Andersen et al v. Stability AI Ltd. et al, Docket No. 3:23-cv-00201 (N.D. Cal. Jan 13, 2023), Court Docket

Multiple Documents

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16   **UNITED STATES DISTRICT COURT**
                 NORTHERN DISTRICT OF CALIFORNIA
17   **SAN FRANCISCO DIVISION**

18 SARAH ANDERSEN, an individual;   Case No.
    KELLY MCKERNAN, an individual;
19 KARLA ORTIZ, an individual,   **COMPLAINT**

20   Individual and Representative Plaintiffs,   **CLASS ACTION**

21   v.

22 STABILITY AI LTD., a UK corporation;   **DEMAND FOR JURY TRIAL**
    STABILITY AI, INC., a Delaware
23 corporation; MIDJOURNEY, INC., a
    Delaware corporation; DEVIANTART, INC.,
24 a Delaware corporation,

25   Defendants.

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CLASS ACTION COMPLAINT

Plaintiffs Sarah Andersen, Kelly McKernan, and Karla Ortiz ("Plaintiffs"), on behalf of themselves and all others similarly situated, bring this Class Action Complaint (the "Complaint") against Defendants Stability AI Ltd. and Stability AI, Inc. (collectively "Stability"); Midjourney, Inc. ("Midjourney"); and DeviantArt, Inc. ("DeviantArt") (all collectively "Defendants") for direct and vicarious copyright infringement under 17 U.S.C. § 501; violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201–1205 (the "DMCA"); violation of Plaintiffs' statutory and common law rights of publicity, Cal. Civ. Code section 3344; violation of Unfair Competition law, *Cal. Bus. & Prof. Code* §§ 17200, *et seq.*; and declaratory relief.

I.   AI IMAGE GENERATORS ARE 21ST-CENTURY COLLAGE TOOLS THAT VIOLATE THE RIGHTS OF MILLIONS OF ARTISTS

1.   Stable Diffusion is a software product—defined below as an AI Image Product—maintained and sold by Stability.

2.   Stability downloaded or otherwise acquired copies of billions of copyrighted images without permission to create Stable Diffusion, including Plaintiffs'. These images are defined below as "Training Images."

3.   By training Stable Diffusion on the Training Images, Stability caused those images to be stored at and incorporated into Stable Diffusion as compressed copies. Stability made them without the consent of the artists and without compensating any of those artists.

4.   When used to produce images from prompts by its users, Stable Diffusion uses the Training Images to produce seemingly new images through a mathematical software process. These "new" images are based entirely on the Training Images and are derivative works of the particular images Stable Diffusion draws from when assembling a given output. Ultimately, it is merely a complex collage tool.

5.   These resulting derived images compete in the marketplace with the original images. Until now, when a purchaser seeks a new image "in the style" of a given artist, they must pay to commission or license an original image from that artist. Now, those purchasers can use the artist's works contained in Stable Diffusion along with the artist's name to generate new

works in the artist's style without compensating the artist at all. As used herein, the phrase "in the style of," refers to a work that others would accept as a work created by that artist whose "style" was called upon, not the general category of work, such as fantasy or impressionism. Only a very small number of incredibly talented artists are capable of this same feat for a single other artist (i.e., reproducing art that is convincingly in that artist's style), let alone for countless other artists. AI Image Products do so with ease by violating the rights of millions of artists.

6.   All AI Image Products operate in substantially the same way and store and incorporate countless copyrighted images as Training Images.

7.   Defendants, by and through the use of their AI Image Products, benefit commercially and profit richly from the use of copyrighted images.

8.   The harm to artists is not hypothetical—works generated by AI Image Products "in the style" of a particular artist are already sold on the internet, siphoning commissions from the artists themselves.

9.   Plaintiffs and the Class seek to end this blatant and enormous infringement of their rights before their professions are eliminated by a computer program powered entirely by their hard work.

II.   JURISDICTION AND VENUE

10.   Plaintiffs bring this action on their own behalf and as representatives of a Class of similarly situated individuals and entities. They seek to obtain injunctive relief and recover damages as a result and consequence of Defendants' unlawful conduct.

11.   Jurisdiction and venue are proper in this judicial district pursuant to Defendants' unauthorized use of Plaintiffs' and the Class's intellectual property in violation of the Copyright Act, 17 U.S.C. § 501, the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201–1205 (the "DMCA"); Unjust Enrichment, and Unfair Competition; California's right of publicity, contract, negligence, privacy, and unfair competition statutes and case law.

12.   A substantial part of the events giving rise to Plaintiffs' claims occurred in this District.

13.   Defendant Midjourney is headquartered in San Francisco. Plaintiff Karla Ortiz resides in San Francisco, California, a substantial portion of the affected interstate trade and commerce was carried out in this District, and the Defendants are licensed to do business in this District.

14.   Each Defendant has transacted business, maintained substantial contacts, and/or committed illegal acts that harmed Plaintiffs and the Class throughout the United States, including in this District. Defendants' conduct has had the intended and foreseeable effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

III.   INTRADISTRICT ASSIGNMENT

15.   Pursuant to Civil Local Rule 3.2 (c) and (e), assignment of this case to the San Francisco Division of the United States District Court for the Northern District of California is proper because Plaintiff Karla Ortiz and a large portion of the Class reside in this District. In addition, a substantial amount of the development of the Stable Diffusion product as well as of the interstate trade and commerce involved and affected by Defendants' conduct giving rise to the claims herein occurred in this Division.

IV.   DEFINITIONS

16.   *"AI Image Product"* refers to the allegedly AI-based image generation products that were created, maintained, marketed, sold, and/or distributed by Defendants, namely Stable Diffusion, the Midjourney Product, DreamStudio, and DreamUp.

17.   *"Artificial Intelligence"* or *"AI."* AI is a software program that algorithmically simulates human reasoning or inference, often using statistical or mathematical methods.

18.   "*Derivative Work*" as used herein refers to the output of AI Image Products as well as the AI Image Products themselves—which contain compressed copies of the copyrighted works they were trained on.

19.   *"Diffusion"* is a specific machine-learning application that results in a model that stores a compressed copy of each item in the training dataset. A more detailed description of

diffusion appears below. Stable Diffusion is an AI software program that includes a diffusion model.

20.   *"Generative AI"* is a subset of machine learning where the program copies training data and uses it to produce derivative works of that training data. Stable Diffusion is an example of a generative AI system, because it is trained using copied images, and produces similar images. Other generative AI systems exist that produce conversational text, software code, and music, in each case similar to the respective training data.

21.   *"Machine Learning"* or *"ML"* is a type of AI process in which the behavior of the software program is derived from copying a corpus of material called *training data*. In this context, the term "learning" is metaphorical. The process bears very little similarity to human learning. In this context, it denotes a technique for developing a software program through massive data input and statistical operations, calculations, and linear algebra, rather than line-by-line coding using a programming language. Machine-learning programs can find patterns or make calculations based on datasets or training data. The operator of the algorithm is sometimes called a "trainer." Machine learning will be referred to as "AI" unless further distinction is necessary. Stable Diffusion, the Midjourney Product, DreamStudio, and DreamUp all include both AI programs and ML programs.

22.   *"Model"* denotes the software component of an AI program that is the output of a machine-learning process. The model is a computer file that contains all the information that has been extracted from analyzing the training data, including the rules and data structures produced by the algorithm.

23.   A *"Software Library"* is a self-contained software program that is designed to provide certain functions or services to another software program, such as a desktop or smartphone application, thereby reducing the development time. When used as a Software Library, Stable Diffusion provides image-generating services to the other program. Stable Diffusion has been used as a Software Library within multiple programs, including DreamStudio, DreamUp, and, on information and belief, the Midjourney Product.

CLASS ACTION COMPLAINT

24.   A "*Text Prompt*" is a textual description that is used as an interface to certain generative AI systems to produce output, including the AI Image Products. For instance, a user of Stable Diffusion can input the text prompt "a dog wearing a baseball cap while eating ice cream," and Stable Diffusion will attempt to generate an image that corresponds to that text prompt. Because randomness is injected into the generative process alongside the text prompt, a particular text prompt will usually produce a varied set of results. In a generative AI system like Stable Diffusion, a text prompt is not part of the training data. It is part of the end-user interface for the tool. Thus, it is more akin to a text query passed to an internet search engine. Just as the internet search engine looks up the query in its massive database of web pages to show us matching results, a generative AI system uses a text prompt to generate output based on its massive database of training data.

25.   A "*Training Image*" is an image, or image paired with a descriptive text caption, that is included among the training data for a machine-learning process. Training images are often gathered through web scraping. For its training data, Stable Diffusion has taken billions of Training Images scraped from public websites.

26.   "*Web Scraping*" refers to the harvesting, copying, or extracting data from websites by using automated tools, including bots or web crawlers. Usually, the scope and quantity of data so "scraped" is massive. Web scraping can be used to harvest any kind of data available on public websites, especially copyrighted data such as text, images, or software code. These collections of scraped copyrighted data are used as input for other computer programs, such as search engines and machine-learning processes. The training data for all AI Image Products are collected via web scraping. For example, the training data for Stable Diffusion—a database of billions of captioned images—was collected via web scraping.

27.   "*Work*" or "*Works*" refers to any image that was used to train any version of Stable Diffusion that was offered directly and/or incorporated into another product by one or more Defendants during the Class Period.

V.   PARTIES

A.   **Plaintiffs**

28.   Plaintiff Sarah Andersen is a resident of the State of Oregon. Ms. Andersen is a full-time cartoonist and illustrator and relies on the income therefrom. Her semi-autobiographical comic strip, *Sarah's Scribbles*, finds the humor in living as an introvert. Her graphic novel *FANGS* was nominated for an Eisner Award. Ms. Andersen has created and owns a copyright interest in over two hundred Works included in the Training Data.[1] Ms. Andersen has complied with the statutory requirements for registration and has applied for and owns copyright registrations for sixteen collections that include Works used as Training Images. Copies of these registrations as reflected in the Copyright Office's records are attached as Exhibits 1 through 16 and are valid and enforceable. Ms. Andersen was, and continues to be, injured during the Class Period as a result of Defendants' unlawful conduct alleged herein.

29.   Plaintiff Kelly McKernan is a resident of the State of Tennessee. Mx. McKernan is a full-time artist and relies on their income therefrom. Kelly creates original watercolor and acryla gouache paintings for galleries, private commissions, and their online store. Mx. McKernan has created and owns a copyright interest in over thirty Works used as Training Images.[2] Mx. McKernan was, and continues to be, injured during the Class Period as a result of Defendants' unlawful conduct alleged herein.

30.   Karla Ortiz is a resident of the State of California. Ms. Ortiz is a Puerto Rican, internationally recognized, award winning full-time artist and relies on the income therefrom. Ms. Ortiz is renowned for her exceptional design sense, realistic renders, and character-driven narratives, and has contributed to many big-budget projects in the film, television, and video-game industries. Ms. Ortiz is also a regular illustrator for major publishing and role playing game companies. Lastly, Ms. Ortiz is a recognized fine artist, and her deeply personal fine art has been

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[1] Examples of Ms. Andersen's Works included in the Training Data can be found here: https://haveibeentrained.com/?search_text=sarah%20andersen.

[2] Examples of Mx. McKernan's Works included in the Training Data can be found here: https://haveibeentrained.com/?search_text=kelly%20mckernan and https://laion-aesthetic.datasette.io/laion-aesthetic-6pls/images?_search=kelly+mckernan&_sort=rowid.

showcased in notable galleries such as Spoke Art and Hashimoto Contemporary in San Francisco; Nucleus Gallery, Thinkspace, and Maxwell Alexander Gallery in Los Angeles; and Galerie Arludik in Paris. Ms. Ortiz has created and owns a copyright interest in at least twelve Works that were used as Training Images.[3] Ms. Ortiz was, and continues to be, injured during the Class Period as a result of Defendants' unlawful conduct alleged herein.

B.   Defendants

31.   Defendant Stability AI Ltd. is a UK corporation with its principal place of business located at 88 Notting Hill Gate, London, England, W11 3HP. Stability AI Ltd. is a party to the unlawful conduct alleged herein.

32.   Defendant Stability AI, Inc. is a Delaware corporation with its principal place of business located at 88 Notting Hill Gate, London, England, W11 3HP. Stability AI, Inc. is a party to the unlawful conduct alleged herein. Stability AI, Inc. conducts business in this judicial district. On information and belief, Defendant Stability AI, Inc. is a wholly owned subsidiary of Defendant Stability AI Ltd.

33.   Stability AI Ltd. and Stability AI, Inc. jointly created, trained, and maintain Stable Diffusion, an AI Image Product. Stable Diffusion is used to derive the output images of Stability's DreamStudio product. DreamStudio is a web-based app that outputs images in response to text prompts. DreamStudio requires Stable Diffusion to function; the images are produced by Stable Diffusion. DreamStudio provides a user interface and access to a trained version of Stable Diffusion. As noted above, Defendant Stability AI, Inc. is referred collectively with Defendant Stability AI Ltd. as "Stability."

34.   Defendant Midjourney, Inc.[4] is a Delaware corporation with its principal place of business located at 333 Harrison Street, Apt. 605, San Francisco, California 94105. Midjourney created, sells, markets, and distributes the Midjourney Product, which is an AI Image Product.

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[3] Examples of Ms. Ortiz's Works included in the Training Data can be found here: https://laion-aesthetic.datasette.io/laion-aesthetic-6pls/images?_search=karla+ortiz.

[4] To avoid confusion between Midjourney's eponymous product and the entity itself, Midjourney, Inc. is referred to herein as "Midjourney," and the image-generating product the company offers is referred to as the "Midjourney Product."

Like Stable Diffusion, the Midjourney Product is a commercial product that produces images in response to text prompts. On information and belief, Stable Diffusion was used in iterations of the Midjourney Product. On information and belief, the version of the Midjourney Product currently available was trained on a subset of the images used to train Stable Diffusion. Midjourney is a party to the unlawful conduct alleged herein.

35.   Defendant DeviantArt, Inc. ("DeviantArt") is a Delaware corporation with its principal place of business located at 100 Gansevoort Street, New York, New York 10014. DeviantArt created, sells, markets, and distributes DreamUp, which is an AI Image Product. Like Stable Diffusion and the Midjourney Product, DreamUp is a commercial product that relies on Stable Diffusion to produce images. DreamUp is sold directly on the internet as well as other sales channels throughout the United States, including in this District. DeviantArt released DreamUp on November 9, 2022. DeviantArt is a party to the unlawful conduct alleged herein.

VI.   AGENTS AND CO-CONSPIRATORS

36.   The unlawful acts alleged against the Defendants in this class action complaint were authorized, ordered, or performed by the Defendants' respective officers, agents, employees, representatives, or shareholders while actively engaged in the management, direction, or control of the Defendants' businesses or affairs.

37.   The Defendants' agents operated under the explicit and apparent authority of their principals.

38.   Each Defendant, and its subsidiaries, affiliates and agents operated as a single unified entity.

39.   Various persons and/or firms not named as Defendants herein may have participated as co-conspirators in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

40.   Each acted as the principal, agent, or joint venture of, or for other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

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VII.   CLASS ALLEGATIONS

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A.   Class Definitions

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41.   Plaintiffs bring this action for damages and injunctive relief on behalf of

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themselves and all others similarly situated as a class action pursuant to Rules 23(a), 23(b)(2), and

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23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following Classes:

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"Injunctive Relief Class" under Rule 23(b)(2):

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All persons or entities nationalized and/or domiciled in the United States that own a copyright interest in any work that was used to train any version of an AI Image Product that was offered directly and/or incorporated into another product by one or more Defendants during the Class Period.

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10
"Damages Class" under Rule 23(b)(3):

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12
All persons or entities nationalized and/or domiciled in the United States that own a copyright interest in any work that was used to train any version of an AI Image Product that was offered directly and/or incorporated into another product by one or more Defendants during the Class Period.

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"DeviantArt Damages Subclass" under Rule 23(b)(3):

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All members of the Damages Class who (1) maintained an account on DeviantArt; (2) posted copyrighted work on DeviantArt; and (3) had that work used to train any version of an AI Image Product.

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These "Class Definitions" specifically exclude the following person or entities:

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a.   Any of the Defendants named herein;

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b.   Any of the Defendants' co-conspirators;

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c.   Any of Defendants' parent companies, subsidiaries, and affiliates;

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d.   Any of Defendants' officers, directors, management, employees,

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subsidiaries, affiliates, or agents;

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e.   All governmental entities; and

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f.   The judges and chambers staff in this case, as well as any members of their

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immediate families.

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B.   Numerosity

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42.   Plaintiffs do not know the exact number of Class members, because such

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information is in the exclusive control of Defendants. Plaintiffs are informed and believe that

1   there are at least thousands of Class members geographically dispersed throughout the United

2   States such that joinder of all Class members in the prosecution of this action is impracticable.

3   **C.   Typicality**

4   43.   Plaintiffs' claims are typical of the claims of their fellow Class members because

5   Plaintiffs' claims arise out of the same course of conduct from which their injuries result.

6   Plaintiffs and all Class own copyrights in the Works. Plaintiffs and the Class created or owned

7   Works that were published on the internet by themselves or others. The Works were used to train

8   various AI Image Products without permission. Plaintiffs and absent Class members were

9   damaged by this and other wrongful conduct of Defendants as alleged herein. Damages and the

10   other relief sought herein are common to all members of the Class.

11   **D.   Commonality & Predominance**

12   44.   Numerous questions of law or fact common to the entire Class arise from

13   Defendants' conduct—including, but not limited to those identified below:

14   **i.   Direct Copyright Infringement**

15   • Whether Defendants violated the copyrights of Plaintiffs and the Class

16   when they downloaded and stored copies of the Works.

17   • Whether Defendants violated the copyrights of Plaintiffs and the Class

18   when they used copies of the Works to train AI Image Products.

19   **ii.   Vicarious Copyright Infringement**

20   • Whether Defendants vicariously violated the copyrights of Plaintiffs and

21   the Class when third parties used Defendants' products to create Fakes, as

22   defined herein.

23   **iii. DMCA Violations**

24   • Whether Defendants violated the DMCA by removing copyright

25   management information ("CMI") from the Works and/or causing their

26   respective AI Image Products to omit CMI from their output images.

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      iv.   **Right of Publicity Violations**

- Whether Defendants violated Plaintiffs' and the Class's rights of publicity when they designed their AI Image Products to respond to prompts requesting output images "in the style" of specific individuals, namely Plaintiffs and the Class.

      v.   **Unlawful-Competition**

- Whether Defendants' AI Image Products are being used by Defendants to engage in Unfair Competition under the Lanham Act and/or California law.

      vi.   **Injunctive Relief**

- Whether this Court should enjoin Defendants from engaging in the unlawful conduct alleged herein. And what the scope of that injunction would be.

      vii.   **Anticipated Defenses**

- Whether any affirmative defense excuses Defendants' conduct, including but not limited to whether some or all of Defendants' conduct is allowed under the Fair Use Doctrine.

