

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

THE INTERCEPT MEDIA, INC.,

Plaintiff,

v.

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

Defendants.

No. 1:24-cv-01515-JSR

**OPENAI'S ANSWER TO FIRST
AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15, Defendants OpenAI, Inc., OpenAI GP, LLC, OpenAI, LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation, and OpenAI Holdings, LLC (collectively, “OpenAI”), by and through the undersigned counsel, submit the following answer to Plaintiff’s First Amended Complaint.

OpenAI states that the headings and sub-headings throughout the First Amended Complaint do not constitute well-pleaded allegations of fact and, therefore, require no response. To the extent a response is deemed required, OpenAI denies the allegations contained in the First Amended Complaint’s headings and sub-headings.

OpenAI denies all allegations in the First Amended Complaint that are not explicitly admitted and otherwise answers as follows:

1. OpenAI admits that the First Amended Complaint purports to bring claims on behalf of an entity identified as The Intercept Media, Inc. against OpenAI through its attorneys Loevy & Loevy. OpenAI lacks knowledge or information sufficient to admit or deny the remaining allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

2. The allegations of this paragraph purport to assert the purposes of a Clause of the U.S. Constitution, to which no response is required. To the extent a response is deemed required, OpenAI denies those allegations, including because they are incomplete and lacking important context. *See, e.g., Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 526 (2023) (noting that copyright law “reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts”) (quoting *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975)). OpenAI denies any remaining

allegations of this paragraph.

3. The allegations of this paragraph purport to assert the purposes of a federal statute, to which no response is required. To the extent a response is deemed required, OpenAI admits that unlike copyright infringement claims, which Plaintiff does not bring, no copyright registration is required to assert a claim under 17 U.S.C. § 1202(b). OpenAI denies any remaining allegations of this paragraph.

4. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

5. OpenAI admits that OpenAI OpCo LLC offers a product named ChatGPT. To the extent the allegations in this paragraph are directed at dismissed party Microsoft Corporation, OpenAI lacks knowledge or information sufficient to admit or deny those allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

6. Denied.

7. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

PARTIES¹

8. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

9. OpenAI lacks knowledge or information sufficient to admit or deny the allegations

¹ OpenAI neither admits nor denies the contents of the various headings and sub-headings in the First Amended Complaint, which are reproduced herein solely for convenience.

of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

10. OpenAI admits that OpenAI OpCo LLC and OpenAI, LLC offers a product named ChatGPT. OpenAI denies any remaining allegations of this paragraph.

11. OpenAI admits that OpenAI, Inc.; OpenAI GP, LLC; OpenAI, LLC; OpenAI OpCo LLC; OpenAI Global LLC; OAI Corporation; and OpenAI Holdings, LLC are related entities. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about dismissed party Microsoft Corporation, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

12. OpenAI admits that OpenAI, Inc. is a Delaware nonprofit corporation with a principal place of business in San Francisco, California. OpenAI denies any remaining allegations of this paragraph.

13. OpenAI admits that OpenAI OpCo LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI OpCo LLC is the sole member of OpenAI, LLC. OpenAI admits that OpenAI OpCo LLC was formerly known as OpenAI LP. OpenAI denies any remaining allegations of this paragraph.

14. OpenAI admits that OpenAI GP, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI denies any remaining allegations of this paragraph.

15. OpenAI admits that OpenAI, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI denies any remaining allegations

of this paragraph.

16. OpenAI admits that OpenAI Global LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that Microsoft Corporation and OAI Corporation are members of OpenAI Global LLC. OpenAI denies any remaining allegations of this paragraph.

17. OpenAI admits that OAI Corporation is a Delaware corporation with its principal place of business in San Francisco, California. OpenAI admits that OAI Corporation's sole shareholder is OpenAI Holdings, LLC. OpenAI denies any remaining allegations of this paragraph.

18. OpenAI admits that OpenAI Holdings, LLC is a Delaware limited liability company with a principal place of business in San Francisco, California. OpenAI admits that OpenAI, Inc. and Aestas, LLC are members of OpenAI Holdings, LLC. OpenAI denies any remaining allegations of this paragraph.

19. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations about dismissed party Microsoft Corporation, and on that basis denies them.

20. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required: denied.

21. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required: denied.

22. The allegations of this paragraph relate to Plaintiff's claims against Microsoft

Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required: denied.

23. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. If a response is deemed required, OpenAI responds that, to the extent the allegations in this paragraph purport to quote from a publicly available interview, the full text of the interview speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations.

24. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required, OpenAI admits that OpenAI OpCo LLC partners with Microsoft's Azure platform. OpenAI denies any remaining allegations of this paragraph.

JURISDICTION AND VENUE

25. OpenAI does not dispute the applicability of 28 U.S.C. §§ 1331 and 1338(a), but denies that Plaintiff has suffered an injury-in-fact sufficient under Article III to invoke this Court's jurisdiction. OpenAI denies any remaining allegations of this paragraph.

