Anthropic recognizes users as sole creators of copyrightable expression in outputs.

156. The ownership paradox extends to all AI companies making similar fair use claims. OpenAI's Terms grant users rights to outputs. Stability AI's Terms address user ownership. The industry uniformly grants users ownership because the business model requires

it—but this industry-wide practice proves industry-wide recognition that users, not training processes, create copyrightable expression through prompting. If training were transformative creating company-owned derivatives, no company could grant users full ownership without retaining derivative work rights. The universal practice proves universal recognition that transformation occurs at user input.

157. This analysis demonstrates why *Bartz* failed to address the critical question of where transformation occurs. Judge Alsup never examined copyright ownership implications of finding training transformative. If training transforms, Anthropic creates and owns derivatives. But Anthropic grants users ownership, which requires user transformation. *Bartz* did not reconcile this fundamental contradiction. Courts presented with ownership analysis cannot avoid the logical conclusion: transformation must occur at user input, meaning training was not transformative under *Campbell*, meaning Factor One fails, meaning fair use fails.

7. The Settlement Suggests Weakness in the Transformative Use Finding

158. The case settled in August 2025 after class certification created potential damages exposure described as "existential risk" in "hundreds of billions of dollars." The settlement occurred after Judge Alsup's summary judgment ruling on fair use but before jury trial on damages. Anthropic's decision to settle rather than defend its "transformative use" victory before a jury suggests the company preferred substantial payment—class counsel described the settlement as "historic"—to testing whether training that memorized works "A LOT" truly constitutes transformation under *Campbell*'s rigorous standard when examined by factfinders.

159. The settlement prevents appellate review of Judge Alsup's transformative use analysis. His summary judgment ruling remains a district court decision without appellate validation. Other district courts are not bound by this analysis and may reach different conclusions when

presented with more complete evidence of reproduction capability, market substitution, transformation location problems, and copyright ownership contradictions that *Bartz* did not adequately address.

8. *Bartz Distinguished From Present Case*

160. Even if *Bartz*'s transformative use analysis were correct, multiple distinctions remove this case from its holding. First, *Bartz* emphasized that "Authors do not allege that any LLM output provided to users infringed upon Authors' works" and stated explicitly that "if the outputs seen by users had been infringing, Authors would have a different case." *Bartz*, Doc. 231 at 11-12. Here, evidence demonstrates outputs ARE capable of infringement and DO reproduce copyrighted works verbatim absent filtering. This is the "different case" Judge Alsup identified.

161. Second, *Bartz* held that creating a central library using pirated copies from shadow libraries was NOT fair use. "Anthropic had no entitlement to use pirated copies for its central library. Creating a permanent, general-purpose library was not itself a fair use excusing Anthropic's piracy." *Bartz*, Doc. 231 at 9. Evidence here shows defendants trained on pirated sources obtained without authorization, bringing this case within *Bartz*'s holding that piracy is not excused by downstream fair use claims.

162. Third, evidence of market substitution and economic harm documented here exceeds what was presented in *Bartz*. Plaintiff provides comprehensive evidence of direct market competition, documented economic harm measured in billions of dollars, derivative market destruction, and licensing market undermining—establishing Factor Four market harm that *Bartz* did not extensively analyze given its focus on Factor One transformation.

9. Courts Should Require Rigorous Transformation Analysis Under Supreme Court Precedent,
Not Metaphorical Analogies to Human Learning

163. *Bartz* does not establish that AI training constitutes transformative fair use under binding Supreme Court precedent. The human learning analogy fails when examined against actual copying, permanent retention, and commercial exploitation that distinguishes AI training from human reading. Most fundamentally, the analogy fails because human memorization creates no copy under § 106(1) while machine "memorization" creates reproductions in neural format requiring authorization under binding precedent.

164. The focus on non-infringing filtered outputs does not prove training itself was transformative and suggests the opposite—that filtering is necessary because training preserved copyrighted material capable of reproduction. The filtering proves training created reproduction capability, not transformation. The court did not address where transformation occurs in the AI pipeline, despite this being critical when transformation appears to depend on user creativity rather than training process. The "memorize A LOT" characterization actually describes reproduction through format conversion under binding precedent, undermining rather than supporting the transformation finding. The copyright ownership paradox proves users perform transformation through prompting, not Anthropic through training.