45. These and other questions of law and fact are common to the Class and predominate over any questions affecting the Class members individually.

E.   Adequacy

46. Plaintiffs will fairly and adequately represent the interests of the Class because they have experienced the same harms as the Class and have no conflicts with any other members of the Class. Furthermore, Plaintiffs have retained sophisticated and competent counsel ("Class Counsel") who are experienced in prosecuting federal and state class actions throughout the United States and other complex litigation and have extensive experience advising clients and litigating intellectual property, competition, contract, and privacy matters.

F.   Other Class Considerations

47.   Defendants have acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

48.   This class action is superior to alternatives, if any, for the fair and efficient adjudication of this controversy. Prosecuting the claims pleaded herein as a class action will eliminate the possibility of repetitive litigation. There will be no material difficulty in the management of this action as a class action.

49.   The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

VIII. FACTUAL ALLEGATIONS

50.   This class action against Defendants concerns a DeviantArt software product called DreamUp, a Midjourney software product, and a Stability software product called DreamStudio, all of which are AI-Image Products and, upon information and belief, built on a Stability Software Library called Stable Diffusion.

A. Stability AI

51.   Stability was founded in London, England in 2020 by Mohammad Emad Mostaque, a former hedge-fund manager. Mostaque is currently the Chief Executive Officer of Stability.

52.   Stability released Stable Diffusion in August 2022. Stable Diffusion is an AI Image Product that produces images in response to Text Prompts. Stable Diffusion is being updated rapidly, and has had several major releases: version 1.1, version 1.2, version 1.3, version 1.4, and the current version is 2.1. Stability is developing an updated version 3.0.

53.   Stable Diffusion is software released under a permissive open-source license.[5] Under this open-source license, programmers and users can download for free the software and

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[5] *See* https://github.com/Stability-AI/stablediffusion/blob/main/LICENSE.

its associated machine-learning models derived from the Training Images and then use the

software according to the terms of the open-source license.

54.   Stability's choice to release Stable Diffusion under an open-source license—rather

than under a traditional paid license—has led to rapid adoption of Stable Diffusion, with many

programmers devising and releasing their own software based on Stable Diffusion.

55.   In August 2022, the same month that Stable Diffusion was released, Stability

released DreamStudio (https://dreamstudio.ai). DreamStudio is a web-server-based AI Image

Product through which users can generate images with Text Prompts. DreamStudio relies on

Stable Diffusion as its underlying Software Library, meaning that DreamStudio relies on Stable

Diffusion to generate images from Text Prompts.

56.   DreamStudio is billed in packages of "credits," priced at $1 for 100 credits, with a

minimum purchase of 1000 credits for $10. New DreamStudio users receive a certain number of

credits for free, after which they must buy more. The credits generally represent computer-

processing resources on Stability's cloud-based servers. For each image generated with

DreamStudio, a certain number of credits are redeemed. DreamStudio represents that the

number of credits consumed per image depends on user-controlled settings related to the quality

and size of the requested image, and the computing resources used. With 1000 credits, Stability

estimates that a user can make "approximately 5000 images with default settings."

57.   Stability scraped, and thereby copied over five billion images from websites as the

Training Images used as training data for Stable Diffusion. Stability did not seek consent from

either the creators of the Training Images or the websites that hosted them from which they were

scraped.

58.   Stability did not attempt to negotiate licenses for any of the Training Images.

Stability simply took them. Stability has embedded and stored compressed copies of the Training

Images within Stable Diffusion.

59.   Stable Diffusion uses the compressed copies in generating its output in response to

Text Prompts. Since launching its DreamStudio app or Stable Diffusion, Stability has not

1 attempted to negotiate any licenses for any of the Training Images and is not sharing any of the

2 revenue with the artists who created the Training Images nor any other owners of the Works.

3   60.   DreamStudio has been lucrative for Stability. In October 2022, Stability

4 announced it had raised $100 million, led by Coatue and Lightspeed Venture Partners. At the

5 time, Stability was valued at approximately $1 billion.

6 **B. Midjourney**

7   61.   Midjourney was incorporated on September 16, 2020 by David Holz. Midjourney

8 launched an open beta of the first public version of its Midjourney Product on July 12, 2022.

9 Since then, it has released Versions 2 and 3, and, most recently, an alpha iteration of Version 4.

10 **C. DeviantArt**

11   62.   DeviantArt was founded in 2000, DeviantArt has been primarily known as an

12 online community (https://deviantart.com) where digital artists post and share their work,

13 primarily in the form of digital images. Today DeviantArt bills itself as "the world's largest art

14 community." DeviantArt hosts millions of such images.

15   63.   Thousands—and possibly millions—of the Training Images for Stability's Stable

16 Diffusion product were scraped and copied from DeviantArt.

17   64.   In November 2022, DeviantArt released DreamUp

18 (https://deviantart.com/dreamup). Like Stability's DreamStudio, DreamUp is a web-based app

19 that generates images in response to Text Prompts. Like DreamStudio, DreamUp relies on

20 Stability's Stable Diffusion software as its underlying software engine.

21 **D. How Stable Diffusion Works: A 21st-Century Collage Tool**

22   65.   As mentioned above, Stable Diffusion is an AI Image Product released by Stability.

23 It has been incorporated as an image-generating engine into many other software programs,

24 including DreamStudio (by Stability), the Midjourney Product, and DreamUp (released by

25 DeviantArt). Thus, the description that follows of how Stable Diffusion works also describes the

26 operation of DreamStudio, the Midjourney Product, and DreamUp, because they rely on Stable

27 Diffusion as an embedded image-generating engine.

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66.   The word "diffusion" in its name refers to the technique the software uses to generate output images that are similar to those found in its training data.

67.   The diffusion technique was invented in 2015 by a team of researchers led by Jascha Sohl-Dickstein at Stanford University and introduced in their paper "Deep Unsupervised Learning Using Nonequilibrium Thermodynamics" (2015).[6] The technique can be applied to any kind of data, but the paper focuses on its application to digital images.

68.   Diffusion operates in two phases. The first phase of diffusion is to take an image and progressively add more noise to it in a series of steps. In this case, "noise" refers to something seen rather than heard, but the connotation is the same: random fluctuations that we perceive as chaotic and unstructured. At each step, the program records how the addition of noise changes the image. By the last step, the image has been "diffused" into essentially random noise.

69.   The second phase is like the first but reversed. Having recorded the process of turning a certain image into noise over many steps, the program can then run the sequence backwards. Starting with some random noise, the program applies the steps in reverse order. As it progressively removes noise (or "denoises") the data, the program is eventually able to reconstruct the original image.

70.   The program relies on complicated mathematics, linear algebra, and a series of algorithms and requires powerful computers and computer processing to recognize underlying relationships in the data.

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[6] *Available at* https://arxiv.org/abs/1503.03585

71.   The diagram below, taken from the Sohl-Dickstein paper, illustrates the two phases of the diffusion process using a spiral image as the example training data.

72.
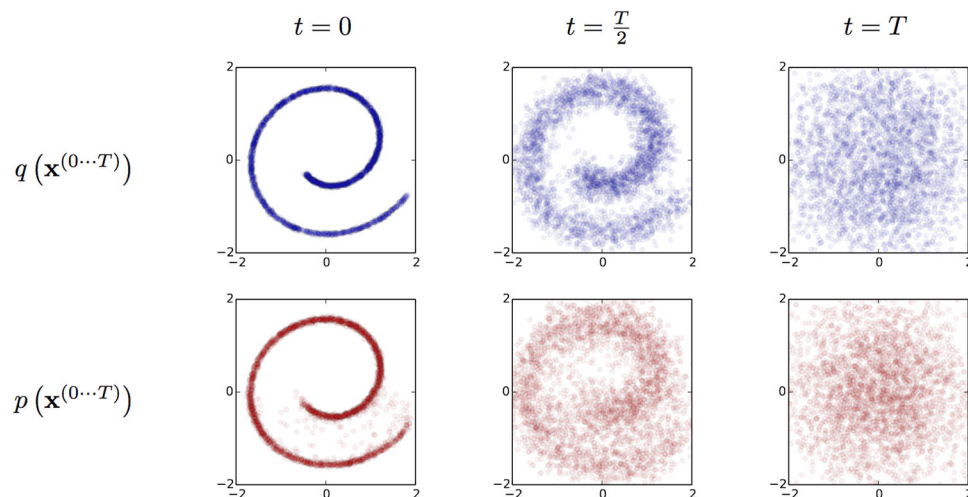
73.   The first row of the diagram (with the blue spiral) reads left to right. It depicts the first phase of diffusion, with noise being progressively added to the spiral image (not every step is shown). The middle image shows the spiral halfway through the diffusion process. The rightmost image shows the end of the diffusion process—the spiral has become a field of random noise.

74.   The second row of the diagram (with the red spiral) **reads right to left**. It shows the reverse process: a patch of random noise (second row, rightmost image) is progressively un-diffused, or "denoised" by reversing the sequence of steps learned in the first phase. The middle image in the second row shows the denoising process at the halfway point. The leftmost image in the second row shows the end result of the denoising process: the spiral has reappeared.

75.   Three facts about the diffusion technique are apparent from this diagram.

a. Diffusion is a way for a machine-learning model to calculate how to reconstruct a copy of its Training Images. For each Training Image, a diffusion model finds the sequence of denoising steps to reconstruct that specific image. Then it stores this sequence of steps. The diagram above shows a spiral as an example. In practice, this training would be repeated for many images—likely millions or billions. A diffusion model is then able to reconstruct copies of each Training Image. Furthermore, being able to reconstruct copies of the Training Images is not an

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incidental side effect. The **primary goal** of a diffusion model is to reconstruct copies of the training data with maximum accuracy and fidelity to the Training Image. It is meant to be a duplicate.

b. These reconstructed copies do not perfectly match the originals. For instance, in the diagram, the reconstructed spiral (in red) has some fuzzy parts in the lower half that the original spiral (in blue) does not. Though the red spiral is plainly a copy of the blue spiral, in computer terms it is known as a *lossy* copy, meaning small, unimportant, or insignificant details are lost as the data is compressed into a smaller size. This is true of many digital data formats, including MP3, AAC, and JPEG, that also make highly compressed copies of digital data by omitting small, unimportant, or insignificant details. This technique is called *lossy compression.* A diffusion model is a form of lossy compression applied to the Training Images.

c. Because a trained diffusion model can produce a copy of any of its Training Images—which could number in the billions—the diffusion model can be considered an alternative way of storing a copy of those images. In essence, it's similar to having a directory on your computer of billions of JPEG image files. But the diffusion model uses statistical and mathematical methods to store these images in an even more efficient and compressed manner.

76.   In December 2020, the diffusion technique was improved by a team of researchers at UC Berkeley led by Jonathan Ho. These ideas were introduced in their paper "Denoising Diffusion Probabilistic Models".[7]

77.   Ho's paper described two improvements to the diffusion technique.

78.   First, Ho introduced what he called "progressive lossy compression", a way for a diffusion model to store its training data more efficiently without impacting its ability to reconstruct high-quality copies of the training data. These compressed versions of Training

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[7] Available from https://arxiv.org/abs/2006.11239

Images have come to be known as *latent image representations* (or just *latent images*). Ultimately, a latent image is just another copy of an image from the training dataset.

79.   Second, Ho showed how a latent image could be interpolated—meaning, blended mathematically—to produce new derivative images. Rather than combine two images pixel by pixel—which gives unappealing results—Ho showed how Training Images can be stored in the diffusion model as latent images and then interpolated as a new latent image. This interpolated latent image can then be converted back into a standard pixel-based image.

80.   The diagram below, taken from Ho's paper, shows how this process works, and demonstrates the difference in results between interpolating pixels and interpolating latent images.

81.
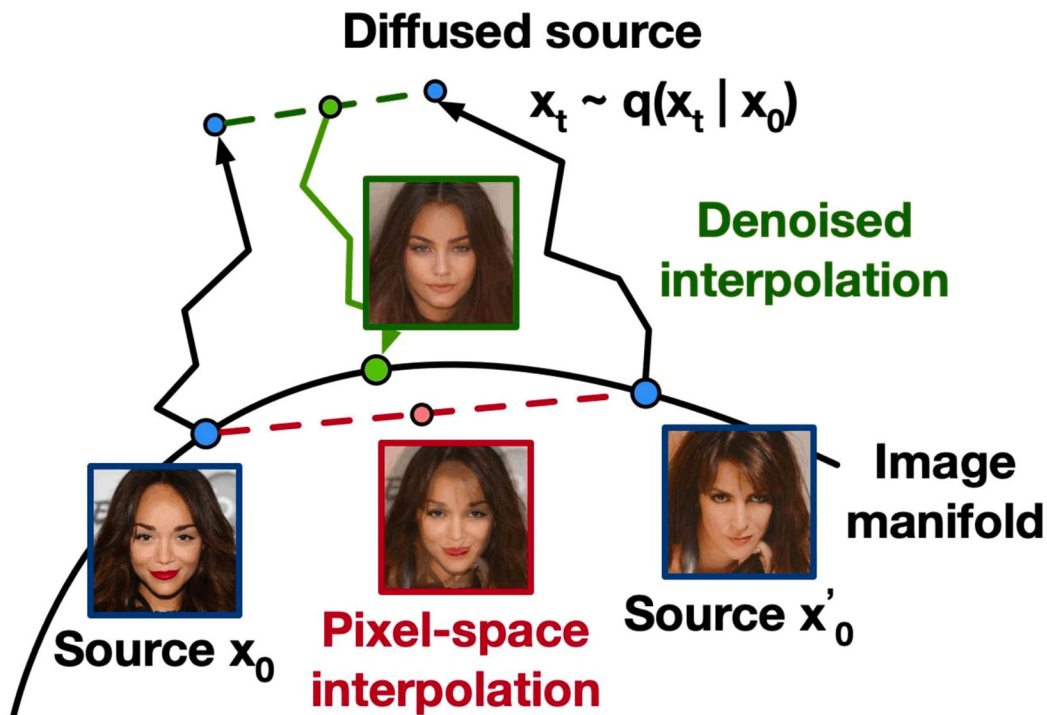
82.   In the diagram, two photos are being blended: the photo on the left labeled "Source x_0," and the photo on the right labeled "Source x'_0."

83.   The image in the red frame has been interpolated pixel by pixel, and is thus labeled "pixel-space interpolation." This pixel-space interpolation simply looks like two translucent face images stacked on top of each other, not a single convincing face.

84.   The image in the green frame, labeled "denoised interpolation", has been generated differently. In that case, the two source images have been converted into latent images (illustrated by the crooked black arrows pointing upward toward the label "Diffused source"). Once these latent images have been interpolated (represented by the green dotted line), the newly interpolated latent image (represented by the smaller green dot) has been reconstructed into pixels (a process represented by the crooked green arrow pointing downward to a larger green dot). This process yields the image in the green frame. Compared to the pixel-space interpolation, the difference is apparent: the denoised blended interpolation looks like a single convincing human face, not an overlay or combination of images of two faces.

85.   A enlarged detail of the two interpolated images is shown below.

86.   Despite the difference in results, these two modes of interpolation are equivalent: they both generate derivative works from the source images. In the pixel-space interpolation (the red-framed image), the source images themselves are being directly interpolated to make a derivative image. In the denoised interpolation (the green-framed image), (1) the source images are being converted to latent images, which are lossy-compressed copies; (2) those latent images are being interpolated to make a derivative latent image; and then (3) this derivative latent image is decompressed back into a pixel-based image.

87.   In April 2022, the diffusion technique was further improved by a team of researchers led by Robin Rombach at Ludwig Maximilian University of Munich. These ideas were introduced in his paper "High-Resolution Image Synthesis with Latent Diffusion Models."

88.   Rombach is also employed by Stability as one of the primary developers of Stable Diffusion, which is a software implementation of the ideas in his paper.

89.   Rombach's diffusion technique offered one key improvement over previous efforts. Rombach devised a way to supplement the denoising process by using extra information, so that latent images could be interpolated in more complex ways. This process is called *conditioning*. The most common tool for conditioning is short text descriptions, previously introduced as *Text Prompts*, that might describe elements of the image, e.g.—"a dog wearing a baseball cap while eating ice cream". This metric uses Text Prompts as conditioning data to select latent images that are already associated with text captions indicating they contain "dog," "baseball cap," and "ice cream." The text captions are part of the Training Images, and were scraped from the websites where the images themselves were found.

90.   The resulting image is necessarily a derivative work, because it is generated exclusively from a combination of the conditioning data and the latent images, all of which are copies of copyrighted images. It is, in short, a 21st-century collage tool.

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91.   The result of this conditioning process may or may not be a satisfying or accurate depiction of the Text Prompt. Below is an example of output images from Stable Diffusion (via the DreamStudio app) using this Text Prompt—"a dog wearing a baseball cap while eating ice cream". All these dogs in the resulting images seem to be wearing baseball hats. Only the one in the lower left seems to be eating ice cream. The two on the right seem to be eating meat, not ice cream.

92.
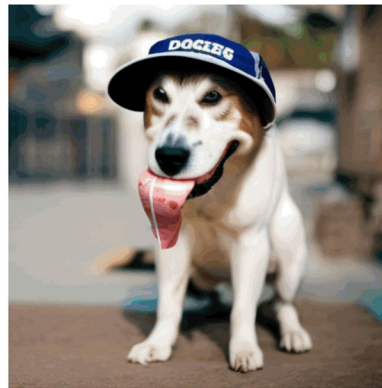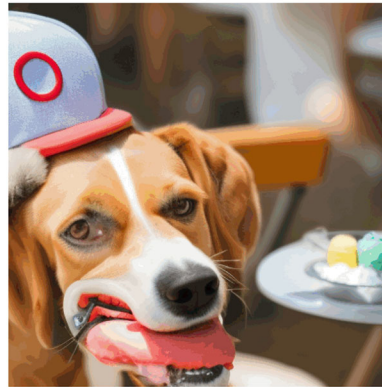
93.   In general, none of the Stable Diffusion output images provided in response to a particular Text Prompt is likely to be a close match for any specific image in the training data. This stands to reason: the use of conditioning data to interpolate multiple latent images means that the resulting hybrid image will not look exactly like any of the Training Images that have been copied into those latent images.

94.   But it is also true that the only thing a latent-diffusion system can do is interpolate latent images into hybrid images. There is no other source of visual information entering the system.

95. Every output image from the system is derived exclusively from the latent images, which are copies of copyrighted images. For these reasons, every hybrid image is necessarily a derivative work.

