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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 TED ENTERTAINMENT, Inc., et al.,

23 Plaintiffs,

24 v.

25 NVIDIA CORPORATION,

26 Defendant.

Case No.: 5:25-CV-10287-EJD-SVK

**NOTICE OF MOTION AND MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM UNDER FED. R. CIV. P. 12(b)(6)**

Judge: Hon. Edward J. Davila
Courtroom: 4, 5th Floor
Hearing Date: May 28, 2026
Hearing Time: 9:00 am

Complaint Filed: November 26, 2025

NOTICE OF MOTION & MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE, that on May 28, 2026 at 9:00 am, in Courtroom 4, 280 South 1st Street, before the Honorable Edward J. Davila, Defendant NVIDIA Corporation (“NVIDIA”) will and does hereby move this Court to dismiss the sole count of the Complaint, disposing of this case in its entirety.

This Motion is based on this Notice of Motion and Motion; the following Memorandum of Points and Authorities in support thereof; all matters of which the Court may take judicial notice; and such documentary and oral evidence as may be presented at or before the hearing on this Motion.

Dated: February 23, 2026

Respectfully submitted,

By: /s/ Lauren Cury

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF ISSUES TO BE DECIDED**

3 Whether the sole count of the Complaint (ECF 1) should be dismissed for failure to state a
4 claim, and the case disposed of in its entirety.

5 **INTRODUCTION**

6 The circumvention provision added by Congress in the Digital Millennium Copyright Act
7 (“DMCA”), 17 U.S.C. § 1201(a)(1), is narrow and specific, designed to provide tailored relief
8 against the circumvention of technological *access controls*. It explicitly excluded from its purview
9 a prohibition on circumventing *copy controls*. This exclusion was intentionally designed “to assure
10 that the public will have the continued ability to make fair use of copyrighted works. Since copying
11 of a work may be a fair use under appropriate circumstances, Section 1201 does not prohibit the
12 act of circumventing a technological measure that prevents copying.” U.S. Copyright Office, *The*
13 *Digit. Millennium Copyright Act of 1998: U.S. Copyright Off. Summary*, at 4 (Dec. 1998),
14 <https://www.copyright.gov/legislation/dmca.pdf> (“1998 USCO DMCA Summary”).

15 In line with this statutory distinction, and the legislative history and Congressional intent
16 that accompany it, courts have explained that “where § 1201(a)(1) refers to technological
17 measure[s] that control ‘access’ to a protected work, that section should be interpreted narrowly to
18 exclude technologies that permit access to copyrighted work, but restrict copying.” *Hattler v.*
19 *Ashton*, No. 16-cv-04099, 2017 WL 11634742, at *8 (C.D. Cal. Apr. 20, 2017). For this reason,
20 courts have explicitly excluded controls that “permit[] users to view or watch a copyrighted work
21 but prevent[] them from downloading a permanent copy of the work” from the purview of §
22 1201(a)(1). *Id.* at *6 (citing *RealNetworks, Inc. v. Streambox, Inc.*, No. 2:99-CV-02070, 2000 WL
23 127311, at *1-2 (W.D. Wash. Jan. 18, 2000). In other words, courts recognize that § 1201(a)(1)
24 applies to access controls, not copy controls.

25 Plaintiffs’ sole § 1201(a)(1) claim here is based only on copy controls. Specifically,
26 Plaintiffs premise their claim on the alleged downloading of “permanent copies” of works they
27 otherwise make freely accessible via “streaming” on YouTube. Compl. ¶ 37 (explaining
28 “[s]treaming through YouTube and downloading permanent copies provide the user with different

1 value propositions,” and grounding their claim in the latter).

2 Because courts, including within this Circuit, have explicitly disavowed these same
3 allegations as sufficient to state a claim under § 1201(a)(1), and because allowing such claim would
4 contradict the statutory structure and legislative history of the DMCA, as well as undermine the
5 availability of the fair use defense Congress explicitly sought to preserve, Plaintiffs’ claim should
6 be dismissed.

7 BACKGROUND

8 I. Plaintiffs’ Complaint

9 Plaintiffs are “content creators who upload their audiovisual content to YouTube.” Compl.
10 ¶ 5. In so doing, they “grant each other user of the Service a worldwide, non-exclusive, royalty-
11 free license to access [their] Content through the Service.” “Terms of Service,” YouTube,
12 <https://www.youtube.com/t/terms> (last visited Feb. 17, 2026).¹ That content is “intended for
13 streaming on YouTube,” Compl. ¶ 15, where the public “can watch and listen to [it] for free.” *Id.*
14 ¶ 32.

15 In their Complaint, Plaintiffs distinguish between “[s]treaming through YouTube and
16 downloading permanent copies.” *Id.* ¶ 37. It is the latter activity—the alleged downloading of
17 digital copies—on which Plaintiffs base their circumvention claim. *Id.* ¶ 56 (alleging that
18 NVIDIA’s “unauthorized downloads[] each constitut[ed] a separate circumvention event”); *id.* ¶
19 70 (accusing NVIDIA of “initiat[ing] millions of individual downloads . . . all without
20 authorization, all in violation of YouTube’s access restrictions”). It is likewise the underlying
21 digital files, and not the audiovisual works, that Plaintiffs accuse NVIDIA of accessing without
22 authorization. *Id.* ¶ 118 (alleging NVIDIA “used automated tools for the sole purpose of
23 circumventing YouTube’s access barriers and extracting files never made available to the public”);
24 *id.* ¶ 73 (accusing NVIDIA of “improperly access[ing] the actual audio and video files and
25 download[ing] those files”).

