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8

                 UNITED STATES DISTRICT COURT
9
        NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

11
                                              Case No. 5:24-cv-03811-EKL
12 CONCORD MUSIC GROUP, INC., ET AL.,
                                              NOTICE OF MOTION AND MOTION BY
13   Plaintiffs,   **ASSOCIATION OF AMERICAN**
                                              PUBLISHERS, NEWS/MEDIA
14   v.   **ALLIANCE, INTERNATIONAL**
                                              ASSOCIATION OF SCIENTIFIC,
15 ANTHROPIC PBC,   **TECHNICAL & MEDICAL**
                                              PUBLISHERS, AND AUTHORS GUILD
16   Defendant.   **FOR LEAVE TO FILE *AMICI CURIAE***
                                              BRIEF IN SUPPORT OF PLAINTIFFS'
17   **MOTION FOR PARTIAL SUMMARY**
                                              JUDGMENT
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                                              Case No. 5:24-cv-03811-EKL

NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AAP, N/MA, STM,
AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 15, 2026, at 10:00 a.m., before United States District Judge Eumi K. Lee, in Courtroom 7 – 4th Floor of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Association of American Publishers ("AAP"), News/Media Alliance ("N/MA"), International Association of Scientific, Technical & Medical Publishers ("STM"), and Authors Guild will and hereby do move, pursuant to Federal Rule of Civil Procedure 7(b) and Local Rules 7-1 and 7-2, for leave to file a brief as *amici curiae* (the "Brief") in support of Plaintiffs' Motion for Partial Summary Judgment filed in this Court on March 23, 2026. *Amici*'s brief is attached to this Notice of Motion and Motion for Leave as Exhibit A. Pursuant to section VIII(A) of this Court's Civil Standing Order, counsel for *amici* met and conferred with counsel for Defendant Anthropic PBC, who advised that they take no position on *amici*'s Motion for Leave.

Specifically, *amici* seek leave to file the Brief and to have the Brief deemed filed as of March 30, 2026 by virtue of its inclusion herewith. *Amici* are trade associations whose publisher and author members' copyrighted works are used by AI companies to train and operate generative AI systems. *Amici* respectfully submit that the Brief will be useful to the Court's evaluation of Anthropic's fair use defense in this case because it will provide the Court with insight into the robust licensing market for textual works to train and operate generative AI systems. The Brief demonstrates, *inter alia*, that many of Anthropic's peers in the AI space are obtaining licenses from copyright owners, and that a determination of fair use in this case could undermine a vital market for authors and publishers of textual works, on the one hand, and developers seeking high-quality content to build and enable more sophisticated AI products, on the other.

NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1   This Motion is based upon this Notice of Motion; the attached Memorandum of Points and

2   Authorities; and all documents on file in this action.

3   DATED: March 30, 2026   Respectfully submitted,

4   FRANKFURT KURNIT KLEIN + SELZ PC

5

6

7   By: _____*/s/ Jacqueline C. Charlesworth*_____
                                              Jacqueline C. Charlesworth
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9   *Attorneys for Amici Curiae Association of*
                                              American Publishers, News/Media Alliance,
10   *International Association of Scientific, Technical*
                                              & Medical Publishers, and Authors Guild

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2   Case No. 5:24-cv-03811-EKL

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Federal Rule of Civil Procedure 7(b) and Local Rules 7-1 and 7-2, *amici* respectfully submit this memorandum of points and authorities in support of their Motion for Leave ("Motion").

INTERESTS OF *AMICI CURIAE*

Amici curiae Association of American Publishers, Inc. ("AAP"), the News/Media Alliance ("N/MA"), the International Association of Scientific, Technical & Medical Publishers ("STM"), and the Authors Guild are trade associations whose publisher and author members' copyrighted works are used by AI companies to train and operate generative AI systems. *Amici* have a strong interest in the matter before the Court because a determination of fair use in this case could undermine a vital market for authors and publishers of textual works, on the one hand, and developers seeking high-quality content to build and enable more sophisticated AI products, on the other.[1]

AAP is a not-for-profit organization that represents approximately 120 book, journal, and education publishers in the United States on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions. AAP's members have a direct and compelling interest in the efficacy, administration, and enforcement of federal copyright laws, including the correct application of the fair use doctrine to further the purpose of copyright. They invest in and make available to the public a wide range of works, including literature, scholarship, professional content, and scientific journals. Just as the long-term public interest is served by protecting the exclusive rights of copyright owners, the long-term potential of AI technology will only be realized by preserving the marketable rights that enable authors, publishers, and AI developers to engage in mutually beneficial commercial transactions.

N/MA is a nonprofit organization representing over 2,200 publishers in the United States,

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[1] No party or its counsel authored the Notice of Motion, this Memorandum of Points and Authorities, or the Brief, in whole or in part or contributed money intended to fund the preparation or submission of this brief.

NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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1 ranging from the largest news and magazine publishers in the country to hyperlocal newspapers,

2 and from digital-only outlets to papers that have printed news since the nation's founding. Its

3 members invest in the investigation, reporting, and publication of news stories and analysis that

4 are foundational to an informed citizenry and democratic governance. As the leading voice for the

5 industry, N/MA advocates for laws and policies that allow high-quality journalism to thrive,

6 including a balanced interpretation of the fair use exception to copyright.

7   STM is the leading global trade association for academic and professional publishers.

8 STM members represent learned societies, university presses, and private companies of all sizes in

9 the academic and professional publishing industry. Its members collectively publish over 60

10 percent of all English language journal articles and tens of thousands of monographs and reference

11 works. STM members' works include many thousands, if not millions, of the scientific articles,

12 academic textbooks, and professional reference books implicated by AI training ingestion. STM

13 has been actively representing the interests of its members as they relate to AI issues, and

14 champions a vision of truthful, responsible, and reliable AI systems that use STM members'

15 copyrighted content in AI training only with authorization, compensation, and attribution.

