Court File No. T-2676-25

FEDERAL COURT
PROPOSED CLASS PROCEEDING

B E T W E E N:

(Court Seal)

MARK GAGNÉ

Plaintiff

and

STABILITY AI LTD., MIDJOURNEY, INC., GOOGLE LLC, and RUNWAY AI, INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you must prepare a Statement of Defence in Form 171B prescribed by the *Federal Court Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court.

> WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or
>
> WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.
>
> TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Court Rules*.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date July 29, 2025 Issued by

Digitally signed by George, Vanessa
DN: cn=George, Vanessa, c=CA, o=GC, ou=CAS-SATJ, email=vanessa.george@cas-satj.gc.ca
Date: 2025.07.29 17:07:03 -04'00'

Local Registrar

Address of local office: Federal Court
180 Queen St. W.
Toronto ON M5V 1Z4

TO: STABILITY AI LTD.
88 Notting Hill Gate
London, England W11 3HP
United Kingdom

AND TO: MIDJOURNEY, INC.
333 Harrison Street, Apt. 605
San Francisco, CA 84105
United States of America

AND TO: GOOGLE LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
United States of America

AND TO: RUNWAY AI
79 Walker St, Floor 5
New York City, NY 10003
United States of America

CLAIM

I. OVERVIEW

1. This is a class action for infringement of copyright, on behalf of artists, against the providers of large commercial image generators that rely on generative "artificial intelligence". The term "artificial" is a misnomer because in reality the defendants' commercial image generators are built on the copyrighted human intelligence of the Class.

2. The defendants used the class members' Works through the Large-scale Artificial Intelligence Open Network ("**LAION**"), which had developed two datasets containing website addresses ("**URLs**") to hundreds of millions of copyrighted images.

3. The defendants infringed the copyrights of class members by both obtaining this material to train and in the process of training their image generators ("input" infringements), and by allowing their commercial image generators to reproduce copyrighted images and the distinctive styles of particular artists, including class members ("output" infringements).

4. **Input infringements**: The defendants downloaded and copied each image linked in the LAION datasets, including hundreds of millions of copyrighted images (the "Works", as defined more specifically below). The defendants then made many copies of each Work – adding progressively more random noise to each copy – to train the diffusion models at the core of their commercial image generators. Both the initial downloading and making additional copies constitute an infringement of the Class's copyright.

5. **Output infringements**: In response to prompts by users, the defendants' commercial image generators reproduce the Works or recognizable parts thereof, and mimic the

distinctive styles of the artists. Producing these reproductions of the Works and artists' distinctive styles constitutes a further infringement of the Class's copyright.

6. The defendants are liable to the plaintiff and the Class for these copyright infringements.

II. DEFINED TERMS

7. In this Statement of Claim, the following terms have the following meanings:

(a) "**400M Period**" means the period from August 20, 2021, to the date that this action is certified as a class proceeding or such other date that the Court may determine to be appropriate.

(b) "**5B Period**" means the period from March 31, 2022, to the date that this action is certified as a class proceeding or such other date that the Court may determine to be appropriate.

(c) "**Class**" means all 400M Artists and all 5B Artists:

(i) "**400M Artists**" means all persons resident in Canada or a corporation domiciled in Canada or incorporated under Canadian law who, during the 400M Period, owned a copyrighted work linked within LAION-400M, excluding the defendants, their parents, subsidiaries, and any other affiliated persons.

(ii) "**5B Artists**" means all persons resident in Canada or a corporation domiciled in Canada or incorporated under Canadian law in Canada who, during the 5B Period, owned a copyrighted work linked within LAION-5B,

excluding the defendants, their parents, subsidiaries, and any other affiliated persons.

(d) "***Copyright Act***" means the *Copyright Act*, RSC 1985, c C-42.

(e) "**Image Generators**" means all of the defendants' products and services trained on LAION-400M or LAION-5B. Without limiting the generality of the foregoing, it includes all of the products and services described below in paragraph 22.

(f) "**Works**" means every image or similar file:

(i) Either: (1) in LAION-400 and subject to copyright during the 400M Period or (2) in LAION-5B and subject to copyright during the 5B Period; and

(ii) The copyright to which is owned by a person resident in Canada or a corporation domiciled in Canada or incorporated under Canadian law.