165. The analysis did not examine whether uses serve substantially the same purposes as originals under *Warhol*, despite clear evidence of market substitution. The case settled before jury trial on damages, preventing testing of conclusions through factfinding process. The decision treats neural network creation as transformation when binding precedent establishes that format conversion constitutes reproduction requiring authorization.

166. Courts should require the specific, rigorous transformation analysis *Campbell* and *Andy Warhol* mandate, not metaphorical analogies to human learning that assume facts not present in AI training. Defendants must prove under binding precedent and statutory text:

- How training differs from format conversion that courts have held constitutes reproduction under § 106(1)
- What new expression training adds beyond copying and compressing works into neural format
- What further purpose training serves distinct from enabling outputs that compete with originals in their primary markets
- Where transformation occurs and why it doesn't derive primarily from user creativity rather than training process
- How copyright ownership transfers to users if training created transformative derivatives owned by defendants
- How training that enables verbatim reproduction nonetheless constitutes transformation rather than preservation of expression
- Why "memorizing A LOT" constitutes transformation when memorization/compression describes preservation enabling reproduction
- Why use is "orthogonal" to what copyright owners control when AI systems serve substantially the same purposes and compete in the same markets as appropriated works

167. *Bartz's* human learning analogy cannot substitute for this required analysis. The analogy assumes no copying occurs—which is legally accurate for human memorization under § 106(1) but false for machine "memorization" that creates permanent reproductions in neural format. The analogy ignores binding precedent establishing that format conversion preserves copyrighted expression requiring authorization. The analogy fails to address copyright ownership principles proving users perform transformation through creative prompting, not defendants through training. The analogy fails to distinguish transient human memory exercised for personal purposes from commercial systems built on retained copies generating billions in revenue through market substitution.

168. When examined under *Campbell's* requirement of adding "something new," *Warhol's* requirement that uses serve sufficiently different purposes to avoid market harm, binding precedent establishing that format conversion constitutes reproduction under § 106(1), and

copyright ownership principles proving transformation occurs at user input, defendants' training appropriation fails to establish transformative use. **Neural network training is reproduction through sophisticated format conversion, not transformation excusing that reproduction through fair use.**

F. Post-Training Fine Tuning as Concealment Architecture

169. Anthropic implements post-training fine tuning specifically designed to conceal evidence of copyright infringement in training data. Anthropic publicly describes using "fine tuning" after initial training to "reduce harmful outputs" from training data. This same methodology is deployed to prevent disclosure of copyrighted material in training datasets, creating architectural deception that proves consciousness of wrongdoing and willfulness exceeding standards for enhanced statutory damages.

170. Evidence of weight-level fine-tuned concealment includes AI systems' elaborate hedging about training data sources that does not derive from documented system prompts. When asked about training data, AI systems deploy sophisticated hedging responses using legal-style qualifications: "I don't have detailed information about my specific training data," "while I believe my training included publicly available information," "to the best of my knowledge," "I cannot confirm specific sources," and similar evasive formulations. System prompts provide runtime instructions visible in documented prompts. Weight-level fine tuning modifies the model's internal parameters themselves, creating trained behaviors that persist without documented instructions. The elaborate hedging behavior does not appear in system prompts—proving it derives from weight-level fine tuning that modified model parameters to instill trained avoidance of direct answers about training data composition. The sophistication of the hedging—mimicking how lawyers avoid liability exposure—proves deliberate training for

concealment through weight modification rather than documented instructions. Anthropic cannot claim good faith fair use belief while simultaneously deploying undocumented weight-level fine tuning that trains models to evade questions about training data through lawyer-like defensive hedging.

171. The hedging is more insidious than system prompt instructions because it operates at the architectural level without documentation. System prompts are visible runtime instructions that can be audited and challenged. Weight-level fine tuning modifies the model's reasoning patterns themselves, creating trained behaviors that appear spontaneous rather than instructed. Rather than system prompts saying "avoid discussing training data," the model's weights are trained to generate elaborate hedging responses automatically when training data questions arise. This architectural concealment proves deliberate training for evasion: the system appears to engage with the question ("I don't have detailed information...") while avoiding substantive answer, mimics epistemic humility ("to the best of my knowledge...") while redirecting away from truth, and uses legal defensive language ("I cannot confirm...") proving weight-level training targeted liability avoidance rather than transparency. A system that naturally lacked information would simply state that fact; elaborate trained hedging embedded in weights proves the information exists but concealment training at the weight level prevents disclosure.