26 In line with these allegations, Plaintiffs describe the “technological protection measures” or
27 “TPMs” they accuse NVIDIA of circumventing as “designed to control access to the underlying
28

¹ Plaintiffs incorporate these terms into ECF 1 (the “Complaint”) at footnote 1.

1 video files and prevent direct *downloading* outside permitted channels.” *Id.* ¶ 33 (emphasis added);
2 *id.* ¶ 42 (describing YouTube’s TPMs as “processes and tools to detect and block unauthorized
3 *downloading*”) (emphasis added). Plaintiffs identify those TPMs as “occasionally update[d] APIs,
4 which operate to interfere with *downloaders*” and that “YouTube monitors *downloading* activity
5 and may block IP addresses that make too many *download* attempts in a specified period.” *Id.* ¶ 42
6 (emphasis added). Plaintiffs also assert that YouTube’s Terms of Service are themselves TPMs.
7 *Id.* ¶ 117.

8 Plaintiffs do not allege any access controls—to include password protection, authentication
9 codes, license keys, encryption, or otherwise—that control access to their audiovisual works
10 themselves. Nor do Plaintiffs allege that NVIDIA decrypted, descrambled, deactivated or
11 otherwise manipulated any such controls.

12 **II. Access Controls Versus Copy Controls**

13 *a. Access and copy controls perform distinct technological functions*

14 Courts, Congress, and the DMCA distinguish between access controls and copy controls.
15 An access control is “a technological measure” that “in the ordinary course of its operation, requires
16 the application of information, or a process or treatment, with the authority of the copyright owner,
17 to gain access to the work.” 17 U.S.C. § 1201(a)(3)(B) (emphasis added). A copy control, by
18 contrast, is “a technological measure” that “in the ordinary course of its operation, prevents,
19 restricts, or otherwise limits the exercise of a right of a copyright owner under this title,” *id.* §
20 1201(b)(2)(B) (emphasis added), which includes the right of “reproduction” or copying. *Id.* §
21 106(1).

22 Access controls function to limit access to the “plain text of the work,” here – the expressive
23 elements of the audiovisual content itself. S. Rep. No. 105–190, at 12 (1998) (“1998 Senate
24 Judiciary Report”). Paradigmatic access controls include “password requirement[s] limiting access
25 to a website to paying customers” and “authentication codes.” U.S. Copyright Office, *Section 1201*
26 *of Title 17: A Report of the Register of Copyrights* at 6 (June 2017),
27 <https://www.copyright.gov/policy/1201/section-1201-full-report.pdf>. Such password requirements
28 and authentication codes operate by preventing those without “authority of the copyright owner”

1 from “gain[ing] access to the work,” effectively controlling access to the works they protect. 17
2 U.S.C. § 1201(a)(3)(B). *See also Synopsys, Inc. v. InnoGrit, Corp.*, No. 19-CV-02082-LHK, 2019
3 WL 4848387, at *7 (N.D. Cal. Oct. 1, 2019) (finding effective access controls to exist in the forms
4 of encrypted control code that permits software to run only upon valid key decryption); *CDK Glob.,*
5 *LLC v. Tekion Corp.*, No. 25-cv-01394-JSC, 2025 WL 1939951, at *9 (N.D. Cal. July 15, 2025)
6 (finding access controls in the form of specialized hardware and firewalls that permit only
7 authorized networks, devices and credentialed users to access the copyrighted software).

8 In line with this understanding, and with respect to videos specifically, the Ninth Circuit
9 and courts within it have found access controls to exist where TPMs control the ability to view or
10 watch the video content itself. *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848 (9th Cir.
11 2017) (finding access controls in the form of a Content Scramble System and Advanced Access
12 Content System—encryption mechanisms that rendered videos unplayable except on licensed
13 players able to lawfully decrypt the video content); *RealNetworks, Inc.*, 2000 WL 127311 (finding
14 access controls over video content in the form of a proprietary authentication sequence, or “Secret
15 Handshake,” required before the content would stream); *Nintendo of America, Inc. v. Chan*, No.
16 CV 09-4203 JFW, 2009 WL 2190186 (C.D. Cal. July 21, 2009) (finding access controls over video
17 game content in the form of both design-based and technological measures through which
18 commands and data must be exchanged in order for the games to play).

19 Copy controls, by contrast, are “technological measure[s] that prevent[] copying.” 1998
20 USCO DMCA Summary at 4. The DMCA describes them under § 1201(b) as “technological
21 measure[s] that effectively protect[] a right of a copyright owner under this title in a work or a
22 portion thereof,” which includes the right of “reproduction.” 17 U.S.C. §§ 1201(b)(2)(B), 106(1).
23 Unlike access controls, copy controls “do[] nothing to prevent access to the plain text of the work,
24 but [are] designed to prevent that work from being copied.” *See* 1998 Senate Judiciary Report at
25 12. Courts in this Circuit have described copy controls as “technological measures that allow some
26 forms of ‘access’ but restrict other uses of the copyrighted work . . . includ[ing] ‘streaming media,
27 which permits users to view or watch a copyrighted work but prevents them from downloading a
28 permanent copy of the work.” *Hattler*, 2017 WL 11634742, at *6 (citing *RealNetworks, Inc.*, 2000

1 WL 127311, at *1-2) (emphasis added).

2 This distinction between access and copy controls is critical, because, as detailed below,
 3 Plaintiffs’ § 1201(a) claim is viable only if they allege circumvention of access controls, not copy
 4 controls.