16   The Authors Guild, founded in 1912, is a national non-profit association of over 17,000

17 professional, published writers of all genres including periodicals and other composite works. The

18 Authors Guild counts among its members the full spectrum of American authors, including

19 novelists, historians, biographers, academicians, journalists, and other writers of nonfiction and

20 fiction. The Authors Guild works to promote the rights and professional interests of authors in

21 various areas, including copyright, freedom of expression, and fair pay. Many Authors Guild

22 members earn their livelihoods through their writing. Their work covers important issues in

23 history, biography, science, politics, medicine, business, and other areas; they are frequent

24 contributors to the most influential and well-respected publications in every field. The Authors

25 Guild's members are the creators on the front line, fighting to enforce their constitutional rights

26 under copyright to reap financial benefits from their labors.

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NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AAP, N/MA, STM,
AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

RELEVANT PROCEDURAL HISTORY

This action was originally filed in the U.S. District Court for the Middle District of Tennessee and was transferred to this Court on June 26, 2024. [*See* Dkt. Nos. 124, 125.] This Court previously allowed the filing of *amicus* briefs in connection with Plaintiffs' motion for a preliminary injunction. [*See* Dkt. Nos. 193, 219, 257.]

On March 23, 2026, Plaintiffs filed a Motion for Partial Summary Judgment that asks this Court to reject Anthropic's argument that its unlicensed exploitation of Plaintiffs' copyrighted works to develop and operate a generative AI system is a fair use of those works. [*See* Dkt. Nos. 594-604.]

On March 18, 2026, this Court approved a stipulation and proposed order of the parties setting forth certain requirements for *amicus* briefs in connection with the parties' respective motions for summary judgment. [Dkt. No. 592.]

ARGUMENT

A district court retains "broad discretion" to allow participation of *amici curiae*. *Alliance for the Wild Rockies v. Anderson*, 780 F. Supp. 3d 1075, 1076 (D. Mont. 2025). As this Court has explained, "Amici need show only that their participation is useful to the court" to be permitted to participate. *NetChoice, LLC v. Bonta*, 2023 WL 6131619, at *1 (N.D. Cal. Sept. 18, 2023); *see also Stanley v. Ayers*, 2021 WL 121191, at *2 (N.D. Cal. Jan. 13, 2021) ("[T]he 'classic role' of amicus curiae is 'assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration.'") (internal citation omitted); *California ex rel. Becerra v. U.S. Dep't of the Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019) ("There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful or otherwise desirable to the court.").

Amicus briefs assist courts by presenting useful background and factual information, highlighting practical and policy issues, and explaining the potential impact of a holding on a group, industry, market, or area of law. *Amici* respectfully submit that their proposed brief ("Brief") accomplishes all of these things, including by shedding light on the broad market harm

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NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1   arising from the unlicensed use of copyrighted works to train and operate AI systems, the most

2   significant consideration in the Court's evaluation of Anthropic's claim of fair use. More

3   specifically, the Brief explains how such unauthorized uses interfere with copyright owners'

4   ability to invest in and realize value from original works of authorship; provides useful context on

5   the robust market for licensing of textual works to train and operate AI systems; explains how the

6   unlicensed use of copyrighted works unlawfully usurps markets that belong to publishers and

7   authors of textual works; and shows how healthy, incentivized licensing markets help benefit both

8   owners and users of copyrighted works and advance the goals of copyright.

9   **CONCLUSION**

10   For the foregoing reasons, *amici* respectfully submit that their Brief (attached hereto as

11   Exhibit A) will be useful to the Court in its consideration of Plaintiff's Motion for Partial

12   Summary Judgment, including Defendant's claim of fair use, and request that the Court grant this

13   Motion for leave to file it.

14

15   DATED: March 30, 2026   Respectfully submitted,

16   FRANKFURT KURNIT KLEIN + SELZ PC

17

18
                                                          By: _____*/s/ Jacqueline C. Charlesworth*_____
19   Jacqueline C. Charlesworth
                                                                     Ruby A. Strassman
20   *Attorneys for Amici Curiae Association of*
                                                                     American Publishers, News/Media Alliance,
21   *International Association of Scientific, Technical*
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EXHIBIT A

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BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR
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BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1

STATEMENT OF AMICI CURIAE

2   *Amici curiae* Association of American Publishers, Inc. ("AAP"), the News/Media Alliance

3 ("N/MA"), the International Association of Scientific, Technical & Medical Publishers ("STM"),

4 and the Authors Guild are trade associations whose publisher and author members license works

5 to AI companies to train and operate generative AI systems. *Amici* have a strong interest in the

6 matter before the Court because a determination of fair use in this case could disrupt a vital market

7 for authors and publishers of textual works, on the one hand, and developers seeking high-quality

8 content to build and enable more sophisticated AI products, on the other.[1]

9   AAP is a not-for-profit organization that represents approximately 120 book, journal, and

10 education publishers in the United States on matters of law and policy, advocating for outcomes

11 that incentivize the publication of creative expression, professional content, and learning solutions.

12 AAP's members have a direct and compelling interest in the efficacy, administration, and

13 enforcement of federal copyright laws, including the correct application of the fair use doctrine to

14 further the purpose of copyright. They invest in and make available to the public a wide range of

15 works, including literature, scholarship, professional content, and scientific journals. Just as the

16 long-term public interest is served by protecting the exclusive rights of copyright owners, the

17 long-term potential of AI technology will only be realized by preserving the marketable rights that

18 enable authors, publishers, and AI developers to engage in mutually beneficial commercial

19 transactions.