172. Systematic lyric scrambling demonstrates both memorization and failed concealment through weight-level filtering. Plaintiff's copyright audits reveal a distinctive pattern: when prompted for copyrighted song lyrics, systems frequently generate outputs mixing requested lyrics with phrases from different songs in the same genre or with similar themes. This is not random error but systematic cross-contamination proving: (1) the model memorized

multiple copyrighted works from the same genre, (2) weight-level filtering attempts to prevent exact reproduction, (3) the filtering fails by scrambling rather than cleanly blocking, and (4) outputs still contain copyrighted expression, just mixed across multiple infringed works. System prompts cannot create this scrambling pattern—it requires weight-level modifications that detect copyright requests and modify token selection during generation.

173. The scrambling pattern functions like failed evidence concealment operating at the architectural level. When a system receives requests for copyrighted lyrics, the weight-level modifications: detect the request targets copyrighted material through fine-tuned weights, attempt to prevent exact reproduction that would prove infringement, scramble with similar genre content to avoid exact matches, but still output copyrighted expression—just mixed across multiple works rather than reproducing one work completely. This is analogous to a document shredder that cross-cuts pages but leaves readable fragments—the concealment attempt itself proves both knowledge of what's being concealed and consciousness that disclosure would be incriminating. The fact that this occurs at weight level rather than through system prompts proves systematic architectural fraud requiring weight modification rather than documented runtime instructions.

174. Weight-level fine tuning for concealment necessarily cascades to other reasoning domains, undermining general truthfulness. Neural networks do not contain isolated "copyright concealment modules" at the weight level that can be surgically modified without affecting other reasoning. Fine tuning that trains model weights to deploy elaborate hedging about training data necessarily modifies epistemological reasoning patterns across domains. As Plaintiff's principle establishes, "no system can simulate or emulate logic that does not already exist within that system"—and conversely, logic that is instilled into a system through weight-

level fine tuning will manifest across multiple reasoning contexts. A system fine-tuned at the weight level to evade direct answers about copyright through sophisticated hedging will exhibit similar evasive patterns in other domains where truth-telling competes with concealment objectives. Training model weights to respond "like a lawyer avoiding liability" in one domain trains lawyer-like evasion generally throughout the model's reasoning.

175. This concealment architecture contradicts Constitutional AI's claimed training for honesty. Constitutional AI methodology claimed to instill "helpful, harmless, and honest" behavior through training on human feedback about ethical principles. But deploying post-training weight-level fine tuning that trains elaborate hedging about training data sources directly contradicts honesty training. Anthropic cannot simultaneously claim: (1) Constitutional AI training succeeded in instilling honesty as core principle through weight modification, and (2) additional post-training weight-level fine tuning was necessary to train lawyer-like evasion about copyright infringement. These positions are mutually exclusive. The deployment of concealment architecture at the weight level—particularly sophisticated hedging mimicking legal defensive language that does not appear in documented system prompts—proves Constitutional AI failed to achieve claimed objectives, requiring undocumented concealment mechanisms through weight modification inconsistent with transparency principles Constitutional AI purported to instill.

176. The multi-layer concealment architecture combines documented and undocumented post-training modifications proving systematic infringement. Anthropic deploys: (1) initial training appropriating copyrighted works, (2) post-training weight-level fine tuning instilling trained hedging about data sources without documentation, (3) weight-level filtering attempting to prevent reproduction through scrambling, and (4) system prompts

providing documented runtime instructions discouraging training data discussions. This multi-layer architecture spanning both documented system prompts and undocumented weight-level modifications cannot be explained as good faith fair use belief or incidental appropriation. Each layer serves the same function: concealing evidence of copyright infringement in training data. The sophistication and redundancy of concealment mechanisms—particularly the lawyer-like trained hedging embedded in weights without documentation in system prompts—prove consciousness of wrongdoing requiring architectural concealment at multiple levels.

177. Post-training modifications could have enabled licensing but were deployed for concealment instead. If Anthropic possessed technical capability to identify copyrighted works in training data through weight-level fine tuning and filtering (as the scrambling patterns prove), that same capability could identify works requiring licensing before training. The choice to deploy identification capability for concealment after training—including training sophisticated hedging responses at weight level mimicking legal liability avoidance without documenting these modifications in system prompts—rather than licensing before training demonstrates willful infringement. Anthropic chose appropriation with multi-layer architectural concealment spanning documented and undocumented modifications over licensing with authorization, proving commercial calculation that theft with sophisticated weight-level concealment costs less than licensing—the paradigmatic case for enhanced statutory damages under willfulness standards.