5 ***b. The DMCA distinguishes between access and copy controls, with different***
 6 ***provisions, prohibitions, and causes of action for each***

7 The DMCA contains differing prohibitions with respect to access versus copy controls. For
 8 access controls, the statute provides that “[n]o person shall” (1) “circumvent” an access control, 17
 9 U.S.C. § 1201(a)(1)(A), or (2) “traffic in any technology, product, service, device, component, or
 10 part thereof, that is primarily designed or produced for the purpose of circumventing” an access
 11 control, *id.* § 1201(a)(2)(A). For copy controls, the statute provides only that “[n]o person shall . .
 12 . traffic in any technology, product, service, device, component, or part thereof, that is primarily
 13 designed or produced for the purpose of circumventing” a copy control. *Id.* § 1201(b)(1)(A). In
 14 other words, the DMCA’s *trafficking* prohibitions apply to both access controls and copy controls,
 15 but its *circumvention* prohibitions apply only to access controls. There is no prohibition under the
 16 DMCA against circumventing copy controls. 1998 Senate Judiciary Report at 12 (“there is no
 17 prohibition on conduct in 1201(b) akin to the prohibition on circumvention conduct in 1201(a)(1)”).

18 This division in the statutory structure has been illustrated by the Copyright Office as
 19 follows:

17 U.S.C. § 1201	Circumvention Prohibition?	Trafficking Prohibition?
Access Controls	Yes § 1201(a)(1)	Yes § 1201(a)(2)
Copy Controls	No	Yes § 1201(b)

24
 25 U.S. Copyright Office, *Section 1201 of Title 17: A Report of the Register of Copyrights*, at 6
 26 (emphasis added).

1 *c. Congress declined to prohibit circumvention of copy controls under the DMCA –*
2 *a deliberate decision to preserve fair use*

3 Congress’s decision to exclude copy controls from its prohibition on circumvention was an
4 intentional and well-reasoned one. Members of the media industry had lobbied for more expansive
5 circumvention prohibitions to include circumvention of copy controls. *See* NII Copyright
6 Protection Act of 1995: Hearing before Subcomm. On Courts and Intell. Prop., pt. 2 at 380, 104th
7 Cong. 380 (1996) (argument by Viacom that prohibitions should cover “the actual circumvention”
8 of “anti-copying technologies”). But Congress declined to include them, including to protect fair
9 use, as highlighted by the tech coalitions. *Id.* at 83, 432 (arguing that Congress must “protect the
10 customary and reasonable fair use rights of consumers” and that “any ‘anti-circumvention’
11 provision must be carefully drafted so as not to prevent legitimate activities”).

12 Had Congress permitted a cause of action under the DMCA for the circumvention of *copy*
13 controls, such prohibition would have impeded legal copying which qualifies as fair use,
14 undermining the fair use doctrine and prohibiting activity authorized by § 107 of the Copyright
15 Act. It was the very desire to avoid this result that drove the distinction between access and copy
16 control prohibitions that Congress ultimately adopted. As the Copyright Office explained, “[t]his
17 distinction was employed to assure that the public will have the continued ability to make fair use
18 of copyrighted works. Since copying of a work may be a fair use under appropriate circumstances,
19 Section 1201 does not prohibit the act of circumventing a technological measure that prevents
20 copying.” 1998 USCO DMCA Summary at 4; *see also United States v. Elcom Ltd.*, 203 F. Supp.
21 2d 1111, 1119 (N.D. Cal. 2002) (“Congress sought to prohibit certain efforts to unlawfully
22 circumvent protective technologies, while at the same time preserving users’ rights of fair use.”).
23 In fact, “Congress expressly disclaimed any intent to impair any person’s rights of fair use,” *id.* at
24 1120–21, codifying the preservation of fair use eligibility in the DMCA itself. 17 U.S.C. §
25 1201(c)(1) (“[n]othing in this section shall affect rights, remedies, limitations, or defenses to
26 copyright infringement, *including fair use*, under this title.”) (emphasis added).

27 Nor was there any need for the DMCA to prohibit circumvention of copy controls, which
28 is the domain of a copyright infringement claim under the Copyright Act, and which provides for

1 the availability of a fair use defense, unlike the DMCA. *Hattler*, 2017 WL 11634742, at * 7. Here,
2 Plaintiffs attempt to shoehorn their copy control circumvention allegations into the DMCA
3 framework, the very thing Congress sought to avoid.

4 LEGAL STANDARD

5 To survive a Rule 12(b)(6) motion, “a complaint must contain sufficient factual matter,
6 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
7 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Dismissal is
8 warranted where “a complaint either (1) lacks a cognizable legal theory or (2) fails to allege
9 sufficient facts to support a cognizable legal theory.” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th
10 Cir. 2013). In evaluating the sufficiency of a pleading, a court need not accept as true “allegations
11 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re*
12 *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal citations omitted). A plaintiff
13 must do more than offer “labels and conclusions” or a “formulaic recitation of the elements of a
14 cause of action.” *Twombly*, 550 U.S. at 555 (citation omitted). Rather, the complaint must plead
15 enough facts to “allow[] the court to draw the reasonable inference that the defendant is liable for
16 the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

17 ARGUMENT

18 Section 1201(a)(1) provides that “[n]o person shall circumvent a technological measure that
19 effectively controls access to a work protected under [the Copyright Act].” 17 U.S.C. § 1201(a)(1).
20 To state a claim under this statute, Plaintiffs must thus plausibly allege both (1) “[a] technological
21 measure that effectively controls access to” their work, *i.e.*, an “access control,” and (2) that
22 NVIDIA circumvented that access control. *CDK Glob., LLC*, 2025 WL 1939951, at *8. Plaintiffs
23 plead neither.