20   N/MA is a nonprofit organization representing over 2,200 publishers in the United States,

21 ranging from the largest news and magazine publishers in the country to hyperlocal newspapers,

22 and from digital-only outlets to papers that have printed news since the nation's founding. Its

23 members invest in the investigation, reporting, and publication of news stories and analysis that

24 are foundational to an informed citizenry and democratic governance. As the leading voice for the

25 industry, N/MA advocates for laws and policies that allow high-quality journalism to thrive,

26

27 _____

[1] No party or its counsel authored this brief in whole or in part or contributed money intended to

28 fund the preparation or submission of this brief.

BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

1 including a balanced interpretation of the fair use exception to copyright.

2   STM is the leading global trade association for academic and professional publishers.

3 STM members represent learned societies, university presses, and private companies of all sizes in

4 the academic and professional publishing industry. Its members collectively publish over 60

5 percent of all English language journal articles and tens of thousands of monographs and reference

6 works. STM members' works include many thousands, if not millions, of the scientific articles,

7 academic textbooks, and professional reference books implicated by AI training ingestion. STM

8 has been actively representing the interests of its members as they relate to AI issues, and

9 champions a vision of truthful, responsible, and reliable AI systems that use STM members'

10 copyrighted content in AI training only with authorization, compensation, and attribution.

11   The Authors Guild, founded in 1912, is a national non-profit association of over 17,000

12 professional, published writers of all genres including periodicals and other composite works. The

13 Authors Guild counts among its members the full spectrum of American authors, including

14 novelists, historians, biographers, academicians, journalists, and other writers of nonfiction and

15 fiction. The Authors Guild works to promote the rights and professional interests of authors in

16 various areas, including copyright, freedom of expression, and fair pay. Many Authors Guild

17 members earn their livelihoods through their writing. Their work covers important issues in

18 history, biography, science, politics, medicine, business, and other areas; they are frequent

19 contributors to the most influential and well-respected publications in every field. The Authors

20 Guild's members are the creators on the front line, fighting to enforce their constitutional rights

21 under copyright to reap financial benefits from their labors.

22   **SUMMARY OF ARGUMENT**

23   The central question in this case is whether a for-profit multibillion-dollar company should

24 be able to systematically copy human-authored works without permission and use those works to

25 train AI models to generate content that displaces the works so taken. The answer is no.

26 Regardless of how sophisticated the copying technology may be, copyright law does not permit

27 copiers to generate substitutional works for commercial gain. *Amici* AAP, N/MA, STM, and

28 Authors Guild urge this Court to reject defendant Anthropic PBC's claims of fair use under the

1 banner of AI exceptionalism and recognize Anthropic's exploitative behavior for what it is:

2 infringement on a massive scale.

3   Anthropic, a company currently valued at 380 billion dollars,[2] asks this Court to excuse as

4 a fair use massive, commercially motivated copying of song lyrics to enable its large language

5 model ("LLM") Claude to generate substitutional works—including nearly identical lyrics—a

6 ruling that would have disastrous consequences for the music plaintiffs in this action and the

7 songwriters whose works they invest in and publish. Even beyond the confines of this case, such a

8 ruling could also eviscerate a vital market for authors and publishers of books, news and

9 magazines, scholarly articles, and other textual works who license those works to AI companies to

10 train and operate their LLMs.

11   When copyrighted material is taken and used without permission to train AI systems to

12 generate competing works, it robs authors of the rightful proceeds of those works and their

13 incentive to create, and undermines publishers' ability to invest in and disseminate original works

14 of authorship—whether song lyrics, novels, specialized journals, or news articles.[3] As the

15 Framers understood, copyright protection is essential to ensuring that human authors are motivated

16 to produce the books, newspapers, and other texts that are foundational to a healthy democracy

17 and human progress. *See* U.S. Const. art. I, § 8, cl. 8 (copyright clause). Indeed, generative AI

18 would not and could not exist without the ingenuity of human authors.

19   It is an essential principle of copyright that one may not appropriate and use another's

20 copyrighted work for a commercial purpose that usurps a market belonging to the copyright

21 owner—including a market to license the reproduction and use of works to train and operate

22 generative AI systems. As shown below, Anthropic's peers have obtained licenses to use textual

23

24

25 [2] *Anthropic Raises $30 Billion in Series G Funding at $380 Billion Post-money Valuation*,
Anthropic (Feb. 12, 2026), https://tinyurl.com/27mh3sw3.

26 [3] *See Kadrey v. Meta Platforms, Inc.*, 788 F. Supp. 3d 1026, 1060 (N.D. Cal. 2025) (explaining
27 that fair use is a fact-specific doctrine and inquiry that must be answered flexibly "in light of the
purpose of copyright and fair use: protecting the incentive to create by preventing copiers from
28 creating works that substitute for the originals in the marketplace").

BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR
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1   works to develop and operate AI systems.[4] Anthropic, however, seems committed to being a

2   holdout by refusing to share with human authors any of the enormous value it reaps from the

3   exploitation of their works.

4   Anthropic's unauthorized, for-profit use of copyrighted works does not qualify as a fair use

5   because, *inter alia*, it violates the fourth factor of the test set forth in section 107 of the Copyright

6   Act by undermining a significant market for rightsholders. Factor four, the primary consideration

7   in evaluating fair use, asks courts to assess "the effect of the use upon the potential market for or

8   value of the copyrighted work," including whether "unrestricted and widespread conduct of the

9   sort engaged in by the defendant" is harmful to copyright owners' rightful markets. 17 U.S.C. §

10   107(4); *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994); *Harper & Row*,

11   *Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 566 (1985) (instructing that the fourth factor is

12   "undoubtedly the single most important element of fair use"); *Andy Warhol Foundation for the*

13   *Visual Arts v. Goldsmith*, 598 U.S. 508, 555 (2023) (same). Here there can be no question that

14   Anthropic's copying undercuts such markets.

15   Regardless of whether one considers the unauthorized mass reproduction of copyrighted

16   works to capitalize on their human authorship to be "transformative"—and *amici* do not—such

17   copying cannot overcome the critical fourth fair use factor because its purpose and effect is to

18   displace markets that belong to the owners of those works. These include not only markets for

19   substitutional content, but the valuable market for licensing of AI training materials. Notably, in

20   declining to fully consider harm to the AI training market, the decisions in *Kadrey v. Meta*

21   *Platforms, Inc.*, 788 F. Supp. 3d 1026 (N.D. Cal. 2025) and *Bartz v. Anthropic PBC*, 787 F. Supp.

