Litigators of the Week: A Landmark $1.5B Settlement for Authors in Copyright Suit Against AI Company Anthropic

By Ross Todd

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Our Litigators of the Week are **Justin Nelson** and **Rohit Nath** of Susman Godfrey and **Rachel Geman of Lieff Cabraser Heimann & Bernstein**. Nelson and Geman are co-lead counsel for copyright holders who claim Anthropic committed large-scale infringement by downloading books obtained from pirated datasets and using them to train the company's AI chatbot Claude. Nath took the lead for plaintiffs at the summary judgment phase.

U.S. District Senior Judge William Alsup agreed with Anthropic that the company's use of copyrighted work to train its AI tool was "transformative" and qualified as fair use. However, the judge held that the company's downloading of millions of book files from two online libraries—Library Genesis, known as LibGen, and the Pirate Library Mirror, or PiLiMi—could constitute "straightforward piracy" at "a massive scale" and granted class certification.

Alsup expressed initial skepticism to the proposed $1.5 billion settlement the plaintiffs reached with Anthropic announced early last month. But after they addressed questions about how authors would be identified and notified about the settlement, the judge gave the deal preliminary approval on Sept. 25.

Lit Daily: Who were your clients and what was at stake here?

L-R: Justin Nelson of Susman Godfrey and Rachel Geman of Lieff Cabraser Heimann & Bernstein and Rohit Nath of Susman Godfrey.

Justin Nelson: We represented three brave writers—Andrea Bartz, Kirk Wallace Johnson, and Charles Graeber—who stepped up to sue Anthropic on behalf of hundreds of thousands of other copyright holders. In this case, and other cases, the fate of an industry and the writing profession is at stake. It's critical that we live in a world where humans have an incentive to create.

This landmark settlement far surpasses any other known copyright recovery. It is the first of its kind in the AI era. It will provide meaningful compensation for each class work and sets a precedent requiring AI companies to pay copyright owners. This settlement sends a powerful message to AI companies and creators alike

that taking copyrighted works from these pirate websites is wrong.

How did this case come to you and your firms?

Rachel Geman: Our firms had been leading another group of authors and copyright holders—including John Grisham, Jodi Picoult, David Baldacci, Jonathan Franzen, the Authors Guild and George R.R. Martin—in litigation against OpenAI and Microsoft. We received an outpouring of interest from other writers who wanted to help and who wanted to hold other LLM companies accountable.

Nelson: In the middle of 2024, a story broke that uncovered Anthropic's use of a pirated dataset called Books3. That's what led to the case. There were a number of authors who had reached out to us from the OpenAI litigation, where I've been appointed as lead counsel.

Who all was on the team and how have you divided the work?

Nelson: Lieff and Susman, as co-lead class counsel, worked as one team every step of the way, dividing up briefing, depositions, discovery and all the other work in the case.

Rohit Nath: In addition to Justin and me, the Susman Godfrey team includes **Alejandra Salinas**, **Jordan Connors**, **Michael Adamson**, **Craig Smyser** and **Samir Doshi**.

Geman: In addition to myself, the Lieff Cabraser team includes **Daniel Hutchinson**, **Jallé Dafa**, **Jacob Miller**, **Danna Elmasry**, **Amelia Haselkorn** and **Betsy Sugar**. **Elizabeth Cabraser** gave invaluable advice as well.

Judge Alsup sided with Anthropic on the transformative nature of Claude, but with you and your clients on the acquisition of certain works. Although piracy-related claims have come up in multiple AI copyright cases, they haven't always stuck. How were you able to make the case that the method of acquisition mattered to Anthropic's fair use argument?

Nath: The key was to frame their piracy as a separate violation of the Copyright Act—that Anthropic committed infringement the moment it copied bootleg books from pirate websites. We had spent some time thinking through this theory, as you can see in this article we published last year. At oral argument, we focused on how Anthropic's decision to get the books it wanted without paying for them from pirate sites was no different from teenagers in the early 2000s using peer-to-peer networks to get movies and music for free. That ended up being the difference in this case, and that win is what propelled us to this settlement.

Statutory damages for willful infringement could have gone as high as $150,000 per work. Why was this settlement—about $3K per work—the right deal for plaintiffs?

Nelson: Absolutely. To start, this is the largest copyright recovery ever, and that alone sends a message. Authors, publishers and any other copyright holders will get meaningful relief, and they will get it without carrying the risk of an appeal. The range of potential outcomes was zero if we were to lose all the way to $150,000 per work if we were going to win and, even then, only if Anthropic could pay on all of that. The statutory damages minimum is $200 a work if there is innocent infringement and $750 a work if there is not innocent infringement. According to a study that was just released in 2023, the most common verdict for copyright statutory damages was $750 a work. We have done this and settled in a way that provides for four times the value of the statutory minimum, even assuming no innocent infringement, to $3,000 a work.

Judge Alsup had lots of questions for you when the settlement was first proposed—many directed at how you were identifying and reaching class members. How were you able to address his concerns and get preliminary approval to this settlement?

Geman: We came up with an extraordinarily detailed plan that had as north stars replicating industry contracts and providing fairness and transparency. We worked with our incredible class representatives, industry stakeholders and co-counsel. Each work gets the same amount in good part because they were treated the same by Anthropic. And class members can, in most cases, choose a default percentage, or provide information if they think another split makes sense.

We very much appreciated Judge Alsup's setting forth 34 on-the-nose questions ahead of time so he could make sure we had thought everything through. And he has instructed us to bird dog the implementation, and bird dog we will. It is our honor to do so for this class.

A $1.5 billion settlement sounds amazing on its face, but with the amount of money being invested into AI companies like Anthropic, you hear the term "rounding error" being thrown around with a settlement of that size. Has this settlement spurred any changes in the AI companies? Will it?

Nelson: This settlement is a turning point for copyright holders. It's the first major victory in any of these cases, and it reflects that these companies face real, significant risk if they decide to ignore copyright law and ask for forgiveness later. The reaction from the copyright community has confirmed this. The settlement has been met with enormous enthusiasm and support from organizations like the Authors Guild, Association of American Publishers, Copyright Alliance and News/Media Alliance.

One of your named plaintiffs wrote in the New York Times last week that this settlement is "an opening gambit in a critical battle that will be waged for years to come." Do you see it that way? What other matters are you and your colleagues handling against AI companies?

Geman: Absolutely, this is just the beginning. We and Susman Godfrey—with other co-counsel—are continuing to litigate cases against OpenAI, Microsoft, Nvidia and Databricks. My firm, with co-counsel, is also pursuing claims against Meta, with upcoming litigation about the issue that when books are torrented, they can be copied and reproduced to others as well. This is one of the ways that certain AI companies have reinvigorated book piracy.

AI is also a fast-moving and heterogeneous sector, with apparently most start-up money in AI, so things will evolve. What won't change is our commitment to rightsholders.

What can other copyright holders take from what you were able to accomplish here?

Nelson: Piracy can have massive consequences. If someone is exploiting your work—even large, well-resourced technology companies—there are ways you can take action to right the wrong. This settlement is, in many ways, a proof of concept for other pending cases and likely many other cases to come.

What will you remember most about this matter?

Nelson: Our incredible clients. They have dedicated their lives to writing books, and in this case, have dedicated an enormous amount of time and effort in making sure that this settlement is fair to everyone.

Geman: This might sound cliché, but the role of books in our thoughts as well as our language—two different things, thoughts and language, that are at risk for conflation in people's minds given how AI is often marketed and treated.