96. A latent-diffusion system can never achieve a broader human-like understanding of terms like "dog," "baseball hat," or "ice cream." Hence, the use of the term "artificial intelligence" in this context is inaccurate.

97. A latent-diffusion system can only copy from latent images that are tagged with those terms. The system struggles with a Text Prompt like "a dog wearing a baseball cap while eating ice cream" because, though there are many photos of dogs, baseball caps, and ice cream among the Training Images (and the latent images derived from them) there are unlikely to be any Training Images that combine all three.

98. A human artist could illustrate this combination of items with ease. But a latent-diffusion system cannot because it can never exceed the limitations of its Training Images.

99. In practice, the quality of the latent-diffusion images depends entirely on the breadth and quality of the Training Images used to generate the latent images. If that weren't true, then it wouldn't matter where Stable Diffusion (or any other AI-Image Product) got its Training Images.

100. In actuality, the provenance of an AI-Image-Product's Training Images matters very much. According to Emad Mostaque, CEO of Stability, Stable Diffusion has "compress[ed] the knowledge of over 100 terabytes of images."[8] Though the rapid success of Stable Diffusion has been partly reliant on a great leap forward in computer science, it has been even more reliant on a great leap forward in appropriating copyrighted images.

E. The source of the Stable Diffusion training data: LAION

101. LAION (acronym for "Large-Scale Artificial Intelligence Open Network") is a nonprofit organization based in Hamburg, Germany. LAION is led by Christoph Schuhmann.

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[8] *See* Kyle Wiggers, *This Startup is Setting a DALL-E 2-Like AI Free, Consequences Be Damned*, TechCrunch (Aug. 12, 2022, 3:55 PM), https://techcrunch.com/2022/08/12/a-startup-wants-to-democratize-the-tech-behind-dall-e-2-consequences-be-damned/

1 LAION's stated goal is "to make large-scale machine learning models, datasets and related code

2 available to the general public." All of LAION's projects are made available for free.

3   102.   One of LAION's most well-known projects is the image datasets it used train AI

4 systems.

5   103.   In August 2021, LAION released LAION-400M, a dataset of 400 million Training

6 Images that included text captions. The Training Images in LAION-400M and their text captions

7 were copied or scraped from web pages or other sources without the consent of the image owners

8 or website operators. At the time, LAION-400M was the largest freely available dataset of its

9 kind.

10   104.   Stability paid LAION to create LAION-5B, a new dataset of 5.85 billion Training

11 Images—more than 14 times bigger than LAION-400M. The only reason LAION-5B exists is

12 because Stability paid for it, so that Stability could have sufficient Training Images for Stable

13 Diffusion.

14   105.   At the time, Stability was in the process of developing Stable Diffusion. As

15 admitted by Mostaque, Stability needed a bigger set of training images for training Stable

16 Diffusion.

17   106.   Mostaque has publicly acknowledged the importance of using licensed training

18 images, saying that future versions of Stable Diffusion would be based on "fully licensed" training

19 images.[9] But for the current version, he took no steps to obtain or negotiate suitable licenses.

20   107.   Stability also paid LAION to create LAION-Aesthetics, a subset of LAION-5B

21 containing the images rated most highly for beauty and visual appeal by testers of Stable

22 Diffusion. To improve the quality of the output images, Stable Diffusion received more

23 concentrated training on version 2.5 of the LAION-Aesthetics dataset,[10] which contains 600

24 million Training Images.

25

[9] *See* @EMostaque, Twitter (Dec. 15, 2022, 8:03 AM),
26 https://twitter.com/EMostaque/status/1603390169192833027.

[10] *See* Stable Diffusion v1 Model Card, GitHub, https://github.com/CompVis/stable-
27 diffusion/blob/main/Stable_Diffusion_v1_Model_Card.md#training (last visited Dec. 21,
28 2022).

108.   Because LAION releases its datasets to the public, it is possible to study the sources of the data, including the websites that the Training Images were scraped or copied from.

109.   The LAION-Aesthetics dataset is heavily reliant on scraping and copying images from commercial image-hosting services: according to one study, 47% of the images in the dataset were scraped from only 100 web domains.[11] The sources of some of the copies and scrapes are stock-image sites, including Getty Images, Shutterstock, and Adobe Stock, as well as shopping sites (like Shopify, Pinterest, Wix, and Squarespace). Significantly, websites featuring user-generated content were a huge source of images, including sites like Smugmug, Flickr, Wikimedia, Tumblr, and DeviantArt.

110.   DeviantArt is the source of a significant portion of the LAION-Aesthetic dataset amounting to an estimate of one out of every fifty images. Reasonable estimates show that there are likely 3.3 million images from DeviantArt in the LAION-Aesthetics dataset.

F. DeviantArt's betrayal of its artist community by embracing generative AI images

111.   In 2000, Angelo Sotira, Scott Jarkoff, and Matthew Stephens founded DeviantArt.

112.   In 2017, Wix acquired DeviantArt. Wix acquired all of DeviantArt's corporate stock for $36 million.

113.   Shortly afterward, in March 2017, Moti Levy became Chief Operating Officer (COO) of DeviantArt. In April 2022, Levy was promoted to Chief Executive Officer (CEO) of DeviantArt.

114.   Since its founding in 2000, DeviantArt has held itself out as an online community friendly to artists, colloquially known on the site as "deviants." A primary activity of artists on DeviantArt is sharing digital images of their artwork, colloquially called "deviations." Today, DeviantArt bills itself as "the world's largest art community," hosting millions of such images.

115.   DreamUp is a commercial product for DeviantArt and available only to customers who pay DeviantArt. DeviantArt offers paid subscriptions to its artist members called "Core

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[11] Andy Baio, *Exploring 12 Million of the 2.3 Billion Images Used to Train Stable Diffusion's Image Generator*, Waxy (Aug. 30, 2022), https://waxy.org/2022/08/exploring-12-million-of-the-images-used-to-train-stable-diffusions-image-generator/.

1   Plans." Custom Core Plans typically range in price from $3.95 to $14.95 per month. To use

2   DreamUp, a member must first subscribe to a Core Plan. A Core Plan subscriber is allowed to use

3   DreamUp for a certain number of Text Prompts per month. For instance, the $9.95 "Pro" level

4   permits 200 DreamUp Text Prompts per month. Core Plan members can purchase additional

5   Text Prompts by purchasing packages of "points." DeviantArt charges $1 for 80 points, with a

6   minimum purchase of 400 points for $5.

7   116.   Stability copied thousands—and possibly millions—of the Training Images from

8   DeviantArt created by artists and other DeviantArt subscribers.

9   117.   DeviantArt claims that DreamUp "lets you create AI art knowing that creators

10 and their work are treated fairly."

11   118.   This statement is false and misleading.

12   119.   Like Stability, DeviantArt has not attempted to negotiate licenses for any of the

13 Training Images. Like Stability, DeviantArt is not sharing any of the revenue from the DreamUp

14 app with the artists or other owners of the Training Images.

15   120.   DeviantArt has betrayed its artist community. Rather than standing up for the

16 rights of its members by rejecting Stable Diffusion and other sources of AI-generated art,

17 DeviantArt has gone the opposite direction: it has built an app called DreamUp that is based on

18 Stable Diffusion.

19   121.   By releasing DreamUp as a paid product, DeviantArt is a co-conspirator in the

20 illegal use of copyrighted works.

21   122.   In addition, by offering for sale AI-generated work based on Stable Diffusion,

22 DeviantArt is in fact competing with and displacing the work of the artists and other subscribers

23 to DeviantArt.

24   123.   DeviantArt's choice to embrace Stable Diffusion by incorporating it into their

25 website via the DreamUp app violates their own terms of service and privacy policy and

26 represents unfair competition against their artist customers.

27   124.   DeviantArt's terms of service have long contained a strict prohibition against

28 using content on the site "for any commercial purpose," and also says no "commercial activities

1   are permitted on or through the Service without DeviantArt's written approval." The terms of

2   service elsewhere state that "You may not reproduce, distribute, publicly display or perform, or

3   prepare derivative works based on any of the [DeviantArt-hosted artworks] without the express,

4   written consent of DeviantArt or the appropriate owner of copyright in such works."

5   125.   DeviantArt was aware or reasonably should have been aware that Stability was

6   acting in violation of those terms. Thus, having been put on notice that DeviantArt images had

7   been used for a commercial purpose—namely, training Stable Diffusion—DeviantArt could have

8   taken legal action against Stable Diffusion for violating those terms.

9   126.   DeviantArt did not do so.

10   127.   There is no evidence that DeviantArt, despite its professed dedication to its terms

11   of service, has ever challenged Stability's violation of the terms of service by training Stable

12   Diffusion on the work of DeviantArt members.

13   128.   The scope of DeviantArt's betrayal of its artist community by embracing Stable

14   Diffusion was evident in a group audio session held by DeviantArt management on November 11,

15   2022, from approximately 1:00–2:30 pm Pacific Time. DeviantArt scheduled the discussion

16   specifically to allay the well-founded concerns of DeviantArt members that DeviantArt's embrace

17   of AI art was a complete repudiation of its longstanding community principles, as well as

18   economically and legally unfair.

19   129.   At one point in the audio session, CEO Moti Levy explicitly took ownership of the

20   decision to bring Stable Diffusion onto DeviantArt via the DreamUp app: "The reason why we're

21   using Stable Diffusion because it's the only option for us to take an open source [software engine]

22   and modify it . . . . The other platforms or the other companies do not allow it. . . . [A]nd by the

23   way, that was my decision. **That's our decision by me as the CEO. That's my decision to take**

24   **Stable Diffusion**." (Emphasis added.)

25   130.   Shortly after the end of this audio session, DeviantArt updated its terms of

26   service. DeviantArt added a new paragraph about "Data Scraping & Machine Learning

27   Activities" that explicitly *permits* this kind of usage under certain circumstances, so that Stable

28   Diffusion and future generative AI services can continue to scrape DeviantArt for images. In so

1   doing, DeviantArt has reneged on its promises. It plainly switched its loyalties from its artist

2   members to the AI companies, like Stability, infringing Plaintiffs' and the Class's intellectual

3   property rights in the work of those members. According to the Internet Archive, this new data-

4   scraping provision was added to the DeviantArt terms of service on November 11, 2022,

5   sometime between 1:41pm and 4:22pm Pacific Time.

6   131.   Furthermore, although the new "Data Scraping" provision acknowledges that

7   certain kinds of data scraping will continue to be an "unauthorized use" of the DeviantArt

8   website, that "owners of the works are responsible for policing their own works". In other words,

9   despite its professed interest in using its terms of service to protect artists, DeviantArt is washing

10   its hands of the matter. Instead of standing up for artists and using its resources to combat illegal

11   AI data scraping, it is forcing artists to take matters into their own hands.

G. Midjourney: the 21st-century collage tool (in)famous for its artistic style

12   132.   Midjourney is a generative AI company based in San Francisco, California.

13   133.   Midjourney was founded in August 2021 by David Holz, who also serves as CEO.

14   According to its website, Midjourney is "self-funded" and employs "11 full-time staff".

15   134.   Midjourney's main product is an online AI-based image generator offered under

16   the name "Midjourney." Like DreamUp and DreamStudio, the Midjourney image generator uses

17   Text Prompts as input and produces digital images as output. Just like DreamUp and

18   DreamStudio, Midjourney relies on Stable Diffusion as its underlying software engine for

19   generating images.

20   135.   Midjourney released the first version of its service in March 2022, and has

21   continued to update the product continually since. Version 2 was launched in April 2022. Version

22   3 was launched in July 2022. On November 10, 2022, the alpha iteration of Version 4 was

23   launched.

24   136.   Midjourney has deployed its service through an internet-chat system called

25   Discord. Users can visit certain Discord servers where Midjourney is enabled and use the

26   command "\imagine . . ." in a group chat room to introduce a Text Prompt. Midjourney will take

this Text Prompt and return an image within the chat-room window. These chat rooms are shared by other users, so everyone can see each others' Text Prompts, and the images that result.

137.   Midjourney allows anyone to sample its service for free by providing a small number of image outputs in response to Text Prompts. Midjourney offers a number of paid subscription plans. For instance, its "Standard" plan costs $30 per month and allows unlimited Text Prompts and digital image outputs. For an additional $20 per month, a customer can get "Private Visibility", allowing users to keep private Text Prompts, images, and digital output. Midjourney also has a "Corporate" plan for $600 per year per person that is "required for employees" of companies with "over $1Million/year [sic] in gross revenue."

138.   Though Holz has described Midjourney as a "diverse research lab" that is "not really financially motivated," Holz intends for Midjourney to make money by enrolling corporate and other professional customers to generate images. Holz has said that "Millions are using [Midjourney] … maybe 30%-50% of our users right now are professionals."

139.   Midjourney subscribers also receive access to the Midjourney web app, similar to DreamStudio or DreamUp, which lets users access the Midjourney service through a web interface.

140.   In its terms of service, Midjourney calls the images generated by its service "Assets." The terms of service require that users grant Midjourney an "irrevocable copyright license . . . [in the] Assets produced by the service at your direction." Midjourney is therefore necessarily asserting that the images generated by its system are copyrightable, and that the copyright inheres in the subscriber who makes the image.

141.   According to Holz, Midjourney distinguishes itself from competitors like DreamUp and DreamStudio by being "focused toward making everything beautiful and artistic looking."

142.   In September 2022, New York resident Kris Kashtanova sought and received U.S. copyright registration for a comic book titled *Zarya of the Dawn*, featuring images generated by Midjourney. In December 2022, the U.S. Copyright Office revoked this registration, deeming the work ineligible for registration because it was generated by AI.

143. Also in September 2022, Colorado resident Jason Allen used Midjourney to generate an image that he submitted to an art competition at the Colorado State Fair, which later won. In response to artists who felt he had cheated, Allen later told the *New York Times*, "Art is dead, dude. It's over. A.I. won. Humans lost." He also said that while using Midjourney, "I felt like … some otherworldly force was involved."

144. But the secret to Midjourney isn't some "otherworldly force". Just like DreamUp and DreamStudio, Midjourney relies on appropriating millions of copyrighted images created by artists and using these images as Training Images.

145. Thus, just like DreamUp and DreamStudio, Midjourney is a collage tool, only capable of producing images that are remixed and reassembled from the copyrighted work of others.

146. Holz has been sanguine about the copyright-infringement aspect of Midjourney, saying that "To my knowledge, every single large AI model is basically trained on stuff that's on the internet. And that's okay, right now. **There are no laws specifically about that**." (Emphasis added.)

147. That statement is false. There are a number of laws that protect and preserve the rights and interests with respect to their art.

148. Holz has been cagey when asked direct questions about the source of Midjourney's Training Images. When asked how the dataset of Training Images was built, he said "It's just a big scrape of the internet. We use the open data sets that are published and train across those. And I'd say that's something that 100% of people do. We weren't picky."

149. On information and belief, because the LAION image datasets are the only large "open data sets that are published," Holz's comment implies that Midjourney has used the LAION image datasets for training. In August 2022, Midjourney released a beta version that used SD.

150. When asked whether he sought consent from the creators of the Training Images, Holz said "No. **There isn't really a way to get a hundred million images and know where they're coming from**. . . . There's no way to find a picture on the internet, and then

automatically trace it to an owner and then have any way of doing anything to authenticate it."
(Emphasis added.)

151.   Holz's statement is false. LAION and other open datasets are simply lists of URLs on the public web. Many of those URLs are derived from a small handful of websites that maintain records of image ownership. Thus, many images could be traced to their owner. Holz and LAION possess information sufficient to perform such tracing.

152.   But Holz is correct that the project of licensing artworks ethically and complying with copyright is not automatic—on the contrary, it is difficult and expensive. This is why Holz was able to say in August 2022, one year after Midjourney's founding: "To be honest, we're already profitable, and we're fine." This stands to reason: Midjourney skipped the expensive part of complying with copyright and compensating artists, instead helping themselves to millions of copyrighted works for free.

IX.   CLAIMS FOR RELIEF

COUNT I
DIRECT COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 106, *et seq.*
(All Defendants)

153.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

154.   As the owners of the copyright rights associated with the Works and/or Training Images, Plaintiffs and the Class hold the exclusive rights under 17 U.S.C. § 106.

155.   Defendants had access to but were not licensed by Plaintiffs or the Class to train any machine learning, AI, or other computer program, algorithm, or other functional prediction engine using the Works.

156.   Defendants had access to but were not licensed by Plaintiffs nor the Class to incorporate the Works into the products offered by Stability, DeviantArt, Midjourney, or related software applications.

1   157.   Defendants had access to but were not licensed by Plaintiffs or the Class to

2 download, store, or distribute copies of the Works for use in training or otherwise creating AI

3 Image Products.

4   158.   Defendants had access to but were not licensed by Plaintiffs nor the Class to create

5 Derivative Works based upon the Works.

6   159.   Defendants had access to but were not licensed by Plaintiffs nor the Class to

7 distribute the Works.

8   160.   Defendants directly infringed Plaintiffs' and the Class's rights because they have:

9   a.   reproduced one or more of the Works in violation of 17 U.S.C. § 106(1);

10   b.   prepared Derivative Works based upon one or more of the Works in violation of 17

11   U.S.C. § 106(2);

12   c.   distributed copies of one or more of the Works to the public in violation of 17

13   U.S.C. § 106(3);

14   d.   performed one or more of the Works publicly in violation of 17 U.S.C. § 106(4);

15   and/or

16   e.   displayed one or more of the Works publicly in violation of 17 U.S.C. § 106(5).

17   161.   Plaintiffs and the Class have been damaged by Defendants' actions.

18   162.   Defendants have directly and indirectly profited from their acts of infringement.

19   163.   Defendants have infringed the Training Images for commercial purposes.

20   164.   Defendants are using copies of the Training Images interconnected with their AI

21 Image Products to generate digital images and other output that are derived exclusively from the

22 Training Images, and that add nothing new.

23   165.   Defendants' AI Image Products produce digital images and other output that act

24 as market substitutes for the underlying Training Images, thereby competing with Plaintiffs and

25 members of the Class.

26   166.   Defendants' AI Image Products contain copies of every image in the set of

27 Training Images and are capable at any time of producing as output a copy of any of the Training

28 Images.

167.   Defendants' AI Image Products, because they generate images derived from the Training Images, will substantially negatively impact the market for the work of Plaintiffs and the Class.

168.   The conduct of Defendants is causing and, unless enjoined and restrained Court, will continue to cause Plaintiffs and the Class great and irreparable injury that cannot fully be compensated or measured in money and have no adequate remedy at law.