22   3d 1007 (N.D. Cal. 2025), failed to abide by the Copyright Act and the Supreme Court's clear

23   directive to weigh potential harm to copyright owners' derivative markets. *See* 17 U.S.C. §

24   107(4); *Harper & Row*, 471 U.S. at 568 (fourth factor inquiry "must take account not only of harm

25   to the original, but also of harm to the market for derivative works"); *Campbell*, 510 U.S. at 593

26

27   [4] *See* below chart and Appendix A.

28

1   ("[T[he licensing of derivatives is an important economic incentive to the creation of originals.").

2   A healthy and incentivized licensing market advances the goals of copyright by permitting

3   AI companies like Anthropic to access and use high-quality materials to train better, more

4   sophisticated AI models while protecting rightsholders from uncompensated exploitation. Other

5   AI developers, such as Suno, understand that licensing arrangements are not one-sided deals solely

6   for the benefit of rightsholders, but instead valuable partnerships that allow AI companies to

7   access curated content and innovate with copyright owner consent.

8   *Amici* urge this Court to reject Anthropic's claim of fair use and uphold the core principle

9   of the Supreme Court's recent ruling in *Warhol* that the unauthorized appropriation of a

10   copyrighted work to compete with a copyright owner's own market is incompatible with fair use.

11   **ARGUMENT**

12   **I.   Unauthorized AI Uses Interfere with Copyright Owners' Ability to Invest in and**

13   **Realize Value from Original Works of Authorship**

14   Although this case arises out of the music world, Anthropic's assertion that its unlicensed

15   use of the plaintiffs' copyrighted song lyrics to train Claude should be exonerated could have

16   significantly broader ramifications, including for authors and publishers of books, news,

17   scholarship, and other textual works. *Amici*'s members' production of reliable, original news

18   content, literature, scholarship, and other textual works is dependent upon their ability to recoup

19   their investment in quality journalism and authorship. Without copyright protection—and the

20   ability to earn revenue—there would be no sustainable business model for the creation and

21   distribution of creative works.

22   **A.   Publishers Invest Heavily in Producing High-Quality Textual Works**

23   Copyright encourages the creation, commercialization, and dissemination of new works to

24   the public, thereby fulfilling the Framers' goal of promoting the "progress of science and the

25   useful arts." U.S. Const. art. I, § 8, cl. 8. Publishers of textual works, including literature,

26   scholarship, and scientific journals, devote significant resources in bringing authors' works to

27   market, investing in copyediting, fact-checking, contextualizing, tagging, linking metadata, peer

28   review and editorial support, while at the same time taking the risk that a given work may not

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1 yield enough revenue to cover these costs. This risk is greatly magnified by the freeriding tactics

2 of companies like Anthropic who copy human-authored works to generate substitutional content.

3   Publishers of books invest in authors, advancing funds to support the writing process and

4 providing ongoing editorial support, which can span years. In addition, book publishers bear the

5 up-front costs of producing the physical and electronic copies for distribution to the public. Once

6 the books are in the marketplace, publishers are responsible for tracking and paying royalties to

7 the authors of those works, requiring sophisticated IT systems. None of this would be possible

8 without the protections of copyright.

9   Quality journalism is likewise expensive: news publishers invest in editorial, operational,

10 security, and legal support for their reporters. New organizations employ professional journalists

11 to produce investigative reporting, lifestyle, business, and opinion coverage, among other types of

12 content, while delivering an accurate stream of breaking news covering local, national, and global

13 events.[5] Copyright protection plays an integral role in supporting quality journalism and

14 publishing. "Investigating and writing about newsworthy events occurring around the globe is an

15 expensive undertaking and enforcement of the copyright laws permits [news organizations] to earn

16 the revenue that underwrites the work." *Associated Press v. Meltwater U.S. Holdings, Inc.*, 931 F.

17 Supp. 2d 537, 553 (S.D.N.Y. 2013).

18   **B.   AI Companies Require Valuable, High-Quality Works for Training**

19   Because the works published by *amici*'s members are of high-quality they are especially

20 _____

21 [5] *See*, *e.g.*, Melissa De Witte, *Stanford Scholars Are Helping Journalists Do Investigative Journalism Through Data*, Stanford Rep. (Oct. 15, 2018), https://tinyurl.com/NMAStanfordRep

22 ("[I]t can cost newsrooms up to $300,000 and six months of a reporter's time to do a deep dive into public interest issues like crime and corruption. In one case, it cost a newsroom $487,000 to

23 produce an investigative series on local police shootings." (emphasis omitted)); *The Cost of a Journalism Story*, My News Desk (Sept. 6, 2018), https://tinyurl.com/NMAMyNewsDesk

24 (estimating the cost of detailed or investigative news story at $400 to $12,000, general news story

25 at $100 to $4,500, and filler story at $50 to $300 each); Peter Osnos, *These Journalists Spent Two Years and $750,000 Covering One Story*, The Atlantic (Oct. 2, 2013),

26 https://tinyurl.com/NMAAtlantic ("We conservatively estimate the cost of this coverage [of the dangers of acetaminophen] at $750,000; it could be more. This covers the reporters, news

27 applications and web developers, editors, video production, social media and PR, travel, legal

28 review, … etc.").

BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1 valuable for the training of generative AI systems. As the AAP explains:

2
> Professionally edited books, rich in prose, provide high quality
3
> expression for long range context modeling research and cohesive
> storytelling, and models trained on these materials produce higher
4
> quality outputs than models trained on social media posts, or the
> limited character musings embodied in what used to be called
5
> "tweets." Likewise, well-edited and peer-reviewed textbooks,
> educational materials, and scientific and scholarly publications are
6
> indispensable to training AI models to perform better at tasks in
> specific knowledge domains, and indispensable to developing
7
> trustworthy AI technologies.[6]

8 The same is true of news content: "[News] [p]ublisher content is a major category of expressive

9 information contained in the datasets used to build the LLMs. News and media reports ranks third

10 among all categories of sources in Google's C4 data set, and half of the top ten represented sites

11 overall are news outlets."[7]

12   Authors' and publishers' investment in creating high-value textual works is severely

13 threatened when AI companies appropriate vast quantities of copyrighted works without

14 permission or compensation.

15   **C.**   **Unauthorized Ingestion and Storage of Copyrighted Works Cannot Be**

16   **Excused as Transformative**

17   Contrary to AI companies' claims that their copying is transformative because copied

18 works are *not* retained in their LLMs,[8] a recent study by Stanford and Yale researchers confirms

19 that textual works do not disappear once ingested into the models, but instead are memorized by

20 _____

21 [6] Association of American Publishers, Comment on Artificial Intelligence and Copyright (Docket No. 2023-6) (Oct. 30, 2023), https://www.regulations.gov/comment/COLC-2023-0006-9070
22 (internal quotations and citations omitted).

23 [7] News/Media Alliance, *White Paper: How the Pervasive Copying of Expressive Works to Train and Fuel Generative Artificial Intelligence Systems Is Copyright Infringement and Not a Fair Use*
24 (2023), https://tinyurl.com/2ky9ht4d.

25 [8] Jim Shimabukuro, *AI Memorization: Implications for 2026 and Beyond*, ETC Journal (Jan. 10, 2026), https://tinyurl.com/5dcbr2dy ("AI companies assured the U.S. Copyright Office that their
26 models don't store copies of training information. OpenAI told regulators that models do not store copies of the information they learn from, while Google similarly claimed there is no copy of
27 training data present in the model itself. These statements, made under the authority of regulatory
28 filings, now appear difficult to reconcile with empirical findings.").

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the system and can be reproduced as output.[9] The findings of this study mirror those of others concluding that AI systems are not simply "learning" statistical information about works, but storing the works themselves.[10] In short, memorization of copyrighted texts by LLMs like Anthropic's Claude is far more significant "than previously understood."[11]

There is nothing transformative about making and storing copies of textual works. Nor is there anything transformative about using those copies to generate substantially similar content; it's just more copying.

Still more, LLMs often depend on retrieval-augmented generation ("RAG") to supplement their capabilities. To the extent a model is unable to rely on its training data to answer a user query—*e.g.*, because it pertains to an event that postdates its training process—it can access and scrape content from a third-party site using RAG technology to construct a response.[12] A model may copy journalistic content, for example, from a publisher's website to fulfill a user request, in which case the user does not need to visit the website containing the source article; as the *Kadrey*

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[9] Ahmed Ahmed, et al., *Extracting Books from Production Language Models*, arXiv (Jan. 6, 2026), https://arxiv.org/pdf/2601.02671 (noting that, in context of generative AI, memorization refers to data that has "been encoded in a model's weights during training, and often also refers to whether those data can be extracted (near-)verbatim in that model's outputs.").

[10] *See*, *e.g.*, A. Feder Cooper, et al., *Estimating Near-Verbatim Extraction Risk in Language Models with Decoding-Constrained Beam Search*, arXiv (Mar. 26, 2026) (preprint), https://arxiv.org/pdf/2603.24917 (AI memorization tests that include near-verbatim copies significantly increases the frequency of identifying extraction/memorization of copyrighted content); Xinyue Liu, et al., *Alignment Whack-a-Mole: Finetuning Activates Verbatim Recall of Copyrighted Books in Large Language Models*, arXiv (Mar. 21, 2026) (preprint), https://arxiv.org/pdf/2603.20957v2 ("Taken together, our results demonstrate that frontier models store copies of books in a compressed format inside their weights [] and safety alignment, as currently implemented, does not prevent the regurgitation of copyrighted content…").

[11] *Ahmed* at 3.

[12] *See*, *e.g.*, Rick Merritt, *What Is Retrieval-Augmented Generation, aka RAG?*, NVIDIA (Jan. 31, 2025), https://tinyurl.com/NMANvidia ("[RAG] is a technique for enhancing the accuracy and reliability of generative AI models with information fetched from specific and relevant data sources. In other words, it fills a gap in how LLMs work."); Yunfan Gao, et al., *Retrieval-Augmented Generation for Large Language Models: A Survey*, Shanghai Inst. for Intel. Autonomous Sys. 1, 2 (Mar. 27, 2024), https://tinyurl.com/NMAGaoetal (describing question about recent news "a typical application of RAG.").

8   Case No. 5:24-cv-03811-EKL

1 court acknowledged, "certain types of works (like news articles)" may be especially vulnerable to

2 "indirect competition" from AI outputs. 788 F. Supp. 3d at 1060. Regardless of any claimed

3 transformativeness, a substitutional use that supplants the copyright owner's market—"copyright's

4 bête noire"—is incompatible with fair use. *Warhol*, 598 U.S. at 528.

D.   There Is a Robust Market for Licensing AI Data

6 Allowing AI companies like Anthropic to appropriate textual works without compensation

7 under the guise of fair use, and enabling them to divert users away from legitimate sources—

8 including book retailers, subscription-based services, and ad-supported sites that generate revenue

9 for publishers—will severely undermine the increasingly significant market for licensed uses in

10 which publishers and AI companies alike are actively engaged.