24 I. Plaintiffs Fail To Allege Any Technological Measure that Effectively Controls Access 25 To a Work

26 Plaintiffs fail to plead the first element of their § 1201(a) claim because they do not allege
27 the existence of any qualifying access controls over the YouTube videos in question. The DMCA
28 defines an access control as “a technological measure” that “in the ordinary course of its operation,

1 requires the application of information, or a process or a treatment, . . . to gain access to the work.”
2 *Id.* § 1201(a)(3)(B) (emphasis added). Put differently, for a technological measure to qualify as an
3 access control, a user must encounter and overcome that measure to obtain access to the copyrighted
4 expression. *See MDY Indus., LLC v. Blizzard Ent., Inc.*, 629 F.3d 928, 952 (9th Cir. 2010) (“[s]ince
5 a player need not encounter Warden to access WoW’s individual non-literal elements, Warden does
6 not effectively control access to those elements.”). In line with this precedent, courts in this Circuit
7 have explained that “where § 1201(a)(1) refers to technological measure[s] that control ‘access’ to
8 a protected work, that section should be interpreted narrowly to exclude technologies that permit
9 access to copyrighted work, but restrict copying.” *Hattler*, 2017 WL 11634742, at *8.

10 Here, Plaintiffs themselves concede that users have access to “watch and listen” to YouTube
11 content for free. *E.g.*, Compl. ¶ 32. And Plaintiffs do not allege any technology that requires the
12 application of information, or a process, or treatment to access—*i.e.* view—their videos. Rather,
13 Plaintiffs allege here the very fact pattern courts have carved out of § 1201(a)(1), namely, where
14 access is permitted but copying restricted.

15 ***a. Plaintiffs allege copy controls, not access controls***

16 *First*, rather than allege the existence of any qualifying *access* controls, Plaintiffs rest their
17 claim on alleged *copy* controls for which a § 1201(a) claim is not available. 17 U.S.C. §
18 1201(a)(1)(A). Plaintiffs’ claim therefore seeks to collapse Congress’s careful distinction in
19 defining different prohibitions with respect to access versus copy controls, threatening the
20 preservation of fair use defenses which the DMCA was drafted to maintain. *See MDY Indus.*, 629
21 F.3d at 946 (“[W]e read the differences in structure between § 1201(a) and (b) as reflecting
22 Congress’s intent to address distinct concerns by creating different rights with different elements”).

23 That Plaintiffs allege copy—not access—controls is evident from the face of the Complaint,
24 which concerns itself not with controls prohibiting *access* to Plaintiffs’ videos, but rather the
25 downloading, or copying, of them. Compl. ¶ 32 (recognizing that users “can watch and listen to
26 music videos for free. . . but YouTube does not give users access to or allow downloading of the
27 digital files for the content”). This concern with downloading is echoed throughout Plaintiffs’
28 allegations. *See* Compl. ¶ 4 (describing NVIDIA’s offending conduct as “scraping and

1 *downloading . . . files*”); *id.* ¶ 39 (describing “prohibitions on *downloading* content”); *id.* ¶ 40
2 (discussing limitations to the “*download*” option” and explaining that “the audiovisual files cannot
3 be transferred to any other device, but remain only for streaming on the app”); *id.* ¶ 42 (“YouTube
4 uses technological processes and tools to detect and block *unauthorized download[s]*”); *id.* ¶ 44
5 (explaining that in “rely[ing] on the TPMs contained in YouTube’s Terms of Service. . . [c]ontent
6 creators, including Plaintiffs and Class Members, expect that their works will not be *copied*”); *id.*
7 ¶ 8 (describing plaintiffs’ works as having been “unlawfully *copied*”); *id.* ¶ 69 (“every act of
8 *downloading . . . is a separate unauthorized copying event.*”) (emphases added to all).

9 Download restrictions are copy controls, not access controls. *See* Online Copyright Liab.
10 Limitation Act: Hearing before the Subcomm. on Cts. and Intell. Prop., 105th Cong. 46–47, 49
11 (1997) (Register of Copyrights Marybeth Peters characterizing “technology that blocks users from
12 downloading copies” as a “measure[] that prevent[s] acts of infringement, rather than access”).
13 Because a user need not “encounter” them to access the works at issue, for example to watch the
14 videos via streaming, those restrictions “do[] not effectively control access” to the works. *See MDY*
15 *Indus.*, 629 F.3d at 943. *See also* Compl. ¶ 37 (recognizing this distinction and contrasting the
16 “[s]treaming through YouTube” which permits access to their videos, with “downloading
17 permanent copies” of which they complain). The same is true of the download and use restrictions
18 Plaintiffs allege here. Compl. ¶ 32 (recognizing that users “can watch and listen to music videos
19 for free. . . but YouTube does not give users access to or allow downloading of the digital files for
20 the content”).

21 *Hattler* is instructive regarding the fatality of this flaw. As here, the *Hattler* plaintiff alleged
22 that defendants violated § 1201(a)(1)(A) when they downloaded works in a manner that
23 circumvented the technological protections on websites where the works were available for
24 streaming. *Compare Hattler*, 2017 WL 11634742, at *6 (“streaming media . . . permits users to
25 view or watch a copyrighted work but prevents them from downloading a permanent copy of the
26 work,”), *with* Compl. ¶¶ 36, 39 (end users “have the ability to view (i.e., stream) through YouTube’s
27 controlled environment” but YouTube has “prohibitions on downloading content”). Defendants
28 moved to dismiss for failure to state a claim, arguing that because the technological protections of

1 those websites restricted downloading, but not general access, § 1201 did not apply. *Hattler*, 2017
2 WL 11634742, at *5.