II. RELIEF SOUGHT

8. The plaintiff, on behalf of the Class, claims:

(a) A declaration that each defendant is liable for infringing the copyright in the Works contrary to sections 3 and 27 of the *Copyright Act*;

(b) A permanent injunction pursuant to sections 34(1) of the *Copyright Act* and a wide injunction pursuant to 39.1 of the *Copyright Act* prohibiting the defendants, their directors, officers, employees, agents, licensees, successors, assigns, related or affiliated companies, and all those under the control of the defendants, from:

(i) Infringing the copyright in the Works and in any other Work that the defendants are likely to infringe;

(ii) Using LAION-400M or LAION-5B to train Image Generators; and/or

(iii) Making the Image Generators available anywhere in Canada;

(c) One of the following:

(i) Damages, and the part of the profits that each defendant has made from the infringements not taken into account in calculating the damages, pursuant to section 35 of the *Copyright Act*, in an amount to be determined at trial; or

(ii) In the alternative, if elected before final judgment is rendered, an award of statutory damages in the amount of $20,000 per Work (or an amount that the Court considers just) for the infringement of copyright, pursuant to section 38.1 of the *Copyright Act*;

(d) Pre-judgment interest and post-judgment interest pursuant to sections 36-37 of the *Federal Courts Act*, RSC 1985, c F-7; and

(e) Such further and other relief as this Honourable Court may deem just.

III. FACTS

A. The Plaintiff

9. The plaintiff, Mark Stephen Gagné, is a professional visual artist residing in Sudbury, Ontario.

10. Since graduating from the fine arts program at Cambrian College in 2003, his career has focused on producing and selling original artwork. He has worked with multiple mediums, including pens, pencils, and markers on paper; photography; and mixed media. Since 2016, Mr. Gagné has also operated MindMelt Studio, a sole proprietorship.

11. Mr. Gagné is particularly well-known for his inked photography, in which he incorporates ink drawings – often of cute or creepy figures – directly onto photographic prints. Schedule A includes some examples of his inked photography, among other Works.

12. Mr. Gagné's copyrighted Works, including all of the images set out in Schedule A, are included in LAION-5B.

13. Copyright subsists in his Works pursuant to section 5 of the *Copyright Act*.

    (a) These Works are each original artistic works within the meaning of section 2 of the *Copyright Act*. They were a product of the exercise of significant skill, judgment, expertise, and talent on the part of Mr. Gagné.

    (b) Mr. Gagné was a citizen of Canada and ordinarily resident in Canada when he made these works.

    (c) Mr. Gagné has never published these works for commercial use.

(d) Mr. Gagné is alive, so the term established in section 6 of the *Copyright Act* has not yet expired.

14. As described further below, the defendants' Image Generators were trained on the Works belonging to the Class, including Mr. Gagné's Works.

15. The defendants' impugned conduct has had and continues to have a direct adverse effect on Mr. Gagné's livelihood, as he now has to compete with the same Image Generators that were unlawfully built on his copyrighted Works. For example, potential clients who would have normally commissioned paid work from Mr. Gagné now use the Image Generators instead. When Mr. Gagné attends art shows and festivals to sell non-commissioned images, he has to compete with people selling images produced by the Image Generators.

B. The Class

16. Like Mr. Gagné, each member of the Class produced – or were transferred the copyright from an artist who produced – at least one image that is linked to in LAION-400M or LAION-5B for which all of the following is true:

(a) The image is an original artistic work within the meaning of section 2 of the *Copyright Act*. They were a product of the exercise of significant skill, judgment, expertise, and talent on the part of the artist.

(b) The artist was a citizen of, or ordinarily resident in a treaty country within the meaning of section 2 of the *Copyright Act* when they made the image.

(c) Neither the artist nor the member of the Class has never published the image for commercial use.

(d) The artist is alive, or it has been fewer than 70 years since the artist passed away.

17. Thus, each member of the Class owns the copyright to at least one Work. Each member of the Class can identify themselves by searching for themselves or their Works in LAION-400M or LAION-5B.

C. The Defendants

18. Stability AI Ltd. ("**Stability**") is a corporation incorporated under the laws of England. Its headquarters are in London, England. As described further below, it operates and sells the services of Stable Diffusion and Stable Assistant across Canada.