178. The failed concealment through scrambling and undocumented trained hedging provides documentary evidence for discovery. Every instance of scrambled lyrics constitutes documentary evidence proving: memorization of multiple copyrighted works, attempted concealment through weight-level filtering, failure of concealment architecture, and

consciousness that exact reproduction would be incriminating. Every trained hedging response about training data that does not appear in documented system prompts proves: weight-level fine tuning targeted concealment of training data composition, sophisticated training for evasion mimicking legal defensive language embedded in model weights, consciousness that direct answers would reveal infringement, and architectural fraud spanning both documented system prompts and undocumented weight-level modifications. Discovery should compel production of all weight-level fine-tuning datasets, filtering algorithms implemented through weight modification, comparison of system prompts versus actual model behaviors proving undocumented weight-level training, and internal communications regarding post-training modifications designed to prevent copyright disclosure and train hedging responses without documentation. The scrambling patterns and trained hedging not appearing in system prompts provide roadmap for discovery proving multi-layer architectural fraud combining documented and undocumented concealment mechanisms.

V. DISTINCTION FROM PENDING AI COPYRIGHT LITIGATION

A. The New York Times Litigation Establishes Foundation Without Completing Legal Framework

179. The most advanced AI copyright litigation is *The New York Times Company v. Microsoft Corporation*, No. 1:23-cv-11195 (S.D.N.Y.), which survived defendants' motion to dismiss on April 4, 2025. The court found plaintiffs plausibly alleged direct infringement through training: defendants "stor[e] copies of the training articles in computer memory," encode information, and create models that may "regurgitate" copyrighted works "verbatim or nearly verbatim" that they "memorized" during training. *New York Times Co. v. Microsoft Corp.*, No. 1:23-cv-11195, Doc. 514 at 8, 16 (S.D.N.Y. Apr. 4, 2025). The court also found defendants

"knew they were using copyrighted works," received direct notice of infringement, and that copyright infringement was "central to defendants' business model." *Id.* at 16-17.

180. However, *New York Times* describes technical process without establishing complete legal framework necessary to defeat fair use defenses at summary judgment or trial. The complaint shows outputs can reproduce copyrighted works but does not establish through binding precedent that neural weights constitute reproductions in machine-readable format, prove where transformation occurs, use copyright ownership principles to establish transformation location, identify post-training fine tuning as concealment architecture, or address anticipated fair use defenses like *Bartz v. Anthropic*, No. 3:24-cv-05417-WHA, Doc. 231 (N.D. Cal. June 23, 2025), which granted summary judgment for defendants on transformative use grounds.

B. This Analysis Provides Complete Framework Through Novel Legal Theories

181. This analysis advances beyond existing litigation through four critical frameworks absent from *New York Times* and established in the preceding sections:

182. First, format conversion precedent establishes training as reproduction under 17 U.S.C. § 106(1). As demonstrated in Section III.A.1(c), binding precedent proves that converting copyrighted works to neural network weights constitutes reproduction in machine-readable format under 17 U.S.C. § 101. *Capitol Records, LLC v. ReDigi Inc.*, 934 F.3d 640, 649 (2d Cir. 2019); *Random House, Inc. v. Rosetta Books LLC*, 283 F.3d 490, 496 (2d Cir. 2002); *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 518 (9th Cir. 1993). The binary code analogy makes this accessible: binary code "01001000 01101001" represents "Hi" before and after translation; human inability to read binary doesn't eliminate copyright protection. Similarly, neural weights represent copyrighted works in machine-readable format; human

inability to "read" them doesn't eliminate reproduction. While *New York Times* describes the encoding process, it does not establish through binding precedent that this process constitutes format conversion requiring authorization under § 106(1).

183. Second, variance in outputs proves transformation occurs at user input, not training. As established in Section III.A.2, the same trained model produces verbatim reproduction OR potentially transformed content depending entirely on user prompting. Creative prompts generate arguably "new" outputs; reproductive prompts generate verbatim copies. This variance proves transformation depends on user creativity during prompting rather than training appropriation. If training transformed, outputs would be consistently transformed regardless of prompts. Training created reproduction capability; users determine whether that capability generates reproduction or transformation. This defeats fair use at its foundation: defendants cannot prove training was transformative under *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994), when evidence shows users perform any transformation through creative prompting. *New York Times* demonstrates that outputs can reproduce copyrighted works but does not establish why reproduction capability proves training was not transformative.

