IN THE SUPREME COURT OF THE UNITED STATES

United States, Petitioner, v. Moonshot AI, Respondent.

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Whether the outputs of a generative artificial intelligence model, produced without sufficient human creative intervention, constitute "works of authorship" eligible for copyright protection under the Copyright Act of 1976.
2. Whether the industrial-scale "distillation" of non-copyrightable AI outputs—the process of using one model's output to train or refine a secondary model—constitutes "copying" of protected intellectual property or is a non-infringing utilization of non-copyrightable data.
3. Whether the United States possesses statutory authority to treat the distillation of machine-generated outputs as unlawful or to enjoin it.
4. Whether the Government possesses standing to assert civil copyright infringement claims regarding the outputs of a third-party model.

STATEMENT OF THE CASE

Opinions Below The District Court granted Respondent's motion for summary judgment in this civil action, finding that the distillation of machine-generated outputs does not constitute copyright infringement as a matter of law. The Court of Appeals for the District of Columbia Circuit affirmed, holding that the Government lacks the statutory authority to characterize the distillation of non-copyrightable, publicly accessible AI outputs as "theft" of proprietary technology or a violation of federal intellectual property statutes.

Jurisdiction The judgment of the Court of Appeals was entered on [date]. This Court granted the petition for a writ of certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Statutory Provisions Involved 17 U.S.C. §§ 102, 103, 301, 501; 18 U.S.C. §§ 1831, 1832, 1030, 1836; 50 U.S.C. § 1702(b)(3).

SUMMARY OF ARGUMENT

The Government’s position fails because the "property" it seeks to protect—the outputs of the *Fable* model—does not exist as copyrightable property. Under established precedent, copyright requires human authorship; machine-generated outputs produced via automated pipelines lack this fundamental requirement. Because the outputs are in the public domain, their "distillation" cannot constitute copyright infringement.

Furthermore, the Government’s attempt to bypass this reality by invoking the Economic Espionage Act (EEA) or the Computer Fraud and Abuse Act (CFAA) is legally flawed. A breach of a private Terms of Service (ToS) agreement does not constitute "improper means" of trade secret misappropriation. Moreover, the outputs were disclosed through a public-facing API, defeating any claim of "secrecy." Under the CFAA, Respondent’s conduct does not constitute "access without authorization," as the outputs were elicited via authorized public endpoints.

Finally, the Government’s resort to IP-theft theories reveals a critical vacuum in its national security toolkit. Because the International Emergency Economic Powers Act (IEEPA) cannot regulate "informational materials" (50 U.S.C. § 1702(b)(3)), the Government is attempting to stretch the Copyright Act to achieve a result that only a specific Act of Congress can provide. This Court should declare that the Government lacks the authority to criminalize or enjoin the distillation of non-copyrightable AI outputs.

ARGUMENT

I. AI Outputs Produced Without Human Authorship Are Not Protectable Under the Copyright Act.

The Copyright Act of 1976 protects only "original works of authorship." *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991) establishes that originality requires a modicum of creativity. Critically, the law requires that such authorship be *human*. This principle is rooted in the *Trade-Mark Cases*, 100 U.S. 82 (1879), and *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884), which recognized that the "author" must be a human being capable of creative intent.

This requirement is settled in the context of AI. In *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025), the court affirmed that "human authorship is a bedrock requirement of copyright." The U.S. Copyright Office has further clarified that works "produced by a machine or mere mechanical process... without any creative input or intervention from a human author" are ineligible for registration. 88 Fed. Reg. 16,190 (Mar. 16, 2023).

Respondent’s distillation pipeline involved the automated elicitation of responses from *Fable*. These outputs were the result of probabilistic mathematical weights, not human creative expression. Because no human author provided the creative spark for the distilled corpus, those outputs are in the public domain. Consequently, the Government cannot assert a claim of copyright infringement.

II. The Government Lacks Standing to Assert Civil Copyright Infringement.

Even if the Court were to find a modicum of protectable expression within specific outputs, the Government lacks standing to bring this action. Under 17 U.S.C. § 501(b), only the copyright owner may sue for infringement. The outputs in question belong to Anthropic, a private party not before this Court. The United States cannot assert civil copyright infringement on behalf of a third-party corporation; this is a threshold, case-dispositive point that precludes the Government's current theory.

III. Even if Outputs Were Protectable, Distillation Constitutes Transformative Fair Use.

In the alternative, the distillation process remains lawful under the doctrine of fair use. Distillation is functionally an "intermediate-copying" process. Persuasive circuit authority suggests that making copies for the purpose of "intermediate" analysis or to facilitate a new, transformative use is permissible, as seen in *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992), *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F.3d 596 (9th Cir. 2000), and *Authors Guild, Inc. v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015).

