

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

REDDIT, INC.,

Plaintiff,

v.

SERPAPI LLC, OXYLABS UAB,
AWMPROXY, and PERPLEXITY AI,
INC.,

Defendants.

Case No. 25-cv-8736

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT PERPLEXITY AI, INC.'S
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

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I. INTRODUCTION

Plaintiff Reddit, Inc. (“Reddit”) asserts a claim against Defendant Perplexity AI, Inc. (“Perplexity”) under Section 1201 of the Digital Millennium Copyright Act (“DMCA”) that remains novel and untenable, even after amendment.

Reddit’s original complaint advanced a single, attenuated theory: According to Reddit, the *other* co-defendants (not Perplexity) are alleged “data scrapers” who scraped *Google’s* (not Reddit’s) publicly available search results pages. Reddit alleged that those pages contain snippets of Reddit *users’* (again, not Reddit’s) posts. As to Perplexity, Reddit alleged only that Perplexity was a “customer” of Defendant SerpApi LLC (“SerpApi”) for the acquisition of “bulk data.” The theory required a remarkable chain of steps to connect the allegedly copyrighted content to Perplexity: (1) Reddit users posted content; (2) Reddit published that content publicly; (3) Google indexed it and displayed excerpts in publicly accessible search results; (4) the *other* defendants allegedly bypassed Google’s SearchGuard to scrape those search-result pages; and (5) Perplexity allegedly received and used those results in its “answer engine,” while providing citations back to the original Reddit posts. That theory had a fatal defect: nowhere did Reddit allege that Perplexity itself bypassed any technological measure or scraped any data. Reddit thus relied entirely on a downstream-use theory that courts have rejected as a basis for a DMCA claim.

The FAC attempts to plead around this fatal defect by repackaging Reddit’s original allegation—that Perplexity “purchased” the “services” of SerpApi—as a claim that Perplexity “used” SerpApi’s “tools.” The FAC alleges that SerpApi offers a “playground” feature that lets customers set parameters for the format of data they receive (FAC ¶ 65) and a “query” feature that lets users enter “queries” for data (FAC ¶ 100), then speculates that Perplexity *or unspecified others* might have used those features. These conclusory allegations fail under *Twombly* both because Reddit fails to allege that *Perplexity* used the features, and because—even assuming Perplexity did—Reddit alleges that *SerpApi* (not Perplexity) designed, developed, and executed the technical processes that allegedly “circumvented” SearchGuard. Reddit does not allege that Perplexity accessed Google *at all*, which is fatal to Reddit’s circumvention claim.

Reddit’s DMCA claim fails for two additional, independently sufficient reasons. First, the statutory definition of “technological measure that effectively controls access” requires that the “copyright owner” authorize who is and is not permitted to access the copyrighted work. But Reddit had *no role* in designing or implementing SearchGuard and has no say in who is or is not permitted to bypass it; only Google does. In fact, the FAC concedes that Reddit was *unaware* of how SearchGuard works until after it filed this lawsuit. Second, Reddit fails to allege the existence of any “technological measure that effectively controls access” to Google’s SERPs.

Reddit cannot cure these defects by repackaging the same core allegations as state-law claims. Unjust enrichment, unfair competition, and civil conspiracy claims are preempted where, as here, they seek to protect the same rights as the Copyright Act—the rights to control the reproduction, adaptation, and distribution of its users’ content. Reddit’s state-law claims also fail because Reddit does not plausibly allege the necessary elements underlying them. The Court should thus dismiss the claims against Perplexity in their entirety. And because Reddit has failed to remedy the structural defects in its complaint even upon amendment, the Court should dismiss the FAC’s claims without further leave to amend.

II. BACKGROUND

A. Perplexity’s answer engine draws on publicly available information.

Perplexity is an AI company dedicated to making knowledge accessible and useful for everyone. At the heart of this case is Perplexity’s “answer engine”—an advanced search engine that combines large language models (“LLMs”) with live internet search to help people find reliable, verifiable information quickly and in an easy-to-digest format. Perplexity’s answer engine does not produce pages of webpage links in response to a user’s query like a traditional search engine. Instead, it uses a technique called Retrieval Augmented Generation to index publicly available content on the internet and then uses LLMs to analyze its users’ questions and deliver comprehensive, conversational responses with citations and links to its sources. *See* FAC ¶¶ 89–91, ECF No. 55.

B. Reddit alleges that the other co-defendants scraped Google search results.

Reddit alleges that it is “one of the Internet’s largest bodies of knowledge and information, with billions of posts and comments.” FAC ¶ 44. The authors and owners of those posts are Reddit’s users—not Reddit—and Reddit holds only a non-exclusive, limited license to them. *Id.* ¶ 46. Reddit makes its users’ posts “publicly available on the Reddit platform.” *Id.* ¶ 52 n.25. There is no allegation that Reddit requires user IDs, passwords, or other credentials to access its users’ posts; to the contrary, user posts are available for anyone to search on Reddit’s free, public website.

Perhaps recognizing the legal problem posed by Reddit’s status as a mere “licensee” of its users’ posts, the FAC adds allegations that Reddit owns a copyright over “tens of thousands of posts [and] comments” on its website “authored by Reddit” itself, as well as its “compilations and arrangements of user-generated content.” *Id.* ¶ 47. These new allegations are a red herring. Reddit’s own “content” is a minuscule fraction of the many billions of posts and comments generated by Reddit’s “over 100 million unique users” who, according to Reddit, engage “every day” in “discussions across its hundreds of thousands of interest-based communities.” *Id.* ¶ 2. And Reddit pleads almost no facts at all about its “arrangements” and “compilations” of user posts, much less that any such arrangements or compilations are sufficiently creative to be copyrightable. As any Reddit user knows, “responses” are ranked algorithmically, and very simply, based on up-voting and down-voting by readers (the same as comment pages on innumerable other websites). *Cf. id.* ¶ 72. And even if Reddit had sufficiently alleged that its arrangements were somehow copyrightable (it has not), it fails to allege that Perplexity or SerpApi accessed them: In the only example alleged in the FAC, the SerpApi interface did *not* capture Reddit’s “Top answer” snippet on the Google SERP. *Id.* ¶¶ 70–72. Thus, Reddit’s core allegation remains unchanged: The defendants allegedly accessed or received Google SERPs that excerpt ***Reddit’s users’ posts***—posts over which ***Reddit’s users*** (not Reddit) own the copyright.

