UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

OpenAI, INC.,

COPYRIGHT INFRINGEMENT

LITIGATION 25-md-3143 (SHS) (OTW)

This Document Relates To:

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AMICUS BRIEF OF THE CENTER FOR AMERICAN RIGHTS, ARTICLE III PROJECT, INTERNET ACCOUNTABILITY PROJECT, THE BULL MOOSE PROJECT, CONSUMERS FOR A STRONG ECONOMY (CASE) and JOEL THAYER

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Other Authorities

Alexandra Alper & Ruchika Khanna, *White House Accuses China of Industrial-Scale Theft of AI Technology*, Reuters (Apr. 24, 2026) 6, 12

CISA Advisory: China's Industrial-Scale AI Distillation Campaign, Cloud Security Alliance (Sep. 18, 2026) 14

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Olivia S. Hiltbrand, *Guarding the News Media's Intellectual Property in the Age of Generative AI*, 28 Stan. Tech. L. Rev. 35 (2025) 10

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AMICI STATEMENT OF INTEREST

The **Center for American Rights** is a nonprofit, nonpartisan public interest law firm with a focus on issues related to broadcasting, communications, telecom, and technology. The Center frequently practices in federal courts and before federal agencies to advance its commitment to policies that will achieve American greatness for the next 250 years of our nation's history.[1]

The **Article III Project** is a nonprofit organization focused on advocating for constitutionalist judicial reform and fighting against the politicization and weaponization of the justice system. Since it was founded in 2019, A3P has been a leader in defending the separation of powers and the Constitution while opposing lawfare and efforts to undermine the lawful prerogatives of the Executive Branch.

Internet Accountability Project is a nonprofit organization focused on educating the public about, and advocating for, policies that (1) promote competition and innovation in the technology sector, (2) ensure online platforms provide a forum for diverse points of view, (3) ensure online privacy, (4) protect children and communities online, and (5) strengthen national security through the effective use of technology.

The **Bull Moose Project** is a 501(c)(4) think tank based in Washington, D.C. The organization's mission is to advocate for a dominant American future. Its advocacy is

[1] No party or counsel for any party authored the brief in whole or in part, and Amicus Center for American Rights is responsible for its costs.

inspired by the legacy of President Theodore Roosevelt and promotes policies that will put America First, invest in our communities, and protect American workers.

CASE is **Consumer Action for a Strong Economy**, the nation's foremost non-profit, non-partisan organization devoted to promoting consumer interests through free-market principles. CASE seeks to serve the interests of U.S. consumers through common-sense policies that allow our economy to innovate and expand, giving consumers more freedom, greater choice, more purchasing options, at less cost.

Joel Thayer is President of the Digital Progress Institute and a Senior Fellow at the Vanderbilt Policy Accelerator for Political Economy and Regulation. He appears as amicus in his personal capacity. His previous experience includes a law firm, a trade association, Capitol Hill, the FCC, and the FTC.

INTRODUCTION

As America First leaders, we share and support the President's vision for a dominant American future powered by Super Intelligence (SI). We look forward to seeing SI-driven advances that save lives through better health care, create wealth through higher productivity, and enhance our warfighters' lethality through cutting-edge weaponry. We are for SI and for the infrastructure that supports SI.

We also support other aspects of the President's agenda to usher in a new age of American greatness.

We support the President's desire to protect our children's innocence online, and, in particular, the First Lady's admirable work to protect everyone's privacy from cruel and vicious misuse through wrongful employment of SI tools.[2]

We support the President's agenda for American innovation and entrepreneurship[3], which necessarily rest on the strong foundations of free markets, private property rights, and intellectual property protection. *See Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1520, 66 Cal. Rptr. 2d 731 (1997) ("[F]undamental to the preservation of our free market economic system is the concomitant right to have the

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[2] *See, e.g.*, "Protecting American Children Online," U.S. Dep't of State (Apr. 23, 2026), https://www.state.gov/releases/office-of-the-spokesperson/2026/04/protecting-american-children-online ("The United States is a global leader in protecting children online. President Trump signed the TAKE IT DOWN Act in 2025, which was championed by First Lady Melania Trump, to criminalize the publication of non-consensual intimate images…").

[3] *See* Presidential Message on National Entrepreneurship Month, The White House (Nov. 4, 2025), https://www.whitehouse.gov/briefings-statements/2025/11/presidential-message-on-national-entrepreneurship-month/.

ingenuity and industry one invests in the success of the business or occupation protected from the gratuitous use of that 'sweat-of-the-brow' by others.").

We support the President's challenge to entrenched mainstream news media institutions. We are okay with seeing mainstream news media organizations shrink, but because they deserve declining readership for their fake news, not because their IP has been stolen.