COUNT II
VICARIOUS COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 106, *et seq.*
(All Defendants)

169.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

170.   As the owners of the copyright rights, Plaintiffs and the Class hold the exclusive rights under 17 U.S.C. § 106.

171.   Individuals have used AI Image Products to create works using the names of Plaintiffs and the Class in prompts and passed those works off as original works by the artist whose name was used in the prompt. Such individuals are referred to herein as "Imposters" By using a particular artist's name, Imposters can cause the AI Image Product to rely more heavily on that artist's prior works to create images that can pass as original works by that artist. These output images are referred to herein as "Fakes."

172.   The ability of AI Image Products to respond to prompts containing specific artists' names was designed by Defendants with either the knowledge of or reckless disregard for the fact that this functionality could easily be used to create Fakes.

173.   Imposters have sold Fakes on ArtStation, Kickstarter, the Unreal Engine Marketplace, and elsewhere.

174.   Plaintiffs and the Class have been damaged by Imposters' actions.

175.   The Defendant-owner of the AI Image Product used to create each Fake is vicariously liable for any infringements committed by Imposters.

1   176.   Defendants have directly and indirectly profited from acts of infringement by

2   Imposters.

3   177.   The conduct of Defendants and Imposters is causing and, unless and until

4   enjoined and restrained by this Court, will continue to cause Plaintiffs and the Class great and

5   irreparable injury that cannot fully be compensated or measured in money and have no adequate

6   remedy at law.

COUNT III
VIOLATION of the DIGITAL MILLENNIUM COPYRIGHT ACT
17 U.S.C. §§ 1201–1205
(All Defendants)

10   178.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding

11   and succeeding paragraph as though fully set forth herein.

12   179.   Plaintiffs and members of the Class own the copyrights to Works used to train AI

13   Image Products. The AI Image Products were trained on billions of images found on the internet.

14   180.   Plaintiffs and members of the Class included the following Copyright

15   Management Information (as defined in Section 1202(c) of the DMCA) ("CMI") in the Works:

16   a.   copyright notices;

17   b.   the title and other information identifying the Works;

18   c.   the name of, and other identifying information about, the creators of the Works;

19   and

20   d.   the name of, and other identifying information about, the copyright owners of the

21   Works.

22   181.   Defendants did not contact Plaintiffs nor the Class to obtain authority to remove

23   or alter CMI from the Works within the meaning of the DMCA.

24   182.   Defendants knew that they did not contact Plaintiffs nor the Class to obtain

25   authority to remove or alter CMI from the Works within the meaning of the DMCA.

26   183.   As part of the scheme, Defendants did not attempt to contact Plaintiffs to obtain

27   authority to remove or alter CMI from the Works within the meaning of the DMCA. In fact,

28   Defendants' removal of CMI made it difficult or impossible to contact Plaintiffs and the Class to

1 obtain authority to remove or alter CMI from the Works within the meaning of the DMCA.

2 Rather, Defendants removed or altered CMI from images that are owned by Plaintiffs and the

3 Class by training Stable Diffusion on those images and designing it to omit any CMI as part of the

4 output.

5   184.   Without the authority of Plaintiffs and the Class, Defendants intentionally

6 removed or altered CMI from the Works after they were posted on DeviantArt or other websites.

7   185.   Defendants had access to but were not licensed by Plaintiffs nor the Class to train

8 any machine learning, AI, or other pseudo-intelligent computer program, algorithm, or other

9 functional prediction engine using the Works.

10   186.   Defendants had access to but were not licensed by Plaintiffs nor the Class to

11 incorporate the Works into their AI Image Products.

12   187.   Defendants had access to but were not licensed by Plaintiffs nor the Class to create

13 Derivative Works based upon the Works.

14   188.   Defendants had access to but were not licensed by Plaintiffs nor the Class to

15 distribute the Works as they do through Defendants' AI Image Products.

16   189.   Without the authority of Plaintiffs and the Class, Defendants distributed CMI

17 knowing that the CMI had been removed or altered without authority of the copyright owner or

18 the law with respect to the Works.

19   190.   Defendants distributed copies of the Works knowing and intending that CMI had

20 been removed or altered without authority of the copyright owner or the law, with respect to the

21 Works.

22   191.   Defendants removed or altered CMI from the Works knowing and intending that it

23 would induce, enable, facilitate, or conceal infringement of copyright. Both in the dataset used to

24 source the Training Images as well as the places on the Internet where the Training Images were

25 found set forth CMI, such as the creator's name. CMI is also incorporated into the Works in the

26 form of artist's signatures. When any of Defendants' AI Image Products output an image, the

27 CMI that was previously included with the Works the image is based upon is removed.

28

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34   CLASS ACTION COMPLAINT

192.   Without the CMI associated with the Works, users of AI Image Products are induced or enabled to copy the Works and/or make Derivative Works based on them. Without the CMI, copyright infringement is facilitated or concealed, because Plaintiffs and the Class are prevented from knowing or learning that the Output is based upon one or more of the Works.

193.   Defendants removed or altered CMI from Works owned by Plaintiffs and the Class while possessing reasonable grounds to know that it would induce, enable, facilitate, and/or conceal infringement of copyright in violation of the DMCA. By omitting and concealing CMI from Output, Defendants have reasonable grounds to know that innocent infringers are induced or enabled to copy the Works, because CMI has been removed. Without the CMI, Defendants have reasonable grounds to know copyright infringement is facilitated or concealed, because Plaintiffs and the Class have the difficult or impossible task of proving the Works belong to them.

194.   The profits attributable to Defendants' violation of the DMCA include the revenue from: any AI Image Products they offer that incorporate Stable Diffusion and other AI Image Products trained on copyrighted images owned by Plaintiffs and/or the Class. The Works add nearly all value to these products because the purpose of them is to provide images and the source of those images are the Works. Without the Works, these products would not be functional.

195.   On information and belief, Defendants could have trained their AI Image Products to include any CMI associated with the Works relied on to create a given Output when providing that Output.

196.   Defendants did not request or obtain permission from Plaintiffs and the Class to use the Works to train their AI Image Products.

197.   Unless Defendants are enjoined from violating the DMCA, Plaintiffs and the Class will suffer great and irreparable harm by depriving them of the right to identify and control the reproduction and/or distribution of their copyrighted works and to pursue copyright-infringement remedies. Defendants will not be damaged if they are required to comply with the DMCA. Plaintiffs and the Class members are therefore entitled to an injunction barring Defendants from violating the DMCA and impounding any device or product that is in the

1 custody or control of Defendants and that the court has reasonable cause to believe was involved

2 in a violation of the DMCA.

3   198.   Plaintiffs and the Class are further entitled to recover from Defendants the actual

4 or statutory damages Plaintiffs and the Class sustained pursuant to 17 U.S.C. § 1203(c) and for

5 Plaintiffs' and the Class's costs and attorneys' fees in enforcing the Licenses. Plaintiffs and the

6 Class are also entitled to recover as restitution from Defendants for any unjust enrichment,

7 including gains, profits, and advantages that Defendants have obtained as a result of their breach

8 of the Licenses.

9   199.   Defendants conspired together and acted jointly and in concert pursuant to their

10 scheme to commit the acts that violated the DMCA alleged herein.

11   200.   Defendants induced their customers to unknowingly violate the DMCA by

12 withholding attribution and other information as described herein.

COUNT IV
VIOLATION of the STATUTORY RIGHT of PUBLICITY
Cal. Civ. Code § 3344
(All Defendants)

16   201.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding

17 and succeeding paragraph as though fully set forth herein.

18   202.   Defendants knowingly used Plaintiffs' names in Defendants' AI Image Products.

19 At no time did Plaintiffs consent to Defendants' use of their names in this capacity.

20   203.   Defendants appropriated Plaintiffs' names to Defendants' advantage, including for

21 the purposes of advertising, selling, and soliciting purchases through Defendants' AI Image

22 Products. Defendants' AI Image Products can be directed to prioritize inclusion of specific

23 artists' Works by invoking the name of the artist or artists. This was a function designed and

24 promoted by Defendants as a product feature.

25   204.   Plaintiffs have invested considerable energy, effort, ingenuity, and creativity into

26 the development of their distinct artistic identities and have successfully built careers as artists.

27 Plaintiffs' names are uniquely associated with their art and artistic styles and are recognizable to

28

1 the public. Plaintiffs have derived value from their names, identities, and distinctive artistic

2 styles.

3   205.   There is a direct connection between Defendants' misappropriation of Plaintiffs'

4 names and Defendants' commercial purposes, because Defendants used Plaintiffs' names to

5 advertise art "in the style" of Plaintiffs' work. Defendants used Plaintiffs' names and advertised

6 their AI's ability to copy or generate work in the artistic style that Plaintiffs popularized in order

7 to sell Defendants' products and services. Defendants' ability to market art similar to and

8 associated with Plaintiffs' names also enabled Defendants to establish an advantage over actual

9 and prospective competitors.

10   206.   Defendants' use of Plaintiffs' names was not incidental. Rather, Defendants

11 specifically and knowingly used Plaintiffs' names because these names were uniquely related to

12 specific artistic styles, and Defendants generated valuable business from their ability to sell

13 artworks "in the style" that Plaintiffs popularized. Thus, the use of Plaintiffs' names contributed

14 value to Defendants' platform and services.

15   207.   Defendants used Plaintiffs' names to link and associate the art generated by its AI

16 with Plaintiffs' specific styles and artistic accomplishments. This link uniquely enhanced the

17 marketability of Defendants' AI art-generating services to consumers and the public.

18   208.   Defendants' emphasized the ability of AI Image Products to create images based

19 on "in the style" prompts that included specific Class members' names. This functionality was

20 prominent and used throughout Defendants' apps, website, and social media posts.

21   209.   Thus, Defendants' misappropriation of Plaintiffs' names is directly connected

22 with Defendants' advertising and sale of their products and services.

23   210.   Because Defendants advertise the ability of their systems to generate artwork "in

24 the style" of Plaintiffs' work—and explicitly used Plaintiffs' work to train their AI algorithms—

25 the art generated by Defendants' AI products is not transformative. Defendants'

26 misappropriation merely capitalizes on Defendants' theft of Plaintiffs' artistic work and the

27 associated value of Plaintiffs' names.

28

1   211.   Defendants appropriated Plaintiffs' names exclusively for commercial purposes.

2 Defendants' appropriation was not done in connection with any news, public affairs, sports

3 broadcast or account, or political campaign.

4   212.   Because of Defendants' unlawful appropriation of Plaintiffs' names, Plaintiffs have

5 suffered injury. Plaintiffs have a right to protect the goodwill that is associated with their names,

6 and that goodwill is compromised by a proliferation of AI-generated art created without Plaintiffs'

7 consent but associated with Plaintiffs' names. Further, the value of Plaintiffs' name recognition—

8 and thus the value of their art itself—is diluted in a market flooded with AI-generated copies

9 associated with Plaintiffs' names and artistic styles. Rather than generating revenue by licensing

10 their own images, Plaintiffs also suffer injury through having to compete with knock-off images

11 generated from Plaintiffs' work and associated with Plaintiffs' names.

COUNT V

VIOLATION of the COMMON LAW RIGHT of PUBLICITY
Common Law
(All Defendants)

15   213.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding

16 and succeeding paragraph as though fully set forth herein.

17   214.   Plaintiffs' identities are distinctly tied to their work as artists and their specific

18 artistic styles. Plaintiffs have invested considerable energy, effort, ingenuity, and creativity into

19 the development of their distinct artistic identities and name-recognition. Plaintiffs have also built

20 careers as artists and have derived value from their names, identities, and distinctive artistic

21 styles.

22   215.   Plaintiffs' names and artistic identities are not limited to a specific copyrighted

23 image or work developed by Plaintiffs. Rather, they extend to Plaintiffs' entire corpus of work and

24 allow consumers and the public to identify work "in the style of" Plaintiffs. Thus, Defendants did

25 not only misappropriate work fixed in a tangible medium of expression, but also misappropriated

26 Plaintiffs' names and artistic identities.

27   216.   Plaintiffs did not consent to Defendants' use of their names or identities.

28

217. Defendants knowingly used Plaintiffs' names and identities to further Defendants' commercial advantage, including for the purposes of advertising, selling, and soliciting purchases through Defendants' AI art-generating system.

218. Defendants used Plaintiffs' names and distinct artistic identities to link and associate the art generated by its AI with Plaintiffs' specific styles and artistic accomplishments. This link uniquely enhanced the marketability of Defendants' AI art-generating services to consumers and the public.

219. Defendants' use of Plaintiffs' names and identities was prominent and used throughout Defendants' apps, website, and social media posts.

220. Thus, Defendants' misappropriation of Plaintiffs' names and identities is directly connected with Defendants' advertising and sale of their products and services.

221. Because Defendants advertise the ability of their systems to generate artwork "in the style" of Plaintiffs' work—and explicitly used Plaintiffs' work to train the algorithms—the art generated by Defendants' AI products is not transformative. Defendants' misappropriation merely capitalizes on Defendants' theft of Plaintiffs' artistic work and the associated value of Plaintiffs' names and identities.

222. Because of Defendants' unlawful appropriation of Plaintiffs' names and identities, Plaintiffs have suffered injury. The goodwill associated with Plaintiffs' names and distinct identities is compromised by a proliferation of AI-generated art associated with Plaintiffs' names and identities, but created without Plaintiffs' consent. The value of Plaintiffs' name recognition and Plaintiffs' distinct artistic styles—and thus the value of their art itself—is diluted in a market flooded with AI-generated copies built on Plaintiffs' unique artistic identities. Plaintiffs also suffer injury through having to compete with knock-off images generated from Plaintiffs' work and associated with Plaintiffs' names.

COUNT VI
UNFAIR COMPETITION
15 U.S.C. § 1125; *Cal. Bus. & Prof. Code* §§ 17200, *et seq.*; and Common Law
(All Defendants)

223.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

224.   Defendants have engaged in unlawful business practices, including:

    a.   Infringement of Plaintiffs' and the Class's copyrights; and

    b.   Violations of Plaintiffs' and the Class's rights under the DMCA.

The details of the unlawful business practices are set forth herein.

225.   Plaintiffs and the Class have suffered monetary damages as a result of Defendants' conduct.

226.   The conduct of Defendants is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs and the Class great and irreparable injury that cannot fully be compensated or measured in money.

COUNT IX
BREACH of CONTRACT
VIOLATION of DEVIANTART POLICIES
Cal. Bus. & Prof. Code § 22575–22579; *Cal. Civ. Code* § 1798.150; and Common Law
(Against Defendant DeviantArt Only)

227.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

228.   DeviantArt Plaintiffs and the DeviantArt Class are DeviantArt users who have accepted DeviantArt's Terms of Service. As a result, Plaintiffs and the Class have formed a contract, the terms of which are set forth in DeviantArt's Terms of Service.

229.   Plaintiffs and the Class are DeviantArt users who have accepted DeviantArt's Privacy Statement. As a result, Plaintiffs and the Class have formed a contract.

230.   DeviantArt's Privacy Statement and Terms of Service share definitions and refer to each other. As such, they are collectively referred to herein as "DeviantArt's Policies" unless a distinction is necessary. Copies of the November 11, 2022 version of the DeviantArt Terms of

1   Service and copies of the current DeviantArt Terms of Service and Privacy Policy are attached as

2   Exhibit 17.

3   231.   Plaintiffs and the Class have performed each of the conditions, covenants, and

4   obligations imposed on them by the terms of DeviantArt's Policies.

5   232.   DeviantArt has substantially and materially breached DeviantArt's Policies in the

6   following ways:

7   a. Sharing Plaintiffs' and the Class's personal data with unauthorized third parties in

8   violation of the DeviantArt Privacy Statement;

9   b. Selling and distributing Plaintiffs' and the Class's personal data in contravention

10   of the DeviantArt's Policies;

11   c. Use of Plaintiffs' and the Class's personal data after the DeviantArt Privacy

12   Statement explicitly claims it will be deleted;

13   d. Use and distribution of Plaintiffs' and the Class's personal data outside the

14   limitations set forth in the DeviantArt Privacy Statement.

15   233.   Plaintiffs and the Class have suffered monetary damages as a result of

16 DeviantArt's conduct.

17   234.   DeviantArt's conduct is causing and, unless enjoined and restrained by this Court,

18 will continue to cause Plaintiffs and the Class great and irreparable injury that cannot fully be

19 compensated or measured in money.

20   235.   As a direct and proximate result of these material breaches by DeviantArt,

21 Plaintiffs and the Class are entitled to an injunction requiring DeviantArt to comply with all the

22 terms of the DeviantArt Policies.

23   236.   Plaintiffs and the Class are further entitled to recover from DeviantArt the

24 damages Plaintiffs and the Class sustained—including consequential damages—for Plaintiffs' and

25 the Class's costs in enforcing DeviantArt's Policies. Plaintiffs and the Class are also entitled to

26 recover as restitution from DeviantArt for any unjust enrichment, including gains, profits, and

27 advantages that it has obtained as a result of its breaches of the DeviantArt Policies.

28

COUNT VII
DECLARATORY RELIEF
28 U.S.C. § 2201(a) and Cal. Code Civ. Proc. § 1060
(All Defendants)

237.   Plaintiffs and the Class hereby repeat and incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

238.   An actual controversy exists between the Class (including Plaintiffs) and Defendants due to Defendants' operation of AI Image Products, which violate Plaintiffs' and the Class's rights, including but not limited to their rights under the Copyright Act, DMCA Section 1202, Cal. Civ. Code § 3344, and Cal. Civ. Code § 17200 as alleged herein.

239.   Plaintiffs are entitled to a judgment declaring that Defendants' actions are unlawful and, specifically, that Defendants violated the Copyright Act, DMCA Section 1202, Cal. Civ. Code § 3344, and Cal. Civ. Code § 17200.

X.   DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs requests that the Court enter judgment on their behalf and on behalf of the Class defined herein, by adjudging and decreeing that:

240.   This action may proceed as a class action, with Plaintiffs serving as Class Representatives, and with Plaintiffs' counsel as Class Counsel;

    a.   Judgment in favor of Plaintiffs and the Class and against Defendants;

    b.   An award of statutory and other damages pursuant to 17 U.S.C. § 504 for violations of Plaintiffs' and the Class's copyright interests by Defendants, both directly and vicariously through others;

    c.   Permanent injunctive relief, including but not limited to making changes to its Defendants' AI Image Products to ensure that all applicable information set forth in 17 U.S.C. § 1203(b)(1) is included with any Output incorporating a Work that had such information associated with it where Defendants found it on the internet;

    d.   An order of costs and allowable attorney's fees pursuant to 17 U.S.C. § 1203(b)(4)–(5);

    e.   An award of statutory damages pursuant to 17 U.S.C. § 1203(b)(3) and 17 U.S.C. § 1203(c)(3), or, in the alternative, an award of actual damages and any additional profits pursuant to 17 U.S.C. § 1203(c)(2) (including tripling damages pursuant to 17 U.S.C. § 1203(c)(4) if applicable);

    f.   An award of damages, including punitive damages, for harms resulting from Defendants acts of unfair competition;

    g.   An award of damages sufficient to compensate Plaintiffs and the Class for harms resulting from Defendants unjust enrichment; and

    h.   An award of damages, including punitive damages, for harms resulting from Defendants violations of Plaintiffs' and the Class's rights of publicity.

