Susman Godfrey LLP

VIA ECF

January 30, 2026

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

Dear Magistrate Judge Wang:

News[1] and Class Plaintiffs submit this joint letter seeking an Order that OpenAI collect, review, and produce responsive portions of OpenAI President Greg Brockman's notebook in which he recorded relevant notes about his work, which was produced in the *Musk* litigation but that OpenAI refuses to produce here. Additionally, Plaintiffs submit a revised request for an Order that OpenAI produce a narrowed list of deposition transcripts and their exhibits from *Musk* **v.** *Altman*, No. 4:24-cv-04722-YGR (N.D. Cal.) ("*Musk*"). *See* Dkt. 1043. The parties met and conferred again on January 29 but were unable to reach agreement. *See* Ex. A.

I. Responsive Portions of Mr. Brockman's Notebook

Plaintiffs learned—for the first time—through the recently unsealed *Musk* filings that OpenAI co-founder and President Greg Brockman kept responsive and relevant information about at least his and Mr. Altman's decision to transition OpenAI to a for-profit entity in a notebook. *See* Dkt. 1162-13 (Ex. M at 6). It is inexcusable that, despite this Court's many previous hearings and orders at *Times* Dkt. 360, *Authors Guild* Dkt. 291, and MDL Dkt. 900 on the need to ask about, collect, and search so-called "personal communications," that OpenAI did not already do just that for this (and any other notebooks) in this case. Nor can OpenAI claim ignorance of the notebook's existence, as it was produced in the *Musk* action. But when Plaintiffs first learned of this document and promptly reached out to confirm whether OpenAI had done just this, OpenAI responded that it had not been searched, and that it refuses to do so.

While we cannot know exactly what the full notebook contains, we do know it includes excerpts about the commercial nature of OpenAI's endeavors—a key part of Factor 1 of the fair use analysis. *See* 17 U.S.C. § 107(1). Regarding the decision to transition OpenAI to a for-profit entity, Mr. Brockman testified yesterday that [redacted] Ex. B (Brockman Rough Depo. Tr.) at 422:10-14. At the same time as he was having that "realiz[ation]" regarding "the mission," Mr. Brockman was writing in his notebook: "What do I *really* want?... Financially, what will take me to $1B?" *See* Dkt. 1162-9 (Ex. I at 2); Ex. B (Brockman Rough Depo. Tr.) at 427:17-18 ([redacted]). His notebook contains other entries grounding his decision-making at OpenAI on his personal net worth rather than "the mission":

[1] For purposes of this motion, "News Plaintiffs" refer to The New York Times and Ziff Davis.

- "[O]ur plan[:]…it would be nice to be making the billions… we've been thinking that maybe we should just flip to a for profit. making the money for us sounds great at all."
- "[C]annot say we are committed to the non-profit. don't wanna say that we're committed. If three months later we're doing b-corp then it was a lie."
- "we've been thinking that maybe we should just flip to a for profit. making the money for us sounds great and all."

See Dkt. 1162-8 (Ex. H at 2); Dkt. 1162-9 (Ex. I at 2); Dkt. 1162-7 (Ex. G at 3).

Just these short public excerpts show that when Mr. Brockman led his team at OpenAI to steal Plaintiffs' copyrighted works to train OpenAI's generative AI models, he did so not for the "benefit of humanity,"[2] as OpenAI claims, but on his personal quest to "$1B"—which [redacted]. *See also* Dkt. 1103. This demonstrates OpenAI's commercial use and is responsive to at least RFPs seeking documents regarding OpenAI's transition to a for-profit company. *See, e.g.*, NYT RFP 11.

Nonetheless, OpenAI never collected, let alone reviewed, Mr. Brockman's notebook or produced any responsive portions in this case, and flatly refuses to do so now, even though it was already reviewed and at least some portions were produced in *Musk*. OpenAI claimed for the first time the day before this brief was due that it might not be able to collect the notebook because public reports described it as Mr. Brockman's personal diary, but OpenAI did not even claim to have asked Mr. Brockman. OpenAI cannot claim that it lacks possession, custody, or control over a notebook that its current president uses to brainstorm about work and that was produced in *Musk*. *See* Fed. R. Civ. Proc. 34(a)(1); *Export-Import Bank of U.S. v. Asia Pulp & Paper Co., Ltd.*, 233 F.R.D. 388, 341-42 (S.D.N.Y. 2005) (rejecting a corporation's claim to lack control over a *former* employee's personal journal when the corporation failed to ask the former employee to cooperate and had secured his appearance at a deposition).