Reddit’s FAC describes a range of purported policies and technical practices it uses to regulate access to its users’ posts over its website, such as IP-rate limits, captcha bot-detection

tools, and prohibitions in its terms of use against “scraping.”¹ *See id.* ¶ 54. These allegations are irrelevant. Reddit does not allege that *any* defendant interacted with Reddit’s systems in a manner that triggered, confronted, or otherwise circumvented those practices. Indeed, Reddit does not allege that any defendant obtained content directly from Reddit *at all*.²

Instead, Reddit alleges that Perplexity’s co-defendants “scraped” *Google’s* search engine results pages (“SERPs”). *See id.* ¶ 5. SERPs are the search results and accompanying links that appear publicly whenever a user enters a query into Google’s search engine. *See id.* Reddit alleges that Defendants SerpApi, Oxylabs UAB, and AWMProxy collected public Google SERPs that contained embedded snippets of Reddit content. *See id.* ¶¶ 5, 63, 64. Reddit’s claims thus focus on a *Google* technology, called “SearchGuard,” which allegedly is intended to prevent users from engaging in high-volume, automated copying of Google’s search results, but which, critically, allows individual, human users to freely retrieve those same publicly available results. *Id.* ¶¶ 56, 123. SearchGuard does this “by imposing a barrier challenge that cannot be solved in the ordinary course by automated systems.” *Id.* ¶ 57.

The FAC alleges that the other co-defendants—not Perplexity—employed techniques to make it seem like their search queries were from individual users (e.g., by varying IP addresses, adjusting header information, or pacing the timing of requests), and thereby reduced the likelihood of triggering SearchGuard’s automated-traffic filters. *See id.* ¶¶ 63–75. As alleged, these methods did not unlock any restricted material that was otherwise inaccessible to the public; rather, they allowed the other co-defendants to collect the same public search results that any individual user

¹ For the purposes of this motion, “scraping” is defined by the FAC as “an automated process for copying content from a website using web crawlers or ‘bots.’” *Id.* ¶ 53 n.27.

² Reddit alleges in a footnote that “[s]ince filing its Complaint in this matter, Reddit identified evidence suggesting that *one of the Defendants may* also be scraping Reddit data directly from its servers.” *Id.* ¶ 63 n.31 (emphasis added). But Reddit does not at any point specify *which* defendant “*may*” be scraping Reddit data directly. The so-called “evidence” to which Reddit refers is that “during January 2026, Reddit detected massive increases in the amount of data that certain residential IP addresses were requesting, far in excess of what humans request when accessing Reddit.” *Id.* In other words, Reddit merely observed an increase in requests to its servers from some unidentified party—with no evidence tying that activity to any of the defendants, other than Reddit’s own suspicion.

could obtain from Google itself, albeit “in bulk.” *See id.* ¶¶ 81, 95.

C. Reddit does not allege that Perplexity “scraped” any data.

The FAC continues to allege this attenuated chain between its users’ posts and Perplexity:

Reddit users → Reddit → Google → Other Co-Defendants → Perplexity

Even after amendment, the specific allegations in the FAC focus almost entirely on the links between Reddit and Google (i.e., how Google allegedly generates SERPs of Reddit content) and between Google and the other co-defendants (i.e., how the other co-defendants allegedly collect SERPs from Google).

The FAC makes only two conclusory allegations attempting to connect Perplexity to any of the conduct in this multi-chain theory of liability. First, Reddit repeats its allegation that Perplexity “is a customer of” SerpApi for some unspecified service related to the provision of data. FAC ¶ 12. But the FAC lacks any specific allegations as to any of the key terms of the alleged relationship, such as *when* any agreement was formed, *what* its terms were, *what* Perplexity allegedly purchased, or *how* any such arrangement supposedly operated.

Instead, whereas the original Complaint alleged that Perplexity “purchased” SerpApi’s “services or products,” the FAC now asserts that Perplexity “used” SerpApi’s “tool” to acquire data.³ This cosmetic change, which Reddit dutifully applies throughout the FAC, is a transparent attempt to plead around a problem that the original Complaint stumbled headfirst into: There is no secondary liability under Section 1201 of the DMCA. But recasting Perplexity from a “purchaser” of SerpApi’s “services or products” (ECF No. 1 at ¶ 89) to a “us[er]” of SerpApi’s “tools” (FAC ¶ 100) is a distinction without a difference. The FAC continues to describe *the other co-defendants*—not Perplexity—as designing, controlling, and executing the process for retrieving and processing search results (the alleged “circumvention”). *See* FAC ¶¶ 70–84. Reddit makes

³ Compare Complaint (ECF No. 1) at ¶ 89 (“Perplexity has **purchased** one or more of SerpApi’s **services or products**”) (emphasis added) with FAC ¶ 100 (“Perplexity circumvents Google’s security protocols and gains access . . . to Reddit data by **using** (at least) SerpApi’s **tools** or directing others to use those tools.”) (emphasis added).

only two short factual allegations in support of its recharacterization of Perplexity as a “user”: Reddit alleges that SerpApi provides a “playground” feature in which customers can set “parameters” (FAC ¶ 65) and a “query” feature into which Perplexity entered “queries” for “results from the Google search page.” (*id.* ¶ 100). But the FAC alleges no facts regarding how Perplexity used the “playground” or entered “queries,” or why it is plausible that Perplexity used these alleged features.

Second, Reddit alleges a single instance in which it created a “test post” that “could only be crawled by Google’s search engine” and that later appeared in Perplexity’s “answer engine.” *Id.* ¶ 96. From this “test post,” Reddit draws the conclusion that the “only way that Perplexity could have obtained that Reddit content and then incorporated it in its ‘answer engine’ is if it ***and/or its Co-Defendants on Perplexity’s behalf*** scraped Google SERPs for that Reddit content” *Id.* (emphasis added). That formulation again relies on speculation in the alternative and does not plausibly allege that *Perplexity* circumvented any technological measure. It merely reiterates Reddit’s theory that Perplexity incorporates Google SERP data containing Reddit content into its search engine and that the content may have come from SerpApi *after* SerpApi retrieved it.

Thus, rather than asserting that *Perplexity* circumvented a technological control measure that *Reddit* operates to protect content that *Reddit* owns, Reddit’s alleged theory is the following: First, Reddit licenses posts written by its users. Second, Reddit makes those posts publicly available for free on the internet. Third, Google then indexes *snippets* of those Reddit posts in its SERPs, which are also publicly available for free on the internet. Fourth, the other co-defendants allegedly collect and copy via automated processes those public Google SERPs, some of which contain snippets of Reddit’s users’ posts. Fifth, SerpApi then purportedly provides the Google SERPs it collected to Perplexity, and finally Perplexity then allegedly uses those SERPs in its own search engine by summarizing them and providing citations that link back to the original Reddit posts. Reddit’s own narrative thus consistently places Perplexity at the end of this long, multi-step chain, but *never* at the point where any technological control is circumvented.