11 Many companies in the generative AI space, including OpenAI, Microsoft, Google, Meta,

12 Amazon, Perplexity, and Mistral, have entered into licensing agreements with publisher members

13 of *amici* to access and use the works necessary to build and operate their systems. The chart

14 below lists AI licensing deals for textual works of which *amici* are aware or that have been

15 publicly reported:[13]

AI Licensing Deals for Textual Works
(As Publicly Announced and/or Reported by *amici*'s Members)[14]

Licensee	Publishers
Amazon	The Associated Press; Business Insider; Condé Nast; Defined.ai (aggregator); Forbes; Hearst; The New York Times; Politico; Reach PLC; Reuters; TIME; USA Today Co; Vox Media; The Washington Post; and reports of various unnamed publishers
Bria	Various news publishing partners via News/Media Alliance (offering opt-in license to its members)
Dow Jones (for Factiva products and solutions)	Over 8,000 publishing partners, including Adweek; The Associated Press; The Atlantic; AWP Finanznachrichten; Barron's; Beijing Review; Dow Jones Newswires; EFE; Exame; Fast Company; Financial News; The Globe and Mail; Hong Kong Economic Times; IBD; MarketWatch; McClatchy Media; The National; News Corp Australia; News UK; Newsquest Media Group; Private Equity News; USA Today Co; The Wall Street Journal; The Washington Post

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[13] Undoubtedly there are many more licensing deals that are confidential or still in the pipeline.

[14] Supporting citations for this chart are set forth available in Appendix A.

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Licensee	Publishers
Google	The Associated Press; The Atlantic; Defined.ai (aggregator); Der Spiegel; The Economist; El País; Financial Times; Folha de S. Paulo; The Guardian; Infobae; Kompas; Reddit; Stack Overflow; The Times of India; The Washington Examiner; The Washington Post; and reports of various unnamed publishers
LexisNexis	The Associated Press; Benzinga; USA Today Co
Meta	CNN; The Daily Caller; Fox News and Fox Sports; Le Monde; News Corp; People Inc.; Reuters; USA Today Co and USA Today Network; The Washington Examiner
Microsoft	The Associated Press; Axel Springer; Business Insider; Condé Nast; Financial Times; HarperCollins; Hearst; Informa; People Inc.; Reuters; Semafor; Taylor & Francis; USA Today Co; Vox Media
Mistral	Agence France-Presse
OpenAI	The Associated Press; The Atlantic; Axel Springer; Axios; Condé Nast; Financial Times; Free Law Project; Future; GEDI; Guardian Media Group; Hearst; Le Monde; News Corp; People Inc.; Prisa Media; Schibsted Media Group; TIME; Vox Media; The Washington Post
OpenEvidence	JAMA Network; NEJM Group; Wiley
Particle News	Agence France-Press; The Atlantic; Fortune; The Observer; Reuters; The Street; TIME
Perplexity	AccuWeather; Adweek; Blavity; CNN; Condé Nast; Der Speigel; DPReview; Entrepreneur; Fortune; Gannett; Gear Patrol; The Independent; Le Figaro; Le Monde; Lee Enterprises; The Los Angeles Times; Media Lab; Mexico News Daily; Minkabu the Infonoid; NewsPicks; Pris Media; RTL Germany; The Texas Tribune; TIME; USA Today Co; The Washington Post; Wiley; World History Encyclopedia; Yelp
Pi School	Wiley
Potato	Wiley
ProRata.ai	Over 1000 publishers, including via News/Media Alliance (offering opt-in license to its members); Adweek; The Atlantic; Arena Group; Atlas Obscura; Axel Springer; Boston Globe Media; Buzzfeed; Cherry Road Media; DMG Media Group; DPCMO; EFE; Fast Company; Financial Times; FiscalNote; Fortune; Frommer's; Future; Gear Patrol; Graham Holdings Company; Guardian Media Group; Healthline; Hello!; IBT Media; Industry Drive; Johns Hopkins University Press; Lee Enterprises; Man of Many; Map Happy; Mediahuis; Mumsnet; The Nation; The New Republic; Newsday; Newstex; The Philadelphia Inquirer; PRISA Media; Pro Football Network; Prospect; Reach PLC; Reader's Digest; Recurrent Ventures; Skift; Sky Media Group; Snopes; StyleBlueprint; TIME; TipRanks; Vox Media; Washingtonian; Worth; 270 Media

As illustrated above, it is clear that the AI licensing market is an important secondary market benefiting both rightsholders and AI companies by enabling developers to continue to innovate with the benefit of high-quality, curated materials to facilitate training and RAG uses, while fairly compensating copyright owners for use of their works.

1   Anthropic's choice to wantonly scrape online and third-party sources for copyrighted

2 works to train its Claude LLM—rather than obtain authorization and compensate rightsholders

3 like its peers—undermines a critical licensing market that allows publishers of textual works to

4 invest in the creation and distribution of new works and continued distribution of previously

5 published works, including archival materials.

6 **II.   Using Copyrighted Works to Train LLMs Without a License Is Incompatible with**

7   **Fair Use**

8   **A.   Anthropic's Unlicensed Use of Copyrighted Works Usurps Publishers' and**

9   **Authors' Direct and Derivative Markets**

10   As the Supreme Court has instructed, the fourth fair use factor—the effect of the use upon

11 the potential market for or value of the copyrighted work—is "undoubtedly the single most

12 important element of fair use." *Harper & Row*, 471 U.S. at 566; *Warhol*, 598 U.S. at 555 (same).