26. For the purposes of this action, OpenAI does not contest personal jurisdiction. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

27. For the purposes of this action, OpenAI does not contest personal jurisdiction. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation,

no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

28. For the purposes of this action, OpenAI does not contest venue at this time, but reserves its right to seek appropriate consolidation and/or coordination with matters pending in other districts. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

29. For the purposes of this action, OpenAI does not contest venue at this time, but reserves its right to seek appropriate consolidation and/or coordination with matters pending in other districts. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

30. For the purposes of this action, OpenAI does not contest venue at this time, but reserves its right to seek appropriate consolidation and/or coordination with matters pending in other districts. OpenAI admits that it did not contest venue in *Authors Guild v. OpenAI Inc.*, 23-cv-08292. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny

those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

PLAINTIFF’S COPYRIGHT-PROTECTED WORKS OF JOURNALISM

31. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

32. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

33. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

DEFENDANTS’ INCLUSION OF PLAINTIFF’S WORKS IN THEIR TRAINING SETS AND REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION

34. OpenAI admits that some of OpenAI OpCo LLC’s products rely on technology that can be described as a “large language model.” OpenAI admits that “large language model” can be abbreviated as “LLM.” OpenAI admits that OpenAI OpCo LLC’s GPT models are a type of “large language model” architecture. OpenAI admits that the models that power ChatGPT may recognize and process text inputs from a user and generate text outputs in response. OpenAI denies any remaining allegations of this paragraph.

35. OpenAI admits that OpenAI OpCo LLC trains its models using numerous sources, including select publicly available data. OpenAI denies any remaining allegations of this paragraph.

36. Denied.

37. OpenAI admits that OpenAI OpCo LLC trains its models using numerous sources, including select publicly available data. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI

denies any remaining allegations of this paragraph.

38. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

39. Denied.

40. To the extent the allegations in this paragraph purport to quote from or reference portions of a publicly available research paper, the full text of that paper speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. To the extent the allegations in this paragraph are directed at Reddit, OpenAI lacks knowledge or information sufficient to admit or deny those allegations and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

41. To the extent the allegations in this paragraph purport to quote from or reference a publicly available webpage, the full text of that webpage speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with the full text available at that link, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

42. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny those allegations, and on that basis denies them. OpenAI denies any remaining allegations of

this paragraph.

43. To the extent the allegations in this paragraph purport to quote from or reference information publicly available on GitHub, the full text available at that link speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with the full text available at that link, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI lacks knowledge or information sufficient to admit or deny any remaining allegations of this paragraph, and on that basis denies them.

44. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

45. To the extent the allegations in this paragraph purport to quote from or reference portions of a publicly available research paper, the full text of that paper speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations in this paragraph.

46. To the extent the allegations in this paragraph purport to quote from or reference portions of a publicly available webpage, the full text of that webpage speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at the creators of the Dragnet content extractor, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

47. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at the creators of the Newspaper content extractor, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

48. Denied.

49. Denied.

50. Denied.

51. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

52. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

53. Denied.

54. Denied.

55. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at Common Crawl, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

56. To the extent the allegations in this paragraph purport to quote from or reference a publicly available research paper, the full text of that paper speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

57. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph directed at Google or the Allen Institute for AI, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

58. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

59. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

60. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

61. Denied.

DEFENDANTS' REGURGITATION AND MIMICKING OF COPYRIGHT- PROTECTED WORKS OF JOURNALISM

62. OpenAI admits that ChatGPT may recognize and process text inputs from a user and generate text outputs in response. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

63. Denied.

64. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

65. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

66. OpenAI admits that memorization is a rare failure of the learning process that

OpenAI OpCo LLC is continually striving to eliminate. OpenAI further admits that OpenAI OpCo LLC has measures in place to limit inadvertent memorization and prevent regurgitation in model output. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

67. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

DEFENDANTS' INTENTIONAL REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION FROM PLAINTIFF'S WORKS IN THEIR TRAINING SETS

68. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because Plaintiff's claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

69. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

70. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

71. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph and on that basis denies them.

72. Denied.

**DEFENDANTS' COLLABORATION IN INFRINGING PLAINTIFF'S COPYRIGHT,
UNLAWFULLY REMOVING COPYRIGHT MANAGEMENT INFORMATION, AND
UNLAWFULLY DISTRIBUTING PLAINTIFF'S WORKS WITH COPYRIGHT
MANAGEMENT INFORMATION REMOVED**

73. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

74. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

75. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

76. The allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, which have been dismissed. Accordingly, no response is required. To the extent a response is required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

DEFENDANTS' ACTUAL AND CONSTRUCTIVE KNOWLEDGE OF THEIR VIOLATIONS

77. Denied.

78. Denied.

79. To the extent the allegations in this paragraph purport to quote from or reference portions of a publicly available article, the full text of that article speaks for itself. To the extent the allegations in this paragraph purport to summarize or characterize or are inconsistent with it, OpenAI denies those allegations. OpenAI denies any remaining allegations of this paragraph.