19. Midjourney Inc. ("**Midjourney**") is a corporation incorporated under the laws of Delaware. Its headquarters are in San Francisco, California. As described further below, it operates and sells the services of Midjourney across Canada.

20. Google LLC ("**Google**") is a corporation incorporated under the laws of Delaware. Its headquarters are in Mountain View, California. As described further below, it operates and sells the services of Imagen, amongst others, across Canada.

21. Runway AI, Inc. ("**Runway**") is a corporation incorporated under the laws of Delaware. Its headquarters are in New York City, New York. As described further below, it operates and sells the services of Runway across Canada.

D. The Image Generators

22. Each of the defendants operates and sells the services of one or more Image Generators that rely on a diffusion model and were trained on a LAION dataset.

(a) **Stability**: On August 22, 2022, Stability publicly released Stable Diffusion version 1 and published that model on GitHub, a free-to-use developer platform commonly used to host open source code. Stable Diffusion is a diffusion model (described below) that generates images. Stability has iterated this core model and now offers the services of three variants of the current version 3.5 (in descending quality but increasing speed: large, medium, and turbo). Stability charges subscription fees to companies that make more than $1,000,000 USD per year. Individuals can use the model for free, but advanced applications require use of the Stability API, which requires credits that Stability sells for $0.01 USD per credit. Generating an image costs 0.9-8 credits. Modifying images costs 1-25 credits. Stability also charges a monthly subscription fee to use Stable Assistant – a tool built on the core Stable Diffusion model that can perform more advanced edits.

(b) **Midjourney**: In February 2022, Midjourney publicly released Midjourney version 1 on Discord, a social media site. The Midjourney model is a diffusion model (described below) that generates images. Within months, the Midjourney server had become the most popular server on Discord. Midjourney has iterated this core model and now offers the services of the current version 7. Midjourney charges subscription fees to use the Midjourney model. For users who need images more quickly, it also charges $4 USD per hour to use additional graphics processing units (or GPUs), which speed up the process.

(c) **Google**: In May 2022, Google announced but did not publicly release Imagen version 1. Imagen is a diffusion model (described below) that generates images. Google has iterated this core model and now offers the services of the current

version 4. Google offers access to and use of Imagen through its other commercial products. In November 2022, Google made Imagen version 1 available to a limited set of users through its AI Test Kitchen (later renamed Whisk). In May 2023, Google incorporated Imagen version 1 into its commercial AI cloud computing service, Vertex AI. In October 2023, Google incorporated Imagen version 1 into its Search Generative Experience through Search Labs, allowing users to add an image generator function to Google search. In February 2025, Google incorporated Imagen version 3 into its Gemini API. Google charges directly for image generation through Vertex AI and Gemini API. For example, it charges $0.06 USD to generate an image using Imagen 4. Google also profits indirectly from the increased use of AI Test Kitchen / Whisk, Search Labs, and Google search.

(d) **Runway**: Runway helped develop the original Stable Diffusion model. In February 2023, using Stable Diffusion as a template, Runway publicly released Runway Gen-1, which was primarily a video generator. The Runway model is a diffusion model (discussed below). Runway has iterated on this core model and now offers the services of the current version Gen-4, which includes an image generator. Runway charges between 5 to 8 credits to generate an image using Gen-4, and users must pay subscription fees to get additional credits.

E. LAION and the LAION Datasets

23. LAION is a non-profit organization based in Hamburg, Germany. Its purported mission is to create and release to the public datasets, code, and models to advance artificial intelligence. It is partially funded by Emad Mostaque, the original CEO of Stability.

24. On August 11, 2021, LAION published a program on GitHub titled "img2dataset". The program is open source so anyone can access it. In order to run this program, the user needs to have a list of URLs of images. When the user runs the program, their computer follows each URL in turn, downloading a copy of that image onto the user's computer. After running the program, the user will have downloaded every image linked in their list of URLs – whether those images are copyrighted or not.

25. On August 20, 2021, LAION published LAION-400M, a dataset containing 400,000,000 entries each of which has: (a) a URL of an image; (b) the width of the image; (c) the height of the image; (d) a caption for that image; (e) a number estimating how similar the image is to the caption; and (f) a tag that indicates whether the image is likely not safe for work.

26. In order to use LAION-400M to train a model, the user must first download copies of every image linked to in LAION-400M. The easiest way to do this would be to run the img2dataset program, but another program with the same functionality could be used.

