

EXHIBIT A

From: [Thomas E. Gorman](mailto:Thomas.E.Gorman)
To: [Jennifer B. Maisel](mailto:Jennifer.B.Maisel); [Edward A. Bayley](mailto:Edward.A.Bayley); Elana.NightingaleDawson@lw.com; openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; KVP-OAI
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Subject: RE: NYT/NYDN - Follow up Call Re: Requests for Inspection to OpenAI
Date: Tuesday, November 19, 2024 5:00:32 PM

Jen—

Several of the key facts in your recitation are incorrect. For example, it shouldn't take 100-200 hours to recreate the data as this VM has been idle most of the time since we made it available; indeed, the total compute time on this machine is nowhere close to 100-200 hours. But rather than go back and forth, I think our time would be better spent focusing on your request that OpenAI run url and ngram searches. I had several promising meetings with OpenAI engineers recently and was hoping to connect with you soon to discuss some details.

Your joint letter brief proposal is inconsistent with the court's directives. Moreover, that proposed schedule is completely unworkable on our end given pre-existing commitments and time zones. If you insist on filing something, it has to be filed by tonight so that we can respond by the 22nd. But given how much paper is going to be filed this week, I don't think it's necessary for us to brief this issue. Our time would be much better spent discussing your search requests.

Thanks,

--Tom

From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Sent: Tuesday, November 19, 2024 12:20 PM
To: Thomas E. Gorman <TGorman@keker.com>; Edward A. Bayley <EBayley@keker.com>; Elana.NightingaleDawson@lw.com; openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; KVP-OAI <KVPOAI@keker.com>
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Subject: RE: NYT/NYDN - Follow up Call Re: Requests for Inspection to OpenAI

[EXTERNAL]

Dear Tom,

I'm following up on the issue raised in my email of November 15, addressing the fact that the contents of the SSD drive for one of the dedicated VMs we have been using for the training data inspection was erased by OpenAI. After speaking with our consultants this morning, we understand

that while a significant amount of the data that OpenAI erased has been recovered, the folder structure and file names have been irrevocably lost, which unfortunately makes the recovered data unusable. For example, without the folder structure and file names, it will be too difficult, error prone, and time consuming to determine what each recovered file is based on its contents alone due to the changing versions of the programs, the inability to access whether the program ran to completion or was terminated, and the lack of other context clues (e.g., name of the model being searched in the folder name). We unfortunately will need to recreate the original contents in those folders from scratch, including the search data and updated programs.

Our estimate is that this setback amounts to at least 10-15 person hours to rerun the programs and about 100-200 hours of computer processing time in order to recreate the data, exclusive of any time for travel or the dozens of calls and emails required to address the issue. This setback further illustrates how time consuming, burdensome, and expensive the training data inspection process has been for the News Plaintiffs.

While we are not presently seeking costs, we maintain that OpenAI is in the best position to search its own datasets for News Plaintiffs' works using its own tools and equipment, and reiterate our request for OpenAI to identify and admit as to which of News Plaintiffs' works it used to train each of the GPT models as set forth in the parties' joint November 1 letter. Please advise whether OpenAI will agree to this request and provide that information by December 20, 2024.

Furthermore, in view of the Court's moratorium on additional filings after November 22, we plan to submit a brief supplemental status update to the Court regarding the events described above no later than Thursday, November 21. If OpenAI wishes to join in that supplemental status update, we propose a simultaneous exchange of the parties' positions no later than 5pm ET on Wednesday, and with a simultaneous exchange of any final positions by 12pm ET on Thursday. Please let us know if OpenAI wishes to join that letter no later than 6pm ET today.

BR,
Jen



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From: Jennifer B. Maisel
Sent: Friday, November 15, 2024 5:29 PM
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Subject: RE: NYT/NYDN - Follow up Call Re: Requests for Inspection to OpenAI

Dear Tom,

Thank you for the update on the recovery efforts. As I said on our call, our team was also storing a week's worth of programs and search data in the "data01" folder, so it is very important to restore that data as soon as possible. The inspection has been very burdensome for us, and we are still very concerned about this setback and the potential irrevocable loss of our work product.