80. Denied.

81. Denied.

82. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

83. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

84. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or

deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

85. To the extent the allegations in this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations and on that basis denies them. OpenAI denies any remaining allegations in this paragraph.

86. OpenAI admits that the OpenAI Service Terms are available at <https://openai.com/policies/service-terms/>, and that the text "disabled, ignored, or did not use any relevant citation, filtering or safety features or restrictions provided by OpenAI" appears at that location. To the extent the allegations in this paragraph purport to quote from or reference portions of the Service Terms, the full text of the Service Terms speaks for itself. To the extent the allegations of this paragraph relate to Plaintiff's claims against Microsoft Corporation, no response is required because those claims have been dismissed. To the extent a response is deemed required, OpenAI lacks knowledge or information sufficient to admit or deny the allegations, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

Count I – Violation of 17 U.S.C. § 1202(b)(1) by OpenAI Defendants

87. This paragraph incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–86.

88. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph, and on that basis denies them.

89. OpenAI lacks knowledge or information sufficient to admit or deny the allegations

of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

90. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

91. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

92. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

93. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

94. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

95. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

96. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

97. OpenAI lacks knowledge or information sufficient to admit or deny the allegations of this paragraph about Plaintiff, and on that basis denies them. OpenAI denies any remaining allegations of this paragraph.

Count II – Violation of 17 U.S.C. § 1202(b)(3) by OpenAI Defendants

98. This paragraph relates to a claim that has been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–97.

99. This paragraph relates to a claim that has been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

Count III – Violation of 17 U.S.C. § 1202(b)(1) by Defendant Microsoft

100. This paragraph relates to a claim that has been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–99.

101. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

102. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

103. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

104. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

105. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

106. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

107. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

108. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

109. This paragraph relates to a party and claim that have been dismissed, and thus no response is required. To the extent a response is deemed required, OpenAI lacks sufficient knowledge or information sufficient to admit or deny the allegations, and on that basis denies them.

Count IV – Violation of 17 U.S.C. § 1202(b)(3) by Defendant Microsoft

110. This paragraph relates to a party and claim that have been dismissed, and incorporates by reference the preceding factual allegations, and thus no response is required. To the extent a response is deemed required, OpenAI incorporates by reference its responses to paragraphs 1–109

111. This paragraph relates to a party and claim that have been dismissed, and thus no

response is required. To the extent a response is deemed required, OpenAI denies the allegations of this paragraph.

PRAYER FOR RELIEF

In response to the prayer for relief, OpenAI denies that Plaintiff is entitled to the requested relief, or to any relief whatsoever, including because Plaintiff has suffered no injury sufficient to confer standing to bring any claim for relief.

JURY DEMAND

With respect to the jury demand contained in the First Amended Complaint, OpenAI states that no response is required. To the extent a response is deemed required, OpenAI denies that Plaintiff's claim is properly triable to a jury.

AFFIRMATIVE DEFENSES

In further answer to the allegations made by Plaintiff in the First Amended Complaint, OpenAI asserts the following affirmative defenses. OpenAI does not concede that it has the burden of proof on the defenses listed below.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claim fails in whole or in part because the complained-of use was validly licensed by express or implied license, otherwise authorized by the copyright owner, or authorized by the law, including because the alleged acts are fair use and/or de minimis, and/or because copyright protection is barred by the doctrine of merger, the doctrine of *scène à faire*, or the idea/expression dichotomy.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is barred, in whole or in part, by one or more equitable doctrines, such as unclear hands, estoppel, waiver, abandonment, forfeiture, or laches.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, because the allegedly violative conduct was innocent pursuant to 17 U.S.C. § 1203(c)(5)(A).

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred, in whole or in part, by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery of damages because of and to the extent of its failure to mitigate its alleged damages (to which, in any event, it is not entitled).

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim fails, in whole or in part, for failure to state a claim.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred, in whole or in part, because the acts alleged in the First Amended Complaint are not an infringement of copyright, including because the alleged acts are fair use and/or de minimis, and/or because copyright protection is barred by the doctrine of merger, the doctrine of *scène à faire*, or the idea/expression dichotomy.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred, in whole or in part, because OpenAI reasonably believed that the acts alleged in the First Amended Complaint were not an infringement of copyright, including because the alleged acts are fair use and/or de minimis, and/or because copyright protection is barred by the doctrine of merger, the doctrine of *scène à faire*, and/or the idea/expression dichotomy.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim is barred, in whole or in part, because OpenAI did not know or have reasonable grounds to know that the acts alleged in the First Amended Complaint were an

infringement of copyright, including because the alleged acts are fair use and/or de minimis, and/or because copyright protection is barred by the doctrine of merger, the doctrine of *scène à faire*, and/or the idea/expression dichotomy.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claim for damages is barred by the Eighth and Fourteenth Amendments to the U.S. Constitution.

Dated: December 5, 2024

MORRISON & FOERSTER LLP

By: /s/ Joseph C. Gratz

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Dated: December 5, 2024

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