III. LEGAL STANDARD

“[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “[C]onclusory allegations or legal conclusions masquerading as fact[s]” do not suffice. *Arcesium, LLC v. Advent Software, Inc.*, 2021 WL 1225446, at *5 (S.D.N.Y. Mar. 31, 2021). If the plaintiff has not “nudged [its] claims across the line from conceivable to plausible, [its] complaint must be dismissed.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

IV. ARGUMENT

Perplexity moves to dismiss each of Reddit’s four claims against it. Count 1, for violation of Section 1201(a)(1)(A), fails for three distinct reasons: first, Reddit does not allege that Perplexity itself engaged in any circumvention; second, Reddit fails to allege that Reddit “authorized” Google’s SearchGuard; and third, Reddit has not alleged a “technological measure that effectively controls access to a work.” Counts 4, 5, and 6—state law claims for unjust enrichment, unfair competition, and civil conspiracy—are both preempted by the Copyright Act and fail on their individual merits for reasons specific to each claim.⁴

A. Reddit fails to state a DMCA claim against Perplexity.

Section 1201 of the DMCA states: “No person shall *circumvent a technological measure that effectively controls access* to a work protected under this title.” 17 U.S.C. § 1201(a)(1)(A) (emphasis added). Under the statute, to “circumvent” means “to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.” *Id.* § 1201(a)(3)(A). A “technological measure [that] effectively controls access to a work” is one that, “in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.” *Id.* § 1201(a)(3)(B).

As explained in greater detail below, the plain language of the statute and large body of

⁴ Perplexity is not named as a defendant on Counts 2 and 3 of the FAC and therefore does not address those claims herein.

case law interpreting it foreclose Reddit’s Section 1201 claim against Perplexity for three reasons: First, as a basic matter, Perplexity cannot be liable under the anti-*circumvention* provision because there are no allegations that it “circumvented” *anything*, and there is no secondary liability under the DMCA. Reddit’s speculation that Perplexity *could* have set parameters for the format of SERPs it allegedly received or used an unspecified “query” feature in SerpApi does not fill this gap, nor does Reddit’s rhetorical shift from describing Perplexity as a “purchaser” of SerpApi’s “services or products” to a “user” of SerpApi’s “tools.”

Second, the statutory definition of “technological measure that effectively controls access” requires that the “copyright owner” authorize who is and is not permitted to access the copyrighted work. But here, neither Reddit nor its users (the relevant copyright owners) had any role in designing, developing, or implementing Google’s SearchGuard; only Google did (and does). And the FAC concedes that Reddit did not even know how SearchGuard works until after filing this lawsuit.

Third, Reddit has not established the circumvention of any “technological measure that effectively controls access” to Google’s SERPs.

1. Reddit fails to allege that Perplexity engaged in circumvention.

Reddit does not allege that *Perplexity* circumvented a technological control measure. To plead a Section 1201 claim, a plaintiff must allege that the defendant “***affirmatively perform[ed] an action that disables or voids the measure***” that effectively controls access. *LivePerson, Inc. v. 24/7 Customer, Inc.*, 83 F. Supp. 3d 501, 509 (S.D.N.Y. 2015) (emphasis added) (internal quotation marks and citation omitted). The prohibited conduct is analogous to “breaking and entering (or hacking) into computer systems.” *Id.* As the Second Circuit explained in *Corley*, the DMCA “targets the *circumvention* of digital walls . . . but does not concern itself with the *use* of those materials after circumvention has occurred.” *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 443 (2d Cir. 2001) (emphasis in original). Thus, Reddit’s allegation that Perplexity received protected material from SerpApi fails to state a claim for circumvention under the statute. *See I.M.S. Inquiry Mgmt. Sys., Ltd. v. Berkshire Info. Sys. Inc.*, 307 F. Supp. 2d 521, 532 (S.D.N.Y.

2004) (“[A] cause of action under the DMCA does not accrue upon unauthorized and injurious access alone.”).

Courts in the Second Circuit regularly dismiss Section 1201(a)(1)(A) claims where the plaintiff fails to allege this threshold requirement of actual, direct circumvention. In *Joint Stock Co. v. Infomir LLC*, the court dismissed the DMCA claim against a company that redistributed descrambled TV programming (Infomir) because the complaint failed to allege Infomir “affirmatively perform[ed] an action that disables or voids the measure that was installed to prevent [it] from accessing the copyrighted material;” instead, the complaint left open the possibility that Infomir accessed the copyrighted shows “after they are [acquired] by another party,” or by retrieving them through “other misconduct that is not within the reach of § 1201(a)(1)(A).” 2017 WL 696126, at *19 (S.D.N.Y. Feb. 15, 2017); *see also LivePerson, Inc.*, 83 F. Supp. 3d at 510–11 (dismissing DMCA claim on the ground that reverse-engineering the software could not separately constitute circumvention because it occurred *after* the defendant had already breached plaintiff’s system); *cf. Dish Network L.L.C. v. World Cable, Inc.*, 893 F. Supp. 2d 452, 464 (E.D.N.Y. 2012) (no DMCA liability for redistributing satellite TV signals, where redistributors purchased boxes to decrypt signals under false pretenses, because “there are no facts in the first amended complaint from which the Court can infer that they circumvented the ‘digital walls’ that protected copyrighted works”).

Here, Perplexity is even further removed from the alleged circumvention than the defendants in the cases above. Despite Reddit’s amendments, Reddit still fails to allege that Perplexity ever *encountered*—let alone used a technological process to circumvent—SearchGuard or any other technological measure: no authentication challenge, no encryption barrier, no password gate, no access-control mechanism of any kind. In *LivePerson* and *Dish Network*, far more detailed allegations of actual interactions with alleged access controls fell short of

“circumvention.”⁵ Reddit’s allegations that Perplexity received Google SERPs from SerpApi are even further from the mark and instead resemble the sparse allegations leading to dismissal in *Joint Stock Co.*, where the plaintiff failed to allege that the Defendant “affirmatively perform[ed] an action that disables or voids the measure.” *See* 2017 WL 696126, at *19.

Reddit clearly realizes that this is a problem. In an effort to manufacture closer proximity between Perplexity and the alleged acts of circumvention—and to access Perplexity’s deep pockets—Reddit ran a “find and replace” on its original Complaint and changed all of the descriptions of Perplexity as a “customer” or a “purchaser” of SerpApi’s “services or products” to assertions that Perplexity is a “user” of SerpApi’s “tool.” But this rhetorical shift does not change, and indeed *contradicts*, the more detailed allegations that SerpApi and the other co-defendants—*not* Perplexity—designed, controlled, and executed the technical processes that allegedly “circumvent” Google’s SearchGuard.

Reddit makes only two allegations in service of this rhetorical shift: First, Reddit alleges that SerpApi “provides customers with a ‘playground’ through which customers can set parameters for circumvention activity, including geographic location, rendering layouts, language settings, advanced filtering, and other operational inputs.” FAC ¶ 65. As alleged, the “playground” feature sets parameters for the *type* and *format* of the SERPs provided by SerpApi, not the substantive content. Second, Reddit alleges in passing near the back of the FAC that Perplexity “is conducting the actual queries” in SerpApi’s platform for Google SERPs. *Id.* ¶ 100. But the FAC makes no allegations whatsoever regarding which “queries” Perplexity supposedly ran, how it ran them, when it ran them, how often it ran them, or which Reddit posts it received from SerpApi by running them. In fact, the FAC concedes that Perplexity may have acquired Google SERPs from *other parties* than SerpApi (*id.* ¶ 65) and that Perplexity may have “direct[ed] others” to run (unspecified) queries in SerpApi’s platform on its behalf (*id.* ¶ 100). In short, other than alleging

⁵ *See LivePerson, Inc.*, 83 F. Supp. 3d at 510 (no circumvention even though the defendant allegedly infiltrated backend systems and installed spyware); *Dish Network L.L.C.*, 893 F. Supp. 2d at 464 (no circumvention where the defendants engaged with an encrypted conditional access system but did so through the system’s intended process).

that Perplexity cites Google SERP data in its “answer engine” and that it is a listed customer of SerpApi, Reddit pleads no concrete facts as to how it acquires that data *at all*.

