

VIA ECF

November 12, 2025
Hon. Ona T. Wang
Southern District of New York

In re OpenAI, Inc., Copyright Infringement Litigation, 25-md-3143 (SHS) (OTW)
This Document Relates To: All Actions

Dear Magistrate Judge Wang:

News Plaintiffs submit this letter in opposition to OpenAI's request for reconsideration of this Court's Order granting News Plaintiffs' motion to compel production of 20 million deidentified Consumer ChatGPT Logs. Dkt. [734](#) (the "Order"); Dkt. [742](#) (OpenAI's "Request").

OpenAI's ill-considered Request is not about protecting user privacy. That concern is simply a pretext for yet another attempt to evade production of evidence in support of News Plaintiffs' claims.

Briefly put, as OpenAI and this Court well know, any user privacy concerns have already been thoroughly addressed by the anonymization work News Plaintiffs agreed OpenAI could do before production (delaying this production some 90 days and counting). To say nothing of the Protective Order in this case which, assuming OpenAI designates these documents as Confidential or Attorneys' Eyes Only, would mean they could only be seen by a select group of individuals who have agreed to be bound by strict confidentiality provisions and through two years of litigation have given Defendants zero cause for concern they would ever breach those provisions. Instead, this comes down to OpenAI not wanting to produce evidence that its products are, as The Times and other News Plaintiffs have long alleged, substitutive for the very works OpenAI cannibalized without permission to train its LLMs. Having made the choice to steal The Times' and others' works to build its products, OpenAI has itself put this evidence at issue.

Having lost (repeatedly) on the merits, this latest Request to avoid production of relevant evidence reads like a barely disguised press release — and in fact coincided with OpenAI issuing an inflammatory press release within moments of its filing.¹ Unsubstantiated fear-mongering aside, nothing in the Request calls into question this Court's prior analysis, let alone meets the standard for moving for reconsideration. Dkt. [42](#), page 2, n. 2 ("Reconsideration is an 'extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.'") (quoting *RST (2005) Inc. v. Research in Motion Ltd.*, 597 F. Supp. 2d 362, 365 (S.D.N.Y. 2009)). OpenAI's Request simply fails to identify any "matters or controlling decisions [that] the [C]ourt has overlooked" in its careful consideration of the merits of the issue. LCR 6.3.

First, OpenAI had ample opportunity to address the pertinence of the *Concord v. Anthropic* case, and in fact, OpenAI previously argued to this Court that the *Concord v. Anthropic* case was

¹ OpenAI, "Fighting the New York Times' Invasion of User Privacy," available at <https://openai.com/index/fighting-nyt-user-privacy-invasion/> (attached hereto as Exhibit A).

the “most pertinent and relevant” case with respect to the output data issue. Here is how OpenAI’s counsel described *Concord* to this Court:

And if you look at how other cases have addressed this issue, in particular, I think the most pertinent and relevant to this case is one that has just come to ground recently in the Concord Music Group v. Anthropic case. Anthropic is another LLM company that provides its own AI system Chatbot. They've addressed this very issue about how to sample conversation data in order to figure out what is reasonable and proportionate for the purposes of the case. In that case -- and subject to an order that just came out on Friday, the court has determined that there needs to be a reasonable -- that what is proportionate to the case is a statistically significant sample. She had the experts go, figure out what that means. They came back with competing proposals, and she adopted a proposal somewhere in between the two. And the end result was that a statistically significant sample was five million chats.

May 27, 2025, Discovery Conference (Afternoon) Transcript at 23:1-16 (attached hereto as Exhibit B). OpenAI has also failed to advise this Court that the very same counsel from Latham & Watkins, LLP representing OpenAI in this multidistrict litigation is also representing Anthropic in the *Concord v. Anthropic* litigation. OpenAI’s argument that “*Concord* is inapposite” disavows its own words in both cases.

Second, OpenAI’s Request ignores this Court’s prior finding that “OpenAI has failed to explain how its consumers’ privacy rights are not adequately protected by: (1) the existing protective order in this multidistrict litigation or (2) OpenAI’s exhaustive de-identification of all of the 20 million Consumer ChatGPT Logs.” Dkt. [734](#) at page 1. Neither of OpenAI’s attempts to distinguish *Concord*—that Anthropic purportedly agreed to the production and that there is more data at issue here than in *Concord*—address this finding. Indeed, OpenAI’s press release admits that “The Times would be legally obligated at this time not to make any data public outside the court process” and that OpenAI is “taking all affected chats and running them through a de-identifying procedure to remove or ‘scrub’ personal identifying information.” Ex. A. Accordingly, OpenAI has not raised a point of fact or law that warrants reconsideration.

Third, OpenAI’s assertion that News Plaintiffs have conceded that 99.99% of the chat outputs are irrelevant is simply false. *See* Dkt. [719](#) at page 5 (citing OpenAI’s own public research suggesting that 14-24% of all ChatGPT users search for information about people, current events, products and recipes – namely the very type of content News Plaintiffs publish). News Plaintiffs said no such thing.

News Plaintiffs will not burden this Court with re-litigating this dispute which has already been covered by over a dozen motions, multiple settlement conferences, and several hearings.

Rather, News Plaintiffs will say this. The Court should deny OpenAI's Request for reconsideration as well as its effort to, in the alternative, introduce yet further delay into an important area of discovery via a stay or anything else. Footnote 5 of the Request states that "OpenAI anticipates completing the de-identification process before **the end of the month** and, if required, providing access via a secure environment within 7 days." (emphasis added). OpenAI should be held to its original estimate, and this Court's Order, to produce on November 14, 2025, the 20 million sample of anonymized historical consumer ChatGPT output log data to News Plaintiffs via a remotely accessible and secure environment.

Respectfully,

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cc: All Counsel of Record (via ECF)