No Harm, No Standing (For Now): DMCA Violation Claims Against OpenAI Dismissed

A New York Federal Court Judge recently dismissed a copyright lawsuit brought by two news outlets: Raw Story Media Inc. and AlterNet Media Inc. for lack of standing. The dismissed complaint alleged OpenAI's use of Raw Story's and AlterNet Media's original content to train its artificial intelligence platform ChatGPT violated the Digital Millennium Copyright Act (DMCA). According to the federal judge, Raw Story and AlterNet failed to allege an adequate injury necessary to bring the legal claim.

The news organizations filed the lawsuit in February in the Southern District of New York (see *Raw Story Media Inc. v. OpenAI Inc.*, No. 24-cv-01514 (S.D.N.Y. 2024)), alleging that thousands of their articles were used without permission to train ChatGPT. According to the Plaintiffs, OpenAI removed the authors, titles and copyright management information from the collected articles before they were uploaded into the AI platform-a violation of the DMCA according to Plaintiffs.

For reference, section 1202(b) of the DMCA generally prohibits the removal of copyright management information (CMI) without permission in a manner that enables or facilitates a copyright infringement. Plaintiffs alleged that their copyrighted works, scraped of their CMI, were used to train OpenAI's ChatGPT and remain in its repository, which *could* result in damages.

While the Court did not render any legal conclusions as to the substantive allegations in the Complaint, the Court determined that Raw Story and AlterNet did not demonstrate a concrete injury necessary for standing in federal court. The Court stated that the Plaintiffs did not allege "any *actual* adverse effects stemming from [the] alleged DMCA violation." As a result, the Court dismissed the lawsuit.

Despite the dismissal, the Court left the door open for Plaintiffs to refile their claim. According to reports, the attorneys for the news organizations are confident they can address the issues identified by the Court in an amended complaint.

Unsurprisingly there has been a surge in litigation over copyrighted material used to train Generative AI Tools. One of the most notable cases was filed by the New York Times in the same district court in New York a year ago in which it alleged that Microsoft and OpenAI impermissibly reproduced the content of its articles and used that copyrighted material to train their large-language AI models. Similar to the Raw Story case, OpenAI (and Microsoft) sought dismissal of the complaint in February 2024, however that motion is still pending.

Bond attorneys regularly assist and advise clients on matters involving the use of artificial intelligence. For more information regarding AI matters, please contact Jessica Copeland, CIPP/US, or any attorney in Bond's artificial intelligence practice.