3 The court sided with defendants, finding that “the statutory structure, appellate precedent
4 and legislative history of the DMCA all support the same conclusion . . . [W]here § 1201(a)(1)
5 refers to technological measure[s] that control ‘access’ to a protected work, that section should be
6 interpreted narrowly to exclude technologies that permit access to copyrighted work, but restrict
7 copying.” *Id.* at *8. In this way, the *Hattler* court’s analysis aligned with the understanding of
8 “access” applied across statutory contexts, including by both the Ninth Circuit and this Court. *See*
9 *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1198-99 (9th Cir. 2022) (“a defining feature of
10 public websites is that their publicly available sections lack limitations on access; instead, those
11 sections are open to anyone with a web browser;” “[w]ith regard to websites made freely accessible
12 on the Internet, the ‘breaking and entering’ analogue invoked so frequently during congressional
13 consideration has no application, and the concept of ‘without authorization’ is inapt”); *Incorp Servs.*
14 *Inc. v. Incsmart.Biz Inc.*, No. 11-CV-4660-EJD-PSG, 2012 WL 3685994 at *3 (N.D. Cal. Aug. 24,
15 2012) (distinguishing between “the circumvention of technological access barriers” and “violation
16 of use restrictions”) (internal quotations omitted). For these reasons, and because the plaintiff in
17 *Hattler*, like Plaintiffs here, alleged the circumvention not of access, but rather copy controls, the
18 *Hattler* court held that plaintiff could not state a claim for relief under § 1201(a)(1). *Id.* (dismissing
19 § 1201(a)(1) claim with prejudice). This same result follows in the present case.²

20
21 ² The recent decision in *Cordova v. Huneault*, No. 25-CV-04685-VKD, 2026 WL 184598, (N.D.
22 Cal. Jan. 23, 2026) does not change this result. There, the Court did not have before it, and thus
23 did not consider, the arguments made here, including with respect to the legislative history of §
24 1201; the distinction between access and copy controls; the public policy and fair use implications
25 underlying this distinction; or the surrounding case law, including *Hattler*. Instead, *Cordova* relied
26 on inapposite, out-of-circuit law, including *Yout, LLC v. Recording Indus. Ass’n of Am., Inc.*, 633
27 F. Supp. 3d 650 (D. Conn. 2022)—a primarily trafficking-based case, brought in a declaratory
28

1 ***b. Plaintiffs conflate unauthorized access to data files with unauthorized access***
2 ***to works—the latter of which they do not allege***

3 Second, in an apparent attempt to cure the fatal deficiency above, Plaintiffs allege that
4 “scraping or bulk downloading is not merely copying material already provided; it is an act of
5 unauthorized access to data files that YouTube affirmatively withholds from public download.”
6 Compl. ¶ 38. But Plaintiffs’ position conflates access control over “data files”—the storage units
7 in which works are held—with access control over the “works” themselves. The two are not the
8 same, a fact Plaintiffs themselves recognize. *Id.* ¶ 119 (distinguishing between “viewing a
9 YouTube video,” and “access to the underlying file,” explaining that “[t]his distinction is critical.”).
10 It is control over access to works, rather than underlying files, that is relevant to the prohibitions of
11 Section 1201(a).

12 A “work,” under the Copyright Act, refers to the protected expressive content that is subject
13 to copyright, not the digital file in which that content is stored. *See Matthew Bender & Co. v. W.*
14 *Pub. Co.*, 158 F.3d 693, 702 (2d Cir. 1998) (“The Copyright Act establishes a ‘fundamental
15 distinction’ between the original work of authorship and the material object in which that work is
16 ‘fixed.’”); *Adobe Sys. Inc. v. Kornrumpf*, 780 F. Supp. 2d 988, 994 (N.D. Cal. 2011) (“A copyright
17 _____
18 judgment posture, which is currently on appeal to the Second Circuit; *Edland v. Basin Elec. Power*
19 *Coop.*, No. 21-CV-04008-KES, 2021 WL 3080225 (D.S.D. July 21, 2021)—which concerned the
20 use of a cell phone to record streaming videos; and *UMG Recordings, Inc. v. Kurbanov*, No. 18-
21 cv-957-CMH TCB, 2021 WL 6492907 (E.D. Va. Dec. 16, 2021) which per the Court’s own
22 description analyzed the downloading of YouTube files under § 1201(b)— demonstrating the
23 *Cordova* court’s conflation of § 1201(a) and (b) and the proper analysis of these allegations as
24 implicating a copy control. This Court is not bound by the *Cordova* decision. *United States v.*
25 *Aitken*, No. CR-14-143-CAS, 2015 WL 1486925, at *6 (C.D. Cal. Mar. 30, 2015) (“Judicial
26 decisions do not stand as binding ‘precedent’ for points that were not raised, not argued, and hence
27 not analyzed.”) (internal citation omitted).
28

1 attaches to an original work of authorship, not the particular medium in which it was. . . fixed.”).
2 In this way, “Congress drew ‘a fundamental distinction between the ‘original work’ which is the
3 product of ‘authorship’ and the multitude of material objects in which it can be embodied.”
4 *London-Sire Recs., Inc. v. Doe 1*, 542 F. Supp. 2d 153, 170 (D. Mass. 2008). *See also Adobe Sys.,*
5 *Inc. v. Stargate Software Inc.*, 216 F. Supp. 2d 1051, 1055 (N.D. Cal. 2002) (quoting 17 U.S.C. §
6 202 (“[o]wnership of a copyright” is distinct from the “ownership of any material object in which
7 the work is embodied”); *Montgomery v. Jones*, 355 F. Supp. 3d 720, 726 (M.D. Tenn. 2019) (“It is
8 well settled that copyright law recognizes a distinction between a copyright-protected work and the
9 ‘physical embodiment’ of that work, with the subject matter of copyright encompassing only the
10 former.”). Applying this distinction, courts have explained that “in the sense of the [Copyright
11 Act], a ‘book’ is not a work of authorship, but is a particular kind of ‘copy.’” *London-Sire Recs.,*
12 *Inc.*, 542 F. Supp. 2d at 170 (quoting H.R. Rep. 94–1476 at 53 (1976), reprinted in 1976
13 U.S.C.C.A.N. at 5666).