241.   Injunctive relief sufficient to alleviate and stop Defendants' unlawful conduct alleged herein.

242.   Plaintiffs and the Class are entitled to prejudgment and post-judgment interest on the damages awarded them, and that such interest be awarded at the highest legal rate from and after the date this class action complaint is first served on Defendants;

243.   Defendants are to be jointly and severally responsible financially for the costs and expenses of a Court approved notice program through post and media designed to give immediate notification to the Class.

244.   Plaintiffs and the Class receive such other or further relief as may be just and proper.

XI.   JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all the claims asserted in this Complaint so triable.

1   Dated: January 13, 2023

                              By: */s/ Joseph R. Saveri*

2   Joseph R. Saveri

3

4   Joseph R. Saveri (State Bar No. 130064)

5   Cadio Zirpoli (State Bar No. 179108)

Christopher K.L. Young (State Bar No. 318371)

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23   lmmatson@locklaw.com

24   *Counsel for Individual and Representative*

Plaintiffs and the Proposed Class

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26

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28

EXHIBIT 1

```
Type of Work:       Text

Registration Number / Date:
                    TX0008825086 / 2019-11-06

Application Title: Adulthood is a Myth 2020 Deluxe Day-to-Day Calendar.

Title:              Adulthood is a Myth 2020 Deluxe Day-to-Day Calendar.

Description:        Calendar.

Copyright Claimant:
                    Sarah Andersen.

Date of Creation:  2019

Date of Publication:
                    2019-08-13

Nation of First Publication:
                    United States

Authorship on Application:
                    Sarah Andersen; Citizenship: United States. Authorship:
                       compilation of previously published art with
                       accompanying text.

Pre-existing Material:
                    previously published art with accompanying text.

Basis of Claim:     compilation of previously published art with accompanying
                       text.

ISBN:               9781449498467

Names:              Andersen, Sarah


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EXHIBIT 2

```
Type of Work:        Text

Registration Number / Date:
                     TX0008826881 / 2019-11-06

Application Title: Adulthood is a Myth 2020 Wall Calendar.

Title:               Adulthood is a Myth 2020 Wall Calendar.

Description:         Calendar.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:  2019

Date of Publication:
                     2019-06-04

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        compilation of previously published art with
                        accompanying text.

Pre-existing Material:
                     previously published art with accompanying text.

Basis of Claim:      compilation of previously published art with accompanying
                        text.

ISBN:                9781449498474

Names:               Andersen, Sarah

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EXHIBIT 3

```
  Type of Work:        Text

  Registration Number / Date:
                       TX0008614103 / 2018-02-06

  Application Title: Adulthood Is A Myth: A "Sarah's Scribbles" 2018 Wall
                       Calendar.

  Title:               Adulthood Is A Myth: A "Sarah's Scribbles" 2018 Wall
                       Calendar.

  Description:         Print Material.

  Copyright Claimant:
                       Sarah Andersen.

  Date of Creation:  2017

  Date of Publication:
                       2017-06-27

  Nation of First Publication:
                       United States

  Authorship on Application:
                       Sarah Andersen, employer for hire; Citizenship: United
                         States. Authorship: artwork, compilation of previously
                         published art with corresponding text; some new artwork.

  Pre-existing Material:
                       text, artwork.

  Basis of Claim:    artwork, compilation of previously published art with
                         corresponding text; some new artwork.

  ISBN:                9781449483449

  Names:               Andersen, Sarah

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EXHIBIT 4

Type of Work: Text

Registration Number / Date:
                     TX0008660257 / 2018-10-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Daily
                     Calendar.

Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Daily
                     Calendar.

Description: Calendar.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation: 2018

Date of Publication:
                     2018-07-31

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen, employer for hire; Citizenship: United
                        States. Authorship: compilation of previously published
                        art with corresponding text.

Pre-existing Material:
                     previously published art with corresponding text.

Basis of Claim: compilation of previously published art with corresponding
                        text.

ISBN: 9781449494490

Names: Andersen, Sarah

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EXHIBIT 5

Type of Work: Text

Registration Number / Date:
                    TX0008706556 / 2018-10-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Wall
                    Calendar.

Title: Adulthood is a Myth: A "Sarah's Scribbles" 2019 Wall
                    Calendar.

Description: Print material.

Copyright Claimant:
                    Sarah Andersen.

Date of Creation: 2018

Date of Publication:
                    2018-06-05

Nation of First Publication:
                    United States

Authorship on Application:
                    Sarah Andersen; Citizenship: United States. Authorship:
                      text, artwork, compilation of previously published art
                      with corresponding text; some new art.

Pre-existing Material:
                    previously published art with corresponding text.

Basis of Claim: artwork, compilation of previously published art with
                      corresponding text; some new art.

Copyright Note: Basis for Registration: Unit of publication

ISBN: 9781449494070

Names: Andersen, Sarah

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EXHIBIT 6

```
Type of Work:       Text

Registration Number / Date:
                    TX0009117084 / 2021-01-22

Application Title:  Adulthood is a Myth: A "Sarah's Scribbles" 2021 Daily
                       Calendar.

Title:              Adulthood is a Myth: A "Sarah's Scribbles" 2021 Daily
                       Calendar.

Description:        Book.

Copyright Claimant:
                    Sarah Andersen.

Date of Creation:  2020

Date of Publication:
                    2020-09-01

Nation of First Publication:
                    United States

Authorship on Application:
                    Sarah Andersen; Citizenship: United States. Authorship:
                       compilation of previously published art with
                       accompanying text.

Pre-existing Material:
                    previously published art with accompanying text.

Basis of Claim:     compilation of previously published art with accompanying
                       text.

ISBN:               9781524857684

Names:              Andersen, Sarah

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EXHIBIT 7

```
Type of Work:        Text

Registration Number / Date:
                     TX0009082399 / 2021-01-22

Application Title: Adulthood is a Myth: A "Sarah's Scribbles" 2021 Wall
                     Calendar.

Title:               Adulthood is a Myth: A "Sarah's Scribbles" 2021 Wall
                     Calendar.

Description:         Book.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:  2020

Date of Publication:
                     2020-06-30

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        artwork, compilation of previously published art with
                        accompanying text; some new art.

Pre-existing Material:
                     previously published art with accompanying text.

Basis of Claim:      artwork, compilation of previously published art with
                        accompanying text; some new art.

ISBN:                9781524857677

Names:               Andersen, Sarah

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EXHIBIT 8

```
Type of Work:        Text

Registration Number / Date:
                     TX0008207926 / 2015-12-10

Application Title: Adulthood Is a Myth: A Sarah's Scribbles Collection.

Title:               Adulthood Is a Myth: A Sarah's Scribbles Collection.

Description:         Book.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:   2015

Date of Publication:
                     2015-12-08

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        text, artwork.

Pre-existing Material:
                     Some cartoons previously appeared on author's website.

Basis of Claim:      text, artwork.

ISBN:                9781449474195

Names:               Andersen, Sarah

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EXHIBIT 9

```
 Type of Work:      Text

 Registration Number / Date:
                    TX0008493928 / 2017-01-09

 Application Title: Big Mushy Happy Lump: A Sarah's Scribbles Collection .

 Title:             Big Mushy Happy Lump: A Sarah's Scribbles Collection .

 Description:       Book, 125 p.

 Copyright Claimant:
                    Sarah Andersen.

 Date of Creation:  2016

 Date of Publication:
                    2016-12-12

 Nation of First Publication:
                    United States

 Authorship on Application:
                    Sarah Andersen; Citizenship: United States. Authorship:
                      text, artwork.

 Copyright Note:    Basis for Registration: Collective work

 ISBN:              9781449479619

 Names:             Andersen, Sarah

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EXHIBIT 10

```
Type of Work:        Text

Registration Number / Date:
                     TX0009043380 / 2020-12-16

Application Title: Fangs.

Title:               Fangs.

Description:         Book, 100 p.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:    2020

Date of Publication:
                     2020-10-06

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        text, artwork.

ISBN:                9781524860677

Names:               Andersen, Sarah
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EXHIBIT 11

Type of Work: Text

Registration Number / Date:
                     TX0008615735 / 2018-02-06

Application Title: Get It Together! with Sarah Scribbles 2017-2018 16-Month
                     Weekly/Monthly Planner.

Title: Get It Together! with Sarah Scribbles 2017-2018 16-Month
                     Weekly/Monthly Planner.

Description: Book.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation: 2017

Date of Publication:
                     2017-05-30

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen, employer for hire; Citizenship: United
                        States. Authorship: artwork, compilation of previously
                        published art with corresponding text; some new artwork.

Pre-existing Material:
                     text, artwork.

Basis of Claim: artwork, compilation of previously published art with
                        corresponding text; some new artwork.

ISBN: 9781449482046

Names: Andersen, Sarah

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EXHIBIT 12

Type of Work: Text

Registration Number / Date:
                     TX0008681086 / 2018-10-22

Application Title: Get It Together! with Sarah Scribbles 2018-2019 16-Month
                     Monthly/Weekly Planner.

Title: Get It Together! with Sarah Scribbles 2018-2019 16-Month
                     Monthly/Weekly Planner.

Description: Book.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation: 2018

Date of Publication:
                     2018-06-05

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen, employer for hire; Citizenship: United
                        States. Authorship: artwork, compilation of previously
                        published art with corresponding text; some new artwork.

Pre-existing Material:
                     text, artwork.

Basis of Claim: artwork, compilation of previously published art with
                        corresponding text; some new artwork.

ISBN: 9781449494063

Names: Andersen, Sarah

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EXHIBIT 13

```
Type of Work:        Text

Registration Number / Date:
                     TX0008826626 / 2019-11-06

Application Title: Get It Together! with Sarah's Scribbles 16-Month 2019-2020
                     Weekly Monthly Planner.

Title:               Get It Together! with Sarah's Scribbles 16-Month 2019-2020
                     Weekly Monthly Planner.

Description:         Calendar.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:   2019

Date of Publication:
                     2019-06-04

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        compilation of previously published art with
                        accompanying text.

Pre-existing Material:
                     previously published art with accompanying text.

Basis of Claim:     compilation of previously published art with accompanying
                        text.

ISBN:               9781449498481

Names:              Andersen, Sarah

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EXHIBIT 14

```
Type of Work:        Text

Registration Number / Date:
                     TX0009082448 / 2021-01-22

Application Title: Get It Together with Sarah's Scribbles16-Month 2020-2021
                     Weekly/Monthly Planner Calendar.

Title:               Get It Together with Sarah's Scribbles16-Month 2020-2021
                     Weekly/Monthly Planner Calendar.

Description:         Book.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:  2020

Date of Publication:
                     2020-06-30

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        artwork, compilation of previously published art with
                        accompanying text; some new artwork.

Pre-existing Material:
                     text, artwork, previously published art with accompanying
                        text.

Basis of Claim:     artwork, compilation of previously published art with
                        accompanying text; some new artwork.

ISBN:               9781524857660

Names:              Andersen, Sarah
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EXHIBIT 15

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Type of Work:        Text

Registration Number / Date:
                     TX0008564573 / 2018-02-12

Application Title: Herding Cats: A Sarah's Scribbles Collection.

Title:               Herding Cats: A Sarah's Scribbles Collection.

Description:         Book, 108 p.

Copyright Claimant:
                     Sarah Andersen.

Date of Creation:  2018

Date of Publication:
                     2018-01-16

Nation of First Publication:
                     United States

Authorship on Application:
                     Sarah Andersen; Citizenship: United States. Authorship:
                        text, artwork, Curated and themed collection of cartoons
                        previously published online.

Pre-existing Material:
                     Some cartoons previously published online.

Basis of Claim:      text, artwork, Curated and themed collection of cartoons
                        previously published online.

ISBN:                9781449489786

Names:               Andersen, Sarah


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EXHIBIT 16

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Type of Work:       Text

Registration Number / Date:
                    TX0009153980 / 2022-02-16

Application Title: Oddball: A Sarah?s Scribbles Collection.

Title:              Oddball: A Sarah?s Scribbles Collection.

Description:        Book, 105 p.

Copyright Claimant:
                    Sarah Andersen.

Date of Creation:  2021

Date of Publication:
                    2021-12-07

Nation of First Publication:
                    United States

Authorship on Application:
                    Sarah Andersen; Citizenship: United States. Authorship:
                       text, artwork.

Copyright Note:    Basis for Registration: Collective work

ISBN:              9781449489793

Names:             Andersen, Sarah
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EXHIBIT 17

<u>Deviant Art Terms of Service (as of November 11, 2022)</u>

Introduction

Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of services provided to you by DeviantArt, including information, text, images, graphics, data or other materials ("Content") and products and services provided through www.DeviantArt.com, Sta.sh, DeviantArt Protect, and other DeviantArt mobile applications as well as all elements, software, programs and code forming or incorporated in to www.DeviantArt.com (the "Service"). This Service is operated by DeviantArt, Inc. ("DeviantArt"). DeviantArt is also referred to in these Terms as "we", "our", and "us".

By using our Service, you agree to be bound by Section I of these Terms ("General Terms"), which contains provisions applicable to all users of our Service, including visitors to the DeviantArt website (the "Site"). If you choose to register as a member of our Service or purchase products from the DeviantArt Shop, you will be asked to check a box indicating that you have read, and agree to be bound by, the additional terms set forth in Section II of these Terms ("Additional Terms").

Section I: General Terms

1. Availability

This Service is provided by DeviantArt on an "AS IS" and "AS AVAILABLE" basis and DeviantArt reserves the right to modify, suspend or discontinue the Service, in its sole discretion, at any time and without notice. **You agree that DeviantArt is and will not be liable to you for any modification, suspension or discontinuance of the Service.**

2. Privacy

DeviantArt has a firm commitment to safeguarding your privacy. Please review DeviantArt's Privacy Policy. The terms of DeviantArt's privacy policy are incorporated into, and form a part of, these Terms.

3. Trademarks

All brand, product and service names used in this Service which identify DeviantArt or third parties and their products and services are proprietary marks of DeviantArt and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of DeviantArt or any third party with respect to any such image, logo or name.

4. Copyright

DeviantArt is, unless otherwise stated, the owner of all copyright and data rights in the Service and its contents. Individuals who have posted works to DeviantArt are either the copyright owners of the component parts of that work or are posting the work under license from a copyright owner or his or her agent or otherwise as permitted by law. You may not reproduce,

distribute, publicly display or perform, or prepare derivative works based on any of the Content including any such works without the express, written consent of DeviantArt or the appropriate owner of copyright in such works. DeviantArt does not claim ownership rights in your works or other materials posted by you to DeviantArt (Your Content). You agree not to distribute any part of the Service other than Your Content in any medium other than as permitted in these Terms of Service or by use of functions on the Service provided by us. You agree not to alter or modify any part of the Service unless expressly permitted to do so by us or by use of functions on the Service provided by us.

5. Reporting Copyright Violations

DeviantArt respects the intellectual property rights of others and expects users of the Service to do the same. At DeviantArt's discretion and in appropriate circumstances, DeviantArt may remove Your Content submitted to the Site, terminate the accounts of users or prevent access to the Site by users who infringe the intellectual property rights of others. If you believe the copyright in your work or in the work for which you act as an agent has been infringed through this Service, please contact DeviantArt's agent for notice of claims of copyright infringement, Daniel Sowers who can be reached through violations@deviantart.com. You must provide our agent with substantially the following information, which DeviantArt may then forward to the alleged infringer (see 17 U.S.C. 512 (c)(3) for further details):

a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

b. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

d. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner.

f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please see DeviantArt's Copyright Policy for further information and details.

6. External Links

DeviantArt may provide links to third-party websites or resources. You acknowledge and agree that DeviantArt is not responsible or liable for: the availability or accuracy of such websites or resources; or the Content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by DeviantArt of such websites or resources or the Content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

7. Third Party Software

As a convenience, we may make third-party software available through the Service. To use the third-party software, you must agree to the terms and conditions imposed by the third party provider and the agreement to use such software will be solely between you and the third party provider. By downloading third party software, you acknowledge and agree that the software is provided on an "AS IS" basis without warranty of any kind. In no event shall DeviantArt be liable for claims or damages of any nature, whether direct or indirect, arising from or related to any third-party software downloaded through the Service.

MPEG License:

As part of the DeviantArt platform, DeviantArt may provide different video services, available for its Core users.

The use of the video services for your account, may require that you receive a license to use certain patents from MPEG-LA (the "License"). It is your own exclusive responsibility to decide whether your activity requires a License and to obtain it. Information about the License can be obtained from MPEG LA L.L.C. here.

Without derogating from any subclause in these Terms of Use, and without any limitation of liability, you shall fully indemnify, defend and hold DeviantArt its officers, directors, shareholders, employees, affiliates and agents, harmless from any and all damages and costs, obligations, losses, liabilities debt and expenses (including attorneys' fees), as accrued, that arise out of or are related to infringement and/or misuse of the patent pool under the MPEG-LA consortium.

If your needs require a more inclusive plan than those regularly offered by us, please contact our support team at: help@deviantart.com

8. Conduct

You agree that you shall not interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or provide any information to DeviantArt that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose. DeviantArt does not endorse any content placed on the Service by third parties or any opinions or advice contained in such content. You agree to defend,

indemnify, and hold harmless DeviantArt, its officers, directors, employees and agents, from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and expert fees, arising out of or in any way connected with your access to or use of the Services, or your violation of these Terms.

9. Disclaimer of Warranty and Limitation of Liability

DEVIANTART MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AS TO THE OPERATION OF THE SERVICE, OR THE CONTENT OR PRODUCTS, PROVIDED THROUGH THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. DEVIANTART DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW. DEVIANTART MAKES NO WARRANTY AS TO THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE. YOU SPECIFICALLY ACKNOWLEDGE THAT DEVIANTART IS NOT LIABLE FOR YOUR DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT, OR SUCH CONDUCT BY THIRD PARTIES, AND YOU EXPRESSLY ASSUME ALL RISKS AND RESPONSIBILITY FOR DAMAGES AND LOSSES ARISING FROM SUCH CONDUCT. EXCEPT FOR THE EXPRESS, LIMITED REMEDIES PROVIDED HEREIN, AND TO THE FULLEST EXTENT ALLOWED BY LAW, DEVIANTART SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF DEVIANTART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON CERTAIN WARRANTIES OR DAMAGES. THEREFORE, SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL DEVIANTART'S AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNTS PAID BY YOU TO DEVIANTART PURSUANT TO THIS AGREEMENT.