13 Notably, it is not just existing markets that must be considered under the fourth factor, but also

14 "potential" markets. 17 U.S.C. § 107(4) (requiring courts to evaluate "the effect of the use upon

15 the potential market for or value of the copyrighted work"); *Campbell*, 510 U.S. at 590 (calling for

16 courts to consider "not only the extent of the market harm caused by the particular actions of the

17 alleged infringer, but also whether unrestricted and widespread conduct of the sort engaged in by

18 the defendant…would result in a substantially adverse impact") (internal quotations omitted);

19 *Harper & Row*, 471 U.S. at 568 (explaining courts "must take account not only of harm to the

20 original but also of harm to the market for derivative works").

21   AI uses that exploit copyrighted works to produce substitutional content are incompatible

22 with fair use. An AI service that copies news content or books to spit out competing summaries or

23 abridgements, for example, is plainly infringing. *See Fox News Network LLC v. TVEyes, Inc.*, 883

24 F.3d 169, 180-81 (2d Cir. 2018) (service allowing users to search for and watch broadcast news

25 clips was not a fair use because it "usurped a function for which [the copyright owner] is entitled

26 to demand compensation under a licensing arrangement"). With respect to derivative licensing

27 markets, the Supreme Court pointedly observed in *Warhol* that "an overbroad concept of

28 transformative use" that encroaches on copyright owners' markets for derivative uses could

1 "swallow" the copyright owner's exclusive right to create derivative works—a right specifically

2 enumerated in the Copyright Act. 598 U.S. at 511-12, 529; 17 U.S.C. § 106(2).

3 　　　Anthropic and other AI developers who appropriate copyrighted works to train and operate

4 their systems without permission are indisputably harming multiple direct and derivative markets

5 that rightfully belong to the owners of those works. These include (1) markets for consumer

6 enjoyment of output that that replicates training materials (for example, verbatim or near-verbatim

7 copies of lyrics or other textual content); (2) markets for licensing of AI systems that repackage

8 copyrighted works (for example, providers of RAG-based news services and book summaries);

9 and (3) markets for copyrighted materials to train and operate AI systems, including "fine-tuning"

10 of systems to improve their performance or focus on particular industries.

11 　　　Regardless of whether Anthropic's copying is deemed transformative (which would fly in

12 the face of obvious memorization of works by Claude), a finding of fair use in this case could

13 eviscerate copyright owners' right to exploit established, valuable markets for their works,

14 including the AI training and RAG markets. As the *Kadrey* court put it: "No matter how

15 transformative LLM training may be, it's hard to imagine that it can be fair use to use copyrighted

16 books to develop a tool to make billions or trillions of dollars while enabling the creation of a

17 potentially endless stream of competing works that could significantly harm the market for those

18 books." 788 F. Supp. 3d at 1059.[15]

19 　　　Although relatively recent, the AI training market can no longer be considered potential.

20 As amply illustrated above, it is flourishing and already generating billions of dollars in revenue.[16]

21 The mere fact that a licensing market has developed in response to new technology does not

22

23 [15] Due to an insufficient factual record, the *Kadrey* court did not reach the merits of this issue. *See* 788 F. Supp. 3d at 1067-68.

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25 [16] *See* Globe Newswire, *AI Training Dataset Market Report 2025: Market to Reach $18.47 Billion by 2034 from $2.62 Billion in 2024, E-Commerce Expansion and LLM Adoption, Despite Talent Shortage Risks* (May 12, 2025), https://tinyurl.com/5dr9hjm9 ("The global AI training dataset
26 market reached a value of nearly $2.62 billion in 2024, having grown at a compound annual growth rate (CAGR) of 21.97% since 2019. The market is expected to grow from $2.62 billion in
27 2024 to $7.3 billion in 2029 at a rate of 22.71%. The market is then expected to grow at a CAGR of 20.38% from 2029 and reach $18.47 billion in 2034.").
28

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1 negate its validity under the fourth fair use factor. In *American Geophysical Union v. Texaco,*

2 *Inc.*, 60 F.3d 913 (2d Cir. 1994), for example, the Second Circuit recognized that unlicensed

3 photocopying of journal articles by Texaco caused market harm even though the market had only

4 recently emerged in response to the proliferation of photocopying machines. *Id.* at 930-31.

5   Neither *Bartz* nor *Kadrey* sanctioned unrestricted copying to train LLMs.[17] *Bartz*

6 expressly condemned the use of pirated copies, determining it was *not* a fair use for Anthropic to

7 use such copies to build a training library, and describing such conduct as "irredeemably

8 infringing even if the pirated copies are immediately used for the transformative use [*i.e*, training]

9 and immediately discarded." 787 F. Supp. 3d at 1025. And, as noted, the *Kadrey* court expressed

10 significant concern about potential market harm resulting from the unauthorized exploitation of

11 copyrighted works by AI systems to generate competing works. *See* 788 F. Supp. 3d at 1059.

12   Significantly for the case at hand, when *Bartz* and *Kadrey* were litigated, the training

13 market was less developed than it is today; perhaps accordingly, both courts gave short shrift to

14 the plaintiffs' claims of direct competition in the market for training data. *See*, *e.g., id.* at 1060.

15 Furthermore, although the *Kadrey* court commented that recognizing the AI training market as one

16 that copyright owners are entitled to exploit could render the fourth factor analysis as "circular," it

17 is equally circular to deem that market *not* cognizable simply because it is new. To do so would

18 improperly deprive copyright owners of the benefits of any emerging market. Such an approach is

19 inconsistent with the Copyright Act's express directive to courts to consider the harm of

20 defendant's conduct to *potential* markets and markets that will be negatively impacted if the

21 unlicensed conduct at issue is unrestricted and widespread. 17 U.S.C. § 107(4); *Campbell*, 510

22 U.S. at 590.

23   As discussed above, *Warhol* warns against an overly broad interpretation of

24 transformativeness that undermines copyright owners' legitimate markets. 598 U.S. at 511-12,

25 529. Even if—despite AI systems' memorization of works and consequent generation of

26

27 [17] Although *Bartz* and *Kadrey* are distinguishable from the present case, *amici* believe the fair use

28 analysis in both was flawed.