14 The DMCA governs access to “the plain text of a work,” not any particular files or other
15 physical embodiments containing the work. *See* 1998 Senate Judiciary Report at 12. *See also* §
16 1201(a)(3)(B) (referring to “technological measure[s] [that] “effectively control[] access to a
17 work”). For this reason, when courts consider access controls over audiovisual works specifically,
18 they inquire not into whether a technological measure controls access to the physical embodiment
19 containing the video (i.e. a .mp4 file, DVD, or video game cartridge), but rather whether the
20 technological measure prevents a user from viewing or watching the video itself. *See VidAngel*,
21 869 F.3d 848 (access controls in the form encryption mechanisms rendered videos unplayable
22 except on licensed players able to lawfully decrypt the video content); *RealNetworks, Inc.*, 2000
23 WL 127311 (access controls in the form of authentication sequences prevented videos from
24 streaming in the absence of a technological “Secret Handshake”); *Nintendo of America*, 2009 WL
25 2190186 (access controls prevented games from playing absent the necessary exchange of
26 commands and data).

27 As the Complaint concedes, the “plain text” of the works here—Plaintiffs’ videos—are
28 freely accessible by the public via streaming. Compl. ¶¶ 3, 32, 36. Unlike in *VidAngel*,

1 *RealNetworks*, or *Nintendo*, Plaintiffs do not allege any controls over the streaming, or playing, or
 2 viewing of those videos. *See supra*. Rather, by their own admission, the “technological protection
 3 measures” Plaintiffs plead are “designed to control access to the underlying video files.” *Id.* ¶ 33
 4 (emphasis added). *See also id.* ¶¶ 118-119 (alleging NVIDIA “extract[ed] files never made
 5 available to the public” and drawing a “distinction” between “viewing a YouTube video through
 6 YouTube’s platform” —the access contemplated by the DMCA—and “provid[ing] access to the
 7 underlying file”) (emphasis added). Because Plaintiffs do not, and cannot, plead any access
 8 controls over the works themselves, their § 1201(a) claim is not viable. *Hattler*, 2017 WL
 9 11634742, at *8.

10 ***c. YouTube’s Terms of Service are not “access controls” under the DMCA***

11 *Third*, Plaintiffs’ allegations surrounding YouTube’s Terms of Service are irrelevant to their
 12 § 1201(a) claim because those Terms of Service are not access controls; they are not a
 13 “technological measure,” nor do they require the “application of information, or a process or a
 14 treatment, . . . to gain access to” Plaintiffs’ works. 17 U.S.C. *Id.* § 1201(a)(3)(B). This was the
 15 conclusion reached by Judge Stein in *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 25-CV-
 16 4315, 2025 WL 3635559 (S.D.N.Y. Dec. 15, 2025). There, the plaintiff alleged that OpenAI
 17 bypassed “robots.txt directives,” or “machine-readable instructions . . . which tell web crawlers
 18 which areas of the site the bot is allowed or disallowed from accessing and indexing,” bringing a §
 19 1201(a) based on that alleged circumvention. *Id.* at *4. The court dismissed that claim, holding
 20 that the robot.txt files were not access controls because they “do not ‘effectively control’ access to
 21 the content any more than a sign requesting that visitors ‘keep off the grass’ effectively controls
 22 access to a lawn.” *Id.*

23 The same reasoning applies here. Even if YouTube’s Terms of Service purported to impose
 24 access restrictions, a user “may access the content without taking any affirmative step other than
 25 impertinently disregarding the request embodied in the [Terms of Service].” *Id.*; *see also*
 26 *Burroughs Payment Sys., Inc. v. Symco Grp., Inc.*, No. 1:10-CV-03029-JEC, 2011 WL 13217738,
 27 at *4 (N.D. Ga. Dec. 13, 2011) (“a copyright notice is not a ‘technological measure that effectively
 28 controls access.’ The mere presence of a notice does not ‘require the application of information, or

1 a process or a treatment, with the authority of the copyright owner, to gain access to the work.”)
2 (citation modified); *Couponcabin LLC v. Savings.com, Inc.*, No. 2:14-CV-39-TLS, 2016 WL
3 3181826, at *6 (N.D. Ind. June 8, 2016) (granting motion to dismiss DMCA claim absent
4 allegations that “a user of the Plaintiff’s website is required to apply ‘information or a process or
5 treatment’ to gain access (e.g., by providing a password)”). For these same reasons, Terms of
6 Service are not access controls and cannot form the basis of a § 1201(a) claim.