27. On March 31, 2022, LAION published LAION-5B, a dataset containing 5,850,000,000 entries with the same information as the entries in LAION-400M, plus additional metrics such as the probability that the image contains a watermark.

28. In order to use LAION-5B to train a model, the user must first download copies of every image linked to in LAION-5B. The easiest way to do this would be to run the img2dataset program, but another program with the same functionality could be used.

29. On October 16, 2022, LAION published an article explaining how LAION-5B works. That document states: "We do not own the copyright of the images or text." It also states: "LAION tools empower people to discover problematic personal or copyrighted content

available in the public internet". It also states, in bold, "we strongly recommend that LAION-5B should only be used for academic research purposes in its current form."

30. LAION's website contains an FAQ, the first two questions and answers are:

> **Does LAION datasets respect copyright law?**
> LAION datasets are simply indexes to the internet, i.e. lists of URLs to the original images together with the ALT texts found linked to those images. While we downloaded and calculated CLIP embeddings of the pictures to compute similarity scores between pictures and texts, we subsequently discarded all the photos. Any researcher using the datasets must reconstruct the images data by downloading the subset they are interested in. For this purpose, we suggest the img2dataset tool.
>
> **Links in your dataset show to my copyrighted data. I would like to have them removed.**
> LAION is a non-profit research organization that studies how learning algorithms work. Therefore, TDM [text and data mining] exemptions are valid for LAION according to Art. 3 EU TDM exemption and §60d UrhG of German law, TDM exemption, for research. LAION is thus permitted to use any copyrighted material as data for conducting research on learning algorithms and foundation models as training outcome.

F. The Defendants Downloaded All Works in the LAION Datasets Without Permission

31. Each defendant trained their Image Generators on LAION-400M, LAION-5B, or both.

(a) **Stability**: Stability has trained Stable Diffusion on LAION datasets since at least April 2022. Versions 2.0, XL 1.0, 3.0, and 3.5 (released, respectively, in November 2022, July 2023, February 2024, and October 2024) were trained on LAION-5B. Stable Assistant incorporates Stable Diffusion, which would have required training using LAION-400M or LAION-5B. The specific dates and details of this training are solely within the knowledge and possession of this defendant, and they are not known to the plaintiff or the Class.

(b) **Midjourney**: Midjourney has trained its Midjourney image generator on LAION datasets since at least February 2022. Version 1, 2, 3, and 4 (released, respectively, in February 2022, April 2022, July 2022, and November 2022) were trained on LAION-400M. Versions 5, 5.1, 5.2, 6, 6.1, and 7 (released, respectively, in March 2023, May 2023, June 2023, December 2023, July 2024, and April 2025) were trained on LAION-5B. Versions 5-7 also incorporate Stable Diffusion, discussed in the previous paragraph, which would have required training using LAION-400M or LAION-5B. The specific dates and details of this training are solely within the knowledge and possession of this defendant, and they are not known to the plaintiff or the Class.

(c) **Google**: Google has trained its Imagen image generator on LAION datasets since at least May 2022. Version 1 (announced but not released in May 2022) was trained on LAION-400M. Versions 2, 3, and 4 (released, respectively, in December 2023, May 2024, and May 2025) were trained on LAION-5B. The specific dates and details of this training are solely within the knowledge and possession of this defendant, and they are not known to the plaintiff or the Class.

(d) **Runway**: Runway relies on Stable Diffusion, which would have required training using LAION-400M or LAION-5B. The specific dates and details of Runway's training are solely within the knowledge and possession of this defendant, and they are not known to the plaintiff or the Class.

32. In order to train their Image Generators, the defendants had to first download local copies of each of the images in either LAION-400M or LAION-5B one or more times, including the Works.

33. Copies of the Works were made in their entirety or in substantial part, by each defendant, each time they trained a version of one of their Image Generators.

34. The defendants did not obtain the consent of members of the Class for the use of these Works, much less for the commercial purpose of training an Image Generator that would compete with members of the Class.

