



No. S-246286
Vancouver Registry

In the Supreme Court of British Columbia

Between

MICHAEL DEAN JACKSON

Plaintiff

and

OPENAI, INC.; OPENAI, LP; OPENAI, LLC; OPENAI GP, LLC; OPENAI OPCO, LLC; OPENAI GLOBAL, LLC; OAI CORPORATION, LLC; OPENAI HOLDINGS, LLC; OPENAI STARTUP FUND I, LP; OPENAI STARTUP FUND GP I, LLC; OPENAI STARTUP FUND MANAGEMENT, LLC; MICROSOFT CORPORATION and MICROSOFT CANADA INC.

Defendants

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

NOTICE OF APPLICATION

(Application to strike out the notice of civil claim, or dismiss or stay the proceeding on the ground that the court does not have jurisdiction)

Names of applicants: OPENAI, INC.; OPENAI, LP; OPENAI, LLC; OPENAI GP, LLC; OPENAI OPCO, LLC; OPENAI GLOBAL, LLC; OAI CORPORATION, LLC; OPENAI HOLDINGS, LLC; OPENAI STARTUP FUND I, LP; OPENAI STARTUP FUND GP I, LLC; and OPENAI STARTUP FUND MANAGEMENT, LLC.

To: MICHAEL DEAN JACKSON, MICROSOFT CORPORATION, and MICROSOFT CANADA INC.

TAKE NOTICE that an application will be made by the applicants to the Judicial Management Judge in this matter, Justice Brongers, at the courthouse at 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1 on February 19, 2026 at 10:00 am for the orders set out in Part 1 below.

The applicants estimate that the application will take two (2) days.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge.

PART 1: ORDER(S) SOUGHT


1. The Applicants seek an order:
 - 1.1. Striking out the notice of civil claim on the ground that the notice of civil claim does not allege facts that, if true, would establish that the court has jurisdiction over each of the Applicants with respect to the claims made;
 - 1.2. In the alternative, dismissing or staying the proceeding on the ground that the court does not have jurisdiction over each of the Applicants with respect to the claims made;
 - 1.3. In the further alternative, staying of the proceeding on the ground that the court ought to decline to exercise jurisdiction over each of the Applicants with respect to the claims made;
 - 1.4. Costs of this application payable by the Plaintiff to the Applicants; and
 - 1.5. Such further and other relief as counsel may request and this Honourable Court may grant.

PART 2: FACTUAL BASIS

1. The Applicants have not attorned to the jurisdiction of this Honourable Court.
2. The Notice of Civil Claim (the “**Claim**”) asserts copyright infringement in an unknown number of unidentified works, as well as other allegations that are vague and unparticularized including conspiracy and unjust enrichment.
3. None of the Applicants are domiciled in British Columbia.¹
4. None of the Applicants carry on business in British Columbia. None of the Applicants have established an office, mailing address, telephone listing, or any other place of

¹ Affidavit #1 of Shantanu Jain made 1-AUG-2025

business in British Columbia. Additionally, the Applicants have not owned, leased, or rented any property or other assets in British Columbia, and they have not employed any officers, directors, agents, or employees within the province.²

5. Of the Applicants, only OpenAI OpCo, LLC develops artificial intelligence (“AI”) models, including the collection of training data and model training. OpenAI OpCo, LLC’s collection of training data and model training do not occur in British Columbia.³ OpenAI OpCo, LLC’s web crawlers, used to crawl content on the internet, accessed only publicly available websites.⁴
6. The Applicants do not operate data centres in British Columbia or use third-party data centres in British Columbia for their collection of training data and model training.⁵
⁶
7. The Applicants are independent from the Microsoft Defendants. Microsoft does not control or direct any research, product development, or design of any models of any Applicant.⁷

PART 3: LEGAL BASIS

No Subject-Matter Jurisdiction: Copyright Is Territorial, and Precludes Overlapping Causes of Action

8. The Court lacks subject-matter jurisdiction over the claims advanced in this proceeding. Canadian copyright law is territorially limited and does not reach allegedly infringing acts occurring outside of Canada. As the Supreme Court has stated, “Copyright law respects the territorial principle, reflecting the implementation

² Affidavit #1 of Shantanu Jain made 1-AUG-2025

³ Affidavit #1 of Shantanu Jain made 1-AUG-2025; Affidavit #1 of Colin Reid made 1-AUG-2025

⁴ Affidavit #1 of Colin Reid made 1-AUG-2025

⁵ Affidavit #1 of Shantanu Jain made 1-AUG-2025; Affidavit #1 of Colin Reid made 1-AUG-2025

⁶ Affidavit #1 of Shantanu Jain made 1-AUG-2025; Affidavit #1 of Colin Reid made 1-AUG-2025

⁷ Affidavit #1 of Shantanu Jain made 1-AUG-2025

of a ‘web of interlinking international treaties’ based on the principle of national treatment.”⁸ As a result, Canadian copyright law, which establishes a territorially declared right, cannot be infringed by an extraterritorial act.⁹

9. OpenAI OpCo, LLC’s collection of training data and model training do not occur in British Columbia. As copyrights are territorial and the conduct the Claim alleges infringes the Plaintiff’s copyright occurred outside of British Columbia, the Claim is not with respect to enforcing any property right in British Columbia.
10. Any collection of training data and model training activity alleged to be infringing occurs [REDACTED]. If anything, the Claim would be about any copyrights that the Plaintiff may hold in other jurisdictions.
11. Moreover, the retrieval of publicly available content on the internet cannot, in itself, constitute copyright infringement. This is because “making a work available on an internet website accessible to the public constitutes authorization of communication by telecommunication.”¹⁰ By publishing his content publicly online, the Plaintiff has, at a minimum, authorized access to that public content. Any act that is authorized by the copyright holder cannot constitute infringement.¹¹ To the extent there was any further reproduction or use of that content beyond merely accessing a public webpage, such acts, if they occurred, took place outside of British Columbia. In other words, where a copyright holder has made content publicly available online, the mere

⁸ *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45, at para 55.