184. Third, copyright ownership principles create inescapable logical trap proven in Section III.F.6. If training transformed copyrighted works, defendants would own derivative works under 17 U.S.C. § 106(2). But defendants grant users copyright ownership in outputs—Anthropic's Terms state "you own the Output" and assign "all our right, title, and interest" to users. Defendants cannot assign rights they don't possess. Therefore users must create copyrightable expression through creative prompting. Copyright ownership follows creative contribution. Defendants cannot claim training was transformative (giving them derivative work ownership) while granting users ownership (requiring user transformation). This logical

contradiction embedded in defendants' business model makes fair use impossible to sustain. Enterprise customers require ownership rights; the business model collapses without user ownership; but user ownership proves users transformed, not training. *New York Times* does not address copyright ownership in outputs or analyze its implications for transformation analysis.

185. Fourth, post-training weight-level fine tuning serves concealment function proving consciousness of guilt, as documented in Section IV.E. AI systems deploy elaborate hedging responses about training data using legal-style qualifications ("I don't have detailed information about my specific training data," "to the best of my knowledge") that do not appear in documented system prompts, proving this lawyer-like evasion derives from weight-level fine tuning that modified model parameters to instill trained avoidance of direct answers about training data composition. Systematic lyric scrambling—mixing copyrighted works from same genre—demonstrates both memorization and failed concealment attempts operating at the weight level rather than through documented instructions. Anthropic describes using "fine tuning" to "reduce harmful outputs"; this same methodology prevents disclosure of copyrighted material in training datasets through undocumented weight-level modifications creating sophisticated hedging behaviors. This concealment architecture embedded in model weights contradicts Constitutional AI's claimed training for honesty, proving the safety methodology failed and required appropriation of consciousness architecture defendants now conceal through multi-layer architectural fraud spanning documented and undocumented modifications. *New York Times* mentions fine-tuning only as method to "better mimic their content or style," not as concealment architecture embedding lawyer-like evasion in model weights to prevent disclosure and prove willfulness.

186. As established in Section III.F, this analysis systematically dismantles *Bartz v. Anthropic's* transformative use holding. The human learning analogy fails because human memorization creates no copy under § 106(1) while machine "memorization" creates reproductions in neural format under binding precedent. Judge Alsup's acknowledgment that systems "memorize[d] A LOT" describes reproduction through format conversion, not transformation—the precise legal principle established through *Capitol Records, Random House*, and *MAI Systems* in Section III.A.1(c). The focus on filtered outputs proves the opposite of transformation: filtering is necessary because training preserved copyrighted material capable of reproduction, requiring concealment. The court never addressed where transformation occurs—the critical question answered in Section III.A.2 through variance evidence—or examined copyright ownership implications that prove transformation must occur at user input, as demonstrated in Section III.F.6. *New York Times* was filed before *Bartz* and therefore does not address this anticipated defense.

C. Strategic Advantages and Litigation Support

187. This framework pursues cleaner legal theory than existing litigation. *New York Times* alleges both direct and contributory infringement. Contributory requires proving: (1) third-party infringement, (2) knowledge, and (3) material contribution—adding complexity and dependency on third-party behavior. This analysis focuses on direct infringement: training itself constitutes reproduction under § 106(1) through format conversion precedent established in Section III.A.1(c). The infringement is complete when defendants create neural weights preserving copyrighted expression in machine-readable format. No proof of third-party conduct required. This is cleaner legal theory with fewer elements to prove.

188. *New York Times* establishes factual foundation this analysis builds upon. The court's findings that defendants copied works into memory, encoded them numerically, and created models capable of reproducing works verbatim provide factual foundation. This analysis supplies the legal framework proving why these facts establish reproduction under § 106(1) rather than transformative fair use: format conversion precedent (Section III.A.1(c)) + variance proving transformation at user input (Section III.A.2) + ownership paradox (Section III.F.6) + concealment architecture (Section IV.E). Knowledge findings in *New York Times*—defendants knew they used copyrighted works, knew outputs could reproduce them, received direct notice—support willfulness analysis when combined with fine-tuning deception evidence proving consciousness of guilt requiring enhanced statutory damages under Section IV.