We support the President's strategy for American leadership in the world, including winning our current geopolitical competition with China. Like the President, we are critical of China's rampant IP theft, and we believe strong IP protection at home is necessary to combat IP theft abroad and to maintain America's unique economic edge.[4] Indeed, we note the need to prevent China's attempts to cheat in the SI race by stealing American SI intellectual property.[5]

We support the President's campaign to stop censorship of conservatives and the weaponization of Big Tech to suppress the voices of everyday Americans. We recognize that SI in the hands of the government or Big Tech can silence diverse

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[4] *See, e.g.*, "President Donald J. Trump Is Protecting America From China's Efforts To Steal Technology And Intellectual Property," The White House (May 29, 2020), https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-protecting-america-chinas-efforts-steal-technology-intellectual-property/.

[5] *See, e.g.*, Alexandra Alper & Ruchika Khanna, *White House Accuses China of Industrial-Scale Theft of AI Technology*, Reuters (Apr. 23, 2026), https://www.reuters.com/world/white-house-accuses-china-industrial-scale-theft-ai-technology-ft-reports-2026-04-23/.

voices, while strong IP protects conservatives and content creators on new platforms like TruthSocial.[6]

Finally, we support the President's strong commitment to the U.S. Constitution. We share his reverence for America's founding generation and celebrate with him the nation's 250th anniversary. Through his judicial and legal appointments, we see his consistent commitment to our nation's founding charter[7], which includes textual commitments to private property rights and intellectual property protection. U.S. Const. Art. I, Sec. 8, Cl. 8 ("To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.").

Our goal in this amicus brief is straightforward: It is to aid this Court in resolving this case by addressing certain assertions made concerning the policy and national security impacts of SI within the context of fair use.

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[6] *See* Report: The Federal Government's Attempt to Control Artificial Intelligence to Suppress Free Speech, U.S. House of Representatives Committee on the Judiciary GOP Staff Report (Dec. 18, 2024), https://judiciary.house.gov/media/press-releases/report-federal-governments-attempt-control-artificial-intelligence-suppress.

[7] *See* Remarks by President Trump on Judicial Appointments, The White House (Sep. 9, 2020), https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-judicial-appointments/.

ARGUMENT

I. Adopting Defendant's theory complicates the Trump Administration's ability to develop a comprehensive framework that supports SI Acceleration while also protecting copyright, children, and other legal and policy priorities.

The President announced a policy to ensure a national SI legislative framework that supports SI acceleration while "also ensur[ing] that children are protected, censorship is prevented, copyrights are respected, and communities are safeguarded. A carefully crafted national framework can ensure that the United States wins the AI race, as we must."[8]

Amici applaud that vision, which recognizes that SI leadership is important, even essential, to American leadership in the 21st Century, but even that level of national imperative is not *carte blanche* to override all other goods and values.

In fact, the Administration has recognized elsewhere that copyright actually protects and promotes U.S. SI leadership. Less than two months ago, as part of the Administration's presidency of the G20, the Administration joined other G20 nations in a declaration that stated: "We recognize that intellectual property (IP) frameworks

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[8] Ensuring a National Policy Framework for Artificial Intelligence (Exec. Order 14365), The White House (Dec. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/, Sec. 1.

Accord Remarks by Director Michael Kratsios at the India AI Impact Summit, The White House (Feb. 20, 2026), https://www.whitehouse.gov/releases/2026/02/remarks-by-director-michael-kratsios-at-the-india-ai-impact-summit/ ("To give the American people confidence in these tools, the Trump Administration seeks to support legislators as they construct a national policy framework that protects children, prevents censorship, respects intellectual property, and safeguards our workers, families, and communities.").

can support innovators, rightsholders, and creators while preserving opportunities for AI development and deployment, helping to sustain the investment necessary for continued AI progress and the production of creative works and inventions by humans."[9] The statement's section on IP closed, "We recognize the importance of enforcing intellectual property rules and trade secret protections and ensuring fair and appropriate remuneration and enabling remedies against misappropriation in accordance with applicable legal frameworks."[10] This, of course, is the Plaintiffs' collective point: the SI companies can access the information they seek, they just need to pay fair and appropriate remuneration.

Last year, on World Intellectual Property Day 2025, the President said, "More than 200 years ago, our Founding Fathers recognized the profound importance of intellectual property, enshrining government-granted legal protections in the Constitution to safeguard American innovation."[11] This heritage is more than a legal principle or historical artifact—it is an essential present policy priority: "The future of our great Nation depends on the continued safeguarding of our intellectual

[9] G20 Innovation Ministerial Statement, U.S. Dep't of Commerce (Sep. 2, 2026), https://www.commerce.gov/sites/default/files/2026-09/G20-INNOVATION-MINISTERIAL-STATEMENT-Pillars%20I-VI.pdf.