⁹ *Thumbnail Creative Group Inc. v. Blu*, 2009 BCSC 1833, at [para 23](#).

¹⁰ *Warman v. Fournier*, 2012 FC 803, at [para 36](#); See also *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30 (“SOCAN 2”), at [para 106](#).

¹¹ Copyright Act, RSC 1985, c C-42, [s 27](#).

act of accessing that content does not constitute copyright infringement; there would need to be a further infringing act in the jurisdiction.

12. In addition, jurisdiction over out-of-province defendants cannot be founded on claims that are legally untenable. The Plaintiff's conspiracy and unjust enrichment claims merely duplicate their copyright infringement allegations. Such duplicative claims are precluded by the *Copyright Act*, which provides an exhaustive statutory scheme setting out the rights and remedies relating to copyright.
13. It is well-established that copyright in Canada is a creature of statute and that the rights and remedies it provides are exhaustive.¹² The *Copyright Act* explicitly defines copyright,¹³ and explicitly ousts any other source of copyrights.¹⁴
14. In addition, copyright is a matter of exclusive federal jurisdiction. Copyright is expressly assigned to the federal Parliament under section 91(23) of the *Constitution Act*, 1867,¹⁵ and is governed exclusively by the *Copyright Act* as set out in section 89. As such, the doctrine of interjurisdictional immunity precludes the application of provincial laws—whether in contract, tort, or equity—that would intrude on the core of exclusive federal jurisdiction over copyright.¹⁶
15. As a result, the Plaintiff's conspiracy and unjust enrichment claims are wholly ousted by the comprehensive and exhaustive scheme set out in the *Copyright Act*. These

¹² *Théberge v. Galerie d'Art du Petit Champlain inc.*, 2002 SCC 34, at [para 5](#); *Alberta v. Canadian Copyright Licensing Agency (Access Copyright)*, 2024 FC 292, at [para 218](#); *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, at [para 9](#).

¹³ *Copyright Act*, RSC 1985, c C-42, [s 2](#).

¹⁴ *Copyright Act*, RSC 1985, c C-42, [s 89](#).

¹⁵ The Constitution Act, 1867, 30 & 31 Vict, c 3, [s 91](#).

¹⁶ *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, at [para 66](#).

claims are therefore untenable in law and cannot serve as a basis for establishing this Court's jurisdiction.

No In Personam Jurisdiction

16. There is no real or substantial connection to British Columbia as between the Applicants and the issues alleged in the Claim.
17. The Applicants are not domiciled in British Columbia and do not carry on business in British Columbia. The Supreme Court has made clear that "carrying on business" requires some form of actual, not merely virtual, presence in the jurisdiction.¹⁷
18. The alleged "tort" was not committed in British Columbia. As set out above, OpenAI OpCo, LLC's collection of training data and model training do not occur in British Columbia.

In the Alternative, British Columbia is Not a Convenient Forum

19. Should this Court find that it has jurisdiction over the Applicants, the Applicants submit that the United States is, in any event, clearly the more suitable and convenient forum. This is because all relevant *forum non conveniens* factors weigh in favour of adjudicating the claim in the United States.¹⁸
20. The **comparative convenience and expense** of litigating in British Columbia versus the United States favours the latter. All of the Applicants are based in the United

¹⁷ *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, at [para 87](#); *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, at [para 85](#).

¹⁸ Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28, [s 11](#).

States,¹⁹ and the alleged conduct, including the training of AI models and the crawling of public web pages [REDACTED].²⁰

21. The **law to be applied** to issues in the proceeding favours the United States. Copyrights are territorial; the conduct alleged to be infringing [REDACTED].
22. The desirability of **avoiding conflicting decisions** in different courts favours the United States. The conduct alleged to be infringing [REDACTED]. The permissibility of training AI models on copyright-protected works is an active issue before the U.S. courts. [REDACTED] on the basis of Canadian copyright laws creates a real risk of inconsistent outcomes on the legality of identical facts.
23. The **enforcement of an eventual judgment** favours the United States. If this Court were to issue a judgment declaring the Applicants' conduct unlawful under Canadian copyright law, there is a risk that such a judgment would not be enforceable in the United States—[REDACTED].
24. The **fair and efficient working of the Canadian legal system** as a whole is a factor that favours the United States. It would be inefficient for this Court to adjudicate conduct that falls squarely within the ambit of U.S. copyright law and that occurred at least predominantly within the United States. There is no threat to the integrity or functioning of the Canadian legal system in declining to exercise jurisdiction over foreign conduct involving territorial intellectual property rights.

¹⁹ Affidavit #1 of Karhema Ettienne made 1-AUG-2025

²⁰ Affidavit #1 of Shantanu Jain made 1-AUG-2025

PART 4: MATERIAL TO BE RELIED ON

1. The pleadings filed in this action.
2. Affidavit #1 of Shantanu Jain made 1-AUG-2025
3. Affidavit #1 of Colin Reid made 1-AUG-2025
4. Affidavit #1 of Karhema Ettienne made 1-AUG-2025
5. Such other materials as counsel may advise and this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: August 1, 2025



Signature of Lawyer for filing parties

Lawyers: Christopher Van Barr, Scott Kugler,
Michael Crichton, Raman Johal, Marc Crandall,
Luke Sabourin

To be completed by the court only:

Order made

[] in the terms requested in paragraphs _____ of Part 1 of this notice of application

[] with the following variations and additional terms:

Date: _____

Signature of Judge Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- None of the above