Producing responsive portions of Mr. Brockman's notebook (and any other notebooks he maintained that include information about his work) is neither burdensome nor disproportionate to the needs of this case. Plaintiffs seek an Order compelling OpenAI to review and produce any responsive portions of Mr. Brockman's notebook here.[3]

II. *Musk v. Altman* Deposition Testimony and Exhibits

Cross-production of recent witness deposition testimony from another action involving substantially overlapping allegations against the same defendants covering the same timeframe is commonplace and straightforward. *See Carter-Wallace, Inc. v. Hartz Mountain Indus., Inc.*, 92 F.R.D. 67, 68-71 (S.D.N.Y. 1981) (ordering cross-production of defendant's deposition transcripts from separate case involving similar allegations); *Costa v. Wright Medical Technology, Inc.*, 2019

[2] https://openai.com/about/. *See also* Ex. C (OpenAI's Jan. 16, 2026 Resp. to Class Pls.' Rog 16) at 16 (claiming "OpenAI's alleged use provides substantial public benefits" that "confirm that OpenAI's alleged use is a fair use under the Copyright Act").

[3] Plaintiffs deposed Mr. Brockman on January 29, 2026, but moved to hold his deposition open because this dispute had not been resolved.

WL 108884, at *1 (D. Mass. Jan. 4, 2019) (documents and "deposition testimony given in other litigation is generally discoverable upon a showing of substantial similarity between the prior and current actions"); *Michelo v. National Collegiate Student Loan Trust 2007-2*, 2020 WL 9423921, at *1-3 (S.D.N.Y. Aug. 31, 2020) (generally approving narrowed requests for documents in separate government investigation covering overlapping issues and the same defendant). There is nothing burdensome or controversial about asking OpenAI to produce transcripts of specific OpenAI and Microsoft witnesses' sworn deposition testimony from *Musk* and their exhibits.

News and Class Plaintiffs renew their motion at Dkt. 1043 for a narrowed subset of six deposition transcripts and their exhibits from *Musk*. Specifically, Plaintiffs are seeking the *Musk* depositions of OpenAI's Sam Altman (CEO), Greg Brockman (President), Tasha McCauley (former board member), Helen Toner (former board member), OpenAI's Rule 30(b)(6) designee,[4] and Microsoft's Satya Nadella (CEO).[5]

As Plaintiffs' prior briefing explained, the limited excerpts of the depositions that were unsealed in *Musk* confirm that this testimony is relevant, responsive, and bears on key issues relating to commercialization, infringement, willfulness, witness bias, and impeachment. *See* Dkt. 1043; Dkt. 1043.

Indeed, the deposition testimony from just one overlapping witness that this Court ordered be produced at the last Conference at Dkt. 1183—of OpenAI co-founder and former Chief Scientist Ilya Sutskever—further confirms as much. By way of example, Mr. Sutskever testified at his deposition that:

- Sam Altman lied to OpenAI's CTO and said that GPT-4 Turbo did not have to be approved by the Deployment Safety Board ("DSB"), the Microsoft and OpenAI joint body responsible for reviewing models for safety and legality before deployment, Ex. D (Sutskever *Musk* Tr.) at 118:5-123:12 [redacted].");
- Microsoft and OpenAI's early deployment of GPT-4 in India without following company legal and safety review policy, *id.* at 139:5-143:5 [redacted]; and

[4] The full scope of OpenAI Rule 30(b)(6) deposition testimony in *Musk* is not clear from the public record, but the limited public excerpts relate to OpenAI's transition to a for-profit entity, Microsoft's investments into OpenAI, and the joint OpenAI Microsoft Deployment Safety Board. *See* Dkt. 1162-2.

[5] OpenAI has not indicated how many of the witnesses in this case were deposed in *Musk*, but to compromise, Plaintiffs voluntarily narrowed their original request for all overlapping witness testimony after the January Conference. Plaintiffs now seek a targeted list of six depositions because the limited portions that were unsealed in *Musk* confirm that they contain testimony from key overlapping witnesses on relevant issues in this action. Moreover, one of these witnesses is a third party whose deposition has not been scheduled (Tasha McCauley) and two others are executives who OpenAI and Microsoft refused to put up for the standard 11-hour limit in this case (Altman and Nadella).

- OpenAI's motivation to transition to a for-profit to compete with Google, *id.* at 204:3-205:7 ("[redacted]").

Plaintiffs' request for a targeted subset of six additional *Musk* depositions of key overlapping witnesses in this case is reasonable, and this discovery is relevant and proportional to the needs of the case.

Respectfully,

/s/ Davida Brook
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Counsel for The New York Times Company
News Plaintiffs' Liaison Counsel

/s/ Justin Nelson
Justin Nelson
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Interim Lead Class Counsel

cc: All Counsel of Record (via ECF)