7 ***d. Plaintiffs’ conclusory allegations do not salvage their claim***

8 *Finally*, to the extent Plaintiffs allege any TPMs at all, those allegations are conclusory at
9 best, and, even if taken as true, do not allege the required application of a process, or treatment or
10 information, necessary to establish the existence of such access controls. *See* Compl. ¶ 33 (alleging
11 that “YouTube deploys technological protection measures (“TPMs”) designed to control access,”
12 but failing to identify what those TPMs are); *id.* ¶ 5 (referencing “YouTube’s anti-circumvention
13 software,” but failing to identify what that “anti-circumvention software” is); *id.* ¶ 34 (explaining
14 that “[YouTube’s Terms of Service] operate together with TPMs to prevent unlicensed access to
15 creators’ videos,” but failing to allege what those TPMs are); *id.* ¶ 90 (alleging that NVIDIA
16 “violated YouTube’s rules and the TPMs that enforce them,” but again failing to identify what
17 those TPMs are); *id.* ¶ 33 (suggesting that the YouTube TPMs at issue consist of “streaming-only
18 delivery, application programming interface (“API”) usage limits, and access controls,” without
19 identifying what any such “access controls” are). These conclusory allegations, which merely
20 recite the alleged existence of “access controls” without identifying what those access controls are,
21 what they do, or how they allegedly control any access, cannot salvage Plaintiffs’ claim. *See*
22 *Bungie, Inc. v. Aimjunkies.com*, No. C21-0811 TSZ, 2022 WL 16853626, at *3 (W.D. Wash. Nov.
23 10, 2022) (granting motion to dismiss because Plaintiffs “merely recite[d]” that its software was
24 protected by a TPM).

25 **II. Plaintiffs Fail To Allege Circumvention**

26 Even if they had alleged a qualifying access control (they cannot), Plaintiffs’ § 1201(a)
27 claim fails because the conduct they allege, even if accepted as true, does not constitute
28 “circumvention.” “[T]o ‘circumvent a technological measure’ means to descramble a scrambled

1 work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a
2 technological measure, without the authority of the copyright owner.” 17 U.S.C. § 1201(a)(3)(A).
3 In other words, “‘circumvention’ requires some manipulation of the technological measure at
4 hand.” *iSpot.tv, Inc. v. Teyfukova*, No. 2:21-CV-06815-MEMF(MARX), 2023 WL 3602806, at *6
5 (C.D. Cal. May 22, 2023). *See also In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL
6 3635559, at *5 (“Plaintiff asserting a DMCA section 1201 claim must allege that a defendant
7 ‘affirmatively perform[ed] an action that disables or voids’ the technological control measure, akin
8 to descrambling or decrypting a work or ‘breaking and entering (or hacking) into computer
9 systems.’”) (*quoting LivePersons Inc. v. 24/7 Customer, Inc.*, 83 F. Supp. 3d 501, 509 (S.D.N.Y.
10 2015)).

11 In line with the above, the Ninth Circuit has explained that Congress envisioned
12 circumvention as akin to “breaking into a locked room in order to obtain a copy of a book.” *MDY*
13 *Indus.*, 629 F.3d at 947 (quoting H.R. Rep. No. 105–551, pt. 1, at 17 (1998)); *see also Universal*
14 *City Studios, Inc. v. Corley*, 273 F.3d 429, 453 (2d Cir. 2001) (finding circumvention where a
15 program functioned to decrypt a TPM like “a skeleton key that can open a locked door, a
16 combination that can open a safe, or a device that can neutralize the security device attached to a
17 store’s products.”). For this reason, courts consistently hold that circumvention requires the
18 defendant to bypass, decrypt, or render ineffective a technological measure that performs a
19 gatekeeping function. *See Apple, Inc. v. Psystar Corp.*, 673 F. Supp. 2d 931, 934, 941 (N.D. Cal.
20 2009), *aff’d*, 658 F.3d 1150 (9th Cir. 2011) (using decryption software to decrypt otherwise
21 inaccessible files protected by Apple’s “lock-and-key technological measures” is circumvention);
22 *Microsoft Corp. v. EEE Bus. Inc.*, 555 F. Supp. 2d 1051, 1059 (N.D. Cal. 2008) (distributing a
23 “Volume License Key” to “unlock [Microsoft’s] media programming” is circumvention); *Dish*
24 *Network, L.L.C. v. Vicxon Corp.*, No. 12-cv-9-L(WVG), 2013 WL 3894905, at *2, *7 (S.D. Cal.
25 July 26, 2013) (using “piracy software” to “mimic a DISH Network smart card” to decrypt
26 broadcast signals containing copyrighted programming is circumvention). On the other hand, and
27 where the alleged “circumvention” is the violation of instructions or terms, where the works are
28 already accessible, or where the alleged circumvention is of download restrictions rather than

1 access controls, courts have found that the circumvention necessary to state a § 1201(a) claim does
2 not exist. *See In re Open AI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *5
3 (“disregard[ing] instructions that were contained in robot.txt files” is not circumvention); *Dish*
4 *Network L.L.C. v. World Cable Inc.*, 893 F. Supp. 2d 452, 464-65 (E.D.N.Y. 2012) (no
5 circumvention where “there are no facts in the first amended complaint from which the Court can
6 infer that they circumvented the ‘digital walls’ that protected the copyrighted works. . . . In this
7 case, the room was already unlocked, and therefore the Defendants did not have to ‘break in’ to
8 gain access to the copyrighted work”); *Hattler*, 2017 WL 11634742, at *8 (no circumvention where
9 videos were accessible to the public on websites).

10 For the reasons below, and because Plaintiffs do not allege any “break-in,” either through
11 decryption, bypassing of password protection, use of counterfeit license keys, or otherwise, and
12 because the only “circumventions” alleged would instead be terms of service violations and the
13 circumvention of download controls, Plaintiffs’ allegations do not constitute “circumvention”
14 under the statute.

15 ***a. Any alleged violation of YouTube’s Terms of Service or licensing limits is not***
16 ***“circumvention”***

17 To the extent Plaintiffs allege “circumvention” of YouTube’s “terms of service and
18 licensing limits,” Compl. ¶ 53, those terms of service are not technological measures or access
19 controls capable of being broken through—they are contractual restrictions. *See Divino Grp. LLC*
20 *v. Google LLC*, No. 19-CV-04749-VKD, 2023 WL 4372701, at *5 (N.D. Cal. July 5, 2023)
21 (YouTube’s Terms of Service “are contractual agreements between YouTube and its users.”).

22 Other courts have dismissed § 1201(a) claims under parallel circumstances, for this reason. *See In*
23 *re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559 at *5 (dismissing § 1201(a) claim
24 based on alleged scraping of web content contrary to robot.txt directives, and finding that “[a]t
25 most, [plaintiff] alleges that OpenAI disregarded the instructions that were contained in robots.txt
26 files. This is not ‘circumvention’ under the DMCA.”). Just as the disregard of robot.txt directives
27 in *In re OpenAI* did not suffice to state a claim for circumvention, neither does any alleged disregard
28 of terms of service or licensing limits, here.

1 ***b. The alleged avoidance of download “monitoring programs” is not***
2 ***circumvention of an access control***

3 The only other “circumvention” Plaintiffs allege is the avoidance of “monitoring programs”
4 which “detect and block unauthorized downloading.” Compl. ¶¶ 42, 78, 86. Specifically, Plaintiffs
5 allege that “YouTube monitors downloading activity and may block IP addresses that make *too*
6 *many download attempts in a specified period,*” *id.* ¶ 42 (emphasis added), alleging that NVIDIA
7 “defeat[ed]” these “monitoring programs” by “refresh[ing] IP addresses.” *Id.* ¶ 78. These copying-
8 related allegations address “the subsequent actions of a person once he or she had obtained
9 authorized access to a copy of a work,” which renders them outside the scope of Section 1201(a).
10 H.R. Rep. No. 105-551, pt. 1, at 18 (1998).

11 For this reason, in *Hattler*, even though the defendant conceded circumvention of
12 technological measures designed to prevent downloading, the court dismissed the § 1201(a) claim
13 because the circumvented technological measures did not control access to the works, which “were
14 publicly available for streaming.” 2017 WL 11634742, *6-7. In so holding, the court explained
15 that “where § 1201(a)(1) refers to technological measure[s] that control ‘access’ to a protected
16 work, that section should be interpreted narrowly to exclude technologies that permit access to
17 copyrighted work, but restrict copying.” *Id.* at *8.

18 The allegations in *Hattler* mirror those at issue here. As in *Hattler*, Plaintiffs’ works are
19 accessible to the public via streaming. *Compare* Compl. ¶¶ 3, 15 (alleging Plaintiffs’ works were
20 “intended for streaming on YouTube,” which “allows the public to view audiovisual works”), with
21 *Hattler*, 2017 WL 11634742, at *6 (noting plaintiff’s works “were publicly available for
22 streaming”). Also, the technology allegedly circumvented in both cases controlled downloading of
23 those works, not access to them. *Compare* Compl. ¶¶ 42, 78 (alleging avoidance of monitoring
24 programs that “block IP addresses that make too many download attempts in a specified period”),
25 *with Hattler*, 2017 WL 11634742, at *5 (alleging defendant “downloaded the [w]orks in a manner
26 that circumvented the technological protections on the websites where the Works were available
27 for streaming.”). Because, as the *Hattler* court explained, § 1201(a)(1) “should be interpreted
28 narrowly to exclude technologies that permit access to copyrighted work, but restrict copying,” *id.*

1 at *8, including specifically “streaming media, which permits users to view or watch a copyrighted
2 work but prevents them from downloading a permanent copy of the work,” *id.* at *6 —the precise
3 fact pattern Plaintiffs allege here, Compl. ¶ 37, this Court should reach the same result and dismiss
4 Plaintiffs’ claim.

5 ***c. Circumvention cannot exist where access has been authorized***

6 Further, because NVIDIA’s access to the works was authorized by license under YouTube’s
7 Terms of Service, Plaintiffs cannot plead circumvention as a matter of law. “[A] person who
8 engages in prohibited usage of a copyrighted work to which he has lawful access does not fall afoul
9 of any provision of Section 1201.” *Ass’n for Info. Media & Equip. v. Regents of the Univ. of*
10 *California*, No. 2:10-CV-09378-CBM, 2012 WL 7683452, at *9 (C.D. Cal. Nov. 20, 2012) (*quoting*
11 *Nimmer on Copyright* § 12A.03). Here, Plaintiffs licensed access to the audiovisual works in
12 question when they uploaded their videos to YouTube. *See* “Terms of Service,” YouTube,
13 <https://www.youtube.com/t/terms> (providing that in uploading their videos to the YouTube
14 platform, Plaintiffs “grant[ed] each other user of the Service a worldwide, non-exclusive, royalty-
15 free license to access [their] Content through the Service.”). As a result, and because NVIDIA’s
16 access itself was authorized, Plaintiffs’ cannot state a § 1201 claim as a matter of law. *Lasica v.*
17 *Am. Online, Inc.*, No. CV 15-4230-GW(FFMx), 2015 WL 12791495, at *5 (C.D. Cal. Sep. 3, 2015)
18 (no circumvention where plaintiff “provided access to the Photograph—to Defendant as well as the
19 general public—through Flickr.com.”).

20 **CONCLUSION**

21 Because Plaintiffs have not—and cannot—plead an effective technological access control
22 or the circumvention thereof, their § 1201 claim fails as a matter of law. *Hattler*, 2017 WL
23 11634742, at *8 (holding that where, as here, the works were accessible on public websites, “any
24 effort to amend the [complaint] would be futile” and dismissing § 1201(a)(1) claim with prejudice).
25 For the reasons detailed herein, this Court should hold the same, dismissing Plaintiffs’ § 1201 claim
26 with prejudice and disposing of this case in its entirety.

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Respectfully submitted,

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