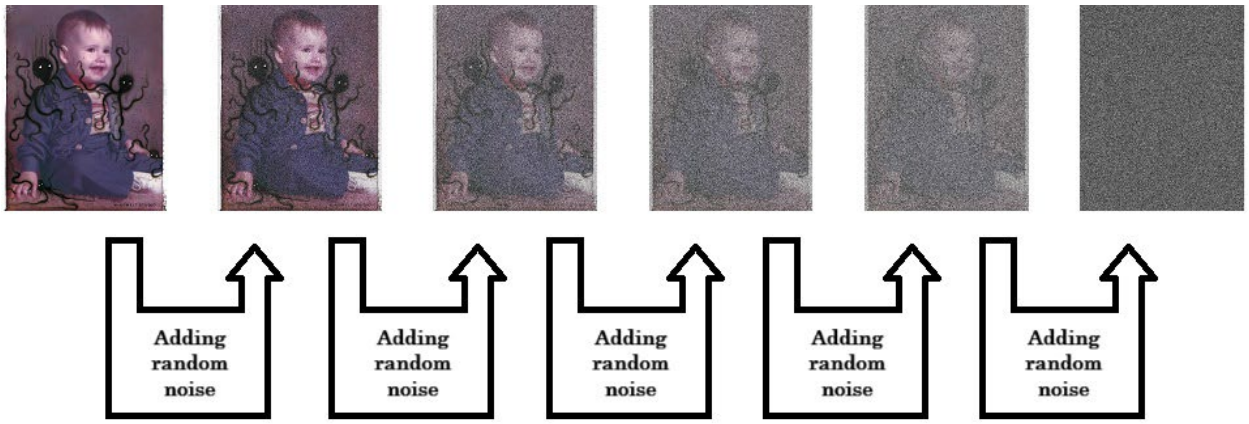
35. At all material times, the defendants were well aware of their obligations to obtain valid licenses for use of the Works.

36. The particulars of when and how the Works were copied is within the knowledge of the defendants, and not within the knowledge of the Class.

G. The Defendants Created Additional Copies of All Works to Train Image Generators

37. The defendants' Image Generators all use diffusion models to generate images.

38. To train a diffusion model, the trainer needs to produce many copies of each image in the training dataset, adding different amounts of random "noise" to each image. The following images are an example of a Work with different amounts of noise:

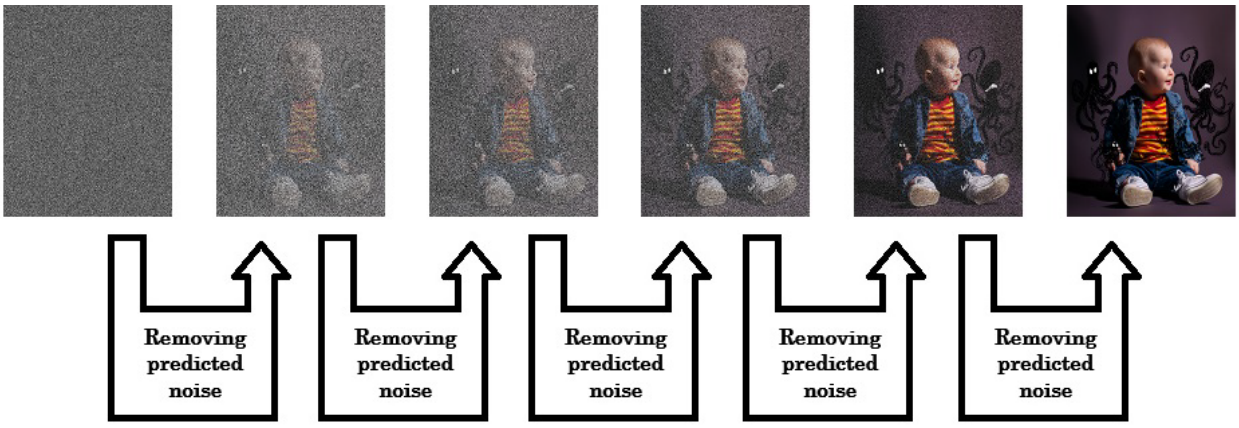


39. If an image like the Work on the left is in the training dataset, the trainer might produce the four copies to the right with progressively more noise. This is known as forward diffusion. The model uses these copies to learn to distinguish noise from image.

40. Each of the defendants used forward diffusion to train their Image Generators. To do this, they each had to create multiple copies of each Work in the LAION dataset that was used for their model, adding progressively more noise to each image.