10. Amendment of the Terms

We reserve the right to amend these Terms from time to time in our sole discretion. If you have registered as a member, we may notify you of any material changes to these Terms (and the effective date of such changes) by sending a notification on the Site. In addition, we will post the revised terms on the Site. If you continue to use the Service after the effective date of the revised Terms, you will be deemed to have accepted those changes. If you do not agree to the revised Terms, your sole remedy shall be to discontinue using the Service.

11. General

These Terms constitute the entire agreement between DeviantArt and you with respect to your use of the Service. DeviantArt's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable. DeviantArt shall have the right to assign its rights and/or delegate its obligations under these Terms, in whole or in part, to any person or business entity. You may not assign your rights or delegate your obligations under these Terms without the prior written consent of DeviantArt. These Terms shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the state and federal courts of the State of California.

12. Comments

If you have any comments or questions about the Service please contact us by email at help@deviantart.com.

Section II: Additional Terms

13. Registration

To register as a member of the Service or purchase products, you must be 13 years or lawfully permitted to enter into and form contracts under applicable law. In no event may minors submit Content to the Service. You agree that the information that you provide to us upon registration, at the time of purchase, and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which we will communicate with you about your account and your orders.

14. Password

When you register as a member you will be asked to provide a password. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree that you shall be solely responsible for any activities or actions under your password, whether or not you have authorized such activities or actions. You shall immediately notify DeviantArt of any unauthorized use of your password.

15. Submitting Content

Chat Rooms and Forums - As a registered member of the Service, you will be granted the privilege of participating in chat rooms and forums on the DeviantArt website as part of the Service, which means you may post Your Content in the form of text for display in these areas of the DeviantArt website, subject to your compliance with the Terms.

Artist Materials - As a registered member of the Service, you will also be granted the privilege of submitting certain types of Your Content, known as "Artist Materials," for display on your user

page. Prior to submitting Artist Materials, you must accept the additional terms and conditions of the Submission Policy, which is incorporated into, and forms a part of, the Terms.

16. Copyright in Your Content

DeviantArt does not claim ownership rights in Your Content. For the sole purpose of enabling us to make your Content available through the Service, you grant to DeviantArt a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content. **Please note that when you upload Content, third parties will be able to copy, distribute and display your Content using readily available tools on their computers for this purpose although other than by linking to your Content on DeviantArt any use by a third party of your Content could violate paragraph 4 of these Terms and Conditions unless the third party receives permission from you by license.**

17. Monitoring Content

DeviantArt has no ability to control the Content you may upload, post or otherwise transmit using the Service and does not have any obligation to monitor such Content for any purpose. You acknowledge that you are solely responsible for all Content and material you upload, post or otherwise transmit using the Service.

18. Storage Policy

At this time, DeviantArt provides free online storage of Your Content to registered members of the Service. However, you acknowledge and agree that DeviantArt may, at its option, establish limits concerning your use of the Service, including without limitation the maximum number of days that Your Content will be retained by the Service, the maximum size of any Content files that may be stored on the Service, the maximum disk space that will be allotted to you for the storage of Content on DeviantArt's servers. Furthermore, you acknowledge that DeviantArt reserves the right to terminate or suspend accounts that are inactive, in DeviantArt's sole discretion, for an extended period of time (thus deleting or suspending access to your Content). Without limiting the generality of Section 9, DeviantArt shall have no responsibility or liability for the deletion or failure to store any Content maintained on the Service and you are solely responsible for creating back-ups of Your Content. You further acknowledge that DeviantArt reserves the right to modify its storage policies from time to time, with or without notice to you.

19. Conduct

You agree to be subject to and to conduct yourself in accordance with the DeviantArt Etiquette Policy. You are responsible for all of Your Content you upload, download, and otherwise copy, distribute and display using the Service. You must have the legal right to copy, distribute and display all parts of any content that you upload, download and otherwise copy, distribute and display. Content provided to you by others, or made available through websites, magazines, books and other sources, are protected by copyright and should not be uploaded, downloaded, or

otherwise copied, distributed or displayed without the consent of the copyright owner or as otherwise permitted by law. Please refer to DeviantArt's Copyright Policy for further details.

You agree not to use the Service:

a. for any unlawful purposes;

b. to upload, post, or otherwise transmit any public and shared content (content which you offer for free) that is pornographic, obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;

c. to upload, post, or otherwise transmit any subscription or paid content featuring pornographic material of real people, which offers sexual services, which glorifies sexual violence, fringe sexual fetish creations, fetish creations that are hard to distinguish from non-consensual sex, or that is obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;

d. to harm minors in any way, including, but not limited to, uploading, posting, or otherwise transmitting content that violates child pornography laws, child sexual exploitation laws or laws prohibiting the depiction of minors engaged in sexual conduct, or submitting any personally identifiable information about any child under the age of 13;

e. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;

f. to upload, post, or otherwise transmit any material which is likely to cause harm to DeviantArt or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;

g. for any commercial purpose, except as expressly permitted under these Terms;

h. to sell access to the Service on any other website or to use the Service on another website for the primary purpose of gaining advertising or subscription revenue other than a personal blog or social network where the primary purpose is to display content from DeviantArt by hyperlink and not to compete with DeviantArt.

19A. Commercial Activities

Commercial activities mean the offering, solicitation or sale of goods or services by anyone other than DeviantArt. Commercial activities with respect to the arts are permitted for registered members acting as individuals, for small corporations or partnerships engaged primarily in art-related activities in which one or more of the principals is a registered member or for those

seeking to retain the services or works of a registered member. Commercial activities in the form of paid advertising on the Service are subject to the terms and conditions relating to the purchase of such advertising. No other commercial activities are permitted on or through the Service without DeviantArt′s written approval. Any interactions with members of the Service with respect to commercial activities including payment for and delivery of goods and/or services and any terms related to the commercial activities including conditions, warranties or representations and so forth are solely between you and the other member. Paragraph 9, above, of these Terms of Service specifically applies with respect to commercial activities.

19B. Groups

As a registered member of the Service, you will also be able to participate as an administrator or member of a ″Group″ which is a set of user pages and applications formed for the purpose of collecting content, discussions and organizing members of the site with common interests. Further information about Groups can be found in our Etiquette Policy.

1. You agree to participate in a Group on the basis of its own rules consistent with these Terms of Service, the conduct set out in paragraph 19, above, and such other rules created by us for Groups from time to time including with respect to the use of Groups for commercial activities.

2. As an administrator or participant in a Group you acquire no ownership rights over the Group, the Group applications provided by us or over the right to conduct the activities of the Group.

3. Any Content or Artists Materials submitted to a Group remain, as between the Group and the user submitting such content, the property of the person who submitted the content.

4. Groups are managed by registered members of the Service and not by us. We are not responsible for the conduct of Group participants or administrators and will not interfere with the management or society of any specific Group or the rules it establishes for itself as long as they are consistent with these Terms of Service and our policies.

5. Groups may not be used to collect personal data about participants in Groups without the participant′s express permission.

6. The Group application permits us to take appropriate action should intervention become necessary as a result of a violation of the Terms of Service or of any other of our policies. We can remove a Group and the Group′s privileges at any time at our discretion.

7. The use in a Group name of trademarks or distinctive trade names of properties, goods or services is subject to objections from the owner of the marks and names. DeviantArt will respond to such objections by requiring an appropriate change in the name of the Group. The use of trademarks and trade names in Group names otherwise must be descriptive of Group activity or purpose. To avoid confusion and animosity, Groups wishing to name

themselves after trademarked properties must include a further description in its name of the type of Group it expects to be such as "Master Photoshop Tutorials" instead of simply "Photoshop."

20. Suspension and Termination of Access and Membership

You agree that DeviantArt may at any time, and without notice, suspend or terminate any part of the Service, or refuse to fulfill any order, or any part of any order or terminate your membership and delete any Content stored on the DeviantArt Site, in DeviantArt's sole discretion, if you fail to comply with the Terms or applicable law.

21. Product Purchases from the DeviantArt Shop

DeviantArt users may make certain products available for purchase through the DeviantArt Shop. For example, you may have the opportunity to purchase or commission "Digital Artwork" that a registered member has listed for sale through the Shop.

All payments are to be made in US dollars and prices are subject to change at any time.

Any purchase made via the Shop is between the user and the purchaser only. DeviantArt only provides the platform in which such purchase is available, but in any event will not be responsible for the purchased item, its quality, terms, price etc.

Before making a purchase, we advise you to review the listing and specifications to make sure they fit your needs and are acceptable by you.

22. Cryptocurrency

DeviantArt enables cryptocurrency payments and earnings withdrawals via a Third Party Software blockchain/cryptocurrency payment processor ("**Cryptocurrency Payment Services**").

You acknowledge and agree that regardless of the manner in which such Cryptocurrency Payment Services may be offered to you, DeviantArt merely acts as an intermediary platform between you and the applicable Cryptocurrency Payment Services provider, and shall not be in any way responsible or liable with respect to any services provided by such Cryptocurrency Payment Services provider.

Any and all use of Cryptocurrency Payment Services shall be done solely at your own risk and responsibility, and may be subject to certain legal and financial terms which govern Cryptocurrency Payment Services, which you are encouraged to review and understand before using such services. Additionally, the use of Cryptocurrency Payment Services is subject to the applicable terms of use of the Cryptocurrency Payment Services provider, including but not limited to the lists of prohibited items and businesses not supported by such provider. In the case of BitPay, your use of Cryptocurrency Payment Services is subject to BitPay's terms of use. Each Cryptocurrency Payment Services provider may support different cryptocurrencies, however

DeviantArt has full discretion regarding which cryptocurrencies will be available through the Cryptocurrency Payment Services on the DeviantArt platform. Please avoid paying in unsupported cryptocurrencies, as doing so may result in loss of funds.

While we hope to avoid such instances, DeviantArt may, at any time and at its sole discretion, suspend, disable access to or remove Cryptocurrency Payment Services without any liability to you or to any third party.

You assume the volatility risk of the cryptocurrencies in which cryptocurrency transactions occur.

Any refunds of cryptocurrency transactions are subject to DeviantArt′s sole discretion.

Services Fees

Your use of Cryptocurrency Payment Services is subject to certain fees and exchange rates ("**Service Fees**"), which may be modified from time to time. For more information, see here. The Service Fees shall be deducted from your DeviantArt Earnings Account. All Service Fees are non-refundable.

Certain transactions (e.g., underpayment and overpayment of cryptocurrency transactions) may be subject to additional fees by the Cryptocurrency Payment Services provider. In the case of BitPay, please refer to the following article for additional information.

23. DeviantArt Protect

DeviantArt enables you to use its DeviantArt Protect service (for qualifying images stored in Sta.sh or qualifying images submitted as deviations), in order to detect potential infringements of your images that you submitted or uploaded in the ways specified below. By using DeviantArt Protect, you agree and acknowledge the following:

a. The DeviantArt Protect service is limited to detecting potentially similar or near-identical images to your images identified on DeviantArt or various blockchains (for more details on the specific platforms scanned, see our updated list). There might be other similar images that we will not detect, and therefore, we encourage you to keep track of existing works on different platforms.

b. To use DeviantArt Protect, you will need to open an account with DeviantArt, and agree to these terms and to the DeviantArt general privacy policy.

c. For images eligible for the DeviantArt Protect service, when a potential infringement is identified, we will send you a notice via email or via platform notification, of any potential similar image found. Upon receiving such a notice, you may choose if you wish to take action regarding such images or not (for example, by filing a DMCA takedown notice).

d. We will not cause or initiate any legal procedures with respect to the similar images. If you believe that one of our results is infringing upon your image, we encourage you to

enter the relevant platform, and submit a takedown notice independently. DeviantArt will not be responsible, in any event, for such procedures. All results are indicating some similarity, but in no event will we determine or suggest if such work is indeed infringing or not.

e. DeviantArt Protect for images uploaded to Sta.sh:
You can upload up to 10 images and up to 2GB for free coverage by the DeviantArt Protect service. To receive coverage of the DeviantArt Protect service for any additional images, you will need to upgrade for a relevant Core Membership. Find out more about our membership, pricing, storage and plans here.

f. DeviantArt Protect for images published on DeviantArt as deviations:
For Core Members, we provide the DeviantArt Protect service for all images published as deviations. For non-Core users, we offer the DeviantArt Protect service for 90 days as of the day when the image was submitted as a deviation.

DeviantArt Terms of Service (as of January 13, 2023)

Introduction

Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of services provided to you by DeviantArt, including information, text, images, graphics, data or other materials ("Content") and products and services provided through www.DeviantArt.com, Sta.sh, DeviantArt Protect, and other DeviantArt mobile applications as well as all elements, software, programs and code forming or incorporated in to www.DeviantArt.com (the "Service"). This Service is operated by DeviantArt, Inc. ("DeviantArt"). DeviantArt is also referred to in these Terms as "we", "our", and "us".

By using our Service, you agree to be bound by Section I of these Terms ("General Terms"), which contains provisions applicable to all users of our Service, including visitors to the DeviantArt website (the "Site"). If you choose to register as a member of our Service or purchase products from the DeviantArt Shop, you will be asked to check a box indicating that you have read, and agree to be bound by, the additional terms set forth in Section II of these Terms ("Additional Terms").

Section I: General Terms

1. Availability

This Service is provided by DeviantArt on an "AS IS" and "AS AVAILABLE" basis and DeviantArt reserves the right to modify, suspend or discontinue the Service, in its sole discretion, at any time and without notice. **You agree that DeviantArt is and will not be liable to you for any modification, suspension or discontinuance of the Service.**

2. Privacy

DeviantArt has a firm commitment to safeguarding your privacy. Please review DeviantArt's Privacy Policy. The terms of DeviantArt's privacy policy are incorporated into, and form a part of, these Terms.

3. Trademarks

All brand, product and service names used in this Service which identify DeviantArt or third parties and their products and services are proprietary marks of DeviantArt and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of DeviantArt or any third party with respect to any such image, logo or name.

4. Copyright

DeviantArt is, unless otherwise stated, the owner of all copyright and data rights in the Service and its contents. Individuals who have posted works to DeviantArt are either the copyright owners of the component parts of that work or are posting the work under license from a copyright owner or his or her agent or otherwise as permitted by law. You may not reproduce,

distribute, publicly display or perform, or prepare derivative works based on any of the Content including any such works without the express, written consent of DeviantArt or the appropriate owner of copyright in such works. DeviantArt does not claim ownership rights in your works or other materials posted by you to DeviantArt (Your Content). You agree not to distribute any part of the Service other than Your Content in any medium other than as permitted in these Terms of Service or by use of functions on the Service provided by us. You agree not to alter or modify any part of the Service unless expressly permitted to do so by us or by use of functions on the Service provided by us.

5. Reporting Copyright Violations

DeviantArt respects the intellectual property rights of others and expects users of the Service to do the same. At DeviantArt′s discretion and in appropriate circumstances, DeviantArt may remove Your Content submitted to the Site, terminate the accounts of users or prevent access to the Site by users who infringe the intellectual property rights of others. If you believe the copyright in your work or in the work for which you act as an agent has been infringed through this Service, please contact DeviantArt′s agent for notice of claims of copyright infringement, Daniel Sowers who can be reached through violations@deviantart.com. You must provide our agent with substantially the following information, which DeviantArt may then forward to the alleged infringer (see 17 U.S.C. 512 (c)(3) for further details):

    a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

    b. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

    c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

    d. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

    e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner.

    f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please see DeviantArt′s Copyright Policy for further information and details.

6. External Links

DeviantArt may provide links to third-party websites or resources. You acknowledge and agree that DeviantArt is not responsible or liable for: the availability or accuracy of such websites or resources; or the Content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by DeviantArt of such websites or resources or the Content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

7. Third Party Software

As a convenience, we may make third-party software available through the Service. To use the third-party software, you must agree to the terms and conditions imposed by the third party provider and the agreement to use such software will be solely between you and the third party provider. By downloading third party software, you acknowledge and agree that the software is provided on an "AS IS" basis without warranty of any kind. In no event shall DeviantArt be liable for claims or damages of any nature, whether direct or indirect, arising from or related to any third-party software downloaded through the Service.

MPEG License:

As part of the DeviantArt platform, DeviantArt may provide different video services, available for its Core users.

The use of the video services for your account, may require that you receive a license to use certain patents from MPEG-LA (the "License"). It is your own exclusive responsibility to decide whether your activity requires a License and to obtain it. Information about the License can be obtained from MPEG LA L.L.C. here.

Without derogating from any subclause in these Terms of Use, and without any limitation of liability, you shall fully indemnify, defend and hold DeviantArt its officers, directors, shareholders, employees, affiliates and agents, harmless from any and all damages and costs, obligations, losses, liabilities debt and expenses (including attorneys' fees), as accrued, that arise out of or are related to infringement and/or misuse of the patent pool under the MPEG-LA consortium.

If your needs require a more inclusive plan than those regularly offered by us, please contact our support team at: help@deviantart.com

8. Conduct

You agree that you shall not interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or provide any information to DeviantArt that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose. DeviantArt does not endorse any content placed on the Service by third parties or any opinions or advice contained in such content. You agree to defend,

indemnify, and hold harmless DeviantArt, its officers, directors, employees and agents, from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and expert fees, arising out of or in any way connected with your access to or use of the Services, or your violation of these Terms.

9. Disclaimer of Warranty and Limitation of Liability

DEVIANTART MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AS TO THE OPERATION OF THE SERVICE, OR THE CONTENT OR PRODUCTS, PROVIDED THROUGH THE SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. DEVIANTART DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW. DEVIANTART MAKES NO WARRANTY AS TO THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE. YOU SPECIFICALLY ACKNOWLEDGE THAT DEVIANTART IS NOT LIABLE FOR YOUR DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT, OR SUCH CONDUCT BY THIRD PARTIES, AND YOU EXPRESSLY ASSUME ALL RISKS AND RESPONSIBILITY FOR DAMAGES AND LOSSES ARISING FROM SUCH CONDUCT. EXCEPT FOR THE EXPRESS, LIMITED REMEDIES PROVIDED HEREIN, AND TO THE FULLEST EXTENT ALLOWED BY LAW, DEVIANTART SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF DEVIANTART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON CERTAIN WARRANTIES OR DAMAGES. THEREFORE, SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL DEVIANTART'S AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNTS PAID BY YOU TO DEVIANTART PURSUANT TO THIS AGREEMENT.

10. Amendment of the Terms

We reserve the right to amend these Terms from time to time in our sole discretion. If you have registered as a member, we may notify you of any material changes to these Terms (and the effective date of such changes) by sending a notification on the Site. In addition, we will post the revised terms on the Site. If you continue to use the Service after the effective date of the revised Terms, you will be deemed to have accepted those changes. If you do not agree to the revised Terms, your sole remedy shall be to discontinue using the Service.