The FAC therefore fails to place Perplexity within the scope of anti-circumvention liability under the DMCA, for two reasons: First, Reddit’s allegations are inherently speculative. “Factual allegations must be enough to raise a right to relief above the speculative level,” and Reddit’s thin allegations fail to do so. *Twombly*, 550 U.S. at 555. Relying on *Twombly*, courts have dismissed complaints resting on allegations of “sheer possibility,” *JBCHoldings NY, LLC v. Pakter*, 931 F. Supp. 2d 514, 526 (S.D.N.Y. 2013) (Engelmayer, J.), or that are “hypothetical,” *Melendez v. Sirius XM Radio, Inc.*, 50 F.4th 294, 306 (2d Cir. 2022). In *JBCHoldings*, the plaintiff alleged that “someone, currently believed to be [the defendant]” had hacked its computer systems, and that the defendant “could have passed along her login” information and contributed to the hacking. 931 F. Supp. 2d at 526. This Court dismissed the claim as insufficient “conjecture.” *Id.* Here, Reddit’s allegations are similarly conjectural: Reddit’s allegation that Perplexity “used at least one of its Co-Defendants’ tools to circumvent *or* caused others to use those tools to circumvent” (FAC ¶ 63) concedes that Reddit does not know whether Perplexity used SerpApi’s platform *at all*, let alone how Perplexity used it; whether Perplexity used the alleged “playground” feature or entered any “queries”; or what (if any) Google SERPs Perplexity received from it. Accordingly, because Reddit has not “nudged [its] claims” that Perplexity “used” these features “across the line from conceivable to plausible, [its] complaint must be dismissed.” *Twombly*, 550 U.S. at 570.

Second—and even more problematically for Reddit—the DMCA does not prohibit Perplexity’s alleged conduct, *regardless* of whether Perplexity used the “playground” feature or entered unspecified “queries” in SerpApi’s platform, because “a person ‘circumvents’ . . . only when he *affirmatively performs an action that disables or voids the measure* that was installed to prevent them from accessing the copyrighted material.” *Joint Stock Co.*, 2017 WL 696126, at *19 (emphasis added); *see also Corley*, 273 F.3d at 443 (the DMCA “targets the *circumvention* of digital walls . . . but does not concern itself with the *use* of those materials after circumvention has occurred” (emphasis in original)). Courts consistently dismiss anti-circumvention claims where,

as here, the defendant is a step removed from the actual alleged act of circumvention. *See id.* at 510 (reverse engineering of the protected software did not “constitute circumvention within the meaning of the DMCA” because it took place *after* the software had already been obtained through a separate breach). The Second Circuit is not alone in this holding, either. In *MGE UPS Systems, Inc. v. GE Consumer & Industrial, Inc.*, the Fifth Circuit affirmed a grant of judgment as a matter of law for the defendant because the plaintiff “cite[d] no evidence that a [defendant] employee or representative was responsible for circumventing the security features of [plaintiff’s] software—as opposed to merely using the software after some other party disabled the [protective] code.” 622 F.3d 361, 365–66 (5th Cir. 2010). Citing *Corley*, the Fifth Circuit again emphasized that “[b]ecause § 1201(a)(1) is targeted at circumvention, it does not apply to the use of copyrighted works *after* the technological measure has been circumvented.” *Id.* at 366.

The same principle forecloses anti-circumvention liability against Perplexity based on the facts alleged in the FAC. The original complaint alleged that Perplexity “purchased” and received data from SerpApi. The FAC alleges the same; the only difference is that the FAC alleges that Perplexity theoretically could have, in some way, set “parameters” or entered “queries” for Google SERPs before *the other co-Defendants* (allegedly) circumvented SearchGuard, retrieved the SERPs, and provided them to Perplexity. Given these allegations, it is irrelevant whether Reddit characterizes Perplexity as a “user of tools” or a “purchaser of services or products.” Either way, Reddit fails to allege that Perplexity designed, developed, or executed the technical processes comprising the alleged circumvention. Put differently, Reddit alleges that *others*, not Perplexity, “affirmatively performed [the] action that disables or voids” Google’s SearchGuard. *See Joint Stock Co.*, 2017 WL 696126, at *19 (cleaned up).

Finally, Reddit’s “test post” allegation—which appears to allege only that Reddit created a post that was crawlable by Google’s search engine and was later cited by Perplexity’s answer engine—similarly fails to allege that Perplexity itself engaged in any act of circumvention. *See* FAC ¶ 96. Reddit asks the Court to assume that, because a Perplexity answer included text that is similar to the “test post,” Perplexity must have received it from one of the other co-defendants and

that they, in turn, must have scraped a SERP containing it from Google. But even if that were a proper inference, it still runs into the same fatal defect underlying Reddit’s DMCA claim: neither the alleged upstream querying nor the downstream use of “scraped” search results constitutes the avoidance, bypassing, or impairment of any technological measure “qua technological measure.” *I.M.S.*, 307 F. Supp. 2d at 532–33.

Because the FAC does not allege that Perplexity circumvented any technological measure, the Court must dismiss Reddit’s DMCA claim against Perplexity for that reason alone.

2. Reddit fails to plead that it (or its users) have any “authority” with respect to the implementation or operation of SearchGuard.

Reddit fails to allege that the “copyright owners”—which are Reddit’s *users*, not Reddit itself—have any “authority” with respect to how Google implements or operates SearchGuard, or which internet users are or are not able to bypass it. This also requires dismissal.

The DMCA’s anti-circumvention provisions require that the “copyright owner” authorize the implementation of the “technological measure” controlling access to the works, *and* that the “copyright owner” authorize which persons are or are not permitted to circumvent that measure. *See* 17 U.S.C. § 1201(a)(3)(B) (“[A] technological measure ‘effectively controls access to a work’ if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, *with the authority of the copyright owner*, to gain access to the work.” (emphasis added)); *id.* at § 1201(a)(3)(A) (“[T]o ‘circumvent a technological measure’ means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, *without the authority of the copyright owner*[.]” (emphasis added)). These references to “the authority of the copyright owner” are not merely descriptive: They are statutory elements that set limits on the technological measures that qualify for DMCA protection as to any particular copyrighted work *and* which persons are liable for circumventing them. Under the plain text of the statute, only a measure that limits access to those who have “the copyright owner[’s]” authority can trigger Section 1201(a)(1)(A) liability, and only those who circumvent that measure “without the authority of the copyright owner” can

be liable.

Reddit attempts to plead this element in a single sentence, alleging that Reddit “has always authorized its partners, including Google, to protect [the allegedly copyrighted] content from misuse and prevent unauthorized access to that data.” FAC ¶ 111. But Reddit does not and cannot plead that the “copyright owners”—i.e., Reddit’s users—had any role in authorizing a third party (Google) to implement SearchGuard, or authorizing which persons may or may not “circumvent” SearchGuard to access their posts. Without any allegation that the “copyright owners” authorized the technological control measure, Reddit’s anti-circumvention claim never leaves the ground. And even assuming that Reddit is the “copyright owner” of its users’ posts, and further assuming that the copyright extends to SERPs of snippets of its users’ posts appearing on Google—all of which Perplexity disputes—Reddit’s conclusory allegation that it “has always authorized its partners” to protect its users’ posts falls far short of the pleading requirement.

Under *Iqbal* and *Twombly*, a plaintiff must plead “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,” and “conclusory allegation[s]” or legal conclusions masquerading as fact do not suffice. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 557. Reddit’s assertion is precisely the type of bare legal conclusion that does not survive a motion to dismiss, because it contains no supporting factual matter at all. Reddit does not identify any agreement between Reddit and Google authorizing or requiring Google to deploy SearchGuard (or any other specific measure). The Reddit–Google “partnership” is described as a data-licensing arrangement enabling “programmatically access by Google to Reddit content for use in Google’s products and services,” not as an agreement under which Google would deploy technological protections on Reddit’s behalf. FAC ¶ 52. Reddit’s blanket statement that it “has always authorized its partners . . . to protect this content,” on its face, encompasses “protections” like contractual terms of use or editorial policies that do *not* qualify as “technological measures” under the DMCA. *See In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *4 (S.D.N.Y. Dec. 15, 2025) (holding that textual instructions asking users to refrain from scraping do not “effectively control” access within the meaning of the statute). The FAC does not say anything about when or

how Reddit authorized *Google* to “protect” its users’ posts, and, most critically, Reddit does not—because it *cannot*—allege that it had any role in authorizing Google to implement SearchGuard, authorizing how SearchGuard works, or authorizing which internet users or classes of internet user SearchGuard lets through (and which it does not.) If Google decided to change SearchGuard, so that some users who were previously blocked could access its website, or vice versa, Reddit would have *no authority whatsoever* in that decision. The DMCA does not give Reddit a statutory claim against a class of internet users that Reddit has no alleged authority to define.

Worse, the First Amended Complaint precludes Reddit from making any of these allegations in a future amendment. The original Complaint contained only vague and conclusory allegations about how SearchGuard works. Complaint ¶ 49. The FAC adds detail about how *Google*—not Reddit—developed SearchGuard through “tens of thousands of person hours and millions of dollars,” invested by *Google* for the purpose of preventing parties who are “unauthorized” by *Google* from “automatically accessing *Google’s* search results.” FAC ¶ 56 (emphases added). Reddit played no part in any of this. In fact, we now know that Reddit *did not even know* how Google developed SearchGuard, how SearchGuard actually works, or which persons are and are not authorized by Google to circumvent SearchGuard, until *after* Reddit brought this lawsuit, when (according to the FAC) Reddit subpoenaed Google and read the complaint filed by Google against co-defendant SerpApi in December 2025. *Id.* n.29.

To permit Reddit’s DMCA claim, despite Reddit’s inability to plead its “authority,” would flout not only the plain language of the statute but also Congress’s intent in enacting it. Congress enacted Section 1201 to “back[] with legal sanctions the efforts of *copyright owners* to protect their works from piracy behind digital walls such as encryption codes or password protections.” *Corley*, 273 F.3d at 435 (emphasis added); *see also* S. Rep. 105-190, at 27-28 (explaining subsection (a)(1) of the DMCA “establishes a general prohibition against gaining unauthorized access to a work by circumventing a technological protection measure *put in place by the copyright owner*”) (emphasis added); H.R. Rep. No. 105-551, at 17 (explaining that the DMCA’s enabling treaties required signatory countries to protect against the “circumvention of

effective technological measures *that are used by authors*”) (emphasis added). The references to the “authority of the copyright owner” in Section 1201(a)(3) serve the necessary function of linking the technological measure to the *copyright owner’s* determination of which persons may and may not access the work. Without that nexus, any third-party platform’s incidental security measure—deployed entirely for the platform’s own reasons, and without the copyright owner’s knowledge (much less “authorization”)—would automatically become a DMCA-protected access control for every piece of copyrighted content that happens to pass through the platform. That would dramatically expand the DMCA’s reach beyond anything Congress intended.

3. Reddit has not alleged a technological measure that effectively controls access.

Reddit’s DMCA claim additionally fails because the FAC fails to identify a “technological measure that effectively controls access” as defined by the DMCA. As argued by SerpApi, SearchGuard does not qualify as a “technological measure that effectively controls access” for purposes of the DMCA. Nor can Reddit establish that SearchGuard was implemented “with the authority of the copyright owner”—here, Reddit users or Reddit itself—as required by the DMCA. 17 U.S.C. § 1201(a)(3)(B).⁶

Moreover, to the extent Reddit seeks to rely on its own and/or Google’s terms of use, those are not “technological measure[s]” because they are not “technological” at all. *See* FAC ¶¶ 6, 54–55, 60. Courts are explicit that “[v]iolating contractual restrictions on access to or distribution of encrypted transmissions is not the type of ‘circumvention’ that Congress intended to combat.” *Joint Stock Co.*, 2017 WL 696126, at *18. Reddit thus cannot assert an anti-circumvention claim based on any alleged violation of terms of use (by the other co-defendants) that ostensibly forbid the “scraping” of data, since bypassing “permission” is distinct from bypassing “digital walls” under the DMCA. *I.M.S. Inquiry Mgmt. Sys., Ltd.*, 307 F. Supp. 2d at 532; *see also Dish Network*

⁶ Defendant SerpApi has filed a motion to dismiss Reddit’s claims against it. ECF No. 59. Perplexity joins and adopts SerpApi’s argument that SearchGuard does not constitute a “technological measure that effectively controls access” under Section 1201(a)(1). For the same reasons, Reddit’s DMCA claim fails as to Perplexity.

L.L.C., 893 F. Supp. 2d at 464 (distinguishing between “contractual barriers” and “digital walls”); *In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *4 (holding that textual instructions asking users to “refrain from scraping certain content do not ‘effectively control’ access to that content any more than a sign requesting that visitors ‘keep off the grass’ effectively controls access to a lawn”).

Because Reddit has not alleged that Perplexity circumvented a technological measure that effectively controls access, its DMCA claim must be dismissed.

B. The state-law claims are preempted by the Copyright Act.

Reddit’s state-law claims are preempted because they do nothing more than assert rights squarely within the scope of the Copyright Act.⁷ The Second Circuit applies a two-step inquiry to determine if a state law claim is preempted by the Copyright Act. First, the work must “come within the subject matter of copyright as specified by sections 102 and 103.” *In re Jackson*, 972 F.3d 25, 42 (2d Cir. 2020). Second, the right asserted must be “equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106.” *Id.* at 43. Both prongs are met here.

The first prong is easily met because Reddit contends repeatedly throughout the FAC that the snippets Perplexity allegedly acquired through SerpApi are copyrighted works. *See* FAC ¶¶ 1, 2, 7, 47, 59 (repeated references to “copyrighted” content). Indeed, Reddit asserts that it has a copyright interest in the content at issue, alleging that “Reddit owns the copyrights in [tens of thousands of posts, comments, and other original works on Reddit authored by Reddit itself], as well as the copyrights in its compilations and arrangements of user-generated content.” *Id.* ¶ 47.

The second prong is also met because Reddit’s state-law claims seek to protect the same rights as the Copyright Act: the right to control reproduction, adaptation, and distribution of Reddit content. “When analyzing the [equivalence] requirement, courts often look to the precise elements

⁷ That Reddit does not bring a copyright infringement claim does not affect the preemption analysis. The Copyright Act “can preempt a state law claim when a plaintiff has not brought a copyright infringement claim.” *Elliott v. Cartagena*, 2025 WL 486634, at *12 (S.D.N.Y. Feb. 13, 2025); *see also Melendez*, 50 F.4th at 298; *Indiaweekly.com, LLC v. Nehaflix.com, Inc.*, 2011 WL 13228167, at *17 (D. Conn. Jan. 19, 2011).

of the cause of action brought under state law and compare them to the elements that must be pled to bring a comparable claim under the Copyright Act.” *Melendez*, 50 F.4th at 307. “[T]he state law claim must involve acts of reproduction, adaptation, performance, distribution, or display.” *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 305 (2d Cir. 2004). And while the “existence of an extra element needed to bring a claim under state law may weigh against preemption,” *Melendez*, 50 F.4th at 307, the “critical inquiry is whether such extra elements of the state law claim beyond what is required for copyright infringement ‘change[] the nature of the action so that it is qualitatively different from a copyright infringement claim,’” *Jackson*, 972 F.3d at 43–44 (citation omitted). The Second Circuit takes a “restrictive view of what extra elements transform an otherwise equivalent claim into one that is qualitatively different from a copyright infringement claim.” *Briarpatch*, 373 F.3d at 306. Here, the state-law claims satisfy this prong.

Unfair competition. Courts in this circuit consistently find claims like Reddit’s unfair-competition-by-misappropriation claim to be preempted. “The Second Circuit has consistently held that unfair competition claims alleging the misappropriation of content in essence seek the enforcement of rights conferred by the Copyright Act and are thus preempted.” *Indiaweekly.com*, 2011 WL 13228167, at *17 (finding preemption of an unfair competition claim involving copying of content from Netflix’s website); *see also BanxCorp v. Costco Wholesale Corp.*, 723 F. Supp. 2d 596, 618 (S.D.N.Y. 2010) (same regarding alleged misappropriation of financial performance indices); *Walker v. Time Life Films, Inc.*, 615 F. Supp. 430, 441 (S.D.N.Y. 1985), *aff’d*, 784 F.2d 44 (2d Cir. 1986) (same regarding alleged misappropriation of the contents and ideas in a book).

Here, Reddit alleges misappropriation based on Perplexity’s alleged contract with SerpApi to “access and scrape” Reddit content for its “own commercial gain” and to “damage Reddit’s competitive position.” FAC ¶¶ 139, 141. These allegations merely assert a right to control the reproduction of Reddit content—rights exclusively governed by the Copyright Act. In *New York Times Co. v. Microsoft Corp.*, 777 F. Supp. 3d 283, 301 (S.D.N.Y. 2025), the court found an unfair-competition-by-misappropriation claim to be preempted under similar circumstances: the claim relied on the defendant’s alleged scraping of news content from the plaintiff’s site to train AI

models. Because the claim alleged no extra elements beyond acts equivalent to reproduction, distribution, or display, it fell within the bounds of rights conferred by the Copyright Act. *Id.* at 320, 323; *see also Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841, 851 (2d Cir. 1997) (“[U]nfair competition and misappropriation claims grounded solely in the copying of a plaintiff’s protected expression are preempted by section 301.”).

Reddit’s allegations of “bad faith” and “knowing[.]” circumvention of technological controls do not qualitatively transform the claim. FAC ¶ 143. “[B]ad faith . . . , like other scienter requirements, [is] insufficient to establish an ‘extra element’” in the preemption analysis. *BanxCorp*, 723 F. Supp. 2d at 617. This is because elements such as “awareness or intent . . . alter the action’s scope but not its nature[.]” *Computer Assocs. Int’l, Inc. v. Altai, Inc.*, 982 F.2d 693, 717 (2d Cir. 1992) (internal quotation marks omitted). Nor do the passing references to circumvention of technological controls change the analysis: these allegations merely describe the mechanism by which defendants allegedly accessed and copied Reddit users’ content and do not constitute a qualitatively distinct extra element. *See ML Genius Holdings LLC v. Google LLC*, 2022 WL 710744, at *3 (2d Cir. Mar. 10, 2022) (explaining that the preemption inquiry turns on whether a right protected by the Copyright Act constitutes the “gravamen” of the state-law claim). The gravamen of Reddit’s unfair competition claim is the alleged reproduction and use of Reddit users’ copyrighted material—and the supposed market substitution or lost licensing revenue flowing from that conduct—which are classic copyright interests and harms. *See Myrieckes v. Woods*, 2009 WL 884561, at *5 (S.D.N.Y. Mar. 31, 2009). Thus, Reddit’s unfair competition claim should be dismissed as preempted. *See Moser Pilon Nelson Architects, LLC v. HNTB Corp.*, 2006 WL 2331013, at *11 (D. Conn. Aug. 8, 2006) (collecting cases) (“[C]ourts routinely grant motions to dismiss state law claims on the basis of [copyright] preemption[.]”).

Unjust Enrichment. Reddit’s unjust enrichment claim—which relies on the same allegations as the unfair competition claim—fares no better. Courts in this circuit have repeatedly found such claims to be preempted. *See, e.g., Ardis Health, LLC v. Nankivell*, 2012 WL 5290326, at *10 (S.D.N.Y. Oct. 23, 2012) (“Courts have generally concluded that the theory of unjust

enrichment protects rights that are essentially ‘equivalent’ to rights protected by the Copyright Act; thus, unjust enrichment claims related to the use of copyrighted material are generally preempted.”); *Atrium Grp. De Ediciones Y Publicaciones, S.L. v. Harry N. Abrams, Inc.*, 565 F. Supp. 2d 505, 509 (S.D.N.Y. 2008) (finding unjust enrichment claim involving misappropriation of architecture and design books to be preempted); *Myrieckes*, 2009 WL 884561, at *5 (same involving alleged reproduction and adaptation of a book). Numerous courts addressing the copying and use of publicly available data to build software products have reached the same result. *See, e.g., In re OpenAI, Inc. Copyright Infringement Litig.*, 2025 WL 3635559, at *3–4 (finding unjust enrichment claim to be preempted where “[t]he basis of [the claim] is that OpenAI used [the plaintiff’s] copyrighted works in an unauthorized way”); *Doe 1 v. GitHub, Inc.*, 2024 WL 235217, at *7–8 (N.D. Cal. Jan. 22, 2024) (same); *Andersen v. Stability AI, Ltd.*, 744 F. Supp. 3d 956, 972–73 (N.D. Cal. 2024) (same).

An unjust enrichment claim requires proof that (1) the defendant was enriched, (2) at the plaintiff’s expense, and that (3) equity and good conscience militate against permitting the defendant to retain what plaintiff is seeking to recover. *See, e.g., Clark v. Daby*, 751 N.Y.S.2d 622, 623 (App. Div. 2002). Here, Reddit points to the unauthorized act of “gain[ing] access to and scrap[ing]” Reddit content for the second and third elements. FAC ¶ 148. In other words, Reddit alleges that the content was copied and reproduced for display. Reddit’s claim thus seeks only to vindicate any reproduction and distribution rights it might have in user-generated content.

Nor does the first element of an unjust enrichment claim—enrichment—add an “extra element.” Reddit alleges that Perplexity was enriched by “obtaining Reddit data through its use of SerpApi and/or the other Co-Defendant’s tools.” FAC ¶ 149. While enrichment is not required to prove copyright infringement, this element “limits the scope of the claim but leaves its fundamental nature unaltered.” *Briarpatch*, 373 F.3d at 306–07 (citing cases); *see also Atrium Grp.*, 565 F. Supp. 2d at 509 (“If the law were otherwise, every time a copyright infringer obtained any profit from his infringing activity, the [rights holder] would be able to assert a state claim for unjust enrichment.”). Reddit’s unjust enrichment claim is therefore preempted.

Civil Conspiracy. Reddit’s civil conspiracy claim alleges nothing more than a conspiracy to violate the Copyright Act. *See Irwin v. ZDF Enters. GmbH*, 2006 WL 374960, at *4 (S.D.N.Y. Feb. 16, 2006) (“[C]laims for conspiracy to violate the Copyright Act are preempted by federal copyright law.”). Because copyright law already “recognizes the concepts of contributory infringement and vicarious copyright infringement . . . , which extend joint and several liability to those who participate in the copyright infringement . . . [a] civil conspiracy claim does not add substantively to the underlying federal copyright claim and should therefore be preempted.” *Id.* Reddit’s allegation that Perplexity “acquir[ed] Reddit data in bulk” and “use[d]” that data in its “commercial offerings” is simply a repackaged claim of copyright infringement. FAC ¶ 155. Alleging that “Perplexity contracted with SerpApi” to achieve those ends does not render the action “qualitatively different” from a copyright infringement claim. *Jackson*, 972 F.3d at 43–44. Reddit’s civil conspiracy claim should be dismissed.

C. The state-law claims also fail on the merits.

In addition to being preempted, Reddit’s state-law claims also fail on the merits.

1. The unjust enrichment claim fails because it is duplicative.

Reddit’s unjust enrichment claim fails because it is redundant of the DMCA claim. “[C]laims for unjust enrichment will not survive a motion to dismiss where plaintiffs fail to explain how their unjust enrichment claim is not merely duplicative of their other causes of action.” *Gill v. Nat’l Football League*, 2021 WL 5087900, at *7 (S.D.N.Y. Nov. 2, 2021) (Engelmayer, J.). Here, Reddit alleges that “Defendants have been unjustly enriched at Reddit’s expense” by circumventing technological measures to scrape Reddit data. FAC ¶ 148; *see also id.* ¶ 149 (alleging that Perplexity has “been unjustly enriched by accessing and obtaining Reddit Data through its use of SerpApi and/or the other Co-Defendants’ tools”). This alleged conduct is the same as that underpinning Reddit’s DMCA claim. *See id.* ¶¶ 115, 117–18, 151.

2. The unjust enrichment claim fails because Reddit alleges no benefit received by Perplexity through wrongful conduct or at Reddit’s expense.

Reddit has also failed to plead facts sufficient to state an unjust enrichment claim. Reddit

must allege that (1) Perplexity was enriched, (2) at Reddit's expense, and (3) equity and good conscience militate against permitting Perplexity to retain what Reddit is seeking to recover. *Briarpatch Ltd., L.P.*, 373 F.3d at 306. Reddit has alleged neither that "equity and good conscience" support its claim nor that Perplexity was enriched at its expense.

Reddit fails to plead that Perplexity's conduct is contrary to "equity and good conscience" because it does not adequately allege that Perplexity's conduct was "tortious or fraudulent." *See Paramount Film Distrib. Corp. v. State of New York*, 30 N.Y.2d 415, 421 (N.Y. 1972). Reddit merely recycles the same factual allegations from its defective DMCA claim and has not alleged any other wrongdoing by Perplexity.

Nor has Reddit adequately alleged that Perplexity was enriched at its expense. Reddit alleges that the "scraping" of Reddit content harmed it in "various ways." *See* FAC ¶ 102. But Perplexity is not plausibly alleged to have "scraped" Reddit data. Even setting that aside, none of Reddit's alleged injuries are plausible. **First**, Reddit says it lost licensing fees and other related "commercial opportunities" because parties that do or could license data from Reddit are "encourage[d]" to "instead use similar techniques as Defendants to gain access" to Reddit content. *Id.* ¶ 109. But Reddit alleges no facts about any lost "opportunities," such as how much they were for, whom they were with, or why their loss is Perplexity's fault. Reddit has thus failed to plead any facts showing that, but for Perplexity's alleged conduct, Reddit would have retained or entered any licensing arrangements. *See Express Gold Cash, Inc. v. Beyond 79, LLC*, 2019 WL 4394567, at *9 (W.D.N.Y. Sep. 13, 2019) (dismissing unjust enrichment claim where plaintiff made "conclusory allegation" of harm but did not "allege any facts" showing that "but for Defendant's deceptive conduct, consumers would have done business with Plaintiff").

Second, Reddit says that its users "care about how their content will be treated when it is posted to Reddit" and "place great trust in Reddit" to "steward[]" that content, such that the "scraping" of that content impacts "Reddit's reputation" and "its users' trust" in it. FAC ¶¶ 102, 104. But again, Reddit has not plausibly alleged that *Perplexity* "scraped" content. And even so, it has not explained how "scraping" affects Reddit users' "anonymity and privacy." *Id.* Reddit

alleges that it lets users delete posts and requires licensees to “respect” these deletions, *id.* ¶¶ 104–08, but does not allege that Perplexity affects users’ ability to delete their posts.

Even if Reddit had plausibly alleged that Perplexity had negatively affected its users’ trust, that would be insufficient. Reddit must allege that it has “*suffered a loss.*” *Edelman v. Starwood Capital Grp., LLC*, 892 N.Y.S.2d 37, 40 (App. Div. 2009) (emphasis in original). Reddit does not allege that any users have quit Reddit as a result of Perplexity’s alleged conduct, or even that any have expressed concern or discontent about it. While Reddit speculates that defendants’ alleged conduct “*threaten[s]* Reddit’s ability to attract and retain users,” FAC ¶ 141 (emphasis added), “no cause of action for unjust enrichment lies for hypothetical future liabilities.” *Axel Johnson, Inc. v. Arthur Andersen & Co.*, 830 F. Supp. 204, 212 (S.D.N.Y. 1993).

Third, Reddit newly alleges that it has “been harmed because Reddit data is being accessed without [its] permission” and “without authorization.” FAC ¶¶ 110–11. But unauthorized access of another’s data—absent any “specific loss or deprivation of opportunity to profit from that information”—does not create a cognizable injury. *Mount v. PulsePoint, Inc.*, 684 F. App’x 32, 36–37 (2d Cir. 2017) (affirming dismissal of unjust enrichment claim where plaintiffs’ only alleged injury was “misappropriation of their browsing information”).

Fourth, Reddit says that it was “harmed by Defendants’ conduct because it is forced to invest significant resources into [its] anti-scraping efforts[.]” FAC ¶ 112. But the “time and expense” spent to combat a perceived risk of harm are not cognizable injuries because they “are solely the result of” a “speculative risk of future injury that may never occur.” *E.g., Shafran v. Harley-Davidson, Inc.*, 2008 WL 763177, at *3 (S.D.N.Y. Mar. 20, 2008) (dismissing unjust enrichment claim where plaintiff’s alleged injury was cost of monitoring to prevent future harm).

3. The unfair competition claim fails because Reddit fails to allege misappropriation, bad faith, or special damages.

To state an unfair competition claim based on misappropriation, a plaintiff must allege that the defendant “(1) misappropriated the plaintiff’s labors, skills, expenditures, or good will; and (2) displayed some element of bad faith in doing so.” *Apple Mortgage Corp. v. Barenblatt*, 162 F.

Supp. 3d 270, 284 (S.D.N.Y. 2016). The plaintiff must also allege “special damages,” such as that the defendant “diverted plaintiff’s customers and business.” *Barbagallo v. Marcum LLP*, 820 F. Supp. 2d 429, 447 (E.D.N.Y. 2011). Reddit fails to plead either.

Reddit does not plausibly allege that Perplexity engaged in any act of misappropriation or acted in bad faith. The unfair competition claim, like the unjust enrichment claim, merely repackages the circumvention allegations underlying the DMCA claim. *See* FAC ¶¶ 139, 143 (“Defendants have acted in bad faith by knowingly circumventing the technological control measures[.]”). Here too, Reddit does not plausibly allege that Perplexity circumvented anything, let alone that it did so in bad faith. And Reddit alleges no other misappropriation by Perplexity.

Reddit also fails to allege that it suffered “special damages.” Reddit reiterates the same damages discussed above with respect to unjust enrichment, which fail here for the same reasons. Reddit alleges, in passing and without facts, that the defendants have achieved a competitive advantage by “removing the need for users to access Reddit content directly through Reddit.” FAC ¶ 141. But this allegation is implausible considering that Perplexity links users back to Reddit if it generates an answer that incorporates Reddit content. *See id.* ¶ 94 (Perplexity “cite[s]” Reddit). If anything, it is more likely that Perplexity adds Reddit traffic by directing users to Reddit.

4. The civil conspiracy claim fails because there is no separate actionable tort and Reddit has not adequately pleaded a conspiracy.

Under New York law, there is no independent cause of action for civil conspiracy. *Reich v. Lopez*, 38 F. Supp. 3d 436, 460 (S.D.N.Y. 2014), *aff’d*, 858 F.3d 55 (2d Cir. 2017). “Allegations of conspiracy are permitted only to connect the actions of separate defendants with an otherwise actionable tort.” *Generation Next Fashions Ltd. v. JP Morgan Chase Bank, NA.*, 698 F. Supp. 3d 663, 688 (S.D.N.Y. 2023) (citation and quotation marks omitted). Because Reddit’s state-law claims fail, its civil conspiracy claim must also be dismissed. *See Uni-World Cap., L.P. v. Preferred Fragrance, Inc.*, 43 F. Supp. 3d 236, 251 (S.D.N.Y. 2014); *Fisk v. Letterman*, 424 F. Supp. 2d 670, 677 (S.D.N.Y. 2006).

Nor can Reddit bootstrap its failed DMCA claim into a civil conspiracy theory. The

DMCA’s anti-circumvention and anti-trafficking provisions delineate who may be held liable: those who (1) themselves circumvent access controls; (2) traffic in technologies that circumvent measures “designed to prevent access to a work;” and (3) traffic in technologies that circumvent measures designed to “permit access to a work but *prevent copying* of the work.” *Corley*, 273 F.3d at 440–41. Congress thus already specified who may be secondarily liable—traffickers of circumvention tools. “The fact that Congress chose to impose some forms of secondary liability, but not others, indicates a deliberate congressional choice with which the courts should not interfere.” *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 184 (1994). Indeed, courts regularly reject conspiracy and aiding and abetting claims based on alleged violations of a federal statute where the statute does not provide for those claims. *See, e.g., In re Currency Conversion Fee Antitrust Litig.*, 265 F. Supp. 2d 385, 432–33 (S.D.N.Y. 2003); *Grady v. F.D.I.C.*, 2014 WL 1364932, at *7 (D. Ariz. Mar. 26, 2014). Reddit cannot use a conspiracy claim to expand the scope of conduct prohibited by the DMCA, when the DMCA *by design* does not allow for this kind of secondary liability.

Reddit has also failed to plausibly allege that Perplexity and SerpApi entered into an agreement to “effectuate an unlawful purpose.” *See Cohen v. Stevanovich*, 722 F. Supp. 2d 416, 437 (S.D.N.Y. 2010). Reddit alleges conclusorily that Perplexity and SerpApi “have entered into one or more contracts . . . for the purpose of circumventing . . . technological control measures . . . to gain access to Reddit data on a large-scale, unauthorized, and automated basis[.]” FAC ¶ 154. But Reddit alleges no details about this supposed contract, whether Perplexity even used any such “tool,” or whether Perplexity even knew about any alleged circumvention. *See Kitchen Winners NY Inc. v. Rock Fintek LLC*, 668 F. Supp. 3d 263, 299–300 (S.D.N.Y. 2023) (dismissing civil conspiracy claim despite allegations that the parties “had a business relationship” because there were no “non-conclusory allegations that the [parties] had the requisite ‘agreement’ . . . to commit any wrong”). Reddit’s civil conspiracy claim should be dismissed.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Reddit’s claims against Perplexity.

Respectfully submitted,
KEKER, VAN NEST & PETERS LLP

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By: /s/ Eric H. MacMichael
ERIC H. MACMICHAEL *pro hac vice forthcoming*
EMacMichael@keker.com
SHARIF E. JACOB *pro hac vice forthcoming*
SJacob@keker.com
BENJAMIN D. ROTHSTEIN
BRothstein@keker.com
CHRISTINA LEE *pro hac vice forthcoming*
CLee@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Defendant PERPLEXITY AI, INC.