Judge denies plaintiffs' effort to intervene in New York copyright actions against OpenAI

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For the last year, ChatGPT creator OpenAI has been hit with a litany of lawsuits across the country alleging that OpenAI committed copyright infringement by using copyrighted works to train its flagship large language model ("LLM"), and that ChatGPT's outputs improperly summarize, mimic or simply reproduce copyrighted material. A recent decision by a federal judge in New York ensures that OpenAI will continue to litigate those cases in multiple jurisdictions, rather than in one consolidated proceeding.

On April 1, Judge Sidney Stein of the U.S. District Court for the Southern District of New York denied a motion by plaintiffs in a California case to intervene in litigation pending against OpenAI in New York federal court. The California plaintiffs had sought to intervene in order to stay or dismiss the New York cases in favor of the pending California actions they had filed, or to transfer the New York cases to California.

In denying the motion, the Court ensured that, at least for the time being, parallel putative class actions will proceed against OpenAI on both coasts, allowing for the possibility that different courts will answer the same novel legal questions about generative artificial intelligence in different ways.

Procedural background

In June 2023, a group of authors brought a putative class action against OpenAI in the Northern District of California, pleading claims for copyright infringement (*Tremblay v. OpenAI, Inc.*, No. 4:23-cv-03223 (N.D. Cal. Jun. 28, 2023)).

The plaintiffs alleged that OpenAI used copies of the plaintiffs' copyrighted books in training its LLMs. The plaintiffs also asserted claims based on the alleged outputs that ChatGPT produced, claiming that users could prompt ChatGPT to generate comprehensive summaries of the authors' books.

Over the next three months, two additional author groups — which included Sarah Silverman, Michael Chabon and Ta-Nehisi Coates — filed two additional putative class actions against OpenAI in the Northern District of California (*Silverman v. OpenAI, Inc.*, No. 4:23-cv-03416 (N.D. Cal. Jul. 7, 2023); *Chabon et al v. OpenAI, Inc.*, No. 3:23-cv-04625 (N.D. Cal. Sept. 8, 2023)).

These suits asserted similar copyright claims as the first action, and further alleged that ChatGPT could produce texts written in the styles of the plaintiff authors. The three actions were ultimately consolidated under the case caption *In re OpenAI ChatGPT Litigation* (No. 3:23-cv-03223-AMO (N.D. Cal. Feb. 16, 2024)) ("*In re OpenAI*").

Separately — but three months *after* the first putative class action was filed in California — a group of authors filed a similar putative class action against OpenAI in the Southern District of New York (*Authors Guild v. OpenAI, Inc.*, No. 1:23-cv-08292 (S.D.N.Y. Sept. 19, 2023)) ("*Authors Guild*"). *Authors Guild* was assigned to Judge Stein.

The California plaintiffs had sought to intervene in order to stay or dismiss the New York cases in favor of the pending California actions they had filed, or to transfer the New York cases to California.

Two months later, another set of authors filed another putative class action in the Southern District of New York (*Alter et al v. OpenAI, Inc.*, No. 1:23-cv-10211 (S.D.N.Y. Nov. 21, 2023) (originally captioned as *Sancton v. Open AI, Inc. et al*)) ("*Alter*"). *Alter* was assigned to Judge Stein, as well, and the plaintiffs in *Authors Guild* and *Alter* ultimately stipulated to consolidating those cases. Shortly thereafter, a third pending action against OpenAI was consolidated into that case (collectively, the "Author Actions").

Finally, on Dec. 27, 2023, The New York Times (the "Times") sued OpenAI and Microsoft in the Southern District of New York, alleging that the defendants use copies of Times articles in their training datasets, which enables the LLM to generate text that closely mimics or verbatim copies the Times' content in both style and substance (*The New York Times Co. v. Microsoft Corp.*, No. 1:23-cv-11195 (S.D.N.Y. Dec. 27, 2023)) ("*NYT*").

The Times also alleges that ChatGPT's hallucinations cause trademark dilution because users are misled into thinking that novel ChatGPT output text is actually published Times content. Judge Stein determined that *NYT* was related to the original *Authors Guild* case. As a result, both the Author Actions and *NYT* are pending before Judge Stein as related cases.

Southern District of New York denies the California plaintiffs' motion to intervene

In February 2024, the *In re OpenAI* plaintiffs filed motions to intervene in the Author Actions and *NYT* for the purpose of seeking to stay or dismiss those actions, or to transfer them to California, under the first-to-file rule. The *In re OpenAI* plaintiffs argued that they were entitled to intervene as of right under Federal Rule of Civil Procedure 24(a), and by permission under Rule 24(b).

Judge Stein rejected both arguments and denied the motion. With respect to intervention as of right, the Court concluded that the California plaintiffs failed to meet their burden under Rule 24(a) to show that they have an interest in the New York actions that would be impeded or impaired if they were not permitted to intervene. The Court rejected the California plaintiffs' argument that contradictory rulings between the California action and the New York actions would impair their interests.

The Court noted that there were significant differences between the two suits, including that Microsoft is not a defendant in the *In re OpenAI* action, and that the *In re OpenAI* case asserted California state-law and Digital Millenium Copyright Act claims which were not asserted in the New York actions.

For the claims that do overlap, the Court found that the *In re OpenAI* plaintiffs had no cognizable interest in avoiding rulings from the New York court since those rulings did not apply to the California plaintiffs.

The Court explained that, since no class has been certified in either jurisdiction, any decision in one of the New York actions would only bind the individual named plaintiffs in that action, with no preclusive effect on the *In re OpenAI* plaintiffs. Moreover, to intervene as of right, an intervenor must show that the current parties would not adequately protect the intervenor's interests. Here, the Court reasoned that, even if a ruling in the New York actions could impact the California plaintiffs' rights, the California plaintiffs made no showing that the New York plaintiffs would not adequately protect the California plaintiffs' interests.

On this point, the Court specifically rejected the California plaintiffs' argument that the *Authors Guild* plaintiffs' publicly declared interest in licensing their intellectual property to OpenAI was sufficient to rebut the presumption that the California plaintiffs' hypothetical interests would be adequately protected.

With respect to permissive intervention, the primary issue courts consider is the risk of undue delay or prejudice to the non-intervening party — here, the New York plaintiffs. On that central issue, the Court concluded that allowing the California plaintiffs to intervene would "certainly" prejudice the New York plaintiffs because the California plaintiffs sought to intervene solely in order to stay, dismiss or transfer the New York actions, thus preventing the New York plaintiffs from litigating the case they brought. The Court noted that the parties in New York had already agreed to an "expedited timeline" in which discovery has already commenced and a summary judgment briefing schedule has been set.

Looking ahead

With intervention denied, the California and New York cases are set to proceed on separate tracks. In *In re OpenAI*, the California court will hear OpenAI's Motion to Dismiss the consolidated complaint on Aug. 1, 2024. Class certification will be briefed in the first half of 2025. In the Author Actions in New York, discovery is underway, with motions for summary judgment due in January 2025. In *NYT*, OpenAI, Microsoft and the Times await the Court's decision on whether to hold oral argument on defendants' motions to dismiss.

Whether those tracks will remain separate is still to be determined. On April 15, the California plaintiffs appealed the denial of their motion to intervene to the 2nd U.S. Circuit Court of Appeals. The schedule for the appeal and any argument is not yet set.

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