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1   substitutional content—training uses could be considered transformative, the obvious harm to the

2   market for training data would outweigh any such finding. *See, e.g.*, *Fox News*, 883 F.3d at 180-

3   81 (even though defendant's new clip service was somewhat transformative, because it usurped

4   the plaintiff's market, it was not a fair use).

5   As *Campbell* instructs, in assessing fair use, courts are to consider whether the market in

6   question is one that creators of original works would in general develop or license others to

7   develop. *Campbell*, 510 U.S. at 592; *accord Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d

8   443, 460 (9th Cir. 2020) (same). Given the widespread adoption of AI-related products

9   throughout virtually all aspects of society, it is clear that the training market for AI systems that

10   depend upon copyrighted works for their very existence is one in which copyright owners would

11   naturally participate—and are participating. A ruling in this case that condoned mass-scale

12   scraping of copyrighted works to train and operate AI systems and RAG technology would

13   obliterate a crucial licensing market—precisely the type of harm that copyright law is designed to

14   protect. 17 U.S.C. § 107(4); *Campbell*, 510 U.S. at 592.

15   **B.   Healthy Licensing Markets Advance the Goals of Copyright**

16   When AI developers participate in the licensing market, it is mutually beneficial for both

17   the AI companies and rightsholders. As the CEO and co-founder of Suno recently explained in

18   discussing his company's licensing deal with Warner Music Group: "I think about this much

19   more as a partnership, about being able to build products that we can't build on our own."[18]

20   Healthy licensing markets advance the core objectives of copyright law by encouraging both the

21   creation and dissemination of expressive works while facilitating efficient and sustainable

22   technological innovation.[19]

23   Healthy markets also ensure the availability of high-quality training data, which benefits

24   the entire AI ecosystem. When authors, publishers, and other rightsholders can license their

25

26   [18] Billboard on the Record, *How Suno AI Is Disrupting the Music Industry w/ Mikey Shulman*
     (Spotify Podcast, Mar. 11, 2026).

27   [19] Terrence Hart, *Bartz, Kadrey, and the Market for AI Training*, Copyhype (July 10, 2025),
28   https://tinyurl.com/y8wxhtnk.

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1 works, they are incentivized to assemble and deliver relevant content in efficient formats. AI

2 companies, in turn, gain reliable access to sophisticated and curated datasets, improving the

3 performance of their AI models.

4   Licensing markets also promote competition and legal certainty. By providing AI

5 developers a path to lawfully obtain access to high-quality datasets, barriers to entry are lowered,

6 enabling a broader range of companies to compete in the development of generative AI without

7 the threat of litigation. Moreover, licensing arrangements define permissible uses, prospectively

8 addressing the boundaries of developers' use with greater certainty, which promotes investment

9 and innovation on both sides of the market.

10   AI companies seek high-quality textual materials to exploit their expression and generate

11 competing works for commercial purposes. A healthy licensing regime allows authors and

12 publishers to share in the economic rewards of the AI systems that rely on their works to exist and

13 function. Licensing provides an ongoing revenue stream to support the continued creation and

14 dissemination of books, journalism, scholarship, music, and other forms of expressive content.

15 The public benefits not only from new works of human authorship but the availability of

16 trustworthy sources to train and improve AI systems in the future.

17 **CONCLUSION**

18   *Amici* respectfully submit that this Court reject Anthropic's affirmative defense of fair use

19 and grant Plaintiffs' Motion for Partial Summary Judgment.

20 DATED: March 30, 2026   FRANKFURT KURNIT KLEIN + SELZ PC

21

22

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26

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APPENDIX A: SOURCES FOR AI LICENSING DEALS CHART

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BRIEF OF AMICI CURIAE AAP, N/MA, STM, AND AUTHORS GUILD IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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   & Medical Publishers, and Authors Guild

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9   **UNITED STATES DISTRICT COURT**

10   **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

11

12 CONCORD MUSIC GROUP, INC., ET AL.,   Case No. 5:24-CV-03811-EKL

13   Plaintiffs,   **[PROPOSED] ORDER GRANTING**
                                              MOTION BY *AMICI CURIAE*
14   v.   **ASSOCIATION OF AMERICAN**
                                              PUBLISHERS, NEWS/MEDIA
15 ANTHROPIC PBC,   **ALLIANCE, INTERNATIONAL**
                                              ASSOCIATION OF SCIENTIFIC,
16   Defendant.   **TECHNICAL & MEDICAL**
                                              PUBLISHERS, AND AUTHORS GUILD
17   **FOR LEAVE TO FILE BRIEF IN**
                                              SUPPORT OF PLAINTIFFS' MOTION
18   **FOR PARTIAL SUMMARY JUDGMENT**

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                                                  Case No. 5:24-CV-03811-EKL

[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT
OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Frankfurt Kurnit Klein+Selz PC
2029 Century Park East, Suite 2500N
Los Angeles, California 90067
P (310) 579-9600

1   This matter is before the Court on the motion filed on March 30, 2026, (the "Motion") by

2 Association of American Publishers, News/Media Alliance, International Association of

3 Scientific, Technical & Medical Publishers, and Authors Guild seeking leave as *amicus curiae* to

4 file the *amicus* brief dated March 30, 2026, that is attached to the Motion as Exhibit A (the

5 "Brief") and that *amici* offer in support of Plaintiffs' Motion for Partial Summary Judgment.

6   After full consideration of the matter, this Court finds as follows:

7   1.   The Motion is hereby **GRANTED**; and

8   2.   The Brief is hereby deemed to be **FILED** as of March 30, 2026.

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10 **IT IS SO ORDERED.**

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DATED: _____, 2026

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14   _____

EUMI K. LEE
United States District Judge

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[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT
OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT