

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

THE INTERCEPT MEDIA, INC.,

Plaintiff,

v.

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

Defendants.

Case No. 1:24-cv-01515-JSR

**DEFENDANT MICROSOFT CORPORATION'S REPLY MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT**

May 16, 2024

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PRELIMINARY STATEMENT

The Intercept's Opposition confirms that its sparsely pleaded § 1202(b) claims are as threadbare as they appear.

As to Article III standing, The Intercept concedes that it alleges no injury based on public dissemination of its works without CMI. Opp. 8. Its asserted harm is nothing more than alleged removal of attribution information during the entirely internal training and development of an LLM. And The Intercept also points to no common law recognition that such non-public non-attribution is a cognizable injury. That ends the inquiry—The Intercept lacks standing. Its only attempted workaround is highly dubious: It equates the non-attribution in private with copyright infringement, a claim The Intercept does not bring. The analogy does not work. CMI is merely information *about* a copyright-protected work, not copyright-protected material itself. The Intercept's claims based on private removal of such information thus could only allege a bare technical violation of § 1202(b), with no concrete injury required to support standing. *Infra* § I.

The Intercept also fails to state a claim. Tasked with defending a Complaint light on factual allegations and heavy on conclusions, The Intercept largely retreats to platitudes about the plausibility standard. Most of the allegations The Intercept points to are not factual allegations at all; they are conclusory assertions that cannot support a plausible claim. When those are cast aside, all that remains of the Complaint are theories, hypotheticals, and rumors strung together to suggest that (a) because some unidentified Intercept works are allegedly in the training set, they *must* have had CMI removed; (b) because Microsoft and OpenAI have a "close relationship," Microsoft *must* have removed CMI from The Intercept's works; and (c) because there is some bare possibility that GPT-based products can emit output that matches some text in the training set, it *must* be likely that they will do so with The Intercept's works, and that end-users will then infringe them further. For The Intercept's claims to survive, all of these premises

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