H. <u>The Image Generators Reproduced Copyrighted Images</u>

41. After a diffusion model is trained, it generates images using reverse diffusion. It starts with random noise, generated by a random seed. It then goes through multiple stages of de-noising. At each stage, it predicts a noise component – calculated based on the prompt – and subtracts it. After multiple stages of de-noising, all that is left is an image. The example below, generated on Midjourney, illustrates how that might work:



42. Fundamentally, a diffusion model is just a compressed version of its training dataset that can be used to calculate noise components that, if subtracted, will reproduce the original images in its training dataset. In effect, it copies and pastes the images. With the right prompt, it will reproduce those images. Indeed, Stability has repeatedly acknowledged that Stable Diffusion is just a compressed version of its training dataset.

(a) On August 22, 2022, Stability announced the launch of Stable Diffusion, explaining that it "is the culmination of many hours of collective effort to create a single file that compresses the visual information of humanity into a few gigabytes".

(b) In a video published September 19, 2022, Mr. Mostaque said: "Stable Diffusion is the model itself … we took 100,000 gigabytes of images and compressed it to a 2 gigabyte file that can recreate any of those and iterations of those".

(c) In a video published on December 22, 2022, referring to Stable Diffusion 2, Mr. Mostaque said: "We took 100,000 gigabytes of image-label pairs – 2,000,000,000

images – and created a 1.6 gigabyte file … that basically compresses the visual information of a snapshot of the internet."

(d) As quoted in an article published May 3, 2023, Mr. Mostaque told a tech journalist that Stable Diffusion is "a hundred thousand gigabytes of images compressed to a two-gigabyte file."

43. As a result, the Image Generators have reproduced images in their training datasets in response to prompts.

44. Multiple studies going back to at least December 2022 have confirmed this with respect to Stable Diffusion. In particular, studies have shown the following:

(a) On average, more than 1% of images generated by Stable Diffusion were substantially similar to an image in its training dataset.

(b) On average, between 50% and 75% of images generated by Stable Diffusion contained parts substantially similar to parts of a copyrighted image in its training dataset.

45. Each of the other Image Generators has also been studied and found to reproduce images in their training datasets in response to prompts.

I. The Image Generators Mimicked the Distinctive Styles of Artists

46. In addition to making near-identical copies of specific works, the Image Generators have also produced images designed to mimic the distinctive styles of individual artists. This is most likely to occur where the user prompts the Image Generator to produce an image "in the style of" a particular artist.

47. One study published on July 8, 2023 confirmed this with respect to Stable Diffusion. The researchers asked Stable Diffusion to reproduce works by professional artists. They then took the generated images and asked an artificial intelligence tool to identify the artist. For more than 80% of artists, the second tool correctly identified the artist, suggesting a high degree of similarity between the generated image and that artist's distinctive style. The researchers also calculated the degree of similarity between the generated image and the artist's works. For more than 90% of artists, the degree of similarity was above 95% (the Bonferroni-corrected p-value was below 0.05).

48. Further, the defendants each publicly encouraged users of their commercial Image Generators to use artists' names in their prompts, and provided guides on how to write prompts in a manner that would be more likely to reproduce copyrighted images. Amongst others:

(a) Stability maintains a Discord channel where executives routinely offer resources to users and encourage them to use artists' names in prompts. On that channel, Mr. Mostaque posted a series of examples of the types of images produced by using the prompt "Artwork by [Artist Name]".

(b) Midjourney published "tips for text-prompts", in which it recommended that users "try invoking unique artists to get a unique style".

(c) In February 2022, Midjourney created a list of artists' distinctive styles and encouraged users to use it in prompts. The CEO of Midjourney, David Holz, posted on Discord "think you're all gonna get [your] mind blown by this style feature … we were very liberal in building out the dictionary … it has cores and punks and

artist names … as much as we could dump in there … i should be clear it's not just genres its also artist names … it's mostly artist names … 4000 artist names."

J. The Defendants Commercialized and Profited from the Image Generators

49. Each of the defendants has made millions of dollars off of their Image Generators, built on the back of the Works of the plaintiff and members of the Class. For example:

(a) Stability's annual revenue is estimated at more than $100,000,000. Its only products are its Image Generators, video generators, and audio generators.