[10] *Id*.

[11] World Intellectual Property Day, 2025, The White House (Apr. 26, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/world-intellectual-property-day-2025/

property, which fuels economic growth, technological progress, and global competitiveness."[12] That is as true of SI as any other area of our tech-driven economy.

Defendant's view complicates the Trump Administration's vision in one critical way: it seeks an unqualified ability to subvert the rights of content owners. It is important to recall why this case is brought before the court. Defendant's system trained on millions of copyrighted books and news articles, none of which defendants licensed from Plaintiffs. They just unabashedly stole their works. Defendants do not even deny that fact. Instead, the Defendants argue that this is all justified because of a boundless fair-use defense. However, as Judge Sidney Stein explained when denying Defendant's motion to dismiss in this case, "A reasonable jury could find that the allegedly infringing outputs are substantially similar to plaintiffs' works."[13]

Even though this Court explicitly did not rule on the question of fair use, it is probative in demonstrating the incongruencies between Defendant's position and the Administration's ability to enact a federal strategy that protects copyright holders. As one commenter describes, "[c]ontent creators' work has been used or 'scraped' [by large SI companies] without permission and without compensation." [14] This implies that they can use your face, voice, words, or written thoughts in any way they choose, and you would not be entitled to a cent, while SI companies rake in billions on your

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[12] *Id*.

[13] *OpenAI, Inc. Copyright Infringement Litigation*, 25-md-3143 (SHS) (OTW), Doc. 701, Opinion and Order at p. 10 (Oct. 27, 2025).

[14] Olivia S. Hiltbrand, *Guarding the News Media's Intellectual Property in the Age of Generative AI*, 28 Stan. Tech. L. Rev. 35 (2025).

likeness and work. If SI is permitted to recklessly crawl the internet, even past paywalls, then we've effectively stripped these smaller companies of their competitive advantage and, worse, permanently solidified these SI companies as the ultimate distributors of our information.

This completely expurgates the incentive for any creator to want to provide free, open content and solidifies SI companies as our sole provider of news and entertainment. That is a terrifying prospect and completely at odds with the Trump Administration's goals of protecting copyright and a diversity of viewpoints (given Big Tech's track record of removing politically disfavored content). To be abundantly candid, SI companies understand that degradation of copyrights only helps them obtain more market dominance over our data and information. To ensure diversity in our news and information ecosystem, this court must ensure that intellectual property is maintained and not overwhelmed by SI.

II. Protecting our intellectual property is critical to protecting our national security.

We agree with the U.S. Department of Justice that SI "will be critical for U.S. national security capabilities" and that the government has a legitimate concern to ensure law does not "threaten national security and give a competitive advantage to foreign adversaries." ECF 316 at 3. Rather than dismiss these concerns, *see* ECF 2071 at 1 and 6, we should instead recognize the countervailing national security policies that support strong IP protection in the SI context.

The National Security Commission on Artificial Intelligence (an independent, bipartisan federal commission chartered by Congress) recommended in its Final

Report that the "United States must recognize IP policy as a national security priority critical for preserving America's leadership in AI and emerging technologies."[15] Moreover, the report explains that "[d]ata is critical to AI and machine learning (ML), but gaps may exist in current protection regimes afforded by patent or copyright. Inadequate protections for data may disincentivize the necessary investments in developing these critical data sets as well as public disclosure and sharing agreements." *Id.* at 473.

However, IP theft is not only an issue of monetary loss—our gravest foreign adversaries also distill American models to steal capabilities that would otherwise constitute copyright violations. Distillation, Reuters explains, is "the process of training smaller AI models using output from larger, more expensive ones as part of an effort to lower the costs of training a new AI tool."[16]

Top Trump Administration officials understand how distillation weakens our national security. As Office of Science and Technology Policy Director Michael Kratsios has explained, "[t]he US government has information indicating that foreign entities, principally based in China, are engaged in deliberate, industrial-scale campaigns to distil US frontier AI systems."[17] In September 2026, U.S. national

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[15] Nat'l Sec. Comm'n on Artificial Intelligence, Final Report p. 14 (2021), https://www.govinfo.gov/content/pkg/GOVPUB-Y3-PURL-gpo153246/pdf/GOVPUB-Y3-PURL-gpo153246.pdf.

[16] Courtney Rozen & A.J Vicens, *US Accuses Chinese AI Firms of 'Malicious' Copying of AI Technology*, Reuters (Sep. 8, 2026), https://www.reuters.com/technology/us-accuses-chinese-ai-firms-industrial-scale-theft-ai-technology-2026-09-08/.