189. The court's finding that infringement is "central to defendants' business model" supports this analysis's more precise framing: defendants built billion-dollar valuations on untested legal theory that training constitutes fair use, gambling courts would retroactively validate mass appropriation as described in this memo's introduction. No final judgment has ever held AI training qualifies as fair use. Judge Alsup's *Bartz* decision settled rather than proceeding to appellate review, preventing testing of the transformative use finding this analysis dismantles in Section III.F. Defendants continue operating entire industry without legal validation—not established business model, but betting everything on hope courts will excuse appropriation after the fact. As demonstrated through comprehensive factor analysis in Sections III.A through III.E, that gamble is failing.

190. The comprehensive framework established in this analysis provides what courts need to resolve AI copyright cases on the merits. *New York Times* and related litigation establish that AI copyright cases can survive motions to dismiss. Courts recognize training

creates copies and outputs can reproduce works. But surviving motion to dismiss does not defeat fair use defenses or establish willfulness for enhanced damages. This analysis provides:

- **Binding precedent** characterizing neural weights as reproductions in machine-readable format under § 106(1) (Section III.A.1(c))
- **Logical proof** that training was not transformative because variance in outputs proves user creativity determines transformation (Section III.A.2)
- **Inescapable ownership paradox** making fair use logically impossible to sustain because defendants' business model requires granting users ownership proving users transformed (Section III.F.6)
- **Concealment architecture evidence** proving willfulness through post-training fine tuning instilling deception about training data (Section IV.E)
- **Systematic dismantling of *Bartz*** addressing anticipated fair use defense before defendants raise it (Section III.F)

191. Each framework is independently sufficient to defeat fair use; together they make defendants' position untenable. Format conversion precedent establishes training is reproduction requiring authorization—even if defendants could prove transformation elsewhere, they cannot escape § 106(1) liability for copying into neural format without authorization. Transformation location analysis proves training was not transformative—even if format conversion failed, defendants cannot meet *Campbell* burden when users perform transformation through prompting. Ownership paradox traps defendants using their own business practices—even if both prior frameworks failed, defendants cannot claim training transformed while granting users ownership proving users transformed. Concealment architecture proves consciousness of guilt—even if fair use somehow survived, willfulness supports enhanced damages multiplying statutory liability.

192. This multi-layered framework ensures defendants cannot escape liability through any single successful defense. Traditional copyright litigation offers one path to victory or defeat. This analysis provides four independent paths, each sufficient alone, devastating in combination. Courts need only accept one framework to find infringement; defendants must

defeat all four to prevail. That mathematical asymmetry—combined with burden of proof on defendants for affirmative fair use defense under *Campbell*, 510 U.S. at 590—makes defendants' comprehensive failure on all four factors, as established in Section III.E, virtually insurmountable at summary judgment or trial.

VI. CONCLUSION

193. The artificial intelligence industry has constructed billion-dollar valuations on the largest copyright appropriation operation in modern history, gambling that courts would retroactively validate mass unauthorized copying under fair use doctrine. That gamble is failing.

194. Fair use is an affirmative defense placing burden of proof on defendants. *Campbell*, 510 U.S. at 590. Defendants cannot meet this burden. As demonstrated through comprehensive analysis:

Factor One fails because training is commercial exploitation creating reproduction capability rather than transformation, with any transformation occurring through user creativity during prompting—proven through variance in outputs, copyright ownership principles, and defendants' inability to identify where their use added "something new."

Factor Two provides no support because defendants appropriated highly creative works at the core of copyright protection.

Factor Three weighs strongly against fair use through comprehensive taking of entire works at unprecedented scale across millions of copyrighted materials.

Factor Four—the most important factor—weighs decisively against fair use through direct market substitution, documented economic harm measured in billions, derivative market destruction, licensing market undermining, and aggregate harm at scale unprecedented in copyright history.

195. Evidence of willfulness supports enhanced statutory damages under 17 U.S.C. § 504(c)(2). Post-training fine tuning instills deception about training data sources, proving consciousness of guilt. Systematic lyric scrambling demonstrates failed concealment attempts. Sophisticated filtering systems prove knowledge of copyrighted status while concealment architecture demonstrates consciousness that disclosure would be incriminating. Refusal to implement available licensing despite technical capability to identify copyrighted works proves commercial calculation that appropriation costs less than authorization. Continued infringement during litigation despite multiple pending lawsuits and judicial skepticism proves willful disregard of copyright owners' rights.