11. General

These Terms constitute the entire agreement between DeviantArt and you with respect to your use of the Service. DeviantArt's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable. DeviantArt shall have the right to assign its rights and/or delegate its obligations under these Terms, in whole or in part, to any person or business entity. You may not assign your rights or delegate your obligations under these Terms without the prior written consent of DeviantArt. These Terms shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the state and federal courts of the State of California.

12. Comments

If you have any comments or questions about the Service please contact us by email at help@deviantart.com.

Section II: Additional Terms

13. Registration

To register as a member of the Service or purchase products, you must be 13 years or lawfully permitted to enter into and form contracts under applicable law. In no event may minors submit Content to the Service. You agree that the information that you provide to us upon registration, at the time of purchase, and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which we will communicate with you about your account and your orders.

14. Password

When you register as a member you will be asked to provide a password. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree that you shall be solely responsible for any activities or actions under your password, whether or not you have authorized such activities or actions. You shall immediately notify DeviantArt of any unauthorized use of your password.

15. Submitting Content

Chat Rooms and Forums - As a registered member of the Service, you will be granted the privilege of participating in chat rooms and forums on the DeviantArt website as part of the Service, which means you may post Your Content in the form of text for display in these areas of the DeviantArt website, subject to your compliance with the Terms.

Artist Materials - As a registered member of the Service, you will also be granted the privilege of submitting certain types of Your Content, known as "Artist Materials," for display on your user page. Prior to submitting Artist Materials, you must accept the additional terms and conditions of the Submission Policy, which is incorporated into, and forms a part of, the Terms.

16. Copyright in Your Content

DeviantArt does not claim ownership rights in Your Content. For the sole purpose of enabling us to make your Content available through the Service, you grant to DeviantArt a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content. **Please note that when you upload Content, third parties will be able to copy, distribute and display your Content using readily available tools on their computers for this purpose although other than by linking to your Content on DeviantArt any use by a third party of your Content could violate paragraph 4 of these Terms and Conditions unless the third party receives permission from you by license.**

17. Monitoring Content

DeviantArt has no ability to control the Content you may upload, post or otherwise transmit using the Service and does not have any obligation to monitor such Content for any purpose. You acknowledge that you are solely responsible for all Content and material you upload, post or otherwise transmit using the Service.

18. Storage Policy

At this time, DeviantArt provides free online storage of Your Content to registered members of the Service. However, you acknowledge and agree that DeviantArt may, at its option, establish limits concerning your use of the Service, including without limitation the maximum number of days that Your Content will be retained by the Service, the maximum size of any Content files that may be stored on the Service, the maximum disk space that will be allotted to you for the storage of Content on DeviantArt's servers. Furthermore, you acknowledge that DeviantArt reserves the right to terminate or suspend accounts that are inactive, in DeviantArt's sole discretion, for an extended period of time (thus deleting or suspending access to your Content). Without limiting the generality of Section 9, DeviantArt shall have no responsibility or liability for the deletion or failure to store any Content maintained on the Service and you are solely responsible for creating back-ups of Your Content. You further acknowledge that DeviantArt reserves the right to modify its storage policies from time to time, with or without notice to you.

19. Conduct

You agree to be subject to and to conduct yourself in accordance with the DeviantArt Etiquette Policy.You are responsible for all of Your Content you upload, download, and otherwise copy, distribute and display using the Service. You must have the legal right to copy, distribute and display all parts of any content that you upload, download and otherwise copy, distribute and display. Content provided to you by others, or made available through websites, magazines, books

and other sources, are protected by copyright and should not be uploaded, downloaded, or otherwise copied, distributed or displayed without the consent of the copyright owner or as otherwise permitted by law. Please refer to DeviantArt's Copyright Policy for further details.

You agree not to use the Service:

a. for any unlawful purposes;

b. to upload, post, or otherwise transmit any public and shared content (content which you offer for free) that is pornographic, obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;

c. to upload, post, or otherwise transmit any subscription or paid content featuring pornographic material of real people, which offers sexual services, which glorifies sexual violence, fringe sexual fetish creations, fetish creations that are hard to distinguish from non-consensual sex, or that is obscene, offensive, blasphemous, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;

d. to harm minors in any way, including, but not limited to, uploading, posting, or otherwise transmitting content that violates child pornography laws, child sexual exploitation laws or laws prohibiting the depiction of minors engaged in sexual conduct, or submitting any personally identifiable information about any child under the age of 13;

e. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;

f. to upload, post, or otherwise transmit any material which is likely to cause harm to DeviantArt or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;

g. for any commercial purpose, except as expressly permitted under these Terms;

h. to sell access to the Service on any other website or to use the Service on another website for the primary purpose of gaining advertising or subscription revenue other than a personal blog or social network where the primary purpose is to display content from DeviantArt by hyperlink and not to compete with DeviantArt.

19A. Commercial Activities

Commercial activities mean the offering, solicitation or sale of goods or services by anyone other than DeviantArt. Commercial activities with respect to the arts are permitted for registered members acting as individuals, for small corporations or partnerships engaged primarily in art-

related activities in which one or more of the principals is a registered member or for those seeking to retain the services or works of a registered member. Commercial activities in the form of paid advertising on the Service are subject to the terms and conditions relating to the purchase of such advertising. No other commercial activities are permitted on or through the Service without DeviantArt′s written approval. Any interactions with members of the Service with respect to commercial activities including payment for and delivery of goods and/or services and any terms related to the commercial activities including conditions, warranties or representations and so forth are solely between you and the other member. Paragraph 9, above, of these Terms of Service specifically applies with respect to commercial activities.

19B. Groups

As a registered member of the Service, you will also be able to participate as an administrator or member of a ″Group″ which is a set of user pages and applications formed for the purpose of collecting content, discussions and organizing members of the site with common interests. Further information about Groups can be found in our Etiquette Policy.

1. You agree to participate in a Group on the basis of its own rules consistent with these Terms of Service, the conduct set out in paragraph 19, above, and such other rules created by us for Groups from time to time including with respect to the use of Groups for commercial activities.

2. As an administrator or participant in a Group you acquire no ownership rights over the Group, the Group applications provided by us or over the right to conduct the activities of the Group.

3. Any Content or Artists Materials submitted to a Group remain, as between the Group and the user submitting such content, the property of the person who submitted the content.

4. Groups are managed by registered members of the Service and not by us. We are not responsible for the conduct of Group participants or administrators and will not interfere with the management or society of any specific Group or the rules it establishes for itself as long as they are consistent with these Terms of Service and our policies.

5. Groups may not be used to collect personal data about participants in Groups without the participant′s express permission.

6. The Group application permits us to take appropriate action should intervention become necessary as a result of a violation of the Terms of Service or of any other of our policies. We can remove a Group and the Group′s privileges at any time at our discretion.

7. The use in a Group name of trademarks or distinctive trade names of properties, goods or services is subject to objections from the owner of the marks and names. DeviantArt will respond to such objections by requiring an appropriate change in the name of the Group. The use of trademarks and trade names in Group names otherwise must be descriptive of

Group activity or purpose. To avoid confusion and animosity, Groups wishing to name themselves after trademarked properties must include a further description in its name of the type of Group it expects to be such as "Master Photoshop Tutorials" instead of simply "Photoshop."

20. Suspension and Termination of Access and Membership

You agree that DeviantArt may at any time, and without notice, suspend or terminate any part of the Service, or refuse to fulfill any order, or any part of any order or terminate your membership and delete any Content stored on the DeviantArt Site, in DeviantArt's sole discretion, if you fail to comply with the Terms or applicable law.

21. Product Purchases from the DeviantArt Shop

DeviantArt users may make certain products available for purchase through the DeviantArt Shop. For example, you may have the opportunity to purchase or commission "Digital Artwork" that a registered member has listed for sale through the Shop.

All payments are to be made in US dollars and prices are subject to change at any time.

Any purchase made via the Shop is between the user and the purchaser only. DeviantArt only provides the platform in which such purchase is available, but in any event will not be responsible for the purchased item, its quality, terms, price etc.

Before making a purchase, we advise you to review the listing and specifications to make sure they fit your needs and are acceptable by you.

22. Cryptocurrency

DeviantArt enables cryptocurrency payments and earnings withdrawals via a Third Party Software blockchain/cryptocurrency payment processor ("**Cryptocurrency Payment Services**").

You acknowledge and agree that regardless of the manner in which such Cryptocurrency Payment Services may be offered to you, DeviantArt merely acts as an intermediary platform between you and the applicable Cryptocurrency Payment Services provider, and shall not be in any way responsible or liable with respect to any services provided by such Cryptocurrency Payment Services provider.

Any and all use of Cryptocurrency Payment Services shall be done solely at your own risk and responsibility, and may be subject to certain legal and financial terms which govern Cryptocurrency Payment Services, which you are encouraged to review and understand before using such services. Additionally, the use of Cryptocurrency Payment Services is subject to the applicable terms of use of the Cryptocurrency Payment Services provider, including but not limited to the lists of prohibited items and businesses not supported by such provider. In the case of BitPay, your use of Cryptocurrency Payment Services is subject to BitPay's terms of use. Each

Cryptocurrency Payment Services provider may support different cryptocurrencies, however DeviantArt has full discretion regarding which cryptocurrencies will be available through the Cryptocurrency Payment Services on the DeviantArt platform. Please avoid paying in unsupported cryptocurrencies, as doing so may result in loss of funds.

While we hope to avoid such instances, DeviantArt may, at any time and at its sole discretion, suspend, disable access to or remove Cryptocurrency Payment Services without any liability to you or to any third party.

You assume the volatility risk of the cryptocurrencies in which cryptocurrency transactions occur.

Any refunds of cryptocurrency transactions are subject to DeviantArt's sole discretion.

Services Fees

Your use of Cryptocurrency Payment Services is subject to certain fees and exchange rates ("**Service Fees**"), which may be modified from time to time. For more information, see here. The Service Fees shall be deducted from your DeviantArt Earnings Account. All Service Fees are non-refundable.

Certain transactions (e.g., underpayment and overpayment of cryptocurrency transactions) may be subject to additional fees by the Cryptocurrency Payment Services provider. In the case of BitPay, please refer to the following article for additional information.

23. DeviantArt Protect

DeviantArt enables you to use its DeviantArt Protect service (for qualifying images stored in Sta.sh or qualifying images submitted as deviations), in order to detect potential infringements of your images that you submitted or uploaded in the ways specified below. By using DeviantArt Protect, you agree and acknowledge the following:

a. The DeviantArt Protect service is limited to detecting potentially similar or near-identical images to your images identified on DeviantArt or various blockchains (for more details on the specific platforms scanned, see our updated list). There might be other similar images that we will not detect, and therefore, we encourage you to keep track of existing works on different platforms.

b. To use DeviantArt Protect, you will need to open an account with DeviantArt, and agree to these terms and to the DeviantArt general privacy policy.

c. For images eligible for the DeviantArt Protect service, when a potential infringement is identified, we will send you a notice via email or via platform notification, of any potential similar image found. Upon receiving such a notice, you may choose if you wish to take action regarding such images or not (for example, by filing a DMCA takedown notice).

d. We will not cause or initiate any legal procedures with respect to the similar images. If you believe that one of our results is infringing upon your image, we encourage you to enter the relevant platform, and submit a takedown notice independently. DeviantArt will not be responsible, in any event, for such procedures. All results are indicating some similarity, but in no event will we determine or suggest if such work is indeed infringing or not.

e. DeviantArt Protect for images uploaded to Sta.sh:
You can upload up to 10 images and up to 2GB for free coverage by the DeviantArt Protect service. To receive coverage of the DeviantArt Protect service for any additional images, you will need to upgrade for a relevant Core Membership. Find out more about our membership, pricing, storage and plans here.

f. DeviantArt Protect for images published on DeviantArt as deviations:
For Core Members, we provide the DeviantArt Protect service for all images published as deviations. For non-Core users, we offer the DeviantArt Protect service for 90 days as of the day when the image was submitted as a deviation.

24. Data Scraping & Machine Learning Activities

DeviantArt is a community of creators that invests significant time and resources to protect its users and foster a cooperative and collaborative environment. Out of respect for its users' choices, DeviantArt has developed clear directives to communicate when its users do not consent to their Content being downloaded and used by third parties for the purposes of developing or operating artificial intelligence or other machine learning systems ("Artificial Intelligence Purposes"). Unless you actively give your consent, for Artificial Intelligence Purposes, DeviantArt will include a robots meta tag with the "noai" or "noimageai" directive in the head section of the HTML page associated with that Content on the Site, and will include an X-Robots-Tag HTTP response header with the "noai" directive when media files associated with that Content are downloaded from the Service. DeviantArt encourages adoption of these directives across other creative platforms, so that creators are able to share their artistic creations with online audiences without fear of losing control of their own works.

DeviantArt expects all users accessing the Service or the Site to respect creators' choices about the acceptable use of their Content, including for Artificial Intelligence Purposes. When a DeviantArt user does not consent to third party use of their Content for Artificial Intelligence Purposes, other users of the Service and third parties accessing the Site are prohibited from using such Content (labeled as "noai" and/or "noimageai") (i) to train an artificial intelligence system, (ii) as input into any previously trained artificial intelligence system, or (iii) to make available any derivative copy unless usage of that copy is subject to conditions at least as restrictive as those set out here. Automated systems or users that fail to respect these choices will be considered to have breached these Terms.

DeviantArt provides no guarantees that "noai" or "noimageai" directives will be present each time Content is accessed, even if the creator does not consent to use of that Content for Artificial Intelligence Purposes; and absence of such directives does not imply creator consent has been granted.

Users acknowledge that by uploading Content to DeviantArt, third-parties may scrape or otherwise use their works without permission. DeviantArt provides no guarantees that third parties will not include certain Content in external data sources, or otherwise use a creator's work for Artificial Intelligence Purposes, even when such directives are present. By prohibiting such conduct, DeviantArt makes no guarantees that it will pursue each unauthorized use of the Service, and the owners of the works are responsible for policing their own works to the extent permitted by law.

DeviantArt, Inc. Privacy Policy

Policy last updated: January 12, 2021

DeviantArt respects your privacy and is fully committed to protect your personal information and use it properly and in compliance with data privacy laws.

This Privacy Policy applies to our web sites, including www.deviantart.com, sta.sh, and our DeviantArt mobile applications (collectively, the "**DeviantArt Sites**" or "**Sites**"). This Privacy Policy explains what information we (together with our affiliated companies worldwide) collect and use pertaining to each of our Account holders and non-Account holders (such as Site visitors) through the Sites, how we use that information, and what choices you have with respect to the information we collect about you. The Sites and our services available via the Sites are collectively called the "**Services**".

Please take a few moments to read this Privacy Policy **before** you access or use the Services. By using or accessing the DeviantArt Sites, you acknowledge that you have read and fully understood this Privacy Policy and our Terms of Service and that they both apply to your use of the Services. If you do not read and fully understand this Privacy Policy, please do not use the Sites or Services. This Privacy Policy is not intended to override the terms of any contract you have with us, nor any rights you might have under applicable data privacy laws. Where you have read this policy but would like further clarification, please contact us at help@deviantart.com.

1. What information do we collect?

To provide you the Services, we may collect personal information relating to an identified or identifiable natural person ("**Information**").

We collect Information in order to provide, operate and improve our Sites and Services, to administer your use of the Site or Services (including your Account, as defined below), and to enable you to enjoy and easily navigate our Site and Services. Additionally, we collect your information, among other reasons stated below, to provide you with ongoing customer assistance and technical support, and to enhance our data security and fraud prevention capabilities.

1.1. Information you provide us:

When you register for our Services and create a DeviantArt account via the DeviantArt Sites (an "**Account**"), when you register for special services (e.g., the Print Program, Premium Content), sign up for e-mail newsletters and purchase products or services, information you include in your communications with us, we collect certain information such as your name, age/ date of birth, postal address, telephone number, e-mail address, details regarding connected third-party accounts (such as the e-mail or username for a connected PayPal, Google or Facebook account), credit card information (if you use certain of our features and services).

If you create your Account using your login credentials from a third party site or service, we'll be able to access and collect your name and email address and other data that your privacy settings

on that third party site or service permit us to access but we don't receive or store passwords for those third party sites and services.

Your Address Book. We may ask users for access to the address books on their mobile devices, so that we may connect Account holders, however we will not access your address book without your permission to do so.

1.2. Information collected through your use of the Site or Services.

When you are visiting or using our Site or Services, including when you browse the Site or a User Account, edit your Account and upload information and content, and/or download and use any Site feature or services, we are aware of it and will usually gather, collect and record such uses, sessions and related information, either independently or with the help of third-party services as detailed herein, including through the use of "cookies" and other tracking technologies, as further detailed in section 5, below.

Our servers automatically collect and record certain information about how a person uses our Services (we refer to this information as "Log Data"), for both Account holders and non-Account holders (such as Site visitors) (both will be referred to as a "User"). Log Data may include information such as a User's Internet Protocol (IP) address, mobile device identifier, browser type, operating system, the pages or features of our Services to which a User browsed and the time spent on those pages or features, search terms, the links on our Services on which a User clicked, the friends of Account holders who also use the Services, purchases made by the User, how often Users click on our advertisements, which files are downloaded most frequently, and which areas of our Site are the most popular and other statistics. We also collect certain information that your mobile device sends when you use our Services, including user settings, the operating system, as well as information about your use of our Services. We use this information to administer the Services and we analyze (and may engage third parties to analyze) this information to further develop, improve and enhance the Services by expanding their features and functionality and tailoring them to our Users' needs and preferences, and to make recommendations.

1.3. Information we collect from other sources

If you create your Account using your login credentials from a third party site or service, we'll be able to access and collect your name and email address and other data that your privacy settings on that third party site or service permits us to access but we never receive or store passwords for those third party sites and services. We cannot delete or change any Information that is stored on third party sites and services.

In addition, We may receive information about you from third-party sources, such as (i) security providers, fraud detection and prevention providers to help us screen out Users associated with fraud, and (ii) advertising and marketing partners in order to monitor, manage and measure our ad campaigns.

2. How do we use such information?

2.1. We use your information for the following purposes: to provide and operate the Services; to enhance our data security and fraud prevention capabilities; To create aggregated statistical data and other aggregated and/or inferred information, which we may use to provide and improve our respective Services; to customize advertising and content available on the DeviantArt Sites, to send you service-related notices and promotional information about products and services that may be of interest to you and/or to conduct research for internal purposes; to help us in updating, expanding and analyzing our records to identify new Users; to facilitate, sponsor, and offer certain contests, events, and promotions, monitor performance, contact winners, and grant prizes and benefits; and to comply with any applicable laws and regulations.