[17] Alexandra Alper & Ruchika Khanna, *White House Accuses China of Industrial-Scale Theft of AI Technology*, Reuters (Apr. 24, 2026),

security agencies (the National Security Agency, Cybersecurity & Infrastructure Security Agency, and FBI) accused six Chinese SI companies of conducting industrial-scale knowledge distillation against top American frontier SI models, such as Claude, GPT, Gemini, and Grok.[18]

Most of the distillation prevention is protected under contract, via terms of service. However, if "terms of service can govern machine outputs [this] would effectively amount to an intellectual property right in model outputs."[19] We believe this view is correct. As CISA rightfully stated, distillation conducted by Chinese models "represents systematic extraction of *proprietary functionalities* and capabilities threatening U.S. technological leadership."[20] Treasury Secretary Scott Bessent argued that "…open source is not open season on American IP. When PRC [People's Republic of China] firms conduct covert, industrial-scale distillation attacks that cross the line into IP theft, sanctions and Entity List designations will be on the table." [21]

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https://www.reuters.com/world/white-house-accuses-china-industrial-scale-theft-ai-technology-ft-reports-2026-04-23/.

[18] Cybersecurity & Infrastructure Security Agency, et al., *China-Based Artificial Intelligence Companies Conducting Industrial-Scale Distillation Campaigns Against U.S. AI Companies*, Website (Sep. 8, 2026), https://www.cisa.gov/news-events/cybersecurity-advisories/aa26-251a ("CISA Cybersecurity Advisory").

[19] Lisa Klassen, *The AI Model Distillation Paradox*, Lawfare (Oct. 8, 2026), https://www.lawfaremedia.org/article/the-ai-model-distillation-paradox.

[20] *See* CISA Cybersecurity Advisory, *supra* (emphasis added).

[21] Treasury Sec. Scott Bessent, X (July 22, 2026), https://x.com/SecScottBessent/status/2080008411790368895.

The stakes could not be higher. Adversarial AI model distillation threatens U.S. national security by allowing foreign competitors to bypass semiconductor export controls, steal billions of dollars in research and development, and strip out critical safety guardrails. As Anthropic explains, distillation also feeds military, intelligence, and surveillance uses.[22] The company reported that Moonshot's Kimi models "were secretly forwarded to Claude as part of its distillation efforts."[23] One request was from a member of China's People's Liberation Army who "sought to analyze CCTV surveillance of a specific individual."[24] The Cloud Security Alliance's ("CSA") AI Safety Initiative states that such distillation "materially strengthens capabilities with military and offensive cyber applications," with likely awareness of the Chinese government.[25]

Indeed, the SI companies themselves also appreciate the national security importance of IP protection when it comes to their own products. The President's Executive Order 14409, entitled *Promoting Advanced Artificial Intelligence Innovation and Security*, explains that "[it] is the policy of the United States . . . to protect American ingenuity and intellectual property from exploitation and theft by

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[22] Strengthening Our Defenses Against Distillation Attacks, Anthropic.com (Oct. 12, 2026), https://www.anthropic.com/research/distillation-defenses.

[23] *Id.*

[24] *Id.*

[25] *CISA Advisory: China's Industrial-Scale AI Distillation Campaign*, Cloud Security Alliance (Sep. 18, 2026), https://labs.cloudsecurityalliance.org/research/csa-research-note-china-ai-distillation-campaign-20260918-cs/.

adversaries."[26] The order allows SI companies to confidentially submit frontier models for a national security agency review with "appropriate" "intellectual-property protection."[27] The SI companies, then, are Pro-IP when it comes to their own IP (just as many news organizations are pro-SI when it can increase reporter research and productivity). And that's for a reason—ensuring that SI falls within existing treaty protections for intellectual property gives the companies another tool to combat foreign and domestic IP theft.

If the Court here agrees with OpenAI's expansive view of fair use, it would not only encourage foreign adversaries to continue this obvious form of IP theft but also give them legal immunity to do so. As a matter of equity, these national security concerns counsel against adopting such an interpretation.

CONCLUSION

This Court's job is to apply the law, not to make policy. But the policy concerns present with this issue are never far from mind. That is especially so when the rule the Court is required to apply includes a component of equity.

This Brief's goal is simple: to demonstrate for the Court that the federal government as a whole appreciates the important national security and economic

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[26] Executive Order 14409: Promoting Advanced Artificial Intelligence Innovation and Security, The White House (June 2, 2026), https://www.whitehouse.gov/presidential-actions/2026/06/promoting-advanced-artificial-intelligence-innovation-and-security/, Sec. 1.

[27] *Id*. Sec. 3(a)(ii).

roles that strong intellectual property protections play in our policy landscape. We are both Pro-SI and Pro-IP.

Respectfully submitted,

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