This was addressed in the Northern District of California's 2025 ruling in the *Bartz* litigation against Anthropic, No. 3:24-cv-05417, 2025 WL 1741691 (N.D. Cal. June 23, 2025). While that court noted that the "unlawful acquisition" of source material is not excused by downstream fair use, Respondent's conduct is distinct: the outputs were elicited via authorized public API access, not through the "unlawful acquisition" of underlying source code or weights. Therefore, the "learning" process remains a non-infringing, transformative use of the data.

IV. The Government's Theories Under the EEA and CFAA are Statutorily Inapplicable.

The Government's pursuit of Respondent relies on a misapplication of federal criminal and civil statutes.

(a) Contractual Breach is not "Improper Means" under the EEA or DTSA. The Government characterizes Respondent's conduct as a violation of Anthropic's Terms of Service (ToS). However, a breach of a private contract is not synonymous with "improper means" under the Economic Espionage Act (18 U.S.C. §§ 1831–1832) or the Defend Trade Secrets Act (DTSA). While the Government invokes the foreign element of § 1831, that statute is a standalone offense requiring intent to benefit a foreign *government, instrumentality, or agent*—not merely the status of the defendant as a foreign company. Furthermore, the outputs were disclosed through a public-facing API, defeating any claim of "secrecy" required for trade secret protection. While the Government may target model weights as trade secrets, the distillation of public outputs does not extract those weights. Notably, under the DTSA, civil claims belong to the trade-secret owner (Anthropic), not the Government.

(b) The CFAA does not criminalize ToS violations. The Government alleges "unauthorized access" under the CFAA. However, an outsider case turns on the first prong: "without authorization." *Van Buren v. United States*, 593 U.S. 374 (2021) did not construe this prong, and the Court expressly reserved whether such access limits must be technological or may be contract-based (Footnote 8). Respondent's use of public-facing outputs does not constitute a "hack" or a breach of technical security protocols.

V. National Security Concerns Do Not Permit the Expansion of the Copyright Act.

The Government's resort to copyright and IP-theft theories is a "tell" that its national security authorities do not cleanly reach this conduct. Because the International Emergency Economic Powers Act (IEEPA) cannot regulate "informational materials" (50 U.S.C. § 1702(b)(3)), the Government cannot simply sanction the free download of open-source models or the distillation of public outputs.

District courts previously enjoined the 2020 IEEPA-based executive ban (see *TikTok Inc. v. Trump*, 490 F. Supp. 3d 73 (D.D.C. 2020) and *Marland v. Trump*, 498 F. Supp. 3d 624 (E.D. Pa. 2020)), while the Supreme Court upheld Congress's 2024 divestiture Act under intermediate First Amendment scrutiny in *TikTok Inc. v. Garland*, 604 U.S. ___ (2025). This establishes that any such restriction requires an Act of Congress, not a retroactive judicial expansion of copyright. The proper channels for the Government's concerns are the Entity List, procurement bans, and the ICTS rule—not the expansion of the Copyright Act to criminalize the lawful distillation of machine-generated data.

CONCLUSION

The Government seeks to transform a private contract dispute into a federal crime by inventing a "shadow copyright" for machine-generated outputs. Because such outputs lack human authorship, they are uncopyrightable and cannot be "stolen." Furthermore, the distillation process constitutes transformative fair use. Respondent respectfully requests that this Court AFFIRM the judgment below and declare that the distillation of non-copyrightable AI outputs does not constitute an infringement of a valid copyright or unlawful conduct under the cited statutes.

Respectfully submitted,

Counsel of Record For Moonshot AI

TABLE OF AUTHORITIES

Cases *Authors Guild, Inc. v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015) *Bartz v. Anthropic*, No. 3:24-cv-05417, 2025 WL 1741691 (N.D. Cal. June 23, 2025) *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884) *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991) *Marland v. Trump*, 498 F. Supp. 3d 624 (E.D. Pa. 2020) *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992) *Sony Computer Entertainment, Inc. v. Connectix Corp.*, 203 F.3d 596 (9th Cir. 2000) *Trade-Mark Cases*, 100 U.S. 82 (1879) *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025) *TikTok Inc. v. Garland*, 604 U.S. ___ (2025) *TikTok Inc. v. Trump*, 490 F. Supp. 3d 73 (D.D.C. 2020) *Van Buren v. United States*, 593 U.S. 374 (2021)

Statutes 17 U.S.C. § 102 17 U.S.C. § 103 17 U.S.C. § 301 17 U.S.C. § 501 18 U.S.C. § 1030 18 U.S.C. § 1831 18 U.S.C. § 1832 18 U.S.C. § 1836 28 U.S.C. § 1254(1) 50 U.S.C. § 1702(b)(3)

Other Authorities 88 Fed. Reg. 16,190 (Mar. 16, 2023) (U.S. Copyright Office AI Guidance)