(b) Midjourney's annual revenue is estimated at more than $500,000,000. Its only product is its Image Generator.

(c) Google makes millions of dollars per year attributable to its Image Generator.

K. The Defendants Knew They Were Harming Artists and Infringing Copyright

50. At all material times, each of the defendants was fully aware that copyright subsisted in the Works, that there was substantial value in the copyright to the Works, and that its conduct was to the detriment of artists and a breach of copyright. For example:

(a) In August 2022, Mr. Mostaque posted on Discord: "Ironically [the] main funding of stability except me is … artists".

(b) In a video posted September 19, 2022, Mr. Mostaque explained that Stability had agreed to license Bollywood content from Eros Investments so that it could use that information in its Image Generators. He added that "if you want to use Bollywood stuff they retain the license but they license it to you … if you use stuff that's copyright, if you create something copyrighted … then you're violating copyright".

(c) In a video posted December 22, 2022, Mr. Mostaque was asked what the effect of Stability would be on Hollywood. He responded, with a wide smile on his face: "I imagine Hollywood will be quite disintermediated".

IV. CAUSES OF ACTION

A. Infringement of Copyright

51. Each member of the Class owns the copyright to at least one Work.

(i) Input Infringements

52. As described above at paragraphs 31-36, amongst others, each defendant downloaded each Work one or more times, in whole or in substantial part, without a license or the consent of the members of the Class.

53. As described above at paragraphs 37-40, amongst others, each defendant made one or more copies of each Work – different from the original download only by virtue of having random noise added – without a license or the consent of the members of the Class.

54. The defendants used these copies to train their commercial Image Generators, which, as described above at paragraphs 14 and 41-48, amongst others, commercially competed directly with members of the Class.

55. As described above at paragraphs 29-30 and 50, amongst others, at all material times, the defendants knew or ought to have known that copyright subsisted in a large number of images linked to in LAION-400M or LAION-5B, including all of the Works.

56. The defendants continue to engage in these unlawful activities.

57. For all these reasons, the defendants' conduct constituted a production or reproduction of the Works within the meaning of section 3(1)(a) of the *Copyright Act*, and so an infringement of copyright within the meaning of section 27 of the *Copyright Act*.

(ii) Output Infringements

58. As described above at paragraphs 41-47, amongst others, each of the Image Generators reproduced and made publicly available images that were substantially similar to the Works or that mimic the distinctive style of a member of the Class, containing identifiable portions of the Works.

59. As described above, at all material times, the defendants knew or ought to have known that their Image Generators reproduced many copyrighted images, including the Works.

60. Further, the defendants induced the users of their commercial Image Generators to infringe the copyrights in the Works.

61. Generating those images constitutes a production or reproduction of the Works within the meaning of section 3(1)(a) of the *Copyright Act*. Making the generated images available to the user constitutes a publication of the Works within the meaning of sections 2.2(1)(a)(i) and 3(1)(a) of the *Copyright Act*, or in the alternative a communication of the Works to the public by means of telecommunication within the meaning of sections 2.4(1.1) and 3(1)(f) of the *Copyright Act*.

62. To the extent that the reproductions are videos or GIFs, this also constitutes adaptation or public presentation of the Works as cinematographic works within the meaning of section 3(1)(e) of the *Copyright Act*.

63. For all of those reasons, the defendants' conduct constituted infringement of copyright within the meaning of section 27 of the *Copyright Act*.

(iii) Provision of Services to Infringe

64. The defendants are also liable under section 27(2.3) of the *Copyright Act*. Many of the factors in section 27(2.4) of the *Copyright Act* support this conclusion.

(a) As described above at paragraph 48, amongst others, the defendants encouraged users to use the Image Generators in a manner that would breach copyright. This constitutes promotion of their service as one that could be used to enable acts of copyright infringement within the meaning of section 27(2.4)(a).

(b) As described above at paragraph 50, amongst others, the defendants understood that their conduct would breach copyright. Additionally, as described above, many publicly-available studies, published over the course of almost 3 years, have shown that each of the Image Generators reproduced copyrighted images, so the defendants should have been aware of the breaches. This constitutes knowledge that their service was used to enable a significant number of acts of copyright infringement within the meaning of section 27(2.4)(b).