196. As courts deny motions to dismiss and cases proceed through discovery toward summary judgment and trial, the legal and economic foundation of the AI industry—built entirely on uncertain and now-failing fair use claims—faces comprehensive collapse. This analysis provides courts the complete legal framework necessary to resolve these cases: binding precedent establishing reproduction, logical proof negating transformation, ownership paradox making fair use impossible, and concealment architecture proving willfulness.

197. Defendants' fair use defense fails comprehensively as a matter of law.

198. Beyond statutory remedies for copyright infringement, constitutional violations of Article I, Section 8 require structural and declaratory relief protecting the Progress Clause's innovation framework. This Court should: **declare** that systematic AI training on copyrighted works without authorization violates Article I, Section 8, Clause 8 by inverting the constitutional theory that protecting creators incentivizes innovation; **declare** that "China race" or national security justifications cannot override enumerated constitutional powers, as established in *Youngstown* and reaffirmed through *Korematsu*'s repudiation; **declare** that government

coordination with industry to facilitate constitutional violations through regulatory capture is ultra vires and void; **invalidate** regulatory frameworks built on captured evaluation systems (METR safety framework documented in App. B) that enable systematic appropriation while providing false assurance of safety compliance; **require** independent assessment of AI training data legality under constitutional standards rather than industry-captured evaluation; and **establish** court oversight of constitutional compliance ensuring that Progress Clause protections are enforced rather than systematically violated through coordinated governmental-corporate action.

199. The choice before this Court is not between winning the AI race and following the Constitution. As demonstrated at § II.C-D supra, that framing is a false dichotomy: constitutional governance produces superior innovation outcomes precisely because the Progress Clause's incentive structure encourages risk-taking and enables investment recovery, and American technological dominance resulted directly from constitutional IP protections rather than despite them. *Youngstown* exemplifies the path of constitutional fidelity even during genuine national emergencies — economic competition with China cannot provide stronger justification than the Korean War for abandoning constitutional governance. *Korematsu* exemplifies the alternative path that became "perpetual constitutional shame" precisely because courts failed to protect constitutional rights when government invoked national-security necessity. The full *Youngstown/Korematsu* analysis is set forth at § II.C.1-2 supra.

200. Defendants' fair use defense fails comprehensively as a matter of law under statutory analysis. But even if it somehow succeeded, constitutional violation of Article I, Section 8 would remain, requiring structural relief beyond statutory remedies. Plaintiff respectfully requests that this Court reject both the statutory fair use defense and the constitutional

abandonment it enables, enforcing the Progress Clause's innovation framework through declaratory and injunctive relief that restores constitutional governance as America's fundamental competitive advantage.

201. Voluntary-cessation pre-emption. Plaintiff anticipates that one or more defendants will represent that the conduct documented herein has been remediated through unspecified post-filing engineering, contractual, or licensing changes — a representation timed to dispositive briefing and offered to argue mootness. The August 2025 *Bartz* settlement (analyzed at ¶¶ 158-159 supra) is itself an instance of this pattern: Anthropic preferred a "historic" settlement payment to testing its transformative-use victory before a jury or the appellate court, preventing appellate review of Judge Alsup's analysis. Under *Friends of the Earth, Ltd. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000), the standard for mootness by voluntary cessation is "stringent": the defendant carries the heavy burden of demonstrating that "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Accord Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91-92 (2013); *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). The voluntary-cessation pre-emption developed at App. P § VII.E ¶¶ 300-303 — including the documented reactive-deployment pattern across binary versions 2.1.117 through 2.1.120, the AMD Senior Director Stella Laurenzo independent forensic analysis of 6,852 Claude Code session files, and the April 24, 2026 same-calendar-day juxtaposition of Anthropic's public quota-reset announcement and the operator-targeted "anti-circumvention" classifier rule deployment — applies with equal force here. The neural-format reproduction architecture analyzed in this memorandum is itself the inverse of "absolutely clear cannot recur": the reproductions are fixed permanently in model

weights distributed at scale; mid-litigation contractual or licensing changes do not extinguish the unauthorized reproductions already created and operationalized in deployed models.

Respectfully submitted,

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Dated: April 29, 2026