We appreciate you providing a conference room today.

Jen



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From: Thomas E. Gorman <TGorman@keker.com>
Sent: Friday, November 15, 2024 3:34 PM
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Jen—

As discussed this morning, your message indicates that you've received some incorrect information. I updated your team yesterday morning (so I don't know why you did not find out until "very late last night") that the instruction you gave us for moving the buffer cache to a different SSD volume (a configuration change which seemed unnecessary) also flushed the `data01` file system. The team immediately implemented a recovery script which is moving sector by sector to recover any files, and given how quickly this glitch was identified, we don't think files would have been overwritten.

We provided additional updates to your team yesterday afternoon, so again, I'm not sure why you think "no further update was provided to [y]our team." We offered some options to get them going with a different disk solution and then adopted the course that they chose. Based on the activity logs, `data01` on VM1 is not the disk where most of your search and disk activity was taking place in the last week (that would be the *other* `data01` volume on the *other* dedicated VM). That, plus the fact that the purpose of this disk was just to stage training data temporarily makes me think that there may not have been a large volume of output data on this disk. But if I receive any updates on the recovery script, I'll pass it along to your team.

I don't think it's particularly productive to itemize all the other miscommunications that we've had over the last few weeks, beginning with the initial request for hundreds of irrelevant/nonexistent software tools and packages, and running all the way to today when your consultant showed up unannounced and with no reservation. (Mark asked on Nov. 5 for inspection on Nov. 11-14, not Nov. 15, and we confirmed that reservation the same day. Today, I was able to grab some empty conference-center space and get him set up, but we don't want to scramble to deal with miscommunications on your end.)

For what it is worth, I've found my conversations with your consultants to be more productive compared to the messages that get passed through counsel (see, e.g., the request to move the buffer cache that triggered this file system issue or the garbled request for sudo privileges). It is especially unproductive when plaintiffs' counsel focus on trying to "make a record" of demands and complaints. In contrast, when your team can explain precisely what they would like or what problems they think they are seeing, there are fewer miscommunications and it is much easier for us to answer

questions or assist. For example, yesterday, one of your consultants showed me the caching behavior that they were concerned about, where large amounts of memory **appear** to be consumed by `buff/cache`. I really appreciated him showing me the exact line that he was concerned about in output from `top` because I was able to pass the specifics back to our team. Because he admitted that he was not a linux expert, we wanted to share this: <https://www.linuxatemyram.com/>. It looks like the behavior he identified is normal. See *id.* (“Don’t Panic! Your ram is fine!”).

Thanks,

--Tom

From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>

Sent: Friday, November 15, 2024 6:32 AM

To: Edward A. Bayley <EBayley@keker.com>; Elana.NightingaleDawson@lw.com; openaicopyrightlitigation.lwteam@lw.com; OpenAICopyright@mofo.com; KVP-OAI <KVPOAI@keker.com>

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Subject: RE: NYT/NYDN - Follow up Call Re: Requests for Inspection to OpenAI

[EXTERNAL]

Counsel,

We learned very late last night that the contents of the SSD drive for one of the dedicated VMs we have been using for the training data inspection was erased by OpenAI. That is, a week’s worth of work and effort has been lost, including all of the search result data that we have been collecting and our programs. If that is not the case, please advise in writing now.

You have also represented that an OpenAI engineer has been working to recover the data, but as of last night only a small amount of data has been recovered and no further update was provided to our team. Please let us know immediately what you are doing to recover the data and, separately, what precautions (such as backups) you are taking to ensure that this does not happen again or, if it does, that we will be able to recover our lost data.

Please be prepared to address this on our meet and confer later today. We reserve all rights.

BR,
Jen



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