2.2. We will only use your Information for the purposes set out in Section 2 where you give us your permission and/or we are satisfied that:

a. our use of your Information is necessary to perform a contract or take steps to enter into a contract with you (e.g. to provide you with Services, to provide you with our customer assistance and technical support), or

b. our use of your Information is necessary to comply with a relevant legal or regulatory obligation that we have, or

c. our use of your Information is necessary to support legitimate interests that we have as a business (for example, to maintain and improve our Services by identifying user trends and the effectiveness of our promotional campaigns and identifying technical issues), provided it is conducted at all times in a way that is proportionate, and that respects your privacy rights

3. How we share your information?

We may share your information with service providers and others (or otherwise allow them access to it) in the following manners and instances:

3.1. *Third Party Service Providers*: We may share Information as well as aggregated information that we collect with third party service providers whose services and solutions complement, facilitate and enhance our own. These include but are not limited to hosting and server co-location services, communications and content delivery networks (CDNs), data and cyber security services, billing and payment processing services, fraud detection and prevention services, industry analysis, web analytics, e-mail distribution and monitoring services, session recording and remote access services, performance measurement, data optimisation and marketing services, content providers, and our legal and financial advisors (collectively, "**Third Party Services**")

3.1.1. We may share information with Third Party Services for a business purpose such as identifiers, commercial information and other categories as listed in Section 1.

3.2. *Information Disclosed for Our Protection and the Protection of Others*. Where permitted by local data protection laws, we will disclose Information when required by law or under the good-faith belief that such disclosure is necessary in order to conform to applicable law, comply with subpoenas, court orders or legal process served on DeviantArt, to establish or exercise our legal rights or defend against legal claims, and to protect the property or interests of DeviantArt, its agents and employees, personal safety, or the public. Under these circumstances, DeviantArt may be prohibited by law, court order or other legal process from providing notice of the disclosure, and DeviantArt reserves the right under those conditions not to provide notice in its sole discretion.

3.3. *Parent Companies, Subsidiaries and Affiliated Companies*. We may share Information internally within our family of companies, for the purposes described in this Privacy Policy. For example, we may share your Information with Wix.com Inc., our U.S.-based parent company, or Wix.com Ltd., our Israel based parent company, in the course of facilitating and providing you with our Site or Services. In addition, should we, Wix or any of its affiliates undergo any change in control, including by means of merger, acquisition or purchase of substantially all of its assets, your Information may be shared with the parties involved in such event.

3.4. *APIs*. We offer APIs for use by third parties to access various features of our Services and content on our Sites. Some APIs will be used by third parties to access and use your Information with the third parties' services however, your Information will not be accessed and used by a third party API user without your consent. We also offer APIs to some of our third party service providers to assist with provision of services to us, such as, but not limited to, credit card processing and shipping fulfillment services, and those third party API users will access and use your Information only in order to provide services to us for you, as noted above under *"Third Party Service Providers"*.

3.5. *Information We Disclose with Your Consent or at Your Request*. We will share your Information with third-party websites or platforms, such as social networking sites, if you have expressly requested that we do so.

3.6. *Social Media Features and Framed Pages:* Our Services include certain Social Media features and widgets, such as the "Facebook Like" button, the "Share this" button or other interactive mini-programs ("Social Media Features"). These Social Media Features may collect information such as your IP address or which page you are visiting on our Sites, and may set a cookie to enable them to function properly. Social Media Features are either hosted by a third party or hosted directly on our Services. Your interactions with these third parties' Social Media Features are governed by their policies and not ours.

For the avoidance of doubt, we may share your Information in manners other than as described above, pursuant to your explicit approval, or if we are legally obligated to do so.

4. Where do we store your information?

4.1. Information of Account holders and non-Account holders may be maintained, processed and stored by us and our authorized affiliates and service providers in the United States of America, in Europe (including in Ukraine), in Israel, and in other jurisdictions as necessary for the proper delivery of our Services and/or as may be required by law (as further explained below).

4.1.1 Jobs Applicants Information will be maintained, processed and stored in the United States and Israel, in the applied position′s location(s).

4.1.2. Our parent company, Wix.com Ltd. is based in Israel, which is considered by the European Commission to be offering an adequate level of protection for the Information of EU Member State residents.

4.1.3. Our affiliates and service providers that store or process your Information on our behalf are each contractually committed to keep it protected and secured, in accordance with industry standards and regardless of any lesser legal requirements which may apply in their jurisdiction.

4.2. Transfer of EU Personal data : If you are located in Europe, when we will transfer your Personal Information to the United States or anywhere outside Europe, we will make sure that (i) there is a level of protection deemed adequate by the European Commission or (ii) that the relevant Model Standard Contractual Clauses are in place.DeviantArt participates in and has certified its compliance with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework. We are committed to subjecting all Information received from European Union (EU) member countries and Switzerland, respectively, in reliance on the Privacy Shield Framework, to the Framework′s applicable Principles. To learn more about the Privacy Shield Framework, visit the U.S. Department of Commerce′s Privacy Shield List, https://www.privacyshield.gov.

5. Use of Cookies and Similar Technologies

5.1. A cookie is a small file of letters and numbers downloaded on to your computer when you access certain websites. In general, cookies allow a website to recognize a userâ€™s computer. The most important thing to know about cookies placed by DeviantArt is that they make our website a bit more user-friendly, for example, by remembering site preferences and language settings.

5.2. Cookies should be divided in two types:

5.2.1. ″First-party cookies″ - Cookies that are placed by DeviantArt

5.2.2. ″Third-party cookies″ - Cookies that are placed and used by Third Party Service Providers

5.3. We also use other technologies with similar functionality to cookies, such as web beacons, pixels, and tracking URLs, to obtain Log Data (as described in the Privacy Policy). For example, our email messages may contain web beacons and tracking URLs to determine whether you have opened a certain message or accessed a certain link.

5.4. Duration: Depending on their function, Cookies may have different durations. There are session cookies and persistent cookies:

5.4.1. Session cookies only last for your online session. It means that the browser deletes these cookies once you close your browser

5.4.2. Persistent cookies stay on your device after the browser has been closed and last for the period of time specified in the cookie

5.5. Categories: The cookies used on our website fall into one of four categories: Essential, Analytics, Functional and Marketing.

5.5.1. *Essential Cookies* let you move around the website and use essential features like secure and private areas.

5.5.2. *Analytics cookies* let us understand how you use our website (e.g. which pages you visit and if you experience any errors). These cookies are essential to us being able to enhance and maintain our platform.

5.5.3. *Functional cookies* are cookies used to remember choices users make to improve their experience.

5.5.4. *Marketing cookies* are used to collect information about the impact of our marketing campaigns performed in other website on users and non-users. These cookies are only used on DeviantArt owned sites under *deviantart.com

Please check out the table below to receive information about the type, categories, purpose and duration of cookies placed by DeviantArt and Third Party Service Providers

Type	Name	Purpose	Duration	
Cookie	auth	Identify logged users	1 month	Essential
Cookie	auth_secure	Security	never	Essential
Cookie	userinfo	Identify logged users	1 month	Essential
Cookie	td	image grid sizing for SSR (eclipse)	session	Essential
Cookie	tw	image grid sizing for SSR (green site)	7 day	Essential
Cookie	hubtoken	websocket push messages	session	Essential
Cookie	tpc	Oauth login for stash	session	Essential

Type	Name	Purpose	Duration	
Cookie	vd	Used for Advertising	1 month	Marketing
Local Storage	chatDB	Allow chat feature	persistent	Essential
Local Storage	console_dapi_recent, console_recent	Recently used endpoints list in API developer console	persistent	Analytics
Local Storage	custombox.recent.colors	Remembers colors used in custom boxes	persistent	Functional
Local Storage	FilmQuality	Allow the use of player settings	persistent	Essential
Local Storage	statusUpdateSubmitCounter	Number of status updates submitted via eclipse	persistent	Functional
Local Storage	intents, intents_other	List of signup intents selected by user	persistent	Essential

Third Party Cookies:

Type	Name	Third party	Purpose	Duration	
Beacon and Cookie	_pxhd	PerimeterX (https://www.perimeterx.com/legal/privacy/)	Security	1 y	Essential
Beacon and Cookie	_ga, _gat, _gid, _utm*	Google Analytics(https://policies.google.com/privacy?hl=en-US)	Analytics	2y	Analytics
Beacon and Cookie	r/collect	Google Doubleclick Ads (through Google Analytics)https://policies.google.com/privacy?hl=en-US	Analytics	session	Marketing
Beacon and	large number, varies	Google Doubleclick Ads and other Ads networks https://policies.google.com/privacy?hl=en-US	Advertising	varies	Marketing

Type	Name	Third party	Purpose	Duration	
Cookie					
Beacon and Cookie	JSESSIONID	New Relic (https://newrelic.com/termsandconditions/privacy)	System Monitoring	session	Essential
Script and Cookie	TS#, XSRF-TOKEN	Wix.com https://www.wix.com/about/privacy	Security	session	Essential
Script and Cookie	frog.wix.com	Wix.com https://www.wix.com/about/privacy	Identify logged users	persistent	Essential
Script and Cookie	fed ,fedops.logger.sessionId	Wix.com https://www.wix.com/about/privacy	System monitoring	persistent	Essential
Local Storage	debug, debugpanel-height, debugpanel-tab, debugpanel-visible	Wix.com https://www.wix.com/about/privacy	System Monitoring	persistent	Essential
Local Storage	firebase:host:wix-engage-visitors-prod-27.firebaseio.com	Wix.com	Allow the Chat feature	persistent	Essential

Your Choices

You can change your cookie settings by clicking this link.

Alternatively, it is also possible to stop your browser from accepting cookies altogether by changing your browser's cookie settings. You can usually find these settings in the "options" or "preferences" menu of your browser.

Please note that deleting our cookies or disabling future cookies or tracking technologies may prevent you from accessing certain areas or features of our Services or may otherwise adversely affect your user experience.

6. Communications:

6.1. *Promotional Messages*: We may use your Information to send you promotional content and messages by e-mail, text messages, notifications within our platform, marketing calls and similar forms of communication from DeviantArt or our partners (acting on our behalf) through such means. If you do not wish to receive such promotional messages or calls, you may notify DeviantArt at any time or follow the "unsubscribe" or STOP instructions contained in the promotional communications you receive.

6.2. *Service and Billing Messages*: We may also contact you with important information regarding our Services, or your use thereof. For example, we may send you a notice (through any of the means available to us) if a certain Service is temporarily suspended for maintenance; reply to your support ticket or e-mail; send you reminders or warnings regarding upcoming or late payments for your current or upcoming subscriptions; forward abuse complaints regarding your Account; or notify you of material changes in our Services.

It is important that you are always able to receive such messages. For this reason, you are not be able to opt-out of receiving such Service and Billing Messages unless you are no longer a DeviantArt User (which can be done by deactivating your Account).

7. Your rights in relation to your information

7.1. It is imperative that you will have control over your Information. That is the reason why we are taking reasonable steps in order to enable you to access, receive a copy of, update, amend, delete, or limit the use of your Information.

7.2. We may ask you for additional information to confirm your identity and for security purposes, before disclosing the requested data to you. We reserve the right to charge a fee where permitted by law, for instance if your request is manifestly unfounded or excessive.

7.3. You have the right to lodge a complaint with your local supervisory authority for data protection (but we still recommend you to contact us first).

7.4. For all DeviantArt Users, if you may review and amend your Information by logging in and navigating to your Settings page on the website. Once there, you may modify information that is incorrect and delete certain information from your profile. You can also change your permission settings for us to send you e-mail newsletters.

7.5. For all DeviantArt Users, if you wish to **retrieve your DeviantArt Account data** or **permanently delete your DeviantArt data**, please follow the instructions provided in the following article: https://www.deviantart.com/settings/gdpr/.

7.6. In addition, feel free to contact us online, or mail your request (see Section 15). We will make all reasonable efforts to honor your request promptly (unless we require further information from you in order to fulfil your request), subject to legal and other permissible considerations.

7.6.1. Please note that permanently deleting your Account erases all of your information from our databases. After completing this process, you can no longer use any of your Services, your Account and all its data will be removed permanently, and we will not be able to restore your Account or retrieve your data in the future. If you contact DeviantArt Support in the future, the system will not recognize your Account and support agents will not be able to locate the deleted Account.

8. Additional Information for California residents

8.1. If you are a California resident using the Services, the California Consumer Privacy Act ("CCPA ") may provide you the right to request access to and deletion of your information.

8.2. In order to exercise the right to request access to and deletion of your Information, please see the information on the section 7, above.

8.3. DeviantArt does **not** sell user Information to third parties for the intents and purposes of the CCPA.

8.4. Users of the Services who are California residents and under 18 years of age may request and obtain removal of content they posted by emailing us at <help@deviantart.com>. All requests must be labeled "California Removal Request " on the email subject line. All requests must provide a description of the content you want removed and information reasonably sufficient to permit us to locate that content. We do not accept California Removal Requests via postal mail, telephone, or facsimile. We are not responsible for notices that are not labeled or sent properly, and we may not be able to respond if you do not provide adequate information. Please note that your request does not ensure complete or comprehensive removal of the material. For example, materials that you have posted may be republished or reposted by another user or third party.

9. Data Retention

We may retain your Information for as long as your Account is active, as indicated in this Privacy Policy or as otherwise needed to provide you with our Services.

We may continue to retain such Information even after you deactivate your Account and/or cease to use any particular Services, as reasonably necessary to comply with our legal obligations, to resolve disputes regarding our Users, prevent fraud and abuse, enforce our agreements and/or protect our legitimate interests. Where your Information is no longer required, we will ensure it is securely deleted.

10. Security

10.1. We have implemented security measures designed to protect the Information you share with us, including physical, electronic and procedural measures. Among other things, we offer HTTPS secure access to most areas on our Services; the transmission of sensitive payment information (such as a credit card number) through our designated purchase forms is protected by an industry standard SSL/TLS encrypted connection; and we regularly maintain a PCI DSS (Payment Card Industry Data Security Standards) certification. We also regularly monitor our systems for possible vulnerabilities and attacks, and regularly seek new ways and Third Party Services for further enhancing the security of our Services and protection of our visitors′ and Users′ privacy.

10.2. Regardless of the measures and efforts taken by us, we cannot and do not guarantee the absolute protection and security of your Information, or any other content you upload, publish or otherwise share with us or anyone else. We therefore encourage you to set strong passwords for your User Account, and avoid providing us or anyone with any sensitive information which you believe its disclosure could cause you substantial or irreparable harm.

10.3. If you have any questions regarding the security of our Services, you are more than welcome to contact us at security-report@deviantart.com.

11. Third-Party Websites

Our Services may contain links to other websites or services. We are not responsible for such websitesâ€™ or servicesâ€™ privacy practices. We encourage you to be aware when you leave our Services and to read the privacy statements of each and every website and service you visit before providing your information. This Privacy Policy does not apply to such linked third party websites and services which are subject only to the third party policies.

12. Your Profile Page

12.1. Please note that when you create an Account, your profile page will display your Account user name and certain statistics regarding your own use of the Services, including but not limited to, the date you became an Account holder, the categories of materials you posted and how long ago you last visited the Sites. It will also display information about the Account holders who visit your profile page including the names of those Account holders who follow you (if the Account holder has permitted such display), and the number of visitors to, and views of your profile page or pages containing content you have submitted.

12.2. Any information or content that you post to your profile page, or to any Groups which you are a part of, chat rooms or forums will be publicly accessible by Users so please exercise your good judgment before you post. The name you choose when creating your Account is visible to all Users of the Services. If you visit another Account holder′s profile page, your user name will appear on that page. DeviantArt does not control, and is not responsible for, the use of any information or content that you have exposed to the public through your use of the Services. You may use the tools we make available via the Services to make decisions about what information about you, including Information, will be visible on your profile page and on the profile pages of

other Account holders that you visit. Please note accounts can be created either by individuals or companies. Note that in some cases, we may not be able to remove your Information from such areas.

13. Questions and Complaints

13.1. If you have any questions or concerns about our collection, use or disclosure of information, or if you believe that we have not complied with this Privacy Policy or applicable data protection laws, please contact us â€" our details are set out at the end of this Privacy Policy.

13.2. Our Data Protection Officer team will investigate the complaint and determine whether a breach has occurred and what action, if any, to take. We take every privacy complaint seriously and will make all reasonable efforts to resolve your complaint promptly and in accordance with applicable law.

14. Updates and Interpretation

14.1. We may update this Privacy Policy as required by applicable law, and to reflect changes to our information collection, usage and storage practices. In relation to any updated Privacy Policy, we will, as required by applicable law, notify you, seek your consent and/or take any other measures. We encourage you to periodically review this page for the latest information on our privacy practices.

14.2. Any heading, caption or section title contained herein, and any explanation is provided only for convenience, and in no way defines or explains any section or provision hereof, or legally binds any of us in any way

15. Contacting Us

If you have questions about this Privacy Policy or our policies or wish to exercise any of your rights as described, please contact our DPO team at:

DeviantArt, Inc.
7111 Santa Monica Blvd, Ste B, PO Box 230
West Hollywood, CA 90046
Email: help@deviantart.com

For the purposes of GDPR (Article 27), you may contact our EU representative at:

Wix Online Platforms Limited
1 Grant's Row
Dublin 2 D02HX96, Ireland

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

SARAH ANDERSEN, an individual; KELLY MCKERNAN, an individual; KARLA ORTIZ, an individual,

DEFENDANTS

STABILITY AI LTD., a UK corporation; STABILITY AI, INC., a Delaware corporation; MIDJOURNEY, INC., a Delaware corporation; DEVIANTART, INC., a Delaware corporation,

(b) County of Residence of First Listed Plaintiff   Multnomah County, Oregon
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

See attachment.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff	☒ 3 Federal Question *(U.S. Government Not a Party)*
☐ 2 U.S. Government Defendant	☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT

- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment Of Veteran's Benefits
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY

- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS

- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities– Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee– Conditions of Confinement

FORFEITURE/PENALTY

- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION

- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY

- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent—Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES

- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation–Transfer
- ☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
17 U.S.C. § 504; 17 U.S.C. §§ 1201 et seq.; 15 U.S.C. § 1125

Brief description of cause:
Copyright Infringement, DMCA violations, Breach of Contract, Right of Publicity violations, and related claims.

VII. REQUESTED IN COMPLAINT:

✓ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $ 1,000,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions)*:

JUDGE _____   DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)   ☒ SAN FRANCISCO/OAKLAND   ☐ SAN JOSE   ☐ EUREKA-MCKINLEYVILLE

DATE 01/13/2023   SIGNATURE OF ATTORNEY OF RECORD /s/ Joseph R. Saveri

ATTACHMENT TO CIVIL COVER SHEET

I.(c) Attorneys (Firm Name, Address, and Telephone Number)

Joseph R. Saveri (State Bar No. 130064)
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