

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

THE NEW YORK TIMES COMPANY

Plaintiff,

v.

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

Defendants.

Civil Action No. 1:23-cv-11195-SHS

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
LEAVE TO FILE FIRST
AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15, Plaintiff The New York Times Company (“The Times”) seeks leave to file its First Amended Complaint (“FAC”). A redline of the FAC is attached as Exhibit A to the concurrently filed Declaration of Ian Crosby,

As indicated in Exhibit A, the only substantive amendments proposed pertain to the exhibits to the FAC. The effect of these proposed amendments is to (1) correct errors in the identification of copyright registration numbers for previously asserted works, and (2) to add approximately 7 million additional works to the suit. These additional works comprise approximately 3.4 million works registered from April 1928 through August 1950, approximately 3.6 million works registered from September 1950 through September 2023, and approximately 10,000 works registered from October 2023 through January 2024. The suit previously comprised over 3 million works from September 1950 through September 2023. The proposed amendment will not affect the schedule that the Court has set for hearing the threshold fair use question because the answer to that question does not turn on the number of works asserted.

The Times was unable to identify the pre-September 1950 works in its original complaint because the Copyright Office’s online database for such works consists only of scanned images of card catalog files, which had to be reviewed and correlated with The Times’s own records of its online works by hand. The additional works for September 1950 – September 2023 were inadvertently omitted from the original complaint due to a data processing issue. Lastly, works for which registration information was not available at the time of filing (i.e. October 2023 – January 2024) have been added.

Leave to amend on a timely motion should be “granted liberally” unless amendment would be futile. *Morrison v. Scotia Cap. (USA) Inc.*, No. 21-CV-1859 (SHS), 2023 WL 8307930, at *1 (S.D.N.Y. Dec. 1, 2023) (Stein, J.). The Times’s motion is timely under this Court’s scheduling order of May 3, 2024, which set a deadline of May 20 for amending pleadings. The proposed amendment does not assert any new causes of action respecting the additional works. Because motions to dismiss are pending with regards to certain of those causes of action, The Times proposes that it should be required to file the FAC within twenty-one days after a ruling on those motions.

Due to the volume of the proposed exhibits to the FAC, the Times also seeks leave to submit them in native electronic Excel format rather than as PDFs. The Times proposes to deliver these native files to the Clerk and to the Court on thumb drives or on such other medium as the Court may direct, and to indicate these exhibits have been submitted in native format by way of slip sheets attached to the copy of the FAC filed in PDF format via ECF. The Times has provided Defendants with access to the native Excel files that it proposes to submit with the FAC concurrently with the filing of this motion. OpenAI has not advised The Times whether they

oppose the proposed amendment. Microsoft takes no position at this time on the proposed amendment.

Because The Times may seek to make further amendments to its complaint if either of the pending motions to dismiss are granted in part, The Times requests that the Court grant leave to file the FAC along with native files of certain exhibits as indicated above within twenty-one days after a ruling on the Defendants' pending motions to dismiss.

Dated: May 20, 2024

/s/ Ian Crosby
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