

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI, INC.,
OPENAI LP, OPENAI GP, LLC, OPENAI, LLC,
OPENAI OPCO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Case No. 1:23-cv-11195-SHS-OTW

**PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO
DEFENDANTS’ PARTIAL MOTIONS TO DISMISS (DKTS. 51, 64)**

Plaintiff The New York Times Company (“The Times”), by and through counsel, respectfully submits this Notice of Supplemental Authority to apprise the Court of a recent order that supports The Times’s opposition to the OpenAI Defendants’ partial motion to dismiss (Dkt. 51) as well as Microsoft’s partial motion to dismiss (Dkt. 64).

On August 12, 2024, the Court in *Anderson v. Stability AI LTD et al.*, No. 23-cv-00201 (N.D. Cal.) denied defendants’ motions to dismiss plaintiffs’ claim for induced copyright infringement. *See* Order Granting in Part and Denying in Part Motions to Dismiss First Amended Complaint, Dkt. 223 at 7-9 (attached hereto as Exhibit 1). Specifically, the Court credited plaintiffs’ allegations that defendants’ AI product “is built to a significant extent on copyrighted works and that the way the product operates necessarily invokes copies or protected elements of those works.” *Id.* at 9. It was therefore “plausible” to infer that “operation” of the product by “end users creates copyright infringement” and that, unlike the VCR, the defendants’ product “was created to facilitate that infringement by design.” *Id.*

This analysis is relevant to The Times’s contributory infringement claim, which addresses circumstances in which “an end-user may be liable as a direct infringer based on output of GPT-based products.” FAC ¶ 179; *see also* FAC ¶ 101 (“[T]hese examples represent a small fraction of Times Works whose expressive contents have been substantially encoded within the parameters of the GPT series of LLMs.”). Both Defendants have moved to dismiss The Times’s contributory infringement claim. Dkt. 52 at 15; Dkt. 65 at 9-10. Microsoft argued that “The Times’s contributory infringement theory thus fails on the very same basis the challenge to the VCR failed four decades ago.” Dkt. 65 at 10.

Dated: August 14, 2024

Respectfully Submitted,

By: /s/ Ian Crosby

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