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24 **UNITED STATES DISTRICT COURT**  
25 **NORTHERN DISTRICT OF CALIFORNIA**  
26 **SAN FRANCISCO DIVISION**

27 Jingna Zhang, et al.,  
28 *Individual and Representative Plaintiffs,*  
v.  
Google LLC, a Delaware limited liability company;  
and Alphabet Inc., a Delaware corporation;  
*Defendants.*

Case No. 5:24-cv-02531-AMO

**PLAINTIFFS' STATEMENT OF  
RECENT DECISION**

1 Pursuant to Civil Local Rule 7-3(d)(2), Plaintiffs respectfully submit this Statement of Recent  
2 Decision pertinent to Plaintiffs’ Opposition to Defendants’ pending Motion to Dismiss Complaint  
3 (“Motion”), ECF No. 26. In *Andersen, et al. v. Stability AI Ltd. et al.*, No. 23-cv-201-WHO (N.D. Cal.)  
4 (“*Stability*”), a group of artists claims that defendant AI companies unlawfully incorporated their  
5 copyrighted works into datasets used for training AI image-diffusion models that generate images  
6 mimicking the styles of those copyrighted works. Recently, in that case, Judge Orrick issued a ruling  
7 that partially granted and partially denied the defendants’ motions to dismiss the plaintiffs’ first  
8 amended complaint (“FAC”), addressing arguments similar to those presented in the current case. *See*  
9 *Stability*, ECF No. 223.<sup>1</sup>

10 First, Judge Orrick determined that the plaintiffs adequately allege direct copyright  
11 infringement by claiming that certain defendants used copyrighted works to train their AI image-  
12 diffusion models, *see id.* at 16-17, 19-21, stating that “[t]he FAC allegations and the exhibits help  
13 plaintiffs cross the plausibility threshold.” *Id.* at 21.

14 Additionally, although he did not issue a ruling on them, Judge Orrick addressed two alternative  
15 theories of direct copyright infringement presented by the plaintiffs. The first, which he referred to as  
16 the “model theory,” posits that the AI image-diffusion model, once trained, becomes an “infringing  
17 Statutory Copy” or a “Statutory Derivative Work” of the plaintiffs’ creations. *See id.* at 16. The second,  
18 known as the “distribution theory,” suggests that distributing an AI image-diffusion model trained on  
19 the plaintiffs’ works infringes on their distribution rights, as it is tantamount to distributing the works  
20 themselves. *See id.* Regarding these theories, Judge Orrick stated:

21 I note that both the model theory and the distribution theory of direct infringement depend on  
22 whether plaintiffs’ protected works are contained, in some manner, in [the AI image-diffusion  
23 model] as algorithmic or mathematical representations—and are therefore fixed in a different  
24 medium than they may have originally been produced in—is not an impediment to the claim at  
25 this juncture. 1 Nimmer on Copyright § 2.09[D][1] (2024) (“A work is no less a motion picture  
26 (or other audiovisual work) whether the images are embodied in a videotape, videodisc, or any  
27 other tangible form.”).

28 *Id.* at 17.

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<sup>1</sup> A copy of Judge Orrick’s Order in *Stability* is attached hereto as **Exhibit 1**.

1 Second, Judge Orrick concluded that the plaintiffs plausibly allege that certain defendants  
2 induced copyright infringement by distributing AI image-diffusion models capable of generating  
3 infringing outputs. *See id.* at 9, 18, 21 n.19. He deemed sufficient the plaintiffs’ allegations that certain  
4 defendants knowingly distributed an AI image-diffusion model that “uses or invokes the training  
5 images in its operation.” *Id.* at 18. Judge Orrick also explained that:

6 [T]his is a case where plaintiffs allege that [the AI image-diffusion model] is built to a  
7 significant extent on copyrighted works and that the way the product operates necessarily  
8 invokes copies or protected elements of those works. The plausible inferences at this juncture  
9 are that [the AI image-diffusion model] *by operation* by end users creates copyright  
10 infringement and was created to facilitate that infringement by design.

11 *Id.* at 9 (emphasis in original).

12 Third, Judge Orrick rejected one defendant’s arguments that certain plaintiffs’ identified works  
13 included in the LAION datasets used for AI training are compilations, with copyright protection  
14 extending only to new material within those compilations. *See id.* at 19. He noted that it was  
15 “undisputed that each of the named plaintiffs who claim their copyright-protected works were included  
16 in the LAION datasets have at least one work whose registration is facially valid. At this juncture,  
17 therefore, the Copyright Act claims survive[.]” *Id.* Additionally, Judge Orrick found that while the  
18 FAC’s identification of unprotected works does not directly establish liability, it bolsters the plausibility  
19 of the plaintiffs’ claims that their works were used in AI training and could potentially be recreated by  
20 the AI image-diffusion models. *See id.* at 20.

21 Finally, Judge Orrick declined to rule that plaintiffs must identify specific, individual registered  
22 works that each contends was used for AI image-diffusion model training. He explained:

23 Given the unique facts of this case—including the size of the LAION datasets and the nature of  
24 defendants’ products, including the added allegations disputing the transparency of the “open  
25 source” software at the heart of [the AI image-diffusion model at issue]—that level of detail is  
26 not required for plaintiffs to state their claims. Instead, plaintiffs have added to their FAC more  
27 detailed allegations regarding the training and use of the LAOIN datasets by defendants  
28 generally . . . . Plaintiffs have plausible allegations showing why they believe their works were  
included in the LAION datasets.

*Id.* at 20.

1 Dated: August 16, 2024

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