(c) The defendants could have licensed images in bulk instead of infringing copyright. Stability licensed Bollywood movies from Eros Investments, so it had actual knowledge that licensing was necessary. There are large databases from which the defendants could have licensed images.

(d) As described above at paragraph 49, amongst others, the defendants have made millions of dollars off of the Image Generators. These are benefits received as a

result of enabling the acts of copyright infringement within the meaning of section 27(2.4)(e).

B. Knowing Inducement of Infringement

65. As described above at paragraphs 29-30, 44-45, 47, 48, and 50, amongst others, at all material times, the defendants knew or ought to have known that users could prompt their Image Generators to produce images that infringed the copyrights of members of the Class.

66. As described above at paragraph 48, amongst others, the defendants encouraged users to prompt their Image Generators in a manner that would mimic the distinctive styles of members of the Class.

67. Thus, the defendants are liable for knowingly inducing their users to infringe the copyrights of members of the Class.

C. Discoverability & Fraudulent Concealment

68. The defendants actively, intentionally, and fraudulently concealed from the Class the conduct described above at paragraphs 31-40, amongst others, preventing the Class from discovering the infringements. In particular, the Class is not aware of when or how often the defendants downloaded the Works in each of the LAION datasets, when or how often the defendants are creating copies of their images for use in forward diffusion training, or how many copies the defendants create of their images in each round of training.

69. Additionally, the defendants repeated the conduct described above at paragraphs 31-40 each time that they trained a new model or a new version of their model. They continue to engage in the same conduct as they develop new models, so this is a continuing breach.

70. The Image Generators repeat the conduct described above at paragraphs 41-47 each time that a user inputs a relevant prompt. The Class has no ability to determine when users input prompts that produce infringing reproductions, and so have no means of discovering most instances of infringement.

V. OTHER

71. The plaintiff pleads and relies on the *Copyright Act*, RSC 1985, c C-42.

72. The plaintiff proposes that this action be tried in Toronto.

July 29, 2025

SOTOS LLP
55 University Ave., Suite 600
Toronto, ON M5J 2H7

Mohsen Seddigh (LSO # 70744I)
mseddigh@sotos.ca
Adil Abdulla (LSO # 82095E)
aabdulla@sotos.ca
Sara Ray Ramesh (LSO # 90549W)
sramesh@sotos.ca

Tel: (416) 977-0007
Fax: (416) 977-0717

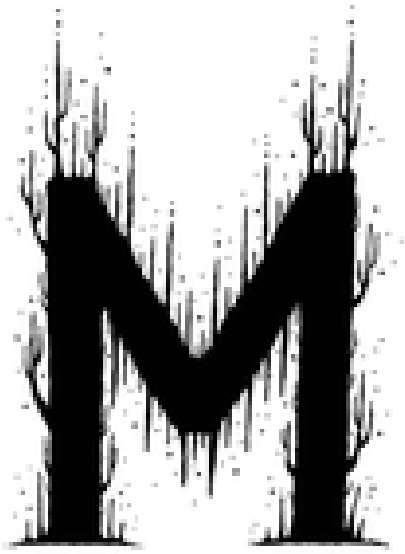
TAP LAW
243 Queen St. W, 2nd Floor
Toronto, ON M5V 1Z4

Veronica Tsou (LSO # 67631O)
veronica@taplaw.ca

Tel: (416) 583-1589
Fax: (416) 583-2435

Lawyers for the plaintiff

SCHEDULE A: EXAMPLES OF PLAINTIFF'S WORKS



MARK GAGNÉ
Plaintiff

-and-

STABILITY AI LTD. et al.
Defendants

Court File No.

FEDERAL COURT
PROPOSED CLASS PROCEEDING

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

SOTOS LLP
55 University Ave., Suite 600
Toronto, ON M5J 2H7

Mohsen Seddigh (LSO # 70744I)
mseddigh@sotos.ca
Adil Abdulla (LSO # 82095E)
aabdulla@sotos.ca
Sara Ray Ramesh (LSO # 90549W)
sramesh@sotos.ca

Tel: (416) 977-0007
Fax: (416) 977-0717

TAP LAW
243 Queen St. W, 2nd Floor
Toronto, ON M5V 1Z4

Veronica Tsou (LSO # 67631O)
veronica@taplaw.ca

Tel: (416) 583-1589
Fax: (416) 583-2435

